



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**DRAFT CARBON TAX BILL: DRAFT REGULATIONS MADE  
IN TERMS OF CLAUSE 19(c) OF THE DRAFT CARBON TAX  
BILL**

**12 November 2018**

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Draft regulations as contemplated in clause 19(c) of the Draft Carbon Tax Bill are hereby published for comment.

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**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.

**B**E 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;

**"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);

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**"offset"** means an avoidance, a reduction or a sequestration of carbon dioxide equivalent (CO<sub>2</sub>e) 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 approved project in respect of which an offset is in existence prior to 1 June 2019 may only be utilised for the purposes of these Regulations until end of the first phase of the carbon tax.

(3) An approved project in respect of which an offset—  
(a) is not in existence prior to 1 June 2019; and  
(b) of which registration has commenced before 1 June 2019,  
may only be utilised as an offset for the purposes of these Regulations until one year  
after the end of the first phase of the carbon tax.

### **Offset utilisation period**

**3.** (1) An offset may, after that offset is generated, only be utilised for—  
(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. A taxpayer conducting an activity in respect of—

- (a) renewable 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 was signed on or before 9 May 2013;
  - (b) the generation of renewable energy in respect of a technology with a generation capacity exceeding 50 MegaWatt;
  - (c) which any allowance may be 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 (N<sub>2</sub>O) from adipic acid production; or
  - (e) nuclear energy;
  - (f) geological carbon dioxide capture and sequestration,
- may not receive the allowance in respect of an offset in respect of that activity.

(4) 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;

**PART IV**  
**Administrator**

## **Designation of administrator**

5. The Director-General of the Department of Energy; or an official employed in the Clean Energy programme of the Department of 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(h);
- (d) an offset that was retired in pursuance of the issuance of a certificate in terms of regulation 9(h);
- (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) obtain an extended letter of approval from the administrator;
- (d) submit to the administrator an attestation of 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 has 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

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- (ii) an attestation of voluntary cancellation is in accordance with an agreement between the government of the Republic and the applicable issuing standard;
- (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) retire an offset after that offset has been used to reduce liability for the carbon tax; and
- (j) issue a certificate as contemplated in regulation 8 for the purposes of utilising an offset for the purposes of reducing 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;
- (f) an indication of whether the offset is utilised for the first time for the purposes of these Regulations or whether the offset is extended in terms of regulation 3; and
- (g) the offset duration period as stipulated by regulation 3.

### **Retaining of Certificate**

12. A taxpayer must obtain a certificate, to be retained for not less than 15 years 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.

## **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 come into operation on the date on which the Carbon Tax Act comes into operation.