# Government Notice

## NATIONAL TREASURY

**No. R. 172** **25 February 2015**

### INCOME TAX ACT, 1962

### REGULATIONS IN TERMS OF SECTION 12T(8) OF THE INCOME TAX ACT, 1962, ON THE REQUIREMENTS FOR TAX FREE INVESTMENT

I, Nhlanhla Musa Nene, Minister of Finance, under section 12T(8) of the Income Tax Act, 1962 (Act No. 58 of 1962), hereby make the regulations as set out in the Schedule hereto.

**Nhlanhla Musa Nene**
Minister of Finance
Date:

SCHEDULE

## PREAMBLE

**SINCE** government wishes to address the low level of household savings in South Africa.

**AND SINCE** government is desirous of allowing providers of financial products to market financial products in a manner that creates a partnership between government and those providers of financial products to encourage household savings.

**THEREFORE** section 12T of the Income Tax Act, 1962, and these regulations are enacted to enable providers of financial products to provide financial products that are simple to understand; that are offered in a transparent manner; carry fees and charges that are reasonable; and that are suitable for those persons who are not necessarily expert investors.

BE IT THEREFORE ENACTED by Regulation, as follows—

## ARRANGEMENT OF REGULATIONS

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## *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), approved as a collective investment scheme in terms of that Act;

**"derivative instrument"** means a derivative instrument as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

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

**"guaranteed return"** means, where at the time of the issue of a financial instrument or policy with a maturity date, all amounts payable in respect of that financial instrument or policy are —

*(a)* specified; or

*(b)* ascertainable from the contract that underlies the financial instrument or policy with reference to—

(i) a fixed rate of return; or

(ii) stated return linked to inflation,

over the full term of the financial instrument or policy;

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

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

**"issuer"** means a person or institution listed in regulation 2;

**"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 tax free investment is contractually bound to liquidate the investment without any penalty imposed on the investor;

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

**"product 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**

**2.** A financial instrument or policy in respect of a tax free investment may only 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 (subject to paragraph *(d)*);

*(d)* a manager as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) of a collective investment scheme in participation bonds that complies with the requirements of the relevant Notice that the registrar is empowered to issue in terms of section 114(4)*(b)* of the Collective Schemes Control Act, 2002 (Act No. 45 of 2002) and only at such time as the requirements have been determined by the Registrar;

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

*(f)* a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or

*(g)* a co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007).

### Advertising of tax free investment

**3.** (1) A product provider must advertise a tax free investment as being a tax free investment by virtue of section 12T of the Income Tax Act when members of the general public are invited to invest therein.

(2) When a product provider advertises a tax free investment as contemplated in subregulation (1), the designation of the instrument or policy that constitutes the tax free investment must contain the words "tax free".

### Accepting of amounts by product provider

**4.** A product provider may not accept any amount in respect of any investor in respect of a tax free investment—

*(a)* in excess of the annual contribution limit in respect of any year; or

*(b)* in excess of the lifetime contribution limit.

### Pre-existing financial instrument or policy may not be converted

**5.** An issuer may not reclassify or convert a pre-existing financial instrument or policy owned by an investor as a tax free investment in respect of that investor.

## *Part III*

## *Disclosure*

### Disclosure by product provider

**6.** (1) A product provider must, prior to an investor investing in a tax free investment and for as long as that investment continues, comply with the disclosure requirements prescribed under the Financial Advice and Intermediary Services Act, 2002 (Act No. 37 of 2002), irrespective of whether the product provider is subject to compliance with those requirements of that Act.

(2) Where a tax free investment has a fixed term but no guaranteed return, a product provider must disclose to an investor in a manner that is readily understandable by that investor all charges, fees or similar costs payable—

*(a)* directly or indirectly by the investor out of any amount forming part of the assets underlying the tax free investment; and

*(b)* implicit in the trading or holding of any derivative instrument or other assets underlying the tax free investment.

(3) Where—

*(a)* any amount in respect of the tax free investment is exposed to an index that is comprised in whole or in part of the prices of traded financial instruments; and

*(b)* income that would otherwise accrue to the owners of those assets is not taken into account in the calculation of the index,

an issuer must disclose to the investor that—

(i) the income that would otherwise accrue to the owners of those assets does not accrue to the investor, and

(ii) the amount of that income referred to in paragraph (i).

(4) When an investor invests in a tax free investment a product provider must inform the investor of the annual contribution limit, the lifetime contribution limit and the consequence of exceeding that limit as contemplated in section 12T(7) of the Income Tax Act in the terms and conditions of the agreement with the investor.

## *Part IV*

## *Withdrawal and transfer*

### Withdrawal and transfer

**7.** A product provider or an issuer may not transfer or deposit an amount that is withdrawn in respect of a tax free investment owned by an investor who is a minor into an account other than into an account—

*(a)* that is held in the name of that investor; or

*(b)* of the deceased estate of that investor,

who is a minor.

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

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

*(a)* that has a maturity date must be payable to an investor by any product provider within thirty two business days; or

*(b)* other than a tax free investment that has a maturity date must be payable to an investor by any product provider within seven business days,

after that investor has requested the payment.

**Transfers**

**9.** An investor may not transfer any amount in respect of a tax free investment prior to 1 March 2016.

***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 product provider may not restrict any receipts or accruals to the investor in respect of that debt security, equity, rate index or specified index except to the extent that the restriction is the result of charges or fees in respect of the tax free investment.

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

## *Part VI*

## *Fees*

### Fees in respect of tax free investment

**11.** (1) Any fee charged in respect of a tax free investment must be reasonable.

(2) A product provider may only charge a fee that is expressed as a percentage of the value of the tax free investment that is not—

*(a)* directly or indirectly commensurate with or linked to the amount received by or accrued to the investor in respect of any tax free investment other than any amount repaid to the investor that was contributed in respect of the tax free investment; or

*(b)* calculated with reference to the period of time for which the tax free investment is held by the investor other than a fee referred to in regulation 12.

(3) If an investor must make repetitive payments of amounts at regular intervals in terms of a tax free investment, an issuer may not charge any fee if that investor–

*(a)* does not pay all of those amounts;

*(b)* ceases to pay those amounts;

*(c)* pays any amount less than any of those amounts;

*(d)* pays a part of the sum of all those amounts; or

*(e)* pays the sum of all those amounts.

### Fees in respect of withdrawal

**12.** A product provider may not on withdrawal of an amount from a tax free investment charge a fee that exceeds—

*(a)* in the case of a tax free investment with a guaranteed return, the higher of—

(i) R 300; or

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

$$X = A \times \frac{B}{C} \times (D - E)$$

in which formula—

"X" represents the amount to be determined;

"A" represents the total amount of the value of the tax free investment at the time when the amount is withdrawn;

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

"C" represents the number 365;

"D" represents the interest rate in respect of the zero coupon nominal bond curve that is published daily by the JSE limited with the same maturity date as the tax free investment at the time of withdrawal;

"E" represents the interest rate in respect of the zero coupon nominal bond curve that is published daily by the JSE limited with the same maturity date as the tax free investment on the date that the tax free investment was acquired;

*(b)* in the case of a tax free investment with a fixed term of five years or longer and with no guaranteed return, an amount that must be determined in accordance with the formula

$$X = \frac{A}{B} \times C \times \frac{D}{E}$$

in which formula—

"X" represents the amount to be determined;

"A" represents the amount withdrawn in respect of which the fee is charged;

"B" represents the total amount of the value of the tax free investment at the time when the amount is withdrawn;

"C" represents the amount of R 500;

"D" represents the higher of—

(i) the number zero; or

(ii) a number equal to the number 1825 less the number of days that the tax free investment has been held;

"E" represents the number 1825; or

*(c)* in the case of a tax free investment with a fixed term of less than five years and with no guaranteed return, an amount that must be determined in accordance with the formula

$$X = \frac{A}{B} \times C \times \frac{D}{E}$$

in which formula—

"X" represents the amount to be determined;

"A" represents the amount withdrawn in respect of which the fee is charged;

"B" represents the total amount of the value of the tax free investment at the time when the amount is withdrawn;

"C" represents the amount of R 500;

"D" represents the number of days remaining to the date of maturity on the date of withdrawal;

"E" represents the total number of days between the date that the tax free investment is acquired and the maturity date of the tax free investment.

## *Part VII*

## *Composition of tax free investment*

### Requirements in respect of composition of certain tax free investments

**13.** (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—

*(a)* not more than 10 per cent of the value of that tax free investment may be derived from shares in any single company; and

*(b)* not less than 80 per cent of any shares must be listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act.

(2) Where the value of a tax free investment is determined with reference to any index of listed shares, the value of shares issued by any company may not exceed an amount of 120 per cent of that company's weighting in that index, subject to a maximum of 35 per cent of the market value of the tax free investment.

(3) 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.

(4) 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.

(5) Where any part of the value of a tax free investment is determined directly or indirectly with reference to any financial instrument issued by any company and that financial instrument is not a share not more than 10 per cent of the value of that tax free investment may be derived from those financial instruments

(6) 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**

**14.** A derivative instrument 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**

**15.** 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.

**Risk cover not allowed**

**16.** 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**

**17.** 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**

**18.** 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.

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