



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

DRAFT REGULATIONS

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**INCOME TAX ACT, 1962: PUBLICATION OF PROPOSED REGULATIONS MADE
IN TERMS OF SECTION 12T(8) OF THE INCOME TAX ACT, 1962, ON THE
REQUIREMENTS FOR TAX FREE INVESTMENT**

Proposed regulations in terms of Section 12T(8) of the Income Tax Act, 1962 (Act No. 58 of 1962) are hereby published for comment.

SCHEDULE

Definitions

1. In these regulations, “**the Regulations**” means the regulations published by Government Notice No. R 172 of 25 February 2015.

Amendment of regulation 4 of Regulations

2. The following regulation is hereby substituted for regulation 4 of the Regulations:

“4. (1) A product provider may not accept any amount in respect of any investor in respect of a tax free investment in excess of the amounts limited as contemplated in section 12T(4)(a) and (c).

(2) For the purposes of calculating the amounts contemplated in subregulation (1), the total amount of contributions in respect of the tax free investment from which the amount is being transferred—

(a) in respect of the year of assessment during which the amount is transferred for the purpose of section 12T(4)(a); and

(b) (i) contemplated in paragraph (a); and

(ii) contributed in years of assessment prior to the year of assessment contemplated in subparagraph (i),

for the purpose of section 12T(4)(c);

must be taken into account as a contribution.”.

Amendment of regulation 6 of Regulations

3. Regulation 6 of the Regulations is hereby amended by the addition after subregulation (4) of the following subregulation:

“(5) If a tax-free investment consists of an investment with a fixed term and a guaranteed return the product provider must disclose to the investor prior to investing in that tax free investment that the return of that tax free investment shall be calculated be calculated in accordance with the formula:

$$X = A^B - C$$

in which formula—

- (a) “X” represents the amount to be determined
- (b) “A” represents an amount determined in accordance with the formula:

$$Y = E + \frac{(F - G)}{G}$$

in which formula—

- (i) “Y” represents the amount to be determined;
- (ii) “E” represents the number 1;
- (iii) “F” represents an amount equal to the value of the tax free investment at the expiry of the fixed term;
- (iv) “G” represents an amount equal to the value of the tax free investment at the commencement of the fixed term;
- (vi) “B” represents an amount determined in accordance with the formula:

$$Z = \frac{H}{I}$$

in which formula—

- (aa) “Z” represents the amount to be determined;
 - (bb) “H” represents the number 1; and
 - (cc) “I” represents the number of years to maturity of the tax free investment.
- (c) “C” represents the number 1

Amendment of regulation 8 of Regulations

4. Regulation 8 of the Regulations is hereby substituted for the following regulation:

“8. Any amount in respect of a tax free investment—

- (a) that has a maturity date must be paid to an investor by any product provider within seven business days after that investor requests that payment or within seven business days after that maturity date; or
- (b) other than a tax free investment that has a maturity date, must be payable within seven business days after that investor requests that payment to an investor by any product provider.”.

Amendment of regulation 9 of the Regulations

5. The Regulations are hereby amended by the substitution for regulation 9 of the following regulations:

“Transfers by product providers

9A. (1) Subject to subregulation (2), a product provider must transfer the amount in cash or assets other than cash in respect of a tax free investment to another tax free investment of that investor administered by another product provider on or after 1 March 2017—

- (a) if that tax free investment has a maturity date, within ten business days after that investor requests that transfer or within ten business days after that maturity date; or
- (b) other than a tax free investment that has a maturity date, within ten business days after that investor requests that transfer.

(2) Despite subregulation (1) a product provider is not obliged to transfer any amount in respect of a tax free investment in respect of the same natural person more than twice a year.

(3) A product provider that is unable to transfer any amount in respect of a tax free investment to another product provider after receipt of an instruction by an investor to transfer that amount may not administer any tax free investment.

Product providers may refuse to accept certain transfers

9B. A product provider may refuse to accept any transfer contemplated in regulation 9A(1) in respect of any amount in respect of a tax free investment if that transfer does not conform to the requirements of the tax free investment which the product provider to whom the amount is transferred applies to that tax free investment.

Transfer certificates

9C. (1) A product provider that transfers an amount as contemplated in regulation 9A(1) must issue a certificate that contains the particulars stipulated in subregulation (4) when transferring that amount.

(2) A product provider that issues a certificate referred to in subregulation (1) must provide a copy of that certificate, on the date that certificate is issued, to—

- (a) the investor; and
- (b) the product provider to whom the amount is transferred.

(3) A product provider that issues a certificate referred to in subregulation (1), the investor and the product provider to whom the amount is transferred must respectively retain a copy of that certificate for a period of five years commencing at the end of the year of assessment in which that certificate is issued.

(4) The certificate referred to in subregulation (1) must contain—

- (a) the name and identity number, passport number or tax reference number of the investor;
- (b) (i) the amount in cash that is transferred; or
 - (ii) the market value of any assets in respect of the tax free investment where the amount is transferred in respect of an asset other than cash,
 on the date that the cash or asset is transferred;
- (c) the date on which the amount is transferred;

- (d) the name, registration number and tax reference number of the product provider that transfers the amount;
- (e) the name, registration number and tax reference number of the product provider that receives the amount;
- (f) the total amount of contributions in respect of the tax free investment from which the amount is being transferred in respect of the year of assessment during which the amount is transferred;
- (g) the total amount of contributions in respect of the tax free investment from which the amount is being transferred in respect of the years of assessment prior to the years of assessment during which the amount is transferred;
- (h) the words “transfer of tax free savings account”;
- (i) a description of assets in respect of the tax free investment where the amount is transferred in respect of an asset other than cash; and
- (j) the number of assets transferred in respect of an asset other than cash.”.

Insertion of regulation 10A in Regulations

6. The following regulation is hereby inserted in the Regulations after regulation 10 of the Regulations:

“Restriction on maturity date

10A. A product provider may not offer any tax free investment with a fixed term of which the maturity date occurs more than five years after the date that the investment commences.”.

Amendment of Regulation 12 of the Regulations

7. Regulation 12 of the Regulations is hereby amended—

- (a) by the deletion of paragraph (b); and
- (b) by the substitution in paragraph (c) for the words preceding the formula of the following words:

“in the case of a tax free investment with a fixed term with no guaranteed return, subject to regulation 10A, an amount that must be determined in accordance with the formula.”

Insertion of regulation 14A in Regulations

8. The following regulation is hereby inserted in the Regulations after regulation 14:

“Fees must be recovered from tax free investment

14A. A product provider may not recover the amount of any fee in respect of a tax free investment in a manner other than recovering the amount from that tax free investment.”.

Insertion of regulation 16A in Regulations

9. The following regulation is hereby inserted after regulation 16 of the Regulations:

“Tax free investment with underlying performance fees not allowed

16A. A product provider may not offer an investment as a tax free investment if any fee expressed as the value of an investment is directly or indirectly commensurate with or linked to an amount received or accrued from an amount invested by the product provider with a person other than that product provider.”.

Substitution of Parts IX and X of Regulations

10. The Regulations are hereby amended by the substitution for Parts IX and X of the following parts:

“PART IX

Compliance with regulations

Product provider must possess operational and management capabilities

17. A product provider must at all times possess the necessary operational management capabilities to administer a tax free investment in accordance with these Regulations.

Submission of documents by service provider

18. A product provider must, at least one month prior to advertising or allowing members of the public to invest in a tax free investment, submit to the Financial Services Board—

- (a) the date from which the tax free investment will be advertised or members of the public will be allowed to invest therein;
- (b) the name of the tax free investment;
- (c) the nature of the tax free investment;
- (d) the legislation under which the tax free investment will be issued together with a confirmation that the tax free investment meets any requirements of that legislation ;
- (e) a summary of the benefits, terms and conditions and marketing material of the tax free investment; and
- (f) a description of how the tax free investment meets the requirements of these Regulations.

Objection of Registrar to implementation of tax free investment

19. Where the Registrar, as contemplated in section 12T(9), of the Income Tax Act objects to the intended implementation of a tax free investment contemplated in paragraph (a), the product provider may not implement the intended tax free investment until such time as the grounds for the objection has been resolved to the satisfaction of the Registrar.

Powers of Registrar if tax free investment fails to comply with regulations or legislation

20. If a tax free investment does not comply with these Regulations or any legislation applicable to that tax free investment, the Registrar, as contemplated in section 12T(9), of the Income Tax Act, may, notwithstanding paragraph (b) not having been applied by the Registrar, require any product provider to –

- (a) cease advertising the tax free investment; or
- (b) cease inviting members of the general public to invest in the tax free investment; and
- (c) (i) within 90-days of a date determined by the Registrar terminate any existing tax free investments; or
 - (ii) by a date determined by the Registrar, amend any of the benefits, terms and conditions and marketing material of the tax free investment in accordance with the requirements of the Registrar.

Part X

Non-compliance with regulations

Non-compliance with regulations

21. Any financial instrument or policy that does not comply with these regulations is not a tax free investment for the purposes of section 12T of the Income Tax Act.

PART XI
Miscellaneous

Short title and commencement

22. These regulations are called the Regulations in terms of section 121(8) of the Income Tax Act, 1962, on the requirements for tax free investments and come into operation on 1 March 2015.

Commencement

11. These regulations come into operation on 1 March 2017.