

INTERPRETATION NOTE 64 (Issue 5)

DATE: 30 December 2025

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 10(1)(e)
SUBJECT : INCOME TAX EXEMPTION: BODIES CORPORATE, SHARE BLOCK COMPANIES, AND ASSOCIATIONS OF PERSONS MANAGING THE COLLECTIVE INTERESTS COMMON TO ALL MEMBERS

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Preamble

In this Note unless the context indicates otherwise –

- **"association of persons"** means an association of persons as envisaged in section 10(1)(e)(i)(cc) formed solely to manage the collective interests common to all members and the collection of levies for which members are liable;
- **"basic exemption"** means the exemption of the receipts and accruals from all other sources except the levy income, up to a maximum of R50 000;
- **"body corporate"** means a body corporate as defined in the Sectional Titles Schemes Management Act;
- **"Close Corporations Act"** means the Close Corporations Act 69 of 1984 that provides for the formation, registration, incorporation, management, control and liquidation of close corporations;
- **"Commissioner"** means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act as defined in section 1(1);
- **"Companies Act"** means the Companies Act 71 of 2008 that provides for the incorporation, registration, organisation and management of companies;
- **"fiduciary"** means a person who holds a position of trust or responsibility including decision-making powers over the affairs of a body corporate, share block company, or an association of persons;

- **“founding document”** means the written instrument such as a constitution or memorandum of incorporation under which an association of persons is established or incorporated;
- **“levy” or “levy income”** is the amount received or accrued from members for the purposes of funding expenditure relating to their collective interests;
- **“member”** means a member of a body corporate, a shareholder of a share block company, or a member of an association of persons;
- **“NPC”** means a “non-profit company” as defined in the Companies Act;
- **“NPO”** means a “nonprofit organisation” as defined in section 1 of the NPO Act, which includes a trust, company, or other association of persons established for a public purpose, and the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered;
- **“NPO Act”** means the Nonprofit Organisations Act 71 of 1997 that provides an administrative and regulatory framework within which NPOs can conduct their affairs;¹
- **“Property Time-Sharing Control Act”** means the Property Time-Sharing Control Act 75 of 1983 that regulates the alienation of time-sharing interests pursuant to property time-sharing schemes;
- **“Regulations”** means the Regulations² to the Property Time-Sharing Control Act issued by the Minister regarding the control over and the operation of property time-sharing schemes, including the payment of levies by purchasers and the establishment of levy funds;³
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“Sectional Titles Act”** means the Sectional Titles Act 95 of 1986 that provides for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property;⁴
- **“Sectional Titles Schemes Management Act”** means the Sectional Titles Schemes Management Act 8 of 2011 that provides for the establishment of bodies corporate to manage and regulate sections and common property in sectional titles schemes and to apply rules applicable to such schemes;⁵

¹ Further information relating to NPOs is available from the NPO Directorate’s website at www.dsd.gov.za.

² Government Notice R327 in *Government Gazette* 9071 of 24 February 1984 and amended by Government Notice R1240 in *Government Gazette* 9269 of 22 June 1984 and Government Notice R1750 in *Government Gazette* 10861 of 14 August 1987.

³ Section 12(1)(d) of that Act.

⁴ This Act, since the introduction during 2006 of the Sectional Titles Schemes Management Act, contains provisions relating only to the registration and conveyancing aspects of sectional title schemes.

⁵ Contains all the scheme management provisions previously contained in the Sectional Titles Act.

- **“share block company”** means a “share block company” as defined in the Share Blocks Control Act;
- **“Share Blocks Control Act”** means the Share Blocks Control Act 59 of 1980 that controls the operation of share block schemes;
- **“Spatial Planning and Land Use Management Act”** means the Spatial Planning and Land Use Management Act 16 of 2013 that provides a framework for spatial planning and land use management in South Africa;
- **“TA Act”** means the Tax Administration Act 28 of 2011 that provides for the effective and efficient collection of tax;
- **“the Act”** means the Income Tax Act 58 of 1962 that consolidates the law relating to the taxation of incomes and donations, provides for the recovery of taxes on persons, and for the payment of income tax, interest, and other charges into the National Revenue Fund;
- **“Trust Property Control Act”** means the Trust Property Control Act 57 of 1988 that regulates the control of trust property; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides guidance on the interpretation and application of section 10(1)(e).

2. Background

Section 10(1)(e)(i) exempts from income tax the levy income of a body corporate (see **5**), a share block company (see **6**), and association of persons (see **7**).

Expenditure incurred in respect of the levy income is not an allowable deduction (see **12.3**).

Section 10(1)(e)(ii) provides for a basic exemption (see **10**).

3. The law

The relevant section of the Act is quoted in **Annexure A**.

4. Application of the law

A body corporate (see **5**), share block company (see **6**), and association of persons (see **7**) may qualify for the levy income exemption (see **9**) and basic exemption (see **10**) provided they are not party to any prohibited transaction, operation or scheme (see **8**).

In the case of an association of persons, the levy income exemption and basic exemption will apply only if such an association of persons has submitted an application (see **13.2**) satisfying the Commissioner (see **7.2**) that the specific requirements (see **7.3**) are met.

5. Bodies corporate

The Sectional Titles Act provides for separate ownership⁶ of units,⁷ which consist of specific privately owned sections⁸ and shared areas of common property,⁹ within a development scheme.¹⁰ These schemes enable buildings¹¹ on land¹² within the jurisdiction of a local authority to be divided into sections for sale or rental.

The Sectional Titles Schemes Management Act establishes bodies corporate to manage and regulate these sections and the common property within sectional titles schemes.¹³ A body corporate is formed from the date when someone other than the developer, usually the registered owner of the land,¹⁴ acquires ownership of a unit in the scheme.¹⁵ Both the developer and any subsequent unit owners become members of the body corporate. Membership is compulsory and is directly linked to ownership within the development scheme.¹⁶

The body corporate must be regulated and managed according to rules¹⁷ that comprise management¹⁸ and conduct rules,¹⁹ which apply equally to all unit owners²⁰ and any person occupying a section, such as tenants.²¹ A body corporate's primary responsibility is to enforce these rules and to regulate, administer, manage, facilitate the use and enjoyment of both the sections and the common property for the benefit of all owners.²² Members are required to contribute levies to cover the costs associated with maintaining the common property.²³

⁶ The term "owner" as defined in section 1(1) of the Sectional Titles Act means the person in whose name the unit is registered at a deeds registry under that Act or in whom ownership is vested by statute.

⁷ The term "unit" is defined in section 1(1) of the Sectional Titles Act.

⁸ The term "section" is defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act.

⁹ The term "common property" is defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act.

¹⁰ The term "development scheme" is defined in section 1(1) of the Sectional Titles Act.

¹¹ The term "building" as defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act means a structure of a permanent nature erected or to be erected and shown on a sectional plan as part of a development scheme.

¹² The term "land" as defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act means the land comprised in a development scheme as shown on a sectional plan.

¹³ The term "body corporate" is defined in section 1(1) of the Sectional Titles Schemes Management Act and section 2 of that Act.

¹⁴ The term "developer" is defined in section 1(1) of the Sectional Titles Schemes Management Act.

¹⁵ Section 10(1) of the Sectional Titles Schemes Management Act.

¹⁶ Section 2(1) of the Sectional Titles Schemes Management Act.

¹⁷ The term "rules" as defined in section 1(1) of the Sectional Titles Schemes Management Act.

¹⁸ Annexure 1 to the Government Regulation Notice 1231 in *Government Gazette* 40335 of 7 October 2016 for standard management rules.

¹⁹ Annexure 2 to the Government Regulation Notice 1231 in *Government Gazette* 40335 of 7 October 2016 for standard conduct rules.

²⁰ Section 10 of the Sectional Titles Schemes Management Act.

²¹ Section 10(4) of the Sectional Titles Schemes Management Act.

²² Section 2(5) of the Sectional Titles Schemes Management Act.

²³ Section 3(1)(f) of the Sectional Titles Schemes Management Act.

6. Share block companies

A share block company's²⁴ main object is to operate a share block scheme²⁵ involving immovable property²⁶ that it owns or leases.²⁷ A shareholder owning a share in a share block company acquires the right of use and occupation of a specific unit or portion of the immovable property owned by the company, subject to the terms and conditions contained in a use agreement²⁸ between the share block company and the member.²⁹ The shareholder, however, does not become the owner of the specific part of the immovable property.³⁰

A share block company must establish a levy fund. It is compulsory for the members to contribute to the levy fund, when a share is sold, the new shareholder automatically becomes a contributor to the levy fund.³¹ The levy fund covers expenses for repairs, maintenance, control and management, and administration of both the share block company and the immovable property, as well as rates and other charges from local authorities.³²

7. Any other association of persons

Developments such as security complexes, country and golf estates, and gated communities have become increasingly popular. These types of developments typically provide enhanced safety through private security, spacious and secure play areas for children, convenient access to schools and shops, and shared amenities like swimming pools, tennis courts, and recreational trails. Such advantages are generally unavailable to owners of freehold properties. Additionally, the shared nature of these amenities often results in lower living costs, as individual owners collectively cover the costs for these communal benefits.

Municipalities, responsible for overseeing municipal planning,³³ may use their by-laws to approve land³⁴ subdivisions, often attaching reasonable conditions to ensure the effective management and regulation of the use³⁵ and development³⁶ of such land.³⁷ One such condition may be the requirement to establish a homeowners', residents', or

²⁴ The term "share block company" is defined in section 1 of the Share Blocks Control Act.

²⁵ The term "share block scheme" as defined in section 1 of the Share Blocks Control Act means any scheme where a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property.

²⁶ The term "immovable property" as defined in section 1 of the Share Blocks Control Act means land, and any building erected or to be erected.

²⁷ Section 7(1) of the Share Blocks Control Act.

²⁸ The term "use agreement" is defined in section 1 of the Share Blocks Control Act.

²⁹ Section 7(2) of the Share Blocks Control Act.

³⁰ An entity that administers the collective interests of members' time-sharing interests in holiday accommodation under the Share Blocks Control Act may qualify for exemption under section 10(1)(e)(i)(bb). Each case must be considered on its own merits.

³¹ Section 13(2) of the Share Blocks Control Act.

³² Section 13(1) of the Share Blocks Control Act.

³³ Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996.

³⁴ The term "land" is defined in section 1(1) of the Spatial Planning and Land Use Management Act.

³⁵ The term "land use" is defined in section 1(1) of the Spatial Planning and Land Use Management Act.

³⁶ The term "land development" is defined in section 1(1) of the Spatial Planning and Land Use Management Act.

³⁷ Section 156(2) of the Constitution of the Republic of South Africa, 1996, and the Spatial Planning and Land Use Management Act.

property association. These associations typically perform functions similar to bodies corporate or share block companies.

Similar to bodies corporate and share block companies, section 10(1)(e)(i)(cc) provides for income tax exemption of any levy received or accrued to associations of persons where the Commissioner is satisfied (see 7.2) that, subject to such conditions deemed necessary (see 7.4), such association of persons, is formed to manage the collective interests of their members and to take responsibility for the collection of levies and the payment of expenses for the common immovable property (see 7.3).

Any other association of persons that may qualify under section 10(1)(e)(i)(cc) include the following:

- Homeowners' associations.
- Residents' associations.
- Property associations.
- Associations of tenants or merchants in shopping centres or malls that oversee the maintenance, security, or appearance of the common immovable property.
- Management associations,³⁸ established when a person other than the developer³⁹ acquires a time-sharing interest⁴⁰ in a property time-sharing scheme.⁴¹ These associations are responsible for controlling, managing and administering the common property⁴² for the benefit of all occupants of the accommodation⁴³ in the scheme.⁴⁴ The members of the management association are purchasers and holders of timeshare interests in the property time-sharing scheme and whose names are recorded in the timeshare register and who agree to the scheme rules and their respective rights and obligations.⁴⁵ Such management associations have the authority to establish a levy fund to cover repairs, maintenance, control, management, administration, municipal rates and taxes, utilities, insurance, and other obligations related to the property. Timeshare holders are required to contribution to this levy fund. The management associations enforce the rules and oversee the management and administration of the common property.⁴⁶

³⁸ The term "management association" as defined in section 1 of the Property Time-sharing Control Act means an association consisting of representatives of a developer and purchasers of time-sharing interests as provided for in paragraph 7 in the Regulations.

³⁹ The term "developer" as defined in section 1 of the Property Time-sharing Control Act means a person whose business is the creation or the selling of time-sharing interest in his own property time-sharing scheme and includes an agent of such person.

⁴⁰ Paragraph 7 of the Regulations.

⁴¹ The term "property time-sharing scheme" is defined in section 1 of the Property Time-sharing Control Act.

⁴² The term "common property" is defined in section 1 in the Property Time-Sharing Control Act.

⁴³ The term "accommodation" as defined in section 1 of the Property Time-Sharing Control Act means any immovable property or any portion or part thereof in relation to a time-sharing interest.

⁴⁴ The other duties of the management association are outlined in paragraph 8(1)(h) of the Regulations.

⁴⁵ Scheme rules generally govern the method and basis of operation of the scheme and may be contained within the founding document of the management association.

⁴⁶ Paragraph 9(1) of the Regulations.

For associations of persons to qualify for an income tax exemption on their levy income (see **9**) and to benefit from the basic exemption (see **10**) on other types of income, they must obtain approval from the Commissioner (see **13.2**). This approval is based on the specific facts of each case, as the Commissioner must be satisfied that the association of persons meets the relevant requirements (see **7.2**). Each case will therefore be considered on its own merits.

7.1 Meaning of “association of persons”: qualify and non-qualifying

The expression “any other association of persons” in section 10(1)(e)(i)(cc) is not defined in the Act. The method of attributing meaning to the words used in legislation involves, as a point of departure, examining the language of the provision at issue, the language and design of the statute as a whole and its statutory purpose.⁴⁷ In *C: SARS v Dunblane (Transkei) (Pty) Ltd*⁴⁸ the court held that words in a section of an Act of Parliament must not be looked at in isolation but in the context in which they are found, both in the immediate context of the sub-section in which they occur and in the general context of the Act.

The *Merriam-Webster Dictionary* describes the words separately as –

- “any” is “one, some, or all indiscriminately of whatever quantity”,⁴⁹
- “other” is “being the one or ones distinct from that or those first mentioned or implied”,⁵⁰
- “association” is “an organization of persons having a common interest”,⁵¹ and
- “person” is “one (such as a human being, a partnership, or a corporation) that is recognized by law as the subject of rights and duties”.⁵²

Any other association of persons, as interpreted in the context of section 10(1)(e)(i)(cc) and based on the dictionary meanings, must be either constituted as –

- a voluntary association that is formed and governed according to a constitution adopted by its members,⁵³ or
- an NPC.

Any other association of persons, whether established as a voluntary association of persons or as an NPC, does not automatically qualify for an exemption from income tax on its levy income or the basic exemption. Such associations must apply (see **13.2**) to SARS and satisfy the Commissioner (see **7.2**) that they meet all the requirements of section 10(1)(e)(i)(cc) (see **7.3**). The association of persons’ founding document must be submitted to the Commissioner as part of the application for exemption. The type of founding document will depend on the nature of the association of persons such as a constitution for a voluntary association or the memorandum of incorporation for an NPC.

⁴⁷ *Chetty t/a Nationwide Electrical v Hart & another* 2015 (6) SA 424 (SCA), 4 All SA 401.

⁴⁸ 2002 (1) SA 38 (SCA), 64 SATC 51 at 57.

⁴⁹ www.merriam-webster.com/dictionary/any [Accessed 30 December 2025].

⁵⁰ www.merriam-webster.com/dictionary/other [Accessed 30 December 2025].

⁵¹ www.merriam-webster.com/dictionary/association [Accessed 30 December 2025].

⁵² www.merriam-webster.com/dictionary/person [Accessed 30 December 2025].

⁵³ Pienaar, G. J. (28 February 2015). Association. In *Law of South Africa LAWSA 2* (Third Edition Volume) in paragraph 155. My LexisNexis: [online].

The following entities do not qualify as “associations of persons” under section 10(1)(e)(i)(cc):

- Companies, except an NPC, as defined in the Companies Act.⁵⁴
- Co-operatives.⁵⁵
- Close corporations.⁵⁶
- Trusts.⁵⁷

Entities such as time-sharing exchanges or managing agents⁵⁸ that sell time-sharing interests and manage the exchange of points or weeks for holidays at other time-sharing destinations for the benefit of time-share owners do not qualify under section 10(1)(e)(i)(cc). These timeshare exchanges simply enable timeshare owners to swap their ownership rights or usage rights or weeks with other timeshare owners, allowing them to vacation at different resorts without buying additional timeshares. Because these entities do not manage the collective interests common to members of the individual time-share properties, any fees received by or accrued to these entities for those services are not exempt from income tax under section 10(1)(e)(i)(cc).

7.2 Satisfaction of the Commissioner

Section 10(1)(e)(i)(cc) does not specifically require the Commissioner’s approval for an association of persons to qualify for the levy income exemption and basic exemption. However, the exemption applies only if the Commissioner is satisfied, subject to any necessary conditions, that the association of persons –

- has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable (see 7.3.1);⁵⁹
- is prohibited from distributing any of its funds to any person except to a similar association of persons (see 7.3.2);⁶⁰ and
- is not involved in any prohibited transaction, operation or scheme (see 8).⁶¹

⁵⁴ See the definition of “company” in section 1 of the Companies Act. This may include a state-owned company (SOC Ltd), private company [(Pty) Ltd], personal liability company (Inc.) or public company (Ltd).

⁵⁵ The term “co-operative” is defined in section 1(1). For commentary, see the *Tax Guide for Small Businesses*.

⁵⁶ The term “close corporation” is defined in section 1(1). For commentary, see the *Tax Guide for Small Businesses*.

⁵⁷ The term “trust” is defined in section 1(1). A trust does not have members sharing collectively in a common purpose. In addition, the beneficiaries of a trust are not members of the trust.

⁵⁸ The term “managing agent” as defined in paragraph 1 of the Regulations means the person engaged by a developer or a management association, to manage a property time-sharing scheme pursuant to a written management agreement.

⁵⁹ Section 10(1)(e)(i)(cc)(A).

⁶⁰ Section 10(1)(e)(i)(cc)(B).

⁶¹ The proviso to section 10(1)(e)(i)(cc).

The word “satisfied” is not defined in the Act. The ordinary dictionary meaning of “if you are satisfied” is described in the –

- *Cambridge Dictionary* as “that something is true, you believe it”;⁶² and
- *Dictionary.com* as “that something is true or has been done properly, you are convinced about this after checking it”.⁶³

The word “satisfaction” in this context means the Commissioner reviewed all relevant facts, evidence, and documentation, and reasonably believes the requirements have been met. This does not require absolute certainty, but rather a belief formed after careful investigation. Typically, this involves examining the association of persons’ founding document, annual financial statements, and any other supporting materials.

It is the responsibility of the association of persons to prove⁶⁴ its compliance with the requirements and its eligibility for the levy income exemption and basic exemption. The association of persons must keep sufficient evidence to support its view taken.⁶⁵ It has always been the practice,⁶⁶ to enable the Commissioner to be satisfied whether an association of persons meets the requirements of section 10(1)(e)(i)(cc), that such an association of persons submits an application with the required supporting documentation (see **13.2**). If all requirements are met, the Commissioner will issue a letter to confirm satisfaction with the requirements and grant the levy income exemption and basic exemption.

Each case is decided based on its specific facts and merits. The Commissioner’s decision can be challenged through objection and appeal (see **14**).

7.3 Requirements that must be met to the Commissioner’s satisfaction

7.3.1 Sole purpose

The words “solely” and “purpose” are not defined in the Act. The *Cambridge Dictionary* describes the words as follows:

- “Solely” is “only and not involving anyone or anything else.”⁶⁷
- “Purpose” is “why you do something or why something exists.”⁶⁸

The Commissioner must be satisfied that an association of persons is formed for the sole purpose to manage the collective interests common to its members, which involves managing expenses applicable to the common immovable property and collecting levies for which its members are liable. The founding document of the association of persons must reflect this sole purpose. When determining the

⁶² <https://dictionary.cambridge.org/dictionary/english/satisfied> [Accessed 30 December 2025].

⁶³ www.collinsdictionary.com/dictionary/english/satisfied [Accessed 30 December 2025].

⁶⁴ Section 102 of the TA Act.

⁶⁵ Section 29 of the TA Act.

⁶⁶ The practice was initially set out in Practice Note 8 “Income Tax – Exemption from Income Tax in terms of Section 10(1)(e) of the Income Tax Act, 1962” dated 26 March 2001, which was withdrawn with effect from 22 February 2012 and replaced by Interpretation Note 64 (Issue 1) “Income Tax Exemption: Bodies Corporate Established Under the Sectional Titles Act, No. 95 of 1986, Share Block Companies Established under the Share Blocks Control Act, No. 59 of 1980 and Associations of Persons Managing the Collective Interests Common to all Members”, which has been archived.

⁶⁷ <https://dictionary.cambridge.org/dictionary/english/solely> [Accessed 30 December 2025].

⁶⁸ <https://dictionary.cambridge.org/dictionary/english/purpose> [Accessed 30 December 2025].

association of persons' sole purpose, the founding document must be interpreted according to the ordinary rules of construction of a document.⁶⁹

Example 1 – Sole purpose

The following are non-exhaustive examples of association of persons formed for the sole purpose of managing the collective interests of members and the collection of levies:

- ABC Residents' Association is formed to oversee and manage security within a gated area. All residents share responsibility for the costs related to security patrols, gates, and fencing, and must pay a monthly levy to cover these costs.
- City Mall Merchants' Association is formed by the shopping mall's developers to maintain the décor and appearance of the mall's common immovable property. Membership is compulsory for all the tenants, who contribute levies to cover the relevant collective expenses.
- Green Estate Homeowners' Association is formed to control and manage the upkeep and general expenses related to the common immovable property within Birchwood Estate, a security estate consisting of 30 residential units. According to its founding document, all owners are required to be members of the association and pay levies to cover costs such as maintaining pavements, perimeter fencing or walls, entrance gardens, the guard house, and security services.
- Gated Community Residents' Association is formed by private homeowners in a residential area to manage the maintenance of the shared roads, security fencing, entrance booms gates, and the hiring security staff. Membership of the association is optional, the owners of the residential units contribute to the ongoing maintenance and upkeep of the common facilities.

(a) Managing the collective interests common to all members

An association of persons must be formed for the sole purpose to manage the collective interests common to all its members. This includes costs related to immovable property collectively owned and collecting levies from members.⁷⁰ The phrase "which include" suggests that managing expenses for common immovable property is just one example of these collective interests. The association of persons' purpose is not limited to this alone.

The meaning and effect of "include"⁷¹ was considered in ITC 1878⁷² in which reference was made to its dictionary meaning as well as several previous judgements, which considered its effect. Vally J pointed out that it was well established that our courts have recognised that the term "includes" is sometimes employed as an exhaustive list, but "as a general rule, it is a term of extension".⁷³ Thus, it brings within the ambit of a

⁶⁹ *Mitchells Plain Town Centre Merchants Association v McLeod & another* 1996 (4) SA 159 (A), [1996] 3 All SA 297.

⁷⁰ Section 10(1)(e)(i)(cc)(A).

⁷¹ *C:SARS v Glencore Operations SA (Pty) Ltd* [2021] (4) All SA 14 (SCA), 84 SATC 227 in 45, 46 and 50 to 53.

⁷² (2015) 77 SATC 349 (J).

⁷³ In 26.

term circumstances that would ordinarily not be regarded as falling within its scope. After reviewing the history of the use of the term, Vally J concluded the following:⁷⁴

“Thus, the word ‘include’ used in a statute is often used to extend or enlarge the meaning of a thing or concept. It brings within the scope of the thing or concept others that are not ordinarily or naturally part of the thing or concept.”

The words “managing”, “collective interests”, “common”, “immovable property” and “members” are not defined in the Act. The *Cambridge Dictionary* describes the words as follows:

- “Manage” is “to be responsible for controlling or organizing someone or something, especially a business or employees.”⁷⁵
- The expression “collective interests” separately as –
 - “collective” is “of or shared by every member of a group of people”;⁷⁶ and
 - “interests” is “something that bring advantages to or affects someone or something”.⁷⁷
- “Common” is “belonging to or shared by two or more people, or things.”⁷⁸
- “Member” is “a person who joins a group to take part in a particular activity.”⁷⁹
- “Immovable property” is “property such as land or buildings, not a person’s possessions.”⁸⁰

An association of persons is tasked with overseeing and managing the financial and administrative matters related to the common immovable property on behalf of its members. This common immovable property can include facilities such as a clubhouse, tennis courts, swimming pool, parking areas, security systems, booms and gates, guard house, entrance gardens, internal roads, pavements, walkways and fences. The association of persons is responsible for preparing an annual budget to cover these expenses, setting appropriate levies (see 9.1.1) or special levies (see 9.1.2) for members, and enforcing fines (see 9.2.1) or penalties (see 9.2.2) for breaches of the management or conduct rules.

In addition to managing expenses related to the common immovable property, an association of persons may perform other responsibilities mandated by its founding document. These often include establishing and enforcing rules that promote the well-being of all members, such as ensuring the environment remains clean, safe, and visually appealing. This can involve setting guidelines for security access, speed limits, noise levels, and scheduling building activities, as well as managing how members use and enjoy communal amenities like the clubhouse, golf course, or hiking trails.

⁷⁴ In 29.

⁷⁵ <https://dictionary.cambridge.org/dictionary/english/managing> [Accessed 30 December 2025].

⁷⁶ <https://dictionary.cambridge.org/dictionary/english/collective?q=collective+> [Accessed 30 December 2025].

⁷⁷ <https://dictionary.cambridge.org/dictionary/english/interest?q=interests> [Accessed 30 December 2025].

⁷⁸ <https://dictionary.cambridge.org/dictionary/english/common> [Accessed 30 December 2025].

⁷⁹ <https://dictionary.cambridge.org/dictionary/english/member> [Accessed 30 December 2025].

⁸⁰ <https://dictionary.cambridge.org/dictionary/english/immovable-property> [Accessed 30 December 2025].

Typically, belonging to an association of persons is connected to owning or occupying a specific unit or part of a property. Members⁸¹ can be residents or property owners in areas like security estates, complexes, or gated communities, as well as tenants in shopping centres or malls.

(b) Collection of levies

The Commissioner must be satisfied that, apart from managing the collective interests of its members, the association of persons was established solely to collect levies (see 9) that its members are responsible for paying.⁸²

7.3.2 Prohibition on distribution of funds

The Commissioner must be satisfied that the association of persons is prohibited from distributing any of its funds to any person except a similar association of persons.⁸³

The words “distribute” and “funding” are not defined in the Act. The words are described in the *Dictionary.com* as follows:

- “Distribute” is “to divide and give out in shares; deal out; allot.”⁸⁴
- “Funding” is “funds, money immediately available; pecuniary resources.”⁸⁵

The word “funds” is described in the *BusinessDictionary.com* as follows:⁸⁶

“All the financial resources of a firm, such as cash in hand, bank balance, accounts receivable. Any change in these resources is reflected in the firm’s financial position.”

In this context, “funds” means the financial resources available to an association of persons, such as cash, liquid assets, or credit.⁸⁷ To “distribute funds” is to allocate or give these resources, typically to another association of persons without the expectation or obligation of repayment.

According to the dictionary meanings, an association of persons may only distribute its financial resources for the collective benefit of its members. Acceptable distribution of funds can include any expenses relating to the common immovable property, settling debts, covering operational costs, making loans or investments, *bona fide* donations (see 15.2), or transferring funds to a similar association of persons.

The requirement prohibiting distributions is absolute and is not subject to the Commissioner’s discretion and can therefore not in general or in a particular instance be waived, deferred or reduced.

All funds must be used for the association of persons’ sole purpose (see 7.3.1), and any surplus may only be distributed to a similar association of persons.

⁸¹ Typically, an association’s rules specify who can become a member. Members are allowed to use the amenities and other benefits offered by the association, provided they pay any required entrance fee, subscription, or levy as set out in the founding document.

⁸² Section 10(1)(e)(i)(cc)(A).

⁸³ Section 10(1)(e)(i)(cc)(B).

⁸⁴ www.dictionary.com/browse/distribute [Accessed 30 December 2025].

⁸⁵ www.dictionary.com/browse/funding [Accessed 30 December 2025].

⁸⁶ www.businessdictionary.com/definition/funds.html [Accessed 30 December 2025].

⁸⁷ See the meaning of “financial resources” in *BusinessDictionary.com* available online at www.businessdictionary.com/definition/financial-resources.html [Accessed 30 December 2025].

The *Free Dictionary* describes “similar” as follows:⁸⁸

“Having a resemblance in appearance or nature; alike though not identical.”

A similar association of persons should have objectives that are alike, though not necessarily exactly the same, as those of the association of persons distributing its funds. Typically, this kind of distribution happens when an association of persons is dissolved (see 7.4). It is not permitted for an association of persons to distribute its funds to individuals or other associations that are subject to tax, as this would allow those recipients to benefit from the income tax exemption. Therefore, the similar recipient association of persons must also be exempted by the Commissioner under section 10(1)(e)(i)(cc).

7.4 Conditions the Commissioner may impose

The Commissioner has the authority under section 10(1)(e)(i)(cc) to impose any conditions considered necessary. These may include conditions such as submitting any amendments to the association of person’s founding document to the Commissioner, ensuring that on dissolution, any remaining assets are transferred to another association of persons that is exempt from income tax under section 10(1)(e)(i)(cc), and complying with any reporting obligations (see 16).

All conditions the Commissioner may deem necessary will be contained in the letter confirming exemption (see 13.2).

The founding document of the association of persons must incorporate the requirements (see 7.3) and the above conditions including those related to the stabilisation fund (see 9.1.4), if applicable, to ensure that the income qualifies as levy income (see 9).

7.5 Disqualification of a person to manage the collective interests of an association of persons

A person cannot manage the collective interests common to all members in an association of persons if disqualified⁸⁹ under the Trust Property Control Act, the NPO Act, or the Companies Act.⁹⁰

The word “managing” is not defined in the Act. The *Cambridge Dictionary* describes “managing” as –

“to be responsible for controlling or organising someone or something, especially a business or employees”.

Based on the dictionary meaning, it is submitted that a person responsible for managing the collective interests of an association of persons is someone who serves in a fiduciary capacity.

⁸⁸ www.thefreedictionary.com/similar [Accessed 30 December 2025].

⁸⁹ The grounds for disqualification were inserted to align with the National Strategy on Anti Money Laundering Countering, Terrorism Financing and Countering the Financing of Proliferation and to achieve consistency with the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022. See the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2023*, in 2.3.

⁹⁰ Section 10(5)(a), which was inserted by section 3 of the Tax Administration Laws Amendment Act 18 of 2023 and came into operation on 22 December 2023, the date of promulgation of that Act.

The following explanation is provided by *LAWSA* on the management of an association:⁹¹

“Members of an association can be elected to office. The word ‘office’ ordinarily has a fairly wide connotation, meaning a position or post to which prescribed duties are attached. Where an association’s constitution prescribes the duties of the president, vice-president, treasurer, trustees and secretary, these posts are all ‘offices’. Certain persons holding office may be required to fulfil managerial functions.

The proper functioning of an association requires the appointment of a group of persons with executive powers. The constitution of the association usually regulates the matter by entrusting the management of the association’s affairs to a management (executive) committee. The election of persons to serve on the management committee takes place in accordance with the constitutional provisions. When a person is elected to serve on a management committee, he or she obtains certain rights and undertakes certain obligations in relation to the conduct of the affairs of the association. Members of the management committee may resign or be removed from office in conformity with the terms of the constitution. A duly elected management committee holds office until it is dismissed or retires of its own accord.”

(Footnotes omitted)

In view of the above, any person elected to office in a voluntary association of persons, such as the chairperson, vice-chairperson, treasurer, secretary, or any person appointed to the management or executive committee is permitted to manage the collective interests common to the members of the association of persons constituted as an association of persons.

An association of persons incorporated as an NPC under the Companies Act must have a minimum of three persons to incorporate the NPC,⁹² and it is required to appoint at least three directors.⁹³ The Companies Act sets out the standard of conduct for directors, stating that their powers and duties must be exercised in good faith, for a proper purpose, in the best interest of the company, and with a degree of care, skill, and diligence expected from a reasonable person carrying out the same functions in relation to the company as those carried out by that director, and having the general knowledge, skill and experience of that director.⁹⁴ Therefore, any person appointed as a director or alternate director, regardless of their title, can manage the collective interests common to the members of the association of persons constituted as an NPC.

The use of the disjunctive word “or” in the disqualification requirement⁹⁵ means that if a person is disqualified under any one or more of the Trust Property Control Act, NPO Act, or the Companies Act, they will be prohibited from managing the collective interests common to all the members of an association of persons. Should a disqualified person take on such a management role, they commit an offence, and may be fined or imprisoned for up to 24 months if convicted.⁹⁶

⁹¹ Pienaar, G. J. (28 February 2015). Association. In *Law of South Africa LAWSA 2* (Third Edition Volume) in paragraph 166 and 178. My LexisNexis: [online].

⁹² Section 13(1) read together with item 3 of Schedule 1 to the Companies Act.

⁹³ Section 66(2)(b) of the Companies Act.

⁹⁴ Section 76(3) of the Companies Act.

⁹⁵ Section 10(5)(a).

⁹⁶ Section 10(5)(b), which was inserted by section 3 of the Tax Administration Laws Amendment Act 18 of 2023 and came into operation on 22 December 2023, the date of promulgation of that Act.

The reasons a person may be disqualified under the Trust Property Control Act,⁹⁷ NPO Act,⁹⁸ or Companies Act⁹⁹ are similar. These grounds for disqualification, as set out in the respective Acts, are summarised below. A person will be disqualified under any of these Acts if that person –

- is an unrehabilitated¹⁰⁰ insolvent;¹⁰¹
- has been prohibited by a court to be a director of a company, or declared by a court to be delinquent¹⁰² under the Companies Act or the Close Corporations Act;¹⁰³
- is prohibited under any law to be a director of a company;¹⁰⁴
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty;¹⁰⁵
- has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount under the Companies Act¹⁰⁶ for theft, fraud, forgery, perjury or an offence –¹⁰⁷
 - involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities;¹⁰⁸
 - in connection with the promotion, formation or management of a company,¹⁰⁹ or in connection with consenting to act or acting as a director when ineligible or disqualified;¹¹⁰ or

⁹⁷ Section 6 of that Act.

⁹⁸ Section 25 of that Act.

⁹⁹ Section 69 of that Act.

¹⁰⁰ Section 69(11) of the Companies Act empowers the court to exempt a person from the grounds of disqualification set out in section 69(8)(b) of that Act.

¹⁰¹ Section 6(1A)(a) of the Trust Property Control Act, section 25A(1)(a) of the NPO Act and section 69(8)(b)(i) of the Companies Act.

¹⁰² A declaration of delinquency may be made under section 162 of the Companies Act or under section 47 of the Close Corporations Act.

¹⁰³ Section 6(1A)(b) of the Trust Property Control Act, section 25A(1)(b) of the NPO Act and section 69(8)(a) of the Companies Act.

¹⁰⁴ Section 6(1A)(c) of the Trust Property Control Act, section 25A(1)(c) of the NPO Act and section 69(8)(b)(ii) of the Companies Act.

¹⁰⁵ Section 6(1A)(d) of the Trust Property Control Act, section 25A(1)(d) of the NPO Act and section 69(8)(b)(iii) of the Companies Act.

¹⁰⁶ Section 69 of the Companies Act.

¹⁰⁷ Section 6(1A)(e) of the Trust Property Control Act, section 25A(1)(e) of the NPO Act and section 69(8)(b)(iv) of the Companies Act.

¹⁰⁸ Section 6(1A)(e)(i) of the Trust Property Control Act, section 25A(1)(e)(i) of the NPO Act and section 69(8)(b)(iv)(aa) of the Companies Act. See section 1 of the Financial Intelligence Centre Act 38 of 2001 for definitions of those terms.

¹⁰⁹ Section 69(2) or (5) of the Companies Act.

¹¹⁰ Section 6(1A)(e)(ii) of the Trust Property Control Act, section 25A(1)(e)(ii) of the NPO Act and section 69(8)(b)(iv)(bb) of the Companies Act.

- under the Trust Property Control Act, the NPO Act, the Companies Act, the Insolvency Act 24 of 1936, the Close Corporations Act, the Competition Act 89 of 1998, the Financial Intelligence Centre Act 38 of 2001, the Financial Markets Act 19 of 2012, Prevention and Combating of Corrupt Activities Act 12 of 2004, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004, or the TA Act;¹¹¹
- is subject to a resolution adopted¹¹² by the Security Council of the United Nations;¹¹³ or
- is an unemancipated minor or is under a similar legal disability.¹¹⁴

Public registers of disqualified individuals are maintained by the following authorities:

- The Master of the High Court, who keeps a register of trustees disqualified by a court order under the Trust Property Control Act or any other law.¹¹⁵
- The NPO Directorate, who keeps a register of office-bearers disqualified under a court order under the NPO Act or any other law.¹¹⁶
- The Companies and Intellectual Property Commission, which keeps a register of directors or those under probation as directors, disqualified by a court order under to the Companies Act or any other law.¹¹⁷

8. Prohibited transactions, operations, or schemes

The exemption provided in section 10(1)(e) does not apply to any body corporate, share block company, or association of persons if they participate in a transaction, operation, or scheme whose sole or main purpose is or was to reduce, postpone, or avoid the liability of any tax, levy, or duty that would otherwise be payable under the Act or any other Act administered¹¹⁸ by the Commissioner.¹¹⁹

The exemption will be denied only if the body corporate, share block company, or association of persons knowingly took part in such an arrangement. The rule applies regardless of whether the body corporate, share block company, or association of persons itself or another party such as a shareholder, unit holder, or member benefitted from the reduced, postponed, or avoided tax, levy, or duty. The taxes, levies, or duties affected could include those under the Act like donations tax, income tax, or dividends

¹¹¹ Section 6(1A)(e)(iii) of the Trust Property Control Act, section 25A(1)(e)(iii) of the NPO Act and section 69(8)(b)(iv)(cc) of the Companies Act.

¹¹² Chapter VII of the Charter of the United Nations, which provides for financial sanctions entailing the identification of persons or entities against whom member states of the United Nations must take action specified in the resolution.

¹¹³ Section 6(1A)(f) of the Trust Property Control Act, section 25A(1)(f) of the NPO Act and section 69(8)(v) of the Companies Act.

¹¹⁴ Section 6(1A)(g) of the Trust Property Control Act, section 25A(1)(g) of the NPO Act and section 69(7)(b) of the Companies Act.

¹¹⁵ Section 6(1H) of the Trust Property Control Act.

¹¹⁶ Section 25A(9)(a) of the NPO Act.

¹¹⁷ Section 69(13) of the Companies Act.

¹¹⁸ The Acts administered by the Commissioner involving tax, duties or levies are set out in Schedule 1 of the South African Revenue Service Act 34 of 1997.

¹¹⁹ The proviso to section 10(1)(e).

tax, or under any other Act administered by the Commissioner, such as value-added tax or transfer duty.

9. Levy income exemption

The exemption provided by section 10(1)(e)(i) applies only to levy income that is received by or accrued to –

- bodies corporate (see **5**) from their members;
- share block companies (see **6**) from their shareholders; and
- associations of persons (see **7**) from their members.

The term “levy” is not defined in the Act. The *Cambridge Dictionary* describes the word “levy” as –¹²⁰

“an amount of money, such as a tax, that you have to pay to a government or organization”.

In this context, levies are the amounts collected by bodies corporate, share block companies, and associations of persons from their members to pay certain expenses relating to managing the members’ collective interests. If the bodies corporate, share block companies, and associations of persons did not manage such interests, each member would be responsible for paying and administering their share of the costs.

To determine if a payment qualifies as a levy, consideration must be given to the actual nature of the transaction. For instance, a fee charged for late payment of a levy is generally considered interest, not a levy.

The words “received” and “accrued” are not defined in the Act, but their meanings have been clarified through court decisions.

Steyn J stated in *Geldenhuys v CIR* that the words “received by” must mean –¹²¹

“received by the taxpayer on his own behalf for his own benefit”.

In *CIR v Genn & Co (Pty) Ltd*, Schreiner JA stated the following:¹²²

“It certainly is not every obtaining of physical control over money or money’s worth that constitutes a receipt for the purposes of these provisions. If, for instance, money is obtained and banked by someone as agent or trustee for another, the former has not received it as his income.”

Watermeyer J stated in *WH Lategan v CIR* the following on the meaning of “accrued”.¹²³

“In his Lordship’s opinion the words in the Act ‘has accrued to or in favour of any person’ merely meant ‘to which he has become entitled’.”

¹²⁰ <https://dictionary.cambridge.org/dictionary/english/levy> [Accessed 30 December 2025].

¹²¹ 1947 (3) SA 256 (C), 14 SATC 419 at 430.

¹²² 1955 (3) SA 293 (A), 20 SATC 113 at 123.

¹²³ 1926 CPD 203, 2 SATC 16 at 20. The correctness of the interpretation of “accrued to” in *Lategan’s* case was confirmed by Hefer JA in *CIR v People’s Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9 at 24.

9.1 Receipts and accruals qualifying as levy income

The types of receipts and accruals that qualify as levy income are considered below.

9.1.1 General levies

A “general” levy typically relates to routine expenses involved in the day-to-day running, maintenance, or operating the bodies corporate, share block companies, or association of persons.

General levies received by or accrued to bodies corporate, share block companies or associations of persons are exempt from income tax if all the requirements of section 10(1)(e)(i) are met.

9.1.2 Special levies

A “special” levy can be imposed to fund capital improvements, for example, installing a satellite dish, paving, upgrading security fencing, or building up a reserve for future projects like resurfacing a tennis court or upgrading an entrance and guard house.

Special levies received by or accrued to bodies corporate, share block companies, and associations of persons are exempt from income tax if all the requirements of section 10(1)(e)(i) are met.

9.1.3 Building penalty levies

The rules of an association of persons (see 7) may require a member to pay an increased levy if they do not start or finish building work within a specified timeframe. This “building penalty levy” is usually calculated as a multiple of the general levy (see 9.1.1), and its main purpose is to cover extra expenses the association of persons incurs as a result of construction delays. These expenses can include repairing damage to roads and curbs from heavy construction vehicles, or hiring extra security to protect other homeowners when there are vacant properties or construction workers on site. Such a building penalty levy qualifies for exemption as a levy, and it should not be confused with a penalty or fine (see 9.2.1).

9.1.4 Stabilisation fund levies

An association of persons (see 7) may establish a levy stabilisation fund to help cover daily expenses and to build a reserve for future capital improvements or unexpected costs related to the common immovable property. The main goal of such a fund is to keep monthly (see 9.1.1) and special levies (see 9.1.2) affordable by spreading out levies and preventing sudden increases. This levy can be charged as a once-off payment, either when a unit is sold by an owner (a departure or exit levy) or when a person buys a unit (an entry levy) and may be a fixed amount or calculated as a percentage of, for example, the unit’s selling price.

For the contributions to the stabilisation fund of an association of persons to qualify as levy income, the association’s founding document must provide –

- for the establishment of a levy stabilisation fund;
- rules relating to the governance of the stabilisation fund;
- that the funds of the stabilisation fund can only be used for expenses related to the common immovable property of the association of persons;

- that the levy is an official charge imposed on members by the association of persons;
- that the amount owing to the levy stabilisation fund when joining the association of persons is a liability, even if it is only paid when the member sells the unit or property; and
- the method to calculate the amount payable.

9.2 Receipts and accruals not qualifying as levy income

Although there may be other receipts and accruals not qualifying as levy income, the receipts and accruals derived by way of fines and late payments are considered below.

9.2.1 Fines

A member may be charged an extra amount in addition to any general (see **9.1.1**) or special levy (see **9.1.2**), which does not related to expenses for the common immovable property. Such charges typically arise from a member's actions or omissions and are intended to encourage certain behaviours, for instance, penalties for littering or causing disturbances to other residents. These receipts and accruals are not considered levy income, since they are not collected to cover costs associated with the common immovable property.

9.2.2 Late payments

Penalties and interest imposed for late payment of levies or other amounts owed to a body corporate, share block company, or association of persons are not regarded as levy income (see **9.1**).

10. Basic exemption

The basic exemption applies to all the receipts and accruals except levy income (see **9.1**) of bodies corporate, share block companies, and associations of persons. However, for an association of persons to benefit from this basic exemption, the Commissioner must have confirmed satisfaction with the requirements (see **7.3**) of section 10(1)(e)(i)(cc) and the exemption of its levy income.

Only receipts or accruals that are included in the definition of "gross income" (see **12.1**) are considered for this exemption. The term "gross income" includes the total amount received by or accrued to a person that is not of a capital nature, unless specifically included under one of the sub-paragraphs of the definition.

Receipts or accruals of a capital nature not specifically included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(e)(ii), since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain.¹²⁴ A taxable capital gain (see **15.4**) is potentially subject to income tax, however, the exemptions in section 10 do not apply to it because a taxable capital gain is included directly in taxable income¹²⁵ and does not comprise "income", namely, gross income less exempt income.¹²⁶

¹²⁴ The term "taxable capital gain" as defined in section 1(1) means an amount determined in accordance with paragraph 10 of the Eighth Schedule.

¹²⁵ Paragraph (b) of the definition "taxable income" in section 1(1).

¹²⁶ Section 26A.

The basic exemption of R50 000 is applied to the total taxable receipts and accruals, from other sources except levy income (see **9.1**), not to each individual source. The basic exemption cannot create an assessed loss (see **12.3**) since it is not a deduction, but is a threshold amount applied to the total taxable receipts and accruals from other sources except levy income to determine the receipts and accruals subject to tax (see **11**).

The amount of receipts and accruals not exempt from income tax, namely, the receipts and accruals other than levy income, must be determined before calculating any allowable deductions (see **12.3**).

Example 2 – Basic exemption

Facts:

ABC Golf Estate Homeowners' Association manages the maintenance and general expenditure relating to the common immovable property of ABC Golf Estate.

The following income is reflected in the financial statements:

	R
Levies received from members	460 240
Rent from cell mast	120 000
Interest on investment	80 000
Golf course subscription fees	400 000
Club house income (food and beverages)	<u>300 000</u>
Total income	<u>1 360 240</u>

Result:

R

Levy income exempt from income tax under section 10(1)(e)(i)

Levies received from members	<u>460 240</u>
------------------------------	----------------

Receipts and accruals subject to income tax

Rent from cell mast	120 000
Interest on investment	80 000
Golf course subscription fees	400 000
Club house income (food and beverages)	<u>300 000</u>
Total receipts and accruals subject to income tax	<u>900 000</u>

Basic exemption under section 10(1)(e)(ii)

Total receipts and accruals from sources other than levy income	900 000
Less: Basic exemption	<u>(50 000)</u>
Income subject to income tax (before allowable deductions)	<u>850 000</u>

11. Retrospective exemption

Generally, the exemption under section 10(1)(e)(i)(cc) takes effect from the date the Commissioner issues the confirmation letter, that is, it applies prospectively, unless the Commissioner decides otherwise. Section 10(1)(e)(i)(cc) does not prevent the Commissioner from confirming the levy income exemption and the basic exemption, retrospectively. The Commissioner can confirm the exemption from a year of assessment before the application date (see **13**) if the association of persons can demonstrate to the satisfaction of the Commissioner, with sufficient proof and the

necessary supporting documentation, that it met all the requirements (see **7.3**) during that earlier period and that the amounts claimed as exempt do qualify or are not taxable.¹²⁷ Since section 10(1)(e)(i)(cc) does not expressly prohibit retrospective exemption, this approach is consistent with the retrospective provisions contained in sections 30¹²⁸ and 30A.¹²⁹

However, retrospective exemption of an association of persons complying with all its obligations under Chapter 4,¹³⁰ Chapter 10¹³¹ and Chapter 11¹³² of the TA Act, may not be extended to years of assessment for which an assessment may not be made under section 99(1) of the TA Act.¹³³ If an association of persons did not comply with these obligations, the Commissioner may not extend the retrospective exemption to a year of assessment for which an assessment could not have been made had the income tax returns been submitted under section 25(1) of the TA Act.¹³⁴

An assessment cannot be made three years after the date of assessment of an original assessment by SARS.¹³⁵

If an association of persons has complied with the relevant TA Act chapters, it would have submitted its returns when due, and the three-year period will include the earliest year of assessment for which an assessment was issued during that period. If the association of persons, for example, applied for exemption on 31 March 2025, the three-year period would begin on 1 April 2022. An association that has a February year-end and its first assessment after 1 April 2022 was for the 2022 year of assessment, the retrospective exemption can be made effective for the 2022 to 2024 years of assessment and reduced assessments may be issued for these years.

If an association of persons did not comply with the TA Act requirements, it is necessary to determine when those years of assessment would have been assessed had the association of persons complied with the return submission requirements. For example, the 2024 public notice required a company (see **16**) to lodge its return for the 2024 year of assessment within 12 months of its financial year-end. A company with a February year-end would therefore have had to submit its 2024 return on or before 28 February 2025, and it is the latter date that must fall within the three years preceding the date of application for retrospective exemption.

Each case for retrospective exemption will be considered on its own merits having regard to the particular facts and circumstances.

¹²⁷ Section 102(a) of the TA Act.

¹²⁸ Section 30(3B) provides for retrospective approval of a public benefit organisation. For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

¹²⁹ Section 30A(4) provides for retrospective approval of a recreational club. For commentary, see the *Tax Exemption Guide for Recreational Clubs*.

¹³⁰ That chapter deals with returns and records.

¹³¹ That chapter deals with tax liability and payment.

¹³² That chapter deals with the recovery of tax.

¹³³ Section 99 of the TA Act places limitations on the making of assessments that have prescribed.

¹³⁴ The annual public notice issued by the Commissioner under section 25(1) of the TA Act specifying the periods within which income tax returns must be submitted, should be consulted. For the latest public notice, see Government Notice 6217 in *Government Gazette* 52712 of 23 May 2025.

¹³⁵ Section 99(1)(a) of the TA Act.

12. Calculation of taxable income

The starting point for the general framework to calculate taxable income is “gross income” (see **12.1**). The meaning of “exemptions” is also relevant for this calculation (see **12.2**). The defined term “taxable income”¹³⁶ is the amount on which a person’s income tax¹³⁷ at the applicable rate (see **12.4**) is calculated.

Example 3 in the **Annexure B** provides a step-by-step guide to calculating the taxable income.

12.1 Gross income

Gross income in relation to any year of assessment¹³⁸ is the total amount of worldwide income, in cash or otherwise, received by or accrued to or in favour of any person who is a resident.¹³⁹ Receipts or accruals of a capital nature, such as *bona fide* donations, are generally excluded from gross income. Certain other receipts and accruals specified within the definition of “gross income” are included regardless of their nature.¹⁴⁰

South Africa has a residence basis of taxation, which means that a South African resident is taxable on their worldwide income regardless of the source of the income.

The definition of “resident” in the context of a person other than a natural person means a person, which is incorporated, established or formed in South Africa.¹⁴¹ The definition of “resident” therefore applies to bodies corporate, share block companies, and associations of persons incorporated, formed or established in South Africa.

A resident must include in that residents’ gross income the total amount in cash or otherwise received by or accrued to (see **9**), or in favour of the resident.

After determining a person’s gross income, the next step is to determine income,¹⁴² by deducting from gross income all receipts and accruals that are exempt from income tax.

12.2 Exemptions under section 10(1)

There are basically two categories of exemptions, namely, certain income that is exempt from income tax and the receipts and accruals of certain entities¹⁴³ that are exempt from income tax.

¹³⁶ The term “taxable income” as defined in section 1(1) means the aggregate of (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II (sections 5 to 37G) to be deducted from or set off against such income, and (b) all amounts to be included or deemed to be included in the taxable income of any person under the Act.

¹³⁷ The term “tax” as defined in section 1(1) means tax, or a penalty imposed under the Act.

¹³⁸ The term “year of assessment” as defined in section 1(1) generally means any year or other period in respect of which any tax or duty leviable under the Act is chargeable.

¹³⁹ The term “gross income” is defined in section 1(1).

¹⁴⁰ See paragraphs (a) to (n) of the definition of “gross income”.

¹⁴¹ The term “resident” is defined in section 1(1).

¹⁴² The term “income” is defined in section 1(1).

¹⁴³ For example, the national, provincial or local sphere of government under section 10(1)(a), institutions, boards or bodies under section 10(1)(cA)(i), public benefit organisations under section 30, recreational clubs under section 10(1)(cO) and small business funding entities under section 10(1)(cQ).

12.2.1 Receipts and accruals from levy income

Levy income received by or accrued to bodies corporate, share block companies, and associations of persons is exempt from income tax (see 9.1).

12.2.2 Receipts and accruals from sources other than levy income

Receipts and accruals from a source other than levy income will be taxable subject to the basic exemption (see 10). Examples of such taxable income include –

- fees charged for using facilities and equipment, for example, squash courts, golf courses, tennis courts, and washing machines;
- rental income from the letting of immovable property such as parking bays, servants' quarters, or areas demarcated for cell phone masts;
- investment income;
- amounts charged for unpaid or late payment of levies (see 9.2.2);
- income from services rendered; and
- fines (see 9.2.1) for not adhering to management rules excluding building penalties (see 9.1.3).

After applying the basic exemption (see 10) and deducting allowable expenses, losses, and allowances under the Act (see 12.3), the remaining amount is considered taxable income and is subject to tax (see 12.4).

The exemption for interest income does not apply to bodies corporate, share block companies, and associations of persons, since it is available only to natural persons.¹⁴⁴

12.3 Expenditure and assessed loss

Expenditure that is directly related to receipts and accruals, which do not qualify for exemption can be deducted when calculating taxable income, provided they meet the requirements for deductibility under the Act. According to the general deduction formula, deductible expenses and losses must –¹⁴⁵

- be actually incurred;
- be in the production of income;
- not be of a capital nature; and
- laid out or expended for the purposes of trade.

These expenses and losses must also be claimed during the year of assessment they are actually incurred. In addition to the general deductions, the Act allows for certain special and additional deductions and allowances, but a detailed consideration of these is outside the scope of this Note.

General expenses, such as bank charges and audit fees, must be allocated to the different income sources in a logical, fair and reasonable way. Using a fixed percentage to allocate general expenses to a specific income source is not acceptable. Instead, it may be appropriate, depending on the facts, to allocate the general expenses on a *pro rata* basis, using the ratio of a particular source of income to the

¹⁴⁴ Section 10(1)(i).

¹⁴⁵ Section 11(a) read with section 23(g).

total income received by the body corporate, share block company or association of persons.

If allowable expenses exceed income from sources other than levy income (see **9**) and the basic exemption (see **10**), an assessed loss is created. This assessed loss must be carried forward to the next year of assessment.

The balance of an assessed loss from a previous year of assessment can be set off against taxable income in the current year of assessment, provided the body corporate, share block company, or association of persons is still carrying on a trade.¹⁴⁶ The amount that can be set off is limited to the higher of R1 million and 80% of the amount of taxable income before applying section 20.¹⁴⁷

The trade carried on by bodies corporate, share block companies, and associations of persons includes activities that generate levies. If a balance of assessed loss is carried forward to a year of assessment in which no taxable income is derived, but the bodies corporate, share block companies, or associations of persons still collect exempt levy income (see **7.3.1**), the balance of assessed loss is not forfeited.

The assessed loss carried forward will be forfeited only if the bodies corporate, share block companies, or associations of persons cease to carry on trade, namely, when they no longer carry on the purpose for which they have been established (see **7.3.1**).

If trade is carried on but there is no taxable income, namely, other sources of income does not exceed the basic exemption, in a year of assessment, the assessed loss will be carried forward until there is taxable income against which to set it off.

12.4 Rate of tax

Bodies corporate,¹⁴⁸ share block companies¹⁴⁹ and associations of persons¹⁵⁰ fall within the definition of “company” for income tax purposes. Bodies corporate, share block companies, and associations of persons, regardless of whether that association is established as an NPC or as a voluntary association of persons, will pay tax on its taxable income at the rate applicable to companies,¹⁵¹ or at a rate prescribed annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.¹⁵²

¹⁴⁶ Section 20(1)(a)(i).

¹⁴⁷ For commentary, see Interpretation Note 33 “Assessed Losses: Companies: the “Trade” and “Income from Trade” Requirements.

¹⁴⁸ Paragraph (a) of the definition of “company” in section 1(1).

¹⁴⁹ Paragraph (a) of the definition of “company” in section 1(1).

¹⁵⁰ Paragraph (d) of the definition of “company” in section 1(1).

¹⁵¹ For tax rates relating to previous years of assessment, see the *Guide for Tax Rates / Duties / Levies*.

¹⁵² The Minister of Finance in accordance with section 5(2)(a) may announce different rates in the national annual budget.

13. Application for exemption

13.1 Bodies corporate and share block companies

A body corporate (see **5**) or share block company (see **6**) does not need to apply for an exemption under section 10(1)(e)(i)(aa) or (bb), respectively. However, both must register for income tax at a SARS Service Centre and submit annual income tax returns, even if they are unlikely to have an income tax liability. The levy income exemption (see **9.1**) and the basic exemption (see **10**) are applied on assessment.

13.2 Association of persons

An association of persons (see **7**) must submit the prescribed application form to SARS for exemption under section 10(1)(e)(i)(cc).¹⁵³ The application form standardises the exemption process by gathering all necessary information and documents for the Commissioner's evaluation. However, the application form itself does not determine whether exemption will be granted since it is simply an administrative tool. Once submitted, the Commissioner will assess whether satisfied that the requirements considered in **7.3** and **8** are met. The Commissioner may also impose additional conditions deemed necessary to ensure compliance (see **7.4**).

Any levies (see **9.1**) received by or accrued to an association of person, as well as other receipts and accruals not exceeding R50 000 (see **10**), are only exempt from income tax if the association of persons has received confirmation from the Commissioner that it qualifies for those exemptions.

If exemption is granted, the Commissioner will issue a letter containing a unique exemption reference number, which is different from the taxpayer reference number (see **16**) allocated during income tax registration.¹⁵⁴ The association of persons must keep this letter confirming exemption as part of its records (see **17**).

If the exemption is denied, the Commissioner will provide written notification with reasons for the decision. Associations of persons that are not exempted by the Commissioner will be liable for income tax and other taxes and duties as a normal taxpayer. Both voluntary associations¹⁵⁵ and NPCs will be taxed on their taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies, which is currently 27%.

¹⁵³ Additional information on how to apply is available on the SARS website at www.sars.gov.za.

¹⁵⁴ The term "taxpayer reference number" as defined in section 1 of the TA Act means the number referred to in section 24 of the same Act.

¹⁵⁵ Paragraph (d) of the definition of "company" in section 1(1).

14. Objection and appeal

Any decision made by the Commissioner when exercising discretion under section 10(1)(e)(i)(cc) is subject to objection and appeal.¹⁵⁶ Such a decision may be objected to and appealed against in the same manner as an assessment.¹⁵⁷

If a body corporate, share block company, or association of persons disagrees with an assessment,¹⁵⁸ it may request SARS to provide reasons¹⁵⁹ for the assessment to enable it to formulate an objection. The request must be made in the prescribed form and manner and delivered to SARS within 30 days¹⁶⁰ of the date of the assessment.

Any body corporate, share block company, or an association of persons may object to an assessment¹⁶¹ in accordance with Chapter 9 of the TA Act read with the “rules”¹⁶² published in the *Government Gazette* within 80¹⁶³ business days¹⁶⁴ after –¹⁶⁵

- receiving the notice providing reasons for an assessment, if requested;¹⁶⁶
- receiving notice from SARS that the reasons have been provided;¹⁶⁷ or
- the date of assessment.

The objection must be submitted on the prescribed form and clearly set out the grounds of the objection including –¹⁶⁸

- the specific part or amount of the assessment being disputed;
- which grounds of the assessment¹⁶⁹ are being disputed; and
- any supporting documents not previously submitted to SARS for the disputed assessment.

¹⁵⁶ Section 3(4)(b).

¹⁵⁷ Section 104(2)(c) of the TA Act.

¹⁵⁸ The term “assessment” as defined in Rule 1 includes, for purposes of the rules, a decision referred to in section 104(2) of the TA Act.

¹⁵⁹ Rule 6 deals with reasons for an assessment.

¹⁶⁰ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

¹⁶¹ For commentary, see Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

¹⁶² The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Regulation Notice 3146 in *Government Gazette* 48188 of 10 March 2023. For commentary, see the *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and the *Alternative Dispute Resolution: Quick Guide*.

¹⁶³ Rule 7(1) was amended from 30 to 80 days, effective from 10 March 2023.

¹⁶⁴ The term “business day” is defined in section 1 of the TA Act.

¹⁶⁵ Rule 7 deals with objections.

¹⁶⁶ Rule 7(1)(a) read with Rule 6.

¹⁶⁷ Rule 7(1)(a) read with Rule 6(4).

¹⁶⁸ Rule 7(2).

¹⁶⁹ The term “grounds of assessment” as defined in Rule 1, for purposes of the rules, includes any grounds for a decision referred to in section 104(2) of the TA Act, and reasons for assessment provided by SARS contemplated in Rule 6(5).

SARS will consider the objection and may either disallow it or allow it in whole or in part. If the objection is disallowed and the body corporate, share block company, or association of persons remains dissatisfied, it can appeal the decision within the prescribed period.¹⁷⁰

15. Other taxes

15.1 Provisional tax

Bodies corporate, share block companies, and associations of persons are excluded from the definition of “provisional taxpayer”.¹⁷¹ As a result, they are not obligated to make provisional tax payments or submit provisional tax returns. If they have taxable income they are required to pay their tax liability when assessed.

15.2 Donations tax

Donations made by or to a body corporate, share block company, or an association of persons are not subject to donations tax.¹⁷²

15.3 Section 18A tax-deductible receipts

A body corporate, share block company and association of persons are not permitted to issue section 18A receipts¹⁷³ for levies or donations they receive.¹⁷⁴ If a taxpayer submits a claim for a deduction based on a section 18A receipt issued by a body corporate, share block company, or association of persons, that deduction will be disallowed when calculating the taxpayer’s taxable income, since it is an invalid receipt.

15.4 Capital gains tax

All capital gains and capital losses from the disposal of assets must be considered when calculating taxable capital gains or assessed capital losses, unless a specific provision states otherwise. The provisions for capital gains tax (CGT) are contained in the Eighth Schedule. CGT forms part of the income tax system, which means that any taxable capital gain must be included in taxable income under section 26A. For bodies corporate, share block companies, and associations of persons, 80% of any capital gain is included in their taxable income.¹⁷⁵

However, it is uncommon for bodies corporate, share block companies, or associations of persons to realise capital gains in their normal operations. The following are examples:

- Selling movable depreciable assets like washing machines in a communal laundry rarely results in a capital gain, since the sale price would usually not exceed the original cost.
- In sectional title schemes, the common property is owned jointly by the sectional title holders in undivided shares, not the body corporate.¹⁷⁶

¹⁷⁰ Rule 10.

¹⁷¹ Paragraph 1 of the Fourth Schedule.

¹⁷² Section 56(1)(h).

¹⁷³ A section 18A receipt is a special prescribed receipt issued under section 18A(2) by certain organisations approved by the Commissioner under section 18A entitling the donor taxpayer to an income tax deduction for *bona fide* donations made.

¹⁷⁴ For commentary, see the *Basic Guide to Section 18A Approval*.

¹⁷⁵ For commentary, see the *Comprehensive Guide to Capital Gains Tax*.

¹⁷⁶ Section 16 of the Sectional Titles Act.

Therefore, if a portion of the common property is sold, the CGT consequences fall on the unit holders, not the body corporate.

- When a share block company transfers immovable property to a holder of shares in the company, such as during a conversion to sectional title or freehold,¹⁷⁷ no capital gain or capital loss arises for the company. The share block company must disregard any capital gain or capital loss on such disposals,¹⁷⁸ and the holder of shares must also disregard any capital gain or loss on the disposal of their shares,¹⁷⁹ which includes the right of use and occupation attaching to the share.¹⁸⁰ Any capital gain or capital loss for the person acquiring the immovable property is deferred until they actually disposes of it. This roll-over treatment is achieved by carrying across to the immovable property details of the cost and date of acquisition of the shares, cost and date of effecting improvements, usage, and any market valuation performed on valuation date.

Capital gains can occur if a company is converted to a share block company, owing to the disposal of rights of use and occupation to holders of the company's shares.

Any capital gain or capital loss resulting from the donation or bequest of an asset to bodies corporate, share block companies, or associations of persons must be disregarded.¹⁸¹

15.5 Dividends tax

A beneficial owner is liable for dividends tax on a cash dividend paid by a company unless the dividend is exempt.¹⁸² A cash dividend paid to a beneficial owner that is a resident company is exempt from dividends tax.¹⁸³ A cash dividend paid to a body corporate, share block company, or an association of persons that is a resident company will therefore be exempt from dividends tax.

A resident company paying a dividend *in specie* is potentially liable for dividends tax subject to the exemptions.¹⁸⁴ Any dividend constituting a disposal,¹⁸⁵ for example, when a share block company distributes immovable property to a holder of its shares (see **15.4**), will be exempt from dividends tax.¹⁸⁶

¹⁷⁷ Section 8(3)(c) of the Share Blocks Control Act prohibits the transfer of a unit to a member otherwise than through Schedule 1 of that Act, which deals with conversion to sectional title. Thus, to the extent that shareholders wish to take transfer under freehold title it would first be necessary for them to cancel their rights of use and occupation before transfer can be affected.

¹⁷⁸ Paragraph 67B(3)(a) of the Eighth Schedule.

¹⁷⁹ Paragraph 67B(3)(b)(i) of the Eighth Schedule.

¹⁸⁰ Section 10(b) of the Share Blocks Control Act.

¹⁸¹ Paragraph 62(d) of the Eighth Schedule.

¹⁸² Section 64F(1).

¹⁸³ Section 64F(1)(a).

¹⁸⁴ Section 64FA.

¹⁸⁵ Paragraph 67B(2) of the Eighth Schedule.

¹⁸⁶ Section 64FA(1)(d).

16. Reporting requirements

The Commissioner publishes an annual public notice in the *Government Gazette* specifying the persons that must submit income tax returns.¹⁸⁷ Typically, every resident company is required to submit a return for the relevant year of assessment, subject to the specific conditions and requirements outlined in the public notice.

The term “company” as defined includes –

- any association, corporation or company incorporated or deemed to be incorporated by or under any law in force or previously in force in South Africa or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law;¹⁸⁸ or
- any association formed in South Africa to serve a specified purpose, beneficial to the public or a section of the public.¹⁸⁹

Bodies corporate, share block companies, and associations of persons, whether established as an NPC or as a voluntary association of persons, are all considered a “company” for income tax purposes and must submit income tax returns. Submitting an income tax return each year enables SARS to verify that the basic exemption (see **10**) has been properly applied to income received from sources other than levy income, and that the correct amount of tax has been paid on accurately calculated taxable income.

A return must be a full and true return,¹⁹⁰ and must be signed by the body corporate, share block company, or association of persons, or by its duly authorised representative (see **17**). The person signing is considered to be aware of the contents of the return.¹⁹¹

The public notice also prescribes the deadlines for submitting income tax returns for the years of assessment specified in that notice. Not receiving an income tax return does not affect the obligation to submit an income tax return.¹⁹² A person who wilfully and without cause refuses or neglects to submit a return or document to SARS is guilty of an offence and may be fined or imprisoned for up to two years if convicted.¹⁹³

If a body corporate, share block company, or association of persons does not comply with the requirement to submit an income tax return,¹⁹⁴ SARS will impose an appropriate penalty,¹⁹⁵ which is determined according to a fixed amount penalty table.¹⁹⁶

¹⁸⁷ Section 25 of the TA Act read with section 66(1).

¹⁸⁸ Paragraph (a) of the definition of “company” in section 1(1).

¹⁸⁹ Paragraph (d) of the definition of “company” in section 1(1).

¹⁹⁰ Section 25(2) of the TA Act.

¹⁹¹ Section 25(3) of the TA Act.

¹⁹² Section 25(4) of the TA Act.

¹⁹³ Section 234(2)(d) of the TA Act.

¹⁹⁴ Section 210 of the TA Act. For commentary, see the *Guide to Understatement Penalties*.

¹⁹⁵ The terms “administrative non-compliance penalty” and “penalty” are defined in section 208 of the TA Act and means a penalty imposed by SARS in accordance with Chapter 15 of the TA Act or a tax Act other than this Act and excludes an understatement penalty referred to in Chapter 16 of the TA Act.

¹⁹⁶ Section 211 of the TA Act.

When submitting an income tax return, it is not necessary to include supporting documents. However, if SARS needs additional documentation to verify any part of the income tax return, the body corporate, share block company, or association of persons will be notified accordingly.

If an income tax return is supported by a balance sheet, statement of assets and liabilities, or account prepared by another person, SARS may request a certificate or statement from the preparer indicating —¹⁹⁷

- the extent to which the preparer examined the books of account and related documents; and
- whether, as far as can be determined from the examination, the entries in those books and documents accurately reflect the true nature of any transaction, receipt, accrual, payment, or debit.

The accounts must be signed by both the person responsible for managing the body corporate, share block company, or association of persons in a fiduciary capacity and the person who prepared them on behalf of the body corporate, share block company, or association of persons.

17. Record-keeping

All bodies corporate, share block companies, and association of persons must keep records for five years¹⁹⁸ from the date a return is submitted. A “return”¹⁹⁹ includes any form, declaration, document, or other manner of submitting information to SARS that includes a self-assessment or forms the basis for SARS to make an assessment. However, some situations require records to be kept for longer,²⁰⁰ namely, if —²⁰¹

- a required return is not submitted for a tax period, records, books of account, or documents must be kept and retained indefinitely until the return is submitted, and then for five years from the date of submission of the return;²⁰²
- an objection or appeal (see **14**) is lodged against an assessment or decision, the relevant records, books of account, or documents must be kept and retained until the dispute is resolved or the applicable five-year period has passed, whichever is later;²⁰³
- SARS notifies a person of an audit or investigation, relevant records, books of account, or documents must be kept until the process is completed or the applicable five-year period has passed, whichever is later;²⁰⁴ or
- documents are relevant to future years of assessment, such as the application form and supporting documents for exemption decisions must be kept indefinitely.

¹⁹⁷ Section 28 of the TA Act.

¹⁹⁸ Section 29(2)(a) read with section 29(3)(a) of the TA Act.

¹⁹⁹ The term “return” is defined in section 1 of the TA Act.

²⁰⁰ For commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

²⁰¹ Section 32 of the TA Act.

²⁰² Section 29(2)(b) of the TA Act.

²⁰³ Section 32(b) of the TA Act.

²⁰⁴ Section 32(a) of the TA Act.

To ensure records are secure and accessible for SARS inspections or audits, bodies corporate, share block companies, and associations of persons must keep and retain them in their original form, organised, and in a safe location.²⁰⁵

For electronic records,²⁰⁶ compliance with the Electronic Record-Keeping Rules²⁰⁷ is required. The rules require that electronic records remain in their original form²⁰⁸ and are accessible and readable by SARS within a reasonable time. The rules also address storage locations, maintaining system documentation, and procedures for backups and conversions.²⁰⁹

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and can be fined or imprisoned for up to two years if convicted.²¹⁰

18. Representative taxpayer

A representative taxpayer²¹¹ must be appointed by bodies corporate, share block companies, and associations of persons to oversee their tax compliance and manage their tax obligations. The representative taxpayer must be a natural person residing in South Africa. This can include the –

- person managing the income of a body corporate in a fiduciary capacity;²¹²
- public officer responsible for the income of a share block company;²¹³
- person managing the income of an association of persons, that is a voluntary association of persons, in a fiduciary capacity (see 7.5);
- public officer for an association of persons, that is an NPC (see 7.5); and
- business rescue practitioner for bodies corporate, share block companies, or an association of persons, that is an NPC, under business rescue according to the Companies Act.

²⁰⁵ Section 30 of the TA Act.

²⁰⁶ Section 255 of the TA Act.

²⁰⁷ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

²⁰⁸ A document will under section 14 of the Electronic Communications and Transactions Act 25 of 2002 be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

²⁰⁹ For commentary, see the *Electronic Communications Guide*.

²¹⁰ Section 234(2)(e) of the TA Act.

²¹¹ See the term “representative taxpayer” in section 1(1) for the complete definition.

²¹² Any trustee holding office under the rules contemplated in section 7 and 8 of the Sectional Titles Schemes Management Act. Generally, where there is more than one trustee, the practice is for the trustees to nominate a single trustee to carry out all the duties and responsibilities imposed as a representative taxpayer. The other trustees despite this practice remain subject to the same duties, responsibilities, and liabilities of a representative taxpayer. see Davis, D. M. & Jooste, R. D. (2023). *Estate Planning* at page 6.4. My LexisNexis [online].

²¹³ Any person who is appointed as a director in accordance with section 12 of the Share Blocks Control Act.

A representative taxpayer, under the TA Act, is a person who acts as an agent²¹⁴ to pay another person's tax liability and includes a person who is a representative taxpayer under the Act.²¹⁵ Every person who becomes or ceases to be a representative taxpayer under the Act, except a company's public officer, must notify SARS within 21 business days, using the form prescribed by the Commissioner.²¹⁶

Any person who wilfully and without just cause refuses or neglects to appoint a representative taxpayer, notify SARS of the appointment, or change of a representative taxpayer is guilty of an offence and can be fined or imprisoned for up to two years if convicted.²¹⁷

A representative taxpayer is personally liable for tax that should have been paid to SARS in that capacity, or for any amount that was disposed of instead of being paid.²¹⁸ Any assessment issued to a representative taxpayer for any tax is considered to be made only in that capacity.²¹⁹

A taxpayer²²⁰ remains responsible for all tax obligations under a tax Act when the representative taxpayer fails to fulfil the required responsibilities or duties.²²¹

Every company carrying on business or having an office in South Africa must always be represented by an individual residing in South Africa.²²² The individual representative must be –²²³

- a person who is a senior official of the company or, if no senior official resides in South Africa, another suitable person approved by SARS;
- appointed by the company or by an agent or legal practitioner²²⁴ who has authority to appoint such a representative for the purposes of a tax Act; and
- called the public officer of the company.

If a public officer is not appointed as required, the public officer is regarded to be –²²⁵

- the first person who is eligible to represent the company as public officer, in the following order of priority, namely the –
 - managing director or equivalent;

²¹⁴ The term "agent" as defined in section 1(1) includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent.

²¹⁵ The term "representative taxpayer" is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act.

²¹⁶ Section 153(2) of the TA Act.

²¹⁷ Section 234(2)(b) of the TA Act.

²¹⁸ Section 155 of the TA Act.

²¹⁹ Section 154(2) of the TA Act.

²²⁰ The term "taxpayer" is defined in section 1(1).

²²¹ Section 153(3) of the TA Act.

²²² Section 246(1) of the TA Act.

²²³ Section 246(2) of the TA Act.

²²⁴ The term "legal practitioner" as defined in section 1 of the TA Act, which was inserted by section 14 of the Tax Administration Laws Amendment Act 43 of 2024 effective from 24 December 2024 refers to the definition in the Legal Practice Act 28 of 2014. According to that Act, the term "legal practitioner" is defined to mean an advocate or attorney admitted and enrolled under sections 24 and 30 of that Act, respectively.

²²⁵ Section 246(3) of the TA Act.

- financial director or equivalent;
 - company secretary;²²⁶
 - director²²⁷ or prescribed officer²²⁸ who has the largest shareholding in the company;
 - director or prescribed officer who has held office for the longest period; and
 - a senior employee of the company in order of the company's reporting hierarchy; or
- any suitable person that SARS designates for that purpose.

A public officer is responsible for all acts, matters, or things that the public officer's company must do under a tax Act, and in case of default, the public officer is subject to penalties for the company's defaults.²²⁹

A person may not be appointed as a public officer if that person is disqualified (see **7.5**).²³⁰

The company is regarded as not having appointed a public officer if the person appointed as public officer is not eligible to represent the company as public officer, or notified by SARS that the person is not considered suitable to represent the company as public officer, and must, within 21 business days, notify SARS, in writing, of the newly appointed public officer.²³¹

If a company is placed under business rescue in accordance with the Companies Act, the business rescue practitioner becomes the representative taxpayer.²³² Should the company go into voluntary or compulsory liquidation, the appointed liquidator or liquidators assume all duties and responsibilities of the public officer for the duration of the liquidation.²³³

A company is required to always have a public officer and must maintain an address for the service or delivery of notices.²³⁴ Any changes to the public officer or the address for notices must be reported to SARS within 21 business days of the change.²³⁵

²²⁶ The duties of a company secretary are set out in section 88 of the Companies Act.

²²⁷ A "director" as defined in section 1 of the Companies Act, is anyone who serves on a company's board as outlined in section 66. This includes both alternate directors and any person acting in the position of director or alternate director, regardless of their official title. An "alternate director" is a person elected or appointed to temporarily serve as a board member in place of a specific director.

²²⁸ The term "prescribed officer" as defined in section 1 of the Companies Act, is a person within a company who performs any function designated by the Minister or the Cabinet responsible for companies, as specified under section 66 (10) of that Act.

²²⁹ Section 246(5) of the TA Act.

²³⁰ Section 246(8) of the TA Act.

²³¹ Section 246(7) of the TA Act

²³² Paragraph (a) of the definition of "representative taxpayer" in section 1(1) and section 248(2) of the TA Act.

²³³ Section 248(1) of the TA Act.

²³⁴ Section 249(2)(a) of the TA Act.

²³⁵ Section 249(2)(b) of the TA Act.

19. Conclusion

The following is concluded:

- Bodies corporate and share block companies automatically receive an exemption from income tax under section 10(1)(e)(i)(aa) and (bb), respectively, they do not need approval from the Commissioner.
- Associations of persons must apply to the Commissioner to obtain exemption under section 10(1)(e)(i)(cc).
- The Commissioner can grant exemption retrospectively to an association of persons if all the relevant conditions and requirements are satisfied as outlined in this Note.
- A person disqualified under the Trust Property Control Act, the NPO Act, or the Companies Act cannot manage the collective interests common to all the members in an association of persons.
- Levies income from bodies corporate, share block companies, and associations of persons (once exempted by the Commissioner) is completely exempt from income tax under section 10(1)(e)(i).
- The sum of any other income other than levy income that bodies corporate, share block companies, or associations of persons (once exempted by the Commissioner) receive is subject to a basic exemption under section 10(1)(e)(ii).
- An assessed loss created when the allowable expenditure exceeds income from sources other than levy income and the basic exemption of bodies corporate, share block companies, or associations of persons, can be carried forward to a future year of assessment and a balance of assessed loss is not forfeited if only levy income is received.
- Bodies corporate, share block companies, and associations of persons are not required to pay provisional tax or submit provisional tax returns.
- Donations made by or to bodies corporate, share block companies, or associations of persons are exempt from donations tax under section 56(1)(h).
- Bodies corporate, share block companies, and associations of persons are not allowed to issue section 18A receipts for levies or donations they receive.
- When a share block company transfers immovable property to a holder of shares, it does not result in a capital gain or capital loss for the company under paragraph 67B(3)(a) of the Eighth Schedule.
- Cash dividends paid to bodies corporate, share block companies, or associations of persons are exempt from dividends tax under section 64F(1)(a).
- A dividend *in specie* declared and paid by a share block company, that comprises a disposal contemplated in paragraph 67B(2) of the Eighth Schedule, is exempt from dividends tax under section 64FA(1)(d).

Annexure A – The law

Section 10(1)(e) and 10(5)

10. Exemptions.—(1) There shall be exempt from normal tax—

- (e) (i) any levy received by or accrued to—
 - (aa) any body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), from its members;
 - (bb) a share block company as defined in the Share Blocks Control Act from the holders of shares in that share block company; or
 - (cc) any other association of persons (other than a company as defined in the Companies Act, any co-operative, close corporation and trust, but including a non-profit company as defined in that Act) from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—
 - (A) has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and
 - (B) is not permitted to distribute any of its funds to any person other than a similar association of persons:

Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner; and
 - (ii) any receipts and accruals other than levies derived by a body corporate, share block company or association contemplated in subparagraph (i), to the extent that the aggregate of those receipts and accruals does not exceed R50 000;
- (5) (a) A person is disqualified from managing the collective interests common to all its members as mentioned in subsection (1)(e)(i)(cc)(A) if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.
- (b) A person who manages the collective interests common to all its members, as mentioned in subsection (1)(e)(i)(cc)(A) in contravention of paragraph (a), shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.

Annexure B – Calculation of taxable income

The following example provides a step-by-step guide to calculating the taxable income of an association of persons.

Example 3 – Calculation of taxable income

The XYZ Homeowners' Association NPC is approved by the Commissioner for the purposes of section 10(1)(e)(i)(cc). The levies of XYZ Homeowners' Association NPC are exempt from income tax under section 10(1)(e)(i) and all other sources of income other than levies qualify for the basic exemption under section 10(1)(e)(ii).

Facts 1:

The financial statements for the year ended 30 June 2024 reflect the following income and expenditure:

Receipts and accruals	R
Monthly levies from members	80 000
Building penalty levies	30 000
Penalty on late payment of levies and fines for non-compliance	50 000
Interest on investments	<u>30 000</u>
Total receipts and accruals	<u>190 000</u>

Expenditure	R
Administration and management fees	1 180 000
Maintenance guard house	15 000
Maintenance security fence and gates	102 800
Security services	234 000
Garden services	107 200
Insurance	160 000
Water	200 000
Electricity	195 000
Bank charges	160 000
Audit fees	<u>100 000</u>
Total expenses	<u>2 454 000</u>

Result 1:

1.	Receipts and accruals qualify under section 10(1)(e)(i) exemption	
	Monthly levies from members	80 000
	Building penalty levies	<u>30 000</u>
	Total receipts and accruals exempt from income tax	<u>110 000</u>
2.	Receipts and accruals not qualifying under section 10(1)(e)(i) exemption	
	Interest on late payment of levies and fines	50 000
	Interest on investments	<u>30 000</u>
	Total receipts and accruals subject to income tax	<u>80 000</u>

3. Apply basic exemption under section 10(1)(e)(ii)

Gross receipts and accruals subject to income tax	80 000
Less: Basic exemption	<u>(50 000)</u>
Income subject to income tax	<u>30 000</u>

4. Apportion general expenditure to income

Levy income of R80 000 and building penalty levies of R30 000 are exempt from income tax under section 10(1)(e)(i). Income from sources other than levy income qualifies for the basic exemption of R50 000 under section 10(1)(e)(i). The expenditure directly related to such levy income and subject to the basic exemption (amounts other than audit fees and bank charges) are prohibited under section 23(f)²³⁶ from being deducted under section 11(a). Audit fees and bank charges will qualify for deduction but only to the extent that they are incurred in respect of amounts received or accrued, which constitute income, and an apportionment is therefore required.

General expenditure:	R
Bank charges	160 000
Audit fees	<u>100 000</u>
Total general expenditure	<u>260 000</u>

General expenditure not deductible:

<u>Exempt receipts and accruals + Basic exemption</u> ×	<u>general expenditure</u>
Total receipts and accruals	1
$\frac{160\,000}{190\,000} \times \frac{260\,000}{1}$	= R218 947

Deductible general expenditure:

<u>Receipts and accruals constituting income</u> ×	<u>general expenditure</u>
Total receipts and accruals	1
$\frac{30\,000}{190\,000} \times \frac{260\,000}{1}$	= R41 053

5. Calculate taxable income

	R
Income subject to income tax (see 3)	30 000
Less: Allowable deductions (see 4)	<u>(41 053)</u>
Assessed loss	<u>(11 053)</u>

²³⁶ Section 23(f) prohibits any expenses incurred in respect of any amounts received or accrued, which do not constitute income as defined in section 1(1).

Facts 2:

The financial statements for the year ended 30 June 2025 reflect the following income and expenditure:

Receipts and accruals	R
Monthly levies from members	2 000 000
Building penalty levies	40 000
Penalty on late payment of levies and fines for non-compliance	80 000
Interest on investments	<u>20 000</u>
Total receipts and accruals	<u>2 140 000</u>

Expenditure	R
Administration and management fees	1 180 000
Maintenance guard house	15 000
Maintenance security fence and gates	102 800
Security services	234 000
Garden services	107 200
Insurance	160 000
Water	200 000
Electricity	195 000
Bank charges	50 000
Audit fees	<u>70 000</u>
Total expenses	<u>2 314 000</u>

Result 2:

1.	Receipts and accruals qualify under section 10(1)(e)(i) exemption	
	Monthly levies from members	2 000 000
	Building penalty levies	<u>40 000</u>
	Total receipts and accruals exempt from income tax	<u>2 040 000</u>
2.	Receipts and accruals not qualifying under section 10(1)(e)(i) exemption	
	Interest on late payment of levies and fines	80 000
	Interest on investments	<u>20 000</u>
	Total receipts and accruals subject to income tax	<u>100 000</u>
3.	Apply basic exemption under section 10(1)(e)(ii)	
	Gross receipts and accruals subject to income tax	100 000
	Less: Basic exemption	<u>(50 000)</u>
	Income subject to income tax	<u>50 000</u>

4. Apportion general expenditure to income

Levy income of R2 000 000 and building penalty levies of R40 000 are exempt from income tax under section 10(1)(e)(i). Income from sources other than levy income qualifies for the basic exemption of R50 000 under section 10(1)(e)(i). The expenditure directly related to such levy income and subject to the basic exemption (amounts other than audit fees and bank charges) are prohibited under section 23(f) from being deducted under section 11(a). Audit fees and bank charges will qualify for deduction but only to the extent that they are incurred in respect of amounts received or accrued, which constitute income, and an apportionment is therefore required.

General expenditure:	R
Bank charges	50 000
Audit fees	<u>70 000</u>
Total general expenditure	<u>120 000</u>

General expenditure not deductible:

<u>Exempt receipts and accruals + Basic exemption</u> ×	<u>general expenditure</u>
Total receipts and accruals	1
$\frac{2\,090\,000}{2\,140\,000} \times \frac{120\,000}{1}$	= R117 196

Deductible general expenditure:

<u>Receipts and accruals constituting income</u> ×	<u>general expenditure</u>
Total receipts and accruals	1
$\frac{50\,000}{2\,140\,000} \times \frac{120\,000}{1}$	= R2 804

5. Calculate taxable income

	R
Income subject to income tax (see 3)	50 000
Less: Allowable deductions (see 4)	(2 804)
Less: 2024 Balance of assessed loss brought forward	<u>(11 053)</u>
Taxable income	<u>36 143</u>

6. Calculate income tax payable

Taxable income (see 5)	49 673
Company tax rate	<u>× 27%</u>
Income tax payable for the 2025 year of assessment	<u>9 758,61</u>