



DRAFT REGULATIONS: CARBON OFFSETS

20 June 2016

DRAFT CARBON TAX BILL: PUBLICATION OF PROPOSED REGULATIONS MADE IN TERMS OF CLAUSE 20(b) OF THE DRAFT CARBON TAX BILL, 2015

Proposed regulations in terms of clause 20(b) of the Draft Carbon Tax Bill, 2015, are hereby published for comment.

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 Draft Carbon Tax Bill, 2015 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 a delegated authority.

“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 and Certification Body, a non-profit organisation established in 2003;

“offset” means a measurable avoidance, reduction or sequestration of carbon dioxide equivalent (CO_{2e}) emissions in respect of an approved project;

“offset registry” means the offset registry established by regulation 8;

“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)

(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; and

“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;

“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;

“verified carbon unit” means a reduction or removal of one ton of carbon dioxide equivalent (CO_{2e}) emissions from the atmosphere.

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 20 of the Draft Carbon Tax Bill, 2015, must be allowed to a taxpayer in respect of any certified emission reduction derived from the furtherance of an approved project—

- (a) that is carried on, on or after 1 January 2017 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 January 2017 may only be utilised for the purposes of these Regulations until 31 December 2017.

- (3) An approved project in respect of which an offset—
- (a) is not in existence prior to 1 January 2017; and
 - (b) of which registration has commenced before 1 January 2017,
- may only be utilised as an offset for the purposes of these Regulations for a period of 6 months after that offset has come into existence.

Offset duration 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 subregulation (1), the duration of an offset may be extended on application to the Minister of Energy or delegated authority
- (3) 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 renewable energy in respect of any power purchase agreement as defined in 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 may not receive the allowance in respect of an offset in respect of that activity.

(2) A taxpayer conducting an activity in respect of which any allowance may be received in terms of section 12L of the Income tax Act, 1962 (Act No. 58 of 1962) may not receive the allowance in respect of an offset in respect of that activity.

(3) A taxpayer conducting an activity in respect of the destruction of industrial gases trifluoromethane (HFC-23) and nitrous oxide (N₂O) from adipic acid production, 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 Administration

Designation and functions of administrator

5. (1) The Designated National Authority as contemplated in the 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) must act as administrator for the purpose of these Regulations.

(2) The administrator as contemplated in subsection (1) must—

- (a) scrutinise applications in respect of the offset for the purposes of utilising that offset for the purposes of reducing liability for the carbon tax; and
- (b) administer and oversee the offset registry.

Responsibilities of Administrator

6. (1) If after consideration of a request for registration of an offset the administrator is satisfied that the offset—

- (a) complies with the requirements of an approved project;

- (b) is an accurate reflection of avoidance, reduction or sequestration of carbon dioxide equivalent (CO₂e) emissions of the taxpayer registering the offset; and
- (c) complies with these Regulations,

the administrator must enter the details of that offset into the registry and issue a certificate containing the information set out in regulation 9 to the person registering the offset.

(3) The administrator may investigate or cause to be investigated any project in respect of an offset to be satisfied that the offset represents an accurate reflection of the reduction or sequestration of carbon dioxide equivalent (CO₂e) emissions.

(4) The administrator must—

- (a) create and maintain, or cause to be created and maintained, a registry of all offsets registered in terms of these Regulations; and
- (b) at all times provide the Minister of Finance and the Commissioner for the South African Revenue Service with ready access to the registry contemplated in paragraph (a).

Procedure for claiming allowance

7. A taxpayer that intends utilising an offset as an allowance of carbon tax liability must register that offset with the administrator in the form and manner and at the place that the administrator may determine.

Offset registry

8. (1) The offset registry created in terms of subregulation (1) must contain a record of any—

- (a) offset registered in terms of regulation 5;
- (b) offset transferred in terms of regulation 3(2) and (3);
- (c) offset in respect of which a certificate was issued in terms of regulation 5 and that offset was retired in pursuance of that issuance;
- (d) correction to an existing offset;
- (e) 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.

Obtaining of Certificate

9. 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 5, from the administrator for the purposes of utilising an offset as an allowance against carbon tax liability.

Content of certificate

10. The certificate issued by the administrator as contemplated in regulation 5 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 name of the manager 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(2);
- (g) the offset duration period as stipulated by regulation 3.

Short title and commencement

11. These regulations are called the Regulations on carbon offsets under section 20(b) of the Carbon Tax Act¹ and come into operation on the date on which the Carbon Tax Act comes into operation.

¹ Carbon Tax Bill, 2015.