national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

DRAFT REGULATIONS RELEASED FOR PUBLIC COMMENT

14 November 2014

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 INVESTMENTS

Proposed regulations in terms of section 12T(8) of the Income Tax Act, 1962 (Act No. 58 of 1962) on the requirements for tax free investments are hereby published for public comment.

Please forward comments on the proposed regulations in writing by the close of business on **3 December 2014** to:

Ms Janice Stoddart at janice.stoddart@treasury.gov.za

SCHEDULE

ARRANGEMENT OF REGULATIONS

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 Income Tax Act bears the meaning so assigned, and—

"annual contribution limit" means the amount contemplated in section 12T(4)*(a)* of the Income Tax Act;

"collective investment scheme" means a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No.45 of 2002), registered as a collective investment scheme in terms of that Act;

"derivative instrument" means any—

(a) financial instrument; or

(b) contract,

that creates rights and obligations of which the value depends on or is derived from the value of one or more underlying asset, rate or index, on a measure of economic value or on a default event;

"fee" includes a management fee, administration fee or any similar charge;

"Income Tax Act" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"investor" means a person contemplated in paragraph *(b)*(i) of the definition of "tax free investment" in section 12T(1) of the Income Tax Act;

"lifetime contribution limit" means the amount as contemplated in section 12T(4)*(c)* of the Income Tax Act.

“maturity date” means the date on which an issuer of a financial instrument or policy must pay the monetary value of that financial instrument or policy to an investor;

“policy” means a policy as defined in section 29A(1) of the Income Tax Act; and

“service provider” means a person or entity contemplated in paragraph *(a)* of the definition of tax free investment in section 12T(1) of the Income Tax Act.

Part II

Issue of financial instrument and policy

Issue of financial instrument or policy in respect of tax free investment

2. A financial instrument or policy in respect of a tax free investment must be issued by—

(a) a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

(b) a long-term insurer as defined in section 1 of the Long-term Insurance Act,1998 (Act No. 52 of 1998);

(c) a manager as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No.45 of 2002), other than a manager of a collective investment scheme in participation bonds; or

(d) the government of the Republic of South Africa in the national sphere.

Advertising of tax free Investment

3. A service provider must advertise a tax free investment as a tax free investment when members of the general public are invited to invest therein.

Pre-existing financial instrument or policy may not be converted

4. A service provider may not convert a pre-existing financial instrument or policy owned by an investor into a tax free investment in respect of that investor.

Part III

Administering, reporting and disclosure

Administering of tax free investment and reporting by service provider

5. If an investor holds more than one tax free investment with one service provider, that service provider must administer and account for all those tax free investments of that investor as one tax free investment for the purposes of the Income Tax Act and the Tax Administration Act.

Disclosure by service provider

6. A service provider must, prior to an investor investing in a tax free investment—

(a) in the case of a tax free investment in respect of a portfolio of a collective investment scheme comply with any requirements in respect of disclosure prescribed under the Collective Investment Schemes Control Act, 2002 (Act No.45 of 2002);

(b) in the case of any financial instrument other than a portfolio of a collective investment scheme or a policy, comply with the disclosure requirements prescribed under the Financial Advice and Intermediary Services Act, 2002 (Act No. 37 of 2002), irrespective of whether the service provider is subject to compliance with those requirements of that Act.

Part IV

Withdrawal and transfer

Withdrawals and transfer in respect of tax free investments

7. A service provider may not transfer or deposit an amount in respect of a tax free investment that is withdrawn into an account other than in an account that is held in the name of the investor in respect of whom the tax free investment is issued.

Payment of amount in relation to withdrawal in respect of tax free investment

8. Any amount in respect of a financial instrument or policy must be payable in cash to an investor within seven business days after that investor has requested the payment.

Transfer between service providers

9. (1) An investor may transfer any amount in respect of a tax free investment from one service provider to another service provider.

(2) A service provider must allow an investor to transfer any amount in respect of a tax free investment from that service provider to another service provider.

(3) Any service provider from whom a tax free investment is transferred as contemplated in subsection (1) must—

(a) submit a return in respect of that transfer in the form, manner, time and at the place as the Commissioner prescribes; and

(b) provide a certificate to the investor containing the details of the transfer as contemplated in paragraph *(a)*.

(4) An investor who transfers a tax free investment as contemplated in subregulation (1) must provide the service provider to whom the tax free investment is transferred with the certificate contemplated in subregulation (3)*(b).*

(5) The service provider to whom the tax free investment is transferred must receive the amount in respect of that tax free investment within two weeks of that amount being received by the investor.

(6) An investor may not transfer any tax free investment as contemplated in subregulation (1) between 14 February and 1 March of each year.

(7) Notwithstanding subregulation (6), a service provider may receive any amount in respect of a tax free investment in the period contemplated in that subregulation.

Part V

Returns and maturity date

Returns in respect of tax free investments

10. (1) If a financial instrument that is any contractual right or obligation, the value of which is determined directly or indirectly with reference to a debt security, equity, rate index or specified index the service provider may not restrict any receipts or accruals to the investor in respect of that debt security, equity, rate index or specified index.

(2) Subregulation (1) does not apply to a financial instrument in respect of any collective investment scheme.

Maturity date

11. A financial instrument may not have a maturity date of more than seven years from the date that financial instrument is acquired by an investor.

Part VI

Fees

Fees in respect of tax free investment

12. A service provider may not charge a fee expressed as a percentage of the value of the financial instrument or policy—

(a) that is commensurate with or linked to the amount received or accrued in respect of the financial instrument or policy; or

(b) that is calculated with reference to the period of time for which the financial instrument or policy is held by the investor.

Fees in respect of withdrawal

13. (1) A service provider may not on the withdrawal of an amount from a tax free investment charge a fee that exceeds—

(a) in the case of a fixed deposit or a financial instrument or policy issued with a guaranteed return, the higher of—

(i) R 300; or

(ii) an amount that must be determined in accordance with the formula

$$X= A \times B \times [C – D]$$

in which formula—

"X" represents the amount to be determined;

"A" represents the total amount received by the service provider from the investor;

"B" represents the number of years remaining until the maturity date of the financial instrument;

"C" represents the interest rate in respect of a financial instrument that is a fixed deposit or policy issued with a guaranteed return with the same maturity date of the financial instrument or policy had that fixed deposit or financial instrument been acquired at the time of withdrawal;

"D" represents the interest rate in respect of the financial instrument on the date that the financial instrument is acquired; or

(b) in any other case, R 300.

(2) For the purposes of subsection (1) "guaranteed return" means, where at the time of the issue of that financial instrument or policy any amount payable in respect of a financial instrument or policy—

(a) is specified; or

(b) is ascertainable from the contract that underlies the financial instrument or policy with reference to a fixed rate of return or stated return linked to inflation over the full term of the financial instrument or policy.

Part VII

Composition of tax free investment

Requirements in respect of composition of certain tax free investments

14. (1) Where any part of the value of a tax free investment is determined directly or indirectly with reference to any financial instrument that is a share, not more than 10 per cent of the value of that tax free investment may be derived from shares in any single company.

(2) Where any part of the value of a tax free investment is determined directly or indirectly with reference to any commodity, not more than 10 per cent of the value of that tax free investment may be derived from that commodity.

(3) Where any part of the value of a tax free investment is determined directly or indirectly with reference to any financial instrument issued by—

(i) any public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(ii) a municipality as defined in section 1 of the Local Government Municipal Finance Management Act, 2003 (Act No. 56 of 2003); or

(iii) any foreign government which has been assigned a foreign currency sovereign rating lower than that of the Republic of South Africa,

not more than 30 per cent of the value of that tax free investment may be derived from any one of those financial instruments.

(4) This regulation does not apply in respect of any financial instrument in respect of a collective investment scheme.

Derivative instrument in respect of a tax free investment

15. A derivative instrument is a tax free investment or may be utilised as an asset underlying a tax free investment only to the extent that the derivative is utilised for the purposes of reducing the risk of loss or reducing cost (without any increase in risk of loss) in respect of the tax free investment.

Part VIII

Transactions not allowed

Certain transactions not allowed

16. A financial instrument comprising a tax free investment may not be utilised as an account—

(a) against which debit orders or stop-orders may be debited;

(b) from which payments or withdrawals may be made from any automatic teller machine or any similar device that dispenses cash to an account holder;

(c) from which payments may be made with a debit card or credit card;
(d) from which transfers may be made to any other person.

Risk cover not allowed

17. A policy in respect of which a tax free savings investment is comprised may not provide for any cover against the occurrence of an unforeseen event, including disability, illness or death.

Part IX

Non-compliance with regulations

Non-compliance with regulations

18. 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 X

Miscellaneous

Short title and commencement

19. These regulations are called the Regulations in terms of section 12T(8) of the Income Tax Act, 1962, on the requirements for tax free investments and come into operation on 1 March 2015.