



**CARBON OFFSET REGULATION AMENDMENTS IN TERMS
OF SECTION 19(c) OF THE CARBON TAX ACT
(GAZETTE NO. 44818)**

**Summary of Comments and Responses to Comments
Received on the Carbon Offset Regulation Amendments**

July 2021

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1. BACKGROUND

The Carbon Tax Act became effective from 1 June 2019 and makes provision for the carbon offset tax-free allowance in terms of Section 13. The carbon offset allowance provides flexibility to firms to reduce their carbon tax liability by either 5 or 10 per cent of their total greenhouse gas (GHG) emissions through investment in projects that reduce their emissions outside their taxable activities.

The Carbon Offset Regulation was gazetted in November 2019 (Gazette No. 42873) in terms of section 19(c) of the Carbon Tax Act after an extensive consultation process on the initial Carbon Offsets Paper in 2014, and two draft versions of the regulations which were published in June 2016 and November 2018.

Draft amendments to the Carbon Offset Regulations were published for public comments on 31st March 2021 with a closing date of 30th April 2021. A set of 12 written comments were received from companies, industry associations, carbon offsets developers, international and national carbon market consultants, and carbon market traders. The Minister of Finance published the Carbon Offset Regulation Amendments in the government gazette on 8th July 2021 (Gazette No. 44818).

This document summarizes the comments and provides responses to the issues raised by stakeholders.

2. SUMMARY OF COMMENTS AND RESPONSES

2.1. Definition of national registries and “Verra registry”.

Comment: Stakeholders supported the proposed changes to the definitions in the section. The comments emphasized that broadening the definition of carbon registries to also include national registries under the Clean Development Mechanism (CDM) will have significant positive impact on the market. They acknowledged that allowing offsets derived from national EU CDM registries (i.e. secondary CERs) into the South African Carbon Offset Administration System (COAS) would help with liquidity in the market for 2021 and, possibly, 2022 before potential new carbon offset projects generate offsets.

Response: Accepted. The regulations were amended to include national registries as part of the eligible carbon registries within the COAS. The definitions of certificate of cancellation and cancellation of carbon credit were also accepted.

Comment: The definition of the “Verra registry” should be aligned with the definition set out in the draft Memorandum of Understanding (MoU) between the Department of Mineral Resources and Energy and Verra that is, “*Verra Registry*” means a registry, operated by Verra or by an entity holding a current and valid agreement with Verra, to provide registry services on behalf of Verra.”

Response: Not Accepted. A new definition of the Verra registry has not been added as further consultations with Verra concluded that the definition based

on the official Verra Program document, currently in the Regulation is preferred rather than the one based on a draft MoU.

Comment: The definition of the national registry refers to registries by governments that are parties to Kyoto protocol. It is suggested that this should be revised to make it clear that this is not only referring to SA government but all governments to enable participants to retire projects held in other jurisdictions outside SA.

Response: Not Accepted. South Africa does not have a Kyoto national registry account as it is not an Annexure 1 country under the Kyoto Protocol hence this definition cannot apply to South Africa.

2.2. VCS crediting periods for non-AFOLU offsets

Comment: It was suggested that the text in Section 3(1)(iii) of the Regulations which provides the crediting periods for non-AFOLU Verified Carbon Standard (VCS) credits is replaced with the following text:

- "(iii) for all offsets other than offsets stipulated in subparagraphs (i) and (ii), a period of— (aa) 7 years which period may be extended twice but not more than 21 years: or (bb) ten years which period may not be extended"

This is to clarify the intent of the clause, which is to refer to all offsets other than those mentioned in the previous two subparagraphs.

Response: Accepted.

2.3. Utilisation period for offsets within taxable activities

Comment: There were requests to clarify the utilisation period for offsets generated up to and including 31 May 2019 on projects that are now taxable activities. Currently the regulations specify that these offsets are eligible to be used against carbon tax liability provided they are “*utilised for the purpose of these Regulations on or before 31 December 2022*”. Given that the carbon tax payment for the final year of phase 1 will occur in July 2023, when the offsets will be retired against the carbon tax in July 2023, it was suggested that wording in the regulation should change to indicate that these offsets can be used up to the end of the first phase of the carbon tax (31 December 2022) and allowed to be used against the 2022 carbon tax liability ie. “*utilised for the purpose of these Regulations on or before 31 July 2023*”.

Response: Accepted. The regulation has been amended to stipulate the date of 28 July 2023 by when the carbon offsets from activities that are included in the carbon tax net can be used by taxpayers. This is aligned with the due date for carbon tax accounts for the 2022 tax period that is, the penultimate working day of July.

2.4. Concurrent benefits – energy efficiency projects

Comment: It was suggested that the current wording in the Carbon Offsets regulations could be interpreted to mean that a taxpayer claiming any section 12L allowance for any project will be prohibited from claiming any carbon tax offsets allowance, despite the project being completely unrelated. Since, this was not the intention of the legislation, there were proposals for an interpretation note to be compiled to clarify the concurrent benefit limitation with the 12L tax incentive.

Response: Accepted. A new sub-regulation 4(2) was inserted to specify the exclusion of 12L projects as eligible carbon offsets. It specifies that: “A taxpayer may not receive the allowance in respect of an offset of a project in which any allowance has been received in terms of section 12L of the Income Tax Act, 1962 (Act No. 58 of 1962)”.

2.5. Finalisation of approved local standards

Comment: There was a request for government to finalise regulations that provide for standards that will be applied to determine whether a project qualifies as a carbon offset project or is not in line with the provision in the regulation of “a project that complies with another standard approved by the Minister of Energy or a delegated authority.” It was emphasised that the current amendments do not elaborate on how the approved standard would be developed or if it will be developed elsewhere and adapted for South African conditions. There was a recommendation that the regulations should address how the government would facilitate the speedy development of the local standard and capacity to ease the potential bottlenecks that could be experienced by local independent entities.

Response: Noted. A process is underway by the Department of Mineral Resources and Energy (DMRE) to publish the draft framework for local standards which was developed under the World Bank’s Partnership for Market Readiness project for public consultation.

2.6. Use of public registries as part of the offsets system

Comment: Stakeholders requested that government considers the use of public registries on which South African based emission reduction projects can be registered, and on which units can be publicly issued and retired due to the uncertainties around the CDM, as well as new restrictions from the Verra and Gold Standards on their registries.

Response: Noted. South Africa is monitoring developments under Article 6 of the Paris Agreement and will consider the potential role for “public registries” once the negotiations have been finalised. This will need to take into account the monitoring, reporting and verification procedures relevant for “public registries” and development of capacity to authenticate, track and trace credits to eligible projects to prevent the proliferation of fraudulent credits in the domestic carbon offset system.

2.7. Scope of eligible offsets, thresholds, geographic scope and additionality principles

Comment: Stakeholders argued that modelling studies indicate that the supply of offsets credits eligible under the Carbon Tax Act might be insufficient to meet demand hence there is need for increased flexibility in the regulations to allow for more projects to be eligible and to increase the level of the carbon offset allowance. There were calls to increase the threshold for offsets use, expand the geographical scope beyond South Africa, allow project activities subject to the Carbon Tax and activities in carbon capture, utilisation and storage (CCUS) as eligible offsets and consideration of a definition of additionality in line with local conditions.

Response:

Not Accepted. The objective of the carbon offsets scheme is to complement the carbon tax and to help deliver least cost mitigation. The thresholds limit for offsets seeks to ensure that companies mitigate emissions in their own activities first and contribute to a net reduction in the absolute level of greenhouse gas emissions. Additionality is a fundamental universal principle of carbon offsetting to ensure that emissions reductions are real (in absolute terms), measurable and verifiable, and cannot be locally defined due to the global nature of the climate change problem. Limitation on the use of offsets also apply under carbon pricing schemes implemented in various jurisdictions globally including China and the European Union Emissions Trading Scheme.

Not accepted. Under the Carbon Tax Act, CCUS is included in the definition of sequestered emissions and is allowed a rebate and / or is subtracted from total combustion emissions. The inclusion of CCUS as an eligible offset project activity could result in double dipping and double counting of emission reductions.

Noted. Options for expanding the geographical scope of eligible offset projects including within the African region will be considered as part of the review and phase 2 design of the carbon tax.

Comment: There were suggestions that carbon sequestration from afforestation on rehabilitated mining land be considered as eligible offsets given the limited mitigation options available for the mining industry. This would provide an alternative option for mining companies to mitigate their GHG emissions while ensuring rehabilitation takes place within a mining right/area.

Response: Not accepted. There is significant potential for double benefits to be conferred on the sector as mining companies are allowed an income tax deduction for costs incurred for land rehabilitation and certain afforestation projects are allowed a sequestration concession under the Carbon Tax Act. Allowing land rehabilitation as eligible offsets could therefore result in double counting of emissions reductions from the sector. Furthermore, due to the mining rehabilitation regulatory requirements in terms of the Mineral and Petroleum Resources Development Act, the additionality of afforestation projects on rehabilitated mining land would be difficult to prove that is, the project reduces greenhouse gas (GHG) emissions below those that would have occurred in a business-as-usual scenario.

2.8. Updating of the Carbon offset registry

Comment: There was a suggestion that the words “at all times” should be included in Regulation 7 to ensure that the offset registry is always kept up to date by the administrator by the insertion of the following text: The administrator must “*at all times*” maintain and oversee, or cause to be maintained and overseen, the offset registry”

Response: Not Accepted. The use of the word “must” is sufficient. The addition of the phrase “at all times” would be superfluous.

2.9. Timelines for carbon offset approval process

Comment: It was suggested that in order to ensure that the carbon offset system is credible and efficient there was a need to include the timeframe for retirement of projects, the principles pertaining to the methodology and the process of retirement of projects as articulated in COAS. Since no timelines are provided for compliance by the DMRE, this omission must be rectified by including timelines for each process in the regulations.

Response: Not Accepted. Timelines for the carbon offset administration process including project approvals, offsets listing and retirement are already stipulated in the COAS Manual.