

**BINDING GENERAL RULING (INCOME TAX) 20 (Issue 4)**

DATE: 3 July 2024

**ACT: INCOME TAX ACT 58 OF 1962  
TRANSFER DUTY ACT 40 OF 1949**

**SECTION: SECTIONS 10(1)(cN), 10(1)(cO), 10(1)(cQ), 30B AND 30C, AND  
PARAGRAPHS 63A AND 63B OF THE EIGHTH SCHEDULE TO THE  
INCOME TAX ACT;  
SECTION 9(1)(c) OF THE TRANSFER DUTY ACT**

**SUBJECT: MEANING OF THE EXPRESSION “SUBSTANTIALLY THE WHOLE”**

***Preamble***

For the purposes of this BGR –

- **“association”** means any “entity” as defined in section 30B(1), which has been approved by the Commissioner under section 30B(2);
- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“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);
- **“PBO”** means a “public benefit organisation” as defined in section 30(1), which has been approved by the Commissioner under section 30(3);<sup>1</sup>
- **“recreational club”** means a “recreational club” as defined in section 30A(1), which has been approved by the Commissioner under section 30A(2);<sup>2</sup>
- **“SBFE”** means a “small business funding entity” as defined in section 1(1), which has been approved by the Commissioner under section 30C(1);<sup>3</sup>
- **“Schedule”** means a schedule to the Act;
- **“section”** means a section of the Act;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“Transfer Duty Act”** means the Transfer Duty Act 40 of 1949; and
- any other word or expression bears the meaning ascribed to it in the Act.

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<sup>1</sup> For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

<sup>2</sup> For further commentary, see the *Tax Exemption Guide for Recreational Clubs*.

<sup>3</sup> For further commentary, see the draft *Tax Exemption Guide for Small Business Funding Entities*.

## 1. Purpose

This BGR provides clarity on the interpretation of the expression “substantially the whole” as referred to in –

- section 10(1)(cN)(ii)(aa)(B) (see **3.1**);
- section 10(1)(cO)(ii)(bb) (see **3.1**);
- section 10(1)(cQ)(ii)(aa)(B) (see **3.1**);
- section 30B(2)(b)(iv), (vi) and (ix) (see **3.2**);
- section 30C(1)(d)(v) and (viii) (see **3.3**);
- paragraph 63A(b) of the Eighth Schedule (see **3.4.1**);
- paragraph 63B(1)(b) of the Eighth Schedule (see **3.4.2**); and
- section 9(1)(c) of the Transfer Duty Act (see **3.5**).

## 2. Background

The expression “substantially the whole” was introduced in the revised tax system for PBOs in 2000<sup>4</sup> to achieve a more supportive fiscal environment and to give effect to the proposals and recommendations by the Katz Commission set out in the Ninth Interim Report.<sup>5</sup> In considering comparative international law with regard to trading activities conducted by non-profit organisations (NPOs) the Ninth Interim Report stated that it was significant that –

“the United States’ federal tax law exempts profits derived from a business which is ‘substantially related’ to a NPOs tax-exempt purposes. Substantially related in this context means that the conduct of the business activity must have a significant causal relationship to the achievement of a tax-exempt purpose. Thus, for the conduct of a trade or business from which a particular amount of gross income is derived to be exempt from taxation, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of the organisations’ exempt purposes.”

The Ninth Interim Report stated further that the –

“United Kingdom Revenue Practice is to accept ancillary trades provided they are ‘small in absolute terms and the turnover of that part of the trade is less than 10 per cent of the turnover of the whole trade’ ”.

The expression “substantially the whole” has also been introduced into legislation (see **3**) dealing with –

- the exemption from normal tax of a recreational club;
- the exemption from normal tax of an SBFE;
- the requirements for approval as an association;
- the requirements for approval as an SBFE;

<sup>4</sup> Section 35(1) of the Taxation Laws Amendment Act 30 of 2000.

<sup>5</sup> MM Katz *et al* “Trading Activities” and “Specific Proposals” (1999) *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa* at 9 and 18.

- capital gains tax<sup>6</sup> affecting PBOs and SBFES; and
- transfer duty<sup>7</sup> affecting PBOs and institutions, boards or bodies contemplated in section 10(1)(cA)(i).<sup>8</sup>

The expression “substantially the whole” is used in various sections although not defined in the Act.

### 3. Discussion

#### 3.1 The exemption from normal tax of public benefit organisations, recreational clubs, and small business funding entities

A PBO,<sup>9</sup> recreational club,<sup>10</sup> and SBFE<sup>11</sup> is allowed to carry on integral and directly related business undertakings or trading activities within certain parameters, while at the same time ensuring that the sole or principal object of –

- a PBO remains the carrying on of public benefit activities (PBAs);
- a recreational club remains the provision of social and recreational amenities or facilities for its members; and
- an SBFE remains the provision of funding for small, medium, and micro-sized enterprises.

The receipts and accruals derived by any of the aforementioned entities from any integral and directly related business undertaking or trading activity will be exempt from normal tax to the extent that “substantially the whole” of such undertaking or activity is directed towards the recovery of cost.<sup>12</sup>

#### 3.2 The requirements for approval as an association

Section 30B sets out the conditions and requirements that an “entity” as defined<sup>13</sup> in section 30B(1) must comply with to obtain and retain approval as an association for its receipts and accruals to be exempt from normal tax under section 10(1)(d)(iii) or (iv).

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<sup>6</sup> For further commentary see Interpretation Note 44 “Public Benefit Organisations: Capital Gains Tax” and the *Comprehensive Guide to Capital Gains Tax*.

<sup>7</sup> For further commentary see Interpretation Note 22 “Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies”.

<sup>8</sup> For further commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies*.

<sup>9</sup> Section 10(1)(cN)(ii)(aa)(B).

<sup>10</sup> Section 10(1)(cO)(ii)(bb).

<sup>11</sup> Section 10(1)(cQ)(ii)(aa)(B).

<sup>12</sup> For further commentary see Interpretation Note 24 “Public Benefit Organisations: Partial Taxation”.

<sup>13</sup> See paragraphs (a) and (b) of the definition of “entity” in section 30B(1), which includes, any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers), local publicity association, and NPC, society or other association of persons established to promote the common interests of persons being members of the NPC, society or association of persons carrying on any particular kind of business, profession or occupation approved by the Commissioner under section 30B(2).

The Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if the constitution or written instrument under which it has been established, amongst other things, provides that substantially the whole of its –

- funds will be used for the sole or principal object for which it has been established;<sup>14</sup>
- activities will be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;<sup>15</sup> and
- funding will be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere.<sup>16</sup>

### 3.3 The requirements for approval as a small business funding entity

Section 30C sets out the conditions and requirements that an SBFE must comply with to obtain and retain approval as an SBFE for certain of its receipts and accruals to be exempt from normal tax under section 10(1)(cQ).

The Commissioner must approve an SBFE for the purposes of section 10(1)(cQ) if the constitution or written instrument under which it has been established, amongst other things, provides that substantially the whole of its –

- funds will be used for its sole or principal object for which it has been established;<sup>17</sup> and
- activities will be directed to the furtherance of its sole or principal object.<sup>18</sup>

### 3.4 Capital gains tax

#### 3.4.1 Public benefit organisations

A PBO must disregard any capital gain or capital loss determined on the disposal of an asset if substantially the whole of the use of that asset by that PBO on and after valuation date was directed at –<sup>19</sup>

- a purpose other than carrying on a business undertaking or trading activity; or
- carrying on a business undertaking or trading activity that qualifies for exemption under section 10(1)(cN)(ii)(aa),<sup>20</sup> (bb)<sup>21</sup> or (cc).<sup>22</sup>

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<sup>14</sup> Section 30B(2)(b)(iv).

<sup>15</sup> Section 30B(2)(b)(vi).

<sup>16</sup> Section 30B(2)(b)(ix). For further commentary see Interpretation Note 125 “Associations: Funding Requirement”.

<sup>17</sup> Section 30C(1)(d)(v).

<sup>18</sup> Section 30C(1)(d)(viii).

<sup>19</sup> Paragraph 63A(b) of the Eighth Schedule.

<sup>20</sup> Integral and directly related to the sole or principal object, substantially the whole directed to cost recovery and not in competition with taxable entities permissible business undertakings or trading activities.

<sup>21</sup> Occasional permissible business undertakings or trading activities undertaken substantially with assistance on a voluntary basis without compensation.

<sup>22</sup> Permissible business undertakings or trading activities approved by the Minister.

### 3.4.2 Small business funding entities

An SBFE must disregard any capital gain or capital loss determined on the disposal of an asset if substantially the whole of the use of that asset by that SBFE was directed at –<sup>23</sup>

- a purpose other than carrying on a business undertaking or trading activity; or
- carrying on a business undertaking or trading activity that qualifies for exemption under section 10(1)(cQ)(ii)(aa),<sup>24</sup> (bb)<sup>25</sup> or (cc).<sup>26</sup>

### 3.5 Transfer duty

To qualify for exemption from the payment of transfer duty under section 9(1)(c) of the Transfer Duty Act, the whole property, or substantially the whole of the property acquired by a PBO or institution, board or body contemplated in section 10(1)(cA)(i) must be used for purposes of carrying on any PBAs.

If at any time subsequent to the acquisition of property that has qualified for the exemption from transfer duty the whole or substantially the whole of the property is used for a purpose other than for carrying on any PBA, transfer duty will become payable.

## 4. Ruling

Strictly interpreted, SARS regards the expression “substantially the whole” to mean 90% or more. However, since PBOs, recreational clubs, associations and SBFEs operate in an uncertain environment making proper planning difficult, SARS will accept a percentage of not less than 85% for purposes of –

- section 10(1)(cN)(ii)(aa)(B) (see **3.1**);
- section 10(1)(cO)(ii)(bb) (see **3.1**);
- section 10(1)(cQ)(ii)(aa)(B) (see **3.1**);
- section 30B(2)(b)(iv), (vi) and (ix) (see **3.2**);
- section 30C(1)(d)(v) and (viii) (see **3.3**);
- paragraph 63A(b) of the Eighth Schedule (see **3.4.1**);
- paragraph 63B(1)(b) of the Eighth Schedule (see **3.4.2**); and
- section 9(1)(c) of the Transfer Duty Act (see **3.5**).

The percentage must be determined using a method appropriate to the circumstances.

This ruling constitutes a BGR under section 89 of the Tax Administration Act 28 of 2011.

<sup>23</sup> Paragraph 63B(1)(b) of the Eighth Schedule.

<sup>24</sup> Integral and directly related to the sole or principal object, substantially the whole directed to cost recovery and not in competition with taxable entities permissible business undertakings or trading activities.

<sup>25</sup> Occasional permissible business undertakings or trading activities undertaken substantially with assistance on a voluntary basis without compensation.

<sup>26</sup> Permissible business undertakings or trading activities approved by the Minister.

**5. Period for which this ruling is valid**

This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.

**Senior Manager: Leveraged Legal Products  
SOUTH AFRICAN REVENUE SERVICE**