

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

NATIONAL TREASURY

NO. 1556

29 NOVEMBER 2019

CARBON TAX ACT, 2019

REGULATIONS

I, Tito Titus Mboweni, Minister of Finance, under section 19(c) of the Carbon Tax Act, 2019 (Act No. 15 of 2019), for the purposes of section 13 of that Act, hereby make the regulations as set out in the Schedule hereto.



TT Mboweni
MINISTER OF FINANCE

PREAMBLE

SINCE Government has enacted a carbon tax;

AND SINCE Government is desirous of providing a flexibility mechanism that will enable industry to deliver least cost mitigation, being mitigation at a lower cost to what would be achieved in their own operations, and thereby lower their tax liability;

AND SINCE Government is desirous to incentivise mitigation in economic sectors or in relation to activities that are not directly subject to the carbon tax or benefiting from other government incentives;

THEREFORE Government is desirous of providing an offset mechanism that may be utilised to develop carbon offset projects to enable reduction in respect of carbon tax liability.

BE IT THEREFORE ENACTED BY Regulation as follows—

Part I

Definitions

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Carbon Tax Act bears the meaning so assigned; and—

"administrator" means an administrator designated in terms of regulation 5;

"approved project" means—

- (a) a CDM project;
- (b) a VCS project;
- (c) a Gold Standard project; or
- (d) a project that complies with another standard approved by the Minister of Energy or delegated authority;

"attestation of voluntary cancelation" means a document issued by the CDM, VCS or Gold Standard certifying that a carbon credit has been cancelled for the purpose of being used in the South African carbon tax offset scheme;

"cancellation of carbon credit" means the permanent removal of a carbon credit from circulation in the CDM, VCS or Gold Standard registry system for purposes other than retirement;

"Carbon Tax Act" means the Carbon Tax Act, 2019 (Act No. 15 of 2019);

"CDM" means the Clean Development Mechanism as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change;

"CDM project" means a project—

- (a) that has been registered as contemplated in paragraph 36 of the Modalities and procedures for a clean development mechanism as contained in the Annex to Decision 3/CMP.1 in Part Two of the Addendum to the Report of the Conference of the Parties serving as the meeting of the Parties to the Protocol to the United Nations Framework Convention on Climate Change adopted at the third session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, Japan, on 11 December 1997 on its first session, held at Montreal from 28 November to 10 December 2005 (FCCC/KP/CMP/2005/8 Add.1); and
- (b) in respect of which a letter of approval as contemplated in regulation 7(3) of the National Environmental Management Act, 1998 Regulations for the establishment of a designated national authority for the Clean Development Mechanism (Government Notice No. R.721 published in *Government Gazette* No. 27788 of 22 July 2005) has been issued;

"extended letter of approval" means a letter issued by the administrator confirming that a project qualifies in respect of creating an offset;

"Gold Standard" means the Gold Standard and Certification Body, a non-profit organisation established in 2003;

"Gold Standard project" means a project that complies with the requirements set out in "Revised Annex C: Guidance on Project Type Eligibility" issued by the Gold Standard;

"list" means the entry of an offset in the offset registry;

"listing confirmation" means a confirmatory document issued in accordance with regulation 9(g);

"offset" means an avoidance, a reduction or a sequestration of carbon dioxide equivalent (CO₂e) emissions recognised in terms of an approved project;

"offset owner" means a person that owns an offset, whether by generating that offset by means of a CDM project, a Gold Standard project or a VCS project or by purchasing that offset from another person;

"offset registry" means the offset registry created by regulation 6;

"retire" means when an offset is used for the claiming of the allowance and that offset is permanently removed from the offset registry by the administrator;

"sequesterate" means the process of storing a greenhouse gas or increasing the carbon content of a carbon reservoir other than the atmosphere;

"VCS" means the non-profit non-governmental association, the Verified Carbon Standard;

"VCS project" means a greenhouse gas reduction program voluntarily entered into that is registered on the VCS project database in respect of which a verified carbon unit is issued;

"VCS project database" means the central VCS project database to which the VCS registry system is able to connect; and

"VCS registry system" means the platform where offsets are assigned unique serial numbers for the purposes of tracking the VCS project in respect of that offset.

Part II

Eligibility

Allowance of offset in respect of an approved project against carbon tax liability

2. (1) An offset, for the purposes of section 13 of the Carbon Tax Act must be allowed to a taxpayer derived from the furtherance of an approved project—

(a) that is carried on, on or after 1 June 2019 if that project is wholly undertaken in the Republic;

(b) in respect of an activity that is not subject to the carbon tax, subject to subregulations (2) and (3).

(2) An offset in respect of an approved project in existence prior to 1 June 2019, in respect of which the activities become subject to tax on or after that date under the Carbon Tax Act, other than any project mentioned in regulation 4(1)(a) and (b)

constitutes an offset for the purpose of these Regulations only if the offset would have been able to be used as an offset, notwithstanding subregulation (1)(b), under these Regulations up to 31 May 2019 had these Regulations been in operation on or before that date if that offset is utilised for the purpose of these Regulations on or before 31 December 2022.

(3) An offset in respect of an approved project existing prior to 1 June 2019, in respect of which the activities do not become subject to tax on or after that date under the Carbon Tax Act, may be utilised for the purposes of these Regulations until the end of the period, specified in regulation 3(1), during which the greenhouse gas emission reductions must be verified and certified under the provisions of the approved project.

Offset creation and utilisation period

3. (1) An offset is created, after the date on which that project starts causing the reduction of greenhouse gas emissions, during a period of—

(a) in the case of a CDM project—

- (i) 7 years which period may be extended with two periods of seven years respectively on application; or
- (ii) 10 years which period may not be extended;

(b) in the case of A Gold Standard project—

- (i) 7 years which period may be extended with three periods of seven years respectively on application; or
- (ii) 10 years which period may not be extended;

(c) in the case of a VCS project—

- (i) for offsets in respect of agriculture, forestry and other land use, other than offsets stipulated in subparagraph (ii)—
 - (aa) not less than 20 years but not more than 100 years; and
 - (bb) extended not more than four times;
- (ii) for all offsets in respect of agriculture, forestry and other land use and agricultural land management exclusively in respect of nitrous oxide, methane or fossil derived carbon dioxide, a period of not more than 10 years which period may be extended twice.

(2) Despite regulation 2(1)(b), if—

- (a) any offset exists in respect of an activity that is carried on in respect of which the carbon tax is not imposed; and
 - (b) the activity referred to in paragraph (a) becomes an activity in respect of which the carbon tax is imposed,
- that offset is allowed to be utilised in terms of these regulations until the period contemplated in subregulation (1) expires.

Part III Non-Eligibility

Limitation on allowance

4. (1) A taxpayer conducting an activity in respect of—

- (a) energy in respect of any power purchase agreement as defined in the Electricity Regulations on New Generation Capacity made by the Minister of Energy under section 35 (4) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) published by Government Notice 721 of 5 August 2009 in respect of the IPP bid programme as defined in those regulations that was signed on or before 9 May 2013 with contracted capacity exceeding 15 MegaWatt, with a cost equal to or lower than R1.09 per kilowatt hour;
- (b) renewable energy generated in respect of a technology with an installed capacity exceeding 15 MegaWatt with a cost equal to or lower than R1.09 per kilowatt hour;
- (c) which any allowance has been received in terms of section 12L of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (d) the destruction of industrial gases trifluoromethane (HFC-23) and nitrous oxide (N₂O) from adipic acid production;
- (e) nuclear energy;
- (f) geological carbon dioxide capture and sequestration; or
- (g) a temporary CDM certified emission reduction.

may not receive the allowance in respect of an offset in respect of that activity.

(2) For the purpose of this regulation—

“renewable energy” means energy generated from the following sources—

- (a) biomass;

- (b) geothermal;
- (c) hydro;
- (d) ocean currents;
- (e) solar;
- (f) tidal waves; or
- (g) wind;

“temporary CDM certified emission reduction” means a temporary certified emission reduction as defined in the United Nations Framework Convention on Climate Change, Clean Development Mechanism *Glossary: CDM Terms*.

PART IV

Administrator

Designation of administrator

5. The Director-General of the Department responsible for Energy or an official employed in the Clean Energy branch of the Department of Mineral Resources and Energy to whom the Director General may delegate exercise of power and discharging of responsibilities conferred by these regulations must act as administrator for the purpose of these Regulations.

Part V

Offset registry

Creation of offset registry

6. (1) The administrator must create or cause to be created and maintain or cause to be maintained an offset registry.

(2) The offset registry must consist of—

- (a) a project database containing information in respect of approved projects, the persons undertaking those approved projects and the documents submitted to the administrator in respect of those approved projects.

- (b) an ownership repository consisting of an electronic database reflecting the listing, transfer of ownership and retirement of offsets.

(3) The offset registry must contain a record of any—

- (a) offset registered in terms of regulation 9;
- (b) offset of which ownership changes;
- (c) offset in respect of which a certificate was issued in terms of regulation 9(i);
- (d) an offset that was retired in pursuance of the issuance of a certificate in terms of regulation 9(i);
- (e) correction to an existing offset; and
- (f) offset that has been revoked due to any material fact that changed or the taxpayer failed to comply with any requirement which would have had the effect that an offset would not have been available under these Regulations had such change in fact or such failure been known at the time of recognising of the offset under these Regulations.

Maintaining, overseeing of offset registry and access to offset registry

7. The administrator must—

- (a) maintain and oversee, or cause to be maintained and overseen, the offset registry; and
- (b) at all times provide the Minister of Finance and the Commissioner for the South African Revenue Service with ready access to the offset registry.

Part VI

Claiming of allowance

Procedure for claiming allowance by taxpayer

8. A person that claims the allowance must—

- (a) register with the administrator in the time, in the form and in the manner as the administrator may prescribe;
- (b) submit to the administrator those documents, in the time, in the form and in the manner, as the administrator may prescribe, enabling the administrator to issue an extended letter of approval;

- (c) (i) obtain an extended letter of approval from the administrator; or
(ii) submit the extended letter of approval that was already issued to the administrator;
- (d) submit to the administrator an attestation of voluntary cancellation;
- (e) obtain from the administrator a certificate containing the content as contemplated in regulation 11; and
- (f) claim the allowance against tax liability.

Duties of administrator for purpose of claiming of allowance by taxpayer

9. The administrator must—

- (a) scrutinise an application in respect of a request for issuing of an extended letter of approval;
- (b) satisfy her or himself that the requirements of regulation 10 have been complied with in view of issuing an extended letter of approval;
- (c) issue an extended letter of approval;
- (d) scrutinise an application for the purpose of listing of an offset;
- (e) for the purposes of listing an offset satisfy her or himself that —
 - (i) an extended letter of approval complies with paragraph (b); and
 - (ii) an attestation of voluntary cancellation is in accordance with an agreement between the government of the Republic and the applicable issuing standard;
 - (iii) a statement contained in the attestation of voluntary cancellation referred to in subparagraph (ii), specifying that the request for voluntary cancellation is made for the purposes of utilising a carbon offset in accordance with these Regulations;
- (f) list an offset in the offset registry;
- (g) issue a listing confirmation, reflecting the amount of credits indicated on the attestation of voluntary cancellation, upon successful listing of an offset in the offset registry;
- (h) alter the information in respect of an offset when the ownership in respect of the offset changes;
- (i) issue a certificate as contemplated in regulation 8(e) for the purposes of utilising an offset for the purposes of reducing liability for the carbon tax; and

- (j) retire an offset after that offset has been used to reduce liability for the carbon tax.

Part VII

Requirement for documents

Requirements for extended letter of approval

10. An extended letter of approval must contain—

- (a) (i) in respect of a CDM project and gold standard compliance project, the content of the letter of approval issued in respect of that project as contemplated in regulation 7(3) of the National Environmental Management Act, 1998 Regulations for the establishment of a designated national authority for the Clean Development Mechanism (Government Notice No. R.721 published in *Government Gazette* No. 27788 of 22 July 2005); and
- (ii) in respect of a VCS project and in respect of a gold standard voluntary project, a confirmation that the project meets the registration requirements for the applicable standard.
- (b) a confirmation by the administrator that the project complies with these Regulations.

Content of certificate

11. The certificate issued by the administrator as contemplated in regulation 8 must contain—

- (a) a unique number that must be allocated for each offset that is registered by the administrator;
- (b) the geographical location of the activity undertaken in respect of which the offset is created;
- (c) the identity of the person conducting or managing the conducting of the activity in respect of which the offset is created;
- (d) the methodological basis in respect of which the approved project is developed as contemplated in the definition of "approved project" in regulation 1;

- (e) the date of the commencement of the activity in respect of which the offset is created;
- (g) the offset creation and utilisation period as stipulated by regulation 3;
- (h) a statement that the certificate issued is non transferrable; and
- (i) the tax period in respect of which the certificate is issued.

Retaining and validity of Certificate

12. (1) A taxpayer must obtain a certificate, to be retained for duration of the project, offset eligibility or 15 years whichever is longer in paper, electronic or other usable format, containing the particulars prescribed by Regulation 11, from the administrator for the purposes of utilising an offset as an allowance against carbon tax liability.

(2) The certificate referred to in subregulation (1) remains valid for the purpose of utilisation in respect of these Regulations for no longer than the tax period in respect of which that certificate is issued.

PART VIII

Miscellaneous

Short title and commencement

13. These regulations are called the Regulations on carbon offsets under section 19 of the Carbon Tax Act and are deemed to have come into operation on 1 June 2019.