
SOUTH AFRICAN REVENUE SERVICE

Draft Tax Exemption Guide for Benefit Funds

Another helpful guide brought to you by the
South African Revenue Service



Draft Tax Exemption Guide for Benefit Funds

Preface

This guide provides guidance on the –

- meaning of a “benefit fund” as defined in section 1(1) of the Income Tax Act 58 of 1962 (the Income Tax Act) (see **2**); and
- exemption from income tax of the receipts and accruals of an eligible benefit fund under section 10(1)(d)(ii) of the Income Tax Act (see **5**).

The guide provides a basic overview of the following taxes and duties that may affect benefit funds:

- Capital gains tax (see **6.1**)
- Dividends tax (see **6.2**)
- Donations tax (see **6.3**)
- Employees’ tax (see **7.1**)
- Estate duty (see **7.2**)
- Securities transfer tax (see **7.4**)
- Section 18A tax-deductible receipts (see **7.3**)
- Skills development levy (see **7.5**)
- Transfer duty (see **7.6**)
- Unemployment insurance fund contributions (see **7.8**)
- Value-added tax (see **7.7**)

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 (TA Act) and accordingly does not create a practice generally prevailing under section 5 of that Act. It does not consider the technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference.

It is also not a binding general ruling (BGR) under section 89 of the TA Act. Taxpayers requiring an advance tax ruling should visit the SARS website at **www.sars.gov.za** for details of the application procedure.¹

This guide is based on legislation as at time of issue. Information relating to taxes, duties, levies, and contributions reflect the rates applicable as at the date of issue of this guide.¹

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Service Centre (between 8am and 4.30pm South African time except on Wednesdays when the service centre can be called between 9am and 4.30pm) –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093;

¹ For historical rates of various taxes, duties, and levies, see the *Guide for Tax Rates/Duties/Levies*.

- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, preferably after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be e-mailed to **policycomments@sars.gov.za**.

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Glossary

In this guide unless the context indicates otherwise –

- **“Authority”**² means the Financial Sector Conduct Authority³ established by section 56 of the Financial Sector Regulation Act;⁴
- **“CGT”** means capital gains tax, being the portion of income tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eighth Schedule;
- **“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;
- **“Companies Act”** means the Companies Act 71 of 2008;⁵
- **“Council”** means the Council for Medical Schemes established under the Medical Schemes Act;⁶
- **“definition of ‘benefit fund’ ”** means the definition of “benefit fund” in section 1(1);
- **“Financial Sector Regulation Act”** means the Financial Sector Regulation Act 9 of 2017;⁷
- **“friendly society”** means any friendly society registered under the Friendly Societies Act, or any fund established before 13 June 1986, which is not registered as a friendly society solely because of the provisions of section 2(2)(a) of the Friendly Societies Act;⁸
- **“Friendly Societies Act”** means the Friendly Societies Act 25 of 1956;
- **“Income Tax Act”** means the Income Tax Act 58 of 1962;
- **“Insurance Act”** means the Insurance Act 18 of 2017;⁹

² The term “Authority” is defined in section 1(1) of the Friendly Societies Act.

³ The term “Financial Sector Conduct Authority” is defined in section 1(1) of the Financial Sector Regulation Act. The Authority, formerly the Financial Services Board, officially took up its new mandate with effect from 1 April 2018.

⁴ The Authority under section 1A(1) of the Friendly Societies Act obtains additional powers and duties under the Financial Sector Regulation Act.

⁵ The Friendly Societies Act, and the Medical Schemes Act refer to the Companies Act 61 of 1973, which has except for certain provisions been repealed by the Companies Act. Section 12 of the Interpretation Act 33 of 1957 provides that if legislation is repealed and replaced, any reference to the old Act, is deemed to be to the replaced Act. Any reference to the repealed Companies Act, 1973, in the Friendly Societies Act and the Medical Schemes Act is therefore a reference to the Companies Act.

⁶ The term “Council” is defined in section 1(1) of the Medical Schemes Act.

⁷ The object according to section 7 of that Act is to achieve a stable financial system that works in the interests of financial customers and that supports balanced and sustainable economic growth in South Africa, by establishing, in conjunction with the specific financial sector laws (see Schedule 1 to that Act), a regulatory and supervisory framework that, amongst other things, promotes financial stability, the safety and soundness of financial institutions, the fair treatment and protection of financial customers, the efficiency and integrity of the financial system, and the prevention of financial crime.

⁸ The term “friendly society” is defined in section 1(1) of the Friendly Societies Act.

⁹ The term “Insurance Act” as defined in section 1(1) of the Friendly Societies Act means the Insurance Act 27 of 1943, which was repealed by section 1 of the Taxation Laws Amendment Act 30 of 2002 deemed to have come into operation on 1 January 2002.

- **“Labour Relations Act”** means the Labour Relations Act 66 of 1995;
- **“medical scheme”** means any medical scheme registered¹⁰ under the Medical Schemes Act;¹¹
- **“Medical Schemes Act”** means the Medical Schemes Act 131 of 1998;
- **“NPO Act”** means the Nonprofit Organisations Act 71 of 1997;
- **“PAYE”** means employees’ tax colloquially referred to as Pay-As-You-Earn;
- **“Registrar”** means the Registrar of Medical Schemes appointed under the Medical Schemes Act;¹²
- **“Regulations”** mean the Regulations published by the Minister of Health in accordance with section 67 of the Medical Schemes Act after consultation with the Council in Government Notice Regulation 1262 in *Government Gazette* 20556 of 20 October 1999;
- **“Schedule”** means a Schedule to the Income Tax Act;
- **“SDL”** means the skills development levy;
- **“SDL Act”** means the Skills Development Levies Act 9 of 1999;
- **“section”** means a section of the Income Tax Act;
- **“section 10(1)(d)(ii)”** means the section providing for the exemption from income tax of the receipts and accruals of any benefit fund;
- **“STT”** means securities transfer tax;
- **“STT Act”** means the Securities Transfer Tax Act 25 of 2007;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“Transfer Duty Act”** means the Transfer Duty Act 40 of 1949;
- **“Trust Property Control Act”** means the Trust Property Control Act 57 of 1988;
- **“UIF”** means unemployment insurance fund;
- **“Unemployment Insurance Act”** means the Unemployment Insurance Act 63 of 2001;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the Income Tax Act.

All amendment Acts, explanatory memoranda, forms, *Government Gazettes* relating to income tax, guides, interpretation notes, and returns referred to in this guide are the latest versions unless the context indicates otherwise, which are available on the **SARS website** or via eFiling at **www.sarsefiling.co.za** (guides only).

¹⁰ Section 24 of the Medical Schemes Act.

¹¹ The term “medical scheme” is defined in section 1(1) of the Medical Schemes Act.

¹² The term “Registrar” is defined in section 1(1) of the Medical Schemes Act.

1. Introduction

Taxation of benefit funds was developed piecemeal over a number of years and therefore not designed as a coherent whole, was complex, contained anomalies and was open to abuse. In 1994 the Katz Commission was tasked, amongst other things, to review and provide recommendations relating to the tax regime applicable to benefit funds. The relevant findings were published in the *Sixth Report of the Katz Commission on Benefit Funds*.¹³ This report provides the following background information and recommendation relating to friendly societies:¹⁴

“Friendly societies are essentially mutual organisations,¹⁵ in the sense that the members are the owners. They were once known as mutual aid societies.¹⁶ No employer - employee relationship is required. They have a long history in South Africa, legislation regulating them having been enacted as early as 1882 in the Cape¹⁷ and 1897 in Natal. The present Act dates from 1956¹⁸ and their supervision is now in the hands of the Financial Services Board.¹⁹

In theory the range of services that may be provided to its members and their dependants by a friendly society is very wide - so wide, in fact, that most stokvels would have to register were it not for an exemption granted societies with annual incomes below R100 000. The range includes relief during minority, old age, widowhood and sickness; the granting of annuities and endowments; payments on the birth of a child or death of a family member; funeral expenses; insurance of implements used in a member's trade; financial assistance on resignation or dismissal; unemployment relief and the provision of sums of money for the advancement of the education or training of members or of the children of members.

In practice, however, severe limitations are placed on what friendly societies may actually do. Despite being allowed to offer relief in old age they may not provide retirement benefits. Despite being allowed to pay annuities, no annuity may exceed . . . without falling foul of the Insurance Act. No death, disability, endowment or other benefit (which the Registrar of the Insurance considers to be an insurance benefit) may be offered A society is precluded from regularising the matter by registering as an insurer, as only companies may register as insurers - and friendly societies are not companies.

¹³ Available online at www.treasury.gov.za/publications/other/katz/default.aspx.

¹⁴ Chapter 3 – Friendly Societies in paragraphs 3.1, 3.2, 3.3 and 3.4.

¹⁵ The expression “mutual organisation” is not defined in the report. The expression is described in the *Investor Dictionary.com* available online at www.investordictionary.com/definition/mutual-organization [Accessed 16 May 2025] as a co-operative organisation (which is often, but not always, a company or business) based on the principle of mutuality. A mutual organisation or society exists with the purpose of raising funds (or money), from its membership or customers (collectively called its members), which can then be used to provide common services to all members. A mutual organisation or society is therefore owned by, and run for the benefit of, its members - it has no external shareholders to pay in the form of dividends, and as such does not usually seek to maximise and make large profits or capital gains. Mutual organisations or societies exist for the members to benefit from the services they provide. Profits made will usually be re-invested for the benefit of the members, although some profit may also be necessary to sustain or grow the mutual organisation or society, and to make sure it remains safe and secure.

¹⁶ The expression “mutual aid societies” is not defined in the report. The expression is described in the *Collins Dictionary* available online at www.collinsdictionary.com/dictionary/english/mutual-aid-society [Accessed 16 May 2025] as an organization that provides benefits or other help to its members when they are affected by things such as death, sickness, disability, old age, or unemployment.

¹⁷ Friendly Societies Act 5 of 1892 of the Cape of Good Hope.

¹⁸ Friendly Societies Act.

¹⁹ Now the Financial Sector Conduct Authority, which officially took up its new mandate with effect from 1 April 2018.

The predictable result of these limitations is that the friendly society movement, while old and stable, has not flourished. There are no grounds for believing that it does, or can, provide a significant tax shelter. The Commission accordingly recommends that the existing exemption remain in place.”

(Footnotes added)

The report provides the following background information and recommendation relating to medical schemes:²⁰

“The Registrar of Medical Schemes, in conjunction with a Council appointed by the Minister of Health, administers the Medical Schemes Act of 1967. Certain departments of state (defence, police, prisons) are not subject to its provisions; and certain industrial schemes are registered in terms of the Labour Relations Act. The latter are required to supply the Registrar with statistical information on a regular basis, so his Reports contain figures relating to about 85% of the industry.

The medical schemes industry is clearly much the bigger - with an asset base 25 times, and an annual contribution rate 400 times, larger.

The comparatively small volume of assets in the medical schemes industry leads to the same conclusion that was reached in the context of friendly societies. There is no significant danger of the industry being used to shelter other income, and no significant scope for tax arbitrage. The existing exemption from tax on the investment roll-up should remain in place. The Commission recommends accordingly, but places on record that the matter should be kept under continuous review if medical schemes in due course become vehicles for pre-funding post-retirement medical expenses. Such a development would necessarily involve the accumulation of substantial volumes of assets and change the situation fundamentally.”

The Katz Commission report on benefit funds made various recommendations, amongst other things, that friendly societies (see 3) and medical schemes (see 4) falling within the ambit of the definition of “benefit fund” (see 2) qualify for preferential tax treatment. The tax status of benefit funds was described in the report as follows:²¹

“Benefit funds have an income tax regime of their own. Benefit funds are exempt from income tax. This exemption extends to contributions received and to investment income earned on amounts accumulated - the so-called ‘roll-up’.”

Preferential tax treatment includes the advantage of an absolute exemption under section 10(1)(d)(ii) on all receipts and accruals (see 5). The exemption under section 10(1)(d)(ii) does not require any approval and is not subject to the Commissioner’s discretion, therefore, the Commissioner does not issue letters to confirm the exemption of the receipts or accruals of a benefit fund under section 10(1)(d)(ii). All the receipts and accruals of a qualifying benefit fund are therefore automatically exempt from income tax.

In addition to being fully exempt from income tax, a qualifying benefit fund may also enjoy exemption from certain other taxes and duties (see 6).

In view of the above, it is critical that friendly societies contemplated in paragraph (a) and medical schemes contemplated in paragraph (b) meet the requirements of the definition of “benefit fund”.

²⁰ Chapter 4 – Registered Medical Schemes in paragraphs 4.1, 4.3 and 4.5.

²¹ Katz, M. M. *et al.* (1997). Chapter 1 - Introduction. The *Sixth Report of the Katz Commission on Benefit Funds* in paragraphs 1.2 and 1.3.

2. Meaning of “benefit fund”

Section 1(1) defines the term “benefit fund” as follows –

- “(a) any friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any fund established before 13 June 1986 which is not so registered solely because of the provisions of section 2(2)(a) of that Act; or
- (b) any medical scheme registered under the provisions of the Medical Schemes Act”.

The interpretation and application of this definition requires an understanding of certain terms and words. The Constitutional Court held in *Minister of Defence and Military Veterans v Thomas*²² that as a general rule, it is not permissible to use the meanings attributed to words in other statutes as determinative in the interpretation of a different statute. Where Parliament has defined a word used in a statute, it is taken as an indication that Parliament contemplated a special meaning assigned to the word and not an ordinary meaning. But if the other statutes traverse the same terrain, they might be relevant but whether that is the case depends on their respective subject matter.

In view of the above it is submitted that the definition of “friendly society” and the provisions relating to friendly societies in the Friendly Societies Act, which are considered in **3**, and the definition of “medical scheme” and the provisions relating to medical schemes in the Medical Schemes Act, which is considered in **4**, are relevant and applicable for purposes of interpreting and applying the definition of “benefit fund” and for the exemption of its receipts and accruals under section 10(1)(d)(ii) of the Income Tax Act.

2.1 Paragraph (a) of the definition “benefit fund”

Paragraph (a) of the definition of “benefit fund” means any –

- friendly society registered under the Friendly Societies Act;
- or any fund established before 13 June 1986, which is not registered solely because of the provisions of section 2(2)(a) of that Act.²³

It is a requirement that a friendly society must be registered under the Friendly Societies Act (see **3.6**) for purposes of the exemption under section 10(1)(d)(ii).

Paragraph (a) of the definition of “benefit fund” was amended by section 2(1) of the Income Tax Act 65 of 1986 to include any fund established before 13 June 1986,²⁴ which is not registered as a friendly society solely because of the provisions of section 2(2)(a) of the Friendly Societies Act.²⁵

The word “fund” is not defined in the Income Tax Act and should therefore be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.²⁶

²² 2016 (1) SA 103 (CC).

²³ Paragraph (a) of the definition of “benefit fund”.

²⁴ Section 2(2) of the Income Tax Act 65 of 1986. The amendment applied to any amount received or accrued on or after 13 June 1986.

²⁵ Paragraph (a) of the definition of “benefit fund”.

²⁶ Kellaway, E. A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills*. Butterworths South Africa. Also, see Steyn, L. C. (1981). *Die Uitleg van Wette* (5 ed) at pages 4 to 7. Juta and Company (Pty) Ltd.

The word “fund” is described in *Investopedia* as follows:²⁷

“A fund is a pool of money that is allocated for a specific purpose. A fund can be established for many different purposes: a city government setting aside money to build a new civic center, a college setting aside money to award a scholarship, or an insurance company that sets aside money to pay its customers’ claims.”

The *Explanatory Memorandum on the Income Tax Bill, 1986*, provides the following:²⁸

“In terms of paragraph (a) of the definition of ‘benefit fund’, a benefit fund includes *inter alia* a friendly society registered under the Friendly Societies Act, 1956, or any fund which is not so registered solely because the members do not make contributions to the fund. The latter provision has been subject to abuse, and an amendment is accordingly proposed in terms of which a fund established on or after 13 June 1986 will be recognised as a benefit fund under the said paragraph (a) only if it is in fact registered under the Friendly Societies Act.”

Section 2(2)(a) of the Friendly Societies Act provides that no association of persons or business (see 3.3) will be regarded as a friendly society under the Friendly Societies Act if none of the persons entitled to the benefits (see 3.4) contribute to such association or business.²⁹

Any fund established before 13 June 1986 that has not been registered as a friendly society under the Friendly Societies Act because the persons entitled to the benefits do not contribute to such fund may qualify as a benefit fund under paragraph (a) of the definition of “benefit fund”. An example is the Navy Widow and Orphans Fund (the fund) that was established before 13 June 1986 with the object of providing funds to the widows and orphans of the contributing members of the fund, who are members of the South African Navy. The fund is unable to register as a friendly society under section 2(2)(a) of the Friendly Societies Act since the persons entitled to benefits, namely, the widows and orphans do not contribute to the fund. As a result, the fund falls within paragraph (a) of the definition of “benefit fund” and its receipts and accruals are exempt under section 10(1)(d)(ii) of the Income Tax Act.

2.2 Paragraph (b) of the definition of “benefit fund”

LAWSA provides the following on the health systems in general:³⁰

“International standards indicate that government bears the ultimate responsibility for a population’s health. The WHO³¹ 2002 report noted that:

‘The ultimate responsibility for the overall performance of a country’s health system lies with government, which in turn should involve all sectors of society in its stewardship. The careful and responsible management of the well-being of the population is the very essence of good government. For every country it means establishing the best and fairest health system possible with available resources. The health of the people is always a national priority: government responsibility for it is continuous and permanent. Ministries of health must therefore take on a large part of the stewardship of health systems’.”

(Footnote added)

²⁷ www.investopedia.com/terms/f/fund.asp [Accessed 16 May 2025].

²⁸ Section 2(1) of the Income Tax Act 65 of 1986 published in *Government Gazette* 10330 dated 4 July 1986.

²⁹ Section 2(2)(a) of the Friendly Societies Act.

³⁰ Olivier, M. P. (31 July 2013). Social Security: Core Elements. In *Law of South Africa (LAWSA)* 13(3) (Second Edition Volume) in paragraph 233. My LexisNexis [online].

³¹ The World Health Organization is the United Nations agency dedicated to global health and safety.

Paragraph (b) of the definition of “benefit fund” includes any medical scheme registered under the provisions of the Medical Schemes Act.

Health care in South Africa is provided by both the public and private sectors. The public health system is funded from taxes while the private health system is based on contributions to medical schemes.³²

The *Explanatory Memorandum on the Income Tax Bill, 1978*, provides the following background on the tax status of medical schemes:³³

“Prior to 1975, medical schemes were required to be registered under the Friendly Societies Act, 1956, and by virtue of that registration fell within the definition of “benefit fund” in section 1 [sic] of the Act. Since 1975 such schemes have been registered under the Medical Schemes Act, 1967.³⁴ The amendment³⁵ introduced by sub clause (1)(fa) [sic] merely ensures that duly registered medical schemes continue to be recognised as benefit funds for income tax purposes. The amendment is deemed to have taken effect as from the commencement of years of assessment ended or ending on or after 1 January 1976.”

The term “medical scheme” is not defined in the Income Tax Act and will therefore be afforded the meaning of a “medical scheme” as defined in the Medical Schemes Act (see 4.3).

A medical scheme must be registered under the Medical Schemes Act (see 4.7) for purposes of the exemption under section 10(1)(d)(ii).

3. Friendly societies registered under the Friendly Societies Act

Friendly societies play a significant role in social and community support by providing mutual aid, insurance, and other benefits to their members. It is thus critical to ensure proper governance and functioning of friendly societies.

3.1 The Friendly Societies Act

The purpose of the Friendly Societies Act is to provide for the registration, incorporation, regulation and dissolution of friendly societies and any related matters.³⁶

The Friendly Societies Act provides that a society registered under that Act is not subject to the Trust Property Control Act.³⁷

The Friendly Societies Act does not apply to a friendly society —³⁸

- of which the aggregate value of income does not exceed R100 000 per annum;³⁹

³² Olivier, M. P. (31 August 2012). Social Security: Framework. In *Law of South Africa (LAWSA)* 13(2) (Second Edition Volume) in paragraph 182. My LexisNexis [online].

³³ At page 4.

³⁴ Act 72 of 1967 was repealed in its entirety by section 68(1) of the Medical Schemes Act. Also, see Schedule 1 to the latter Act.

³⁵ Clause 3(1)(a) of the Income Tax Act 101 of 1978 amended paragraphs (a) and (b) of the definition of “benefit fund”.

³⁶ The *Preamble* to that Act.

³⁷ Section 49 of the Friendly Societies Act.

³⁸ Section 3(1) of that Act.

³⁹ Section 3(1)(b) of the Friendly Societies Act. Such society will be required to comply with the provisions of any regulation that may be made in relation to it.

- established or continued under a collective agreement⁴⁰ concluded in a council⁴¹ under the Labour Relations Act;⁴²
- converted to a company under the Companies Act and registered under the Insurance Act to carry on a particular class of insurance business⁴³ within the meaning of that Act.⁴⁴

A friendly society may be exempted from all or partially of any provision of the Friendly Societies Act, by notice in writing and on such conditions as may be specified in that notice, if the Authority is satisfied that –⁴⁵

- the aggregate value of the income to be received will not in general exceed during any year an amount of R100 000;
- such a friendly society operates exclusively by means of policies of insurance⁴⁶ issued by a person⁴⁷ lawfully carrying on an insurance business within the meaning of the Insurance Act; or
- the affairs of any friendly society are subject to such a measure of control issuing from any department of the State or any provincial administration, as to ensure that the society will as regards its financial strength, and the conduct of its business conform to standards at least as high as those imposed under the Friendly Societies Act.

3.2 Definition of “friendly society” in the Friendly Societies Act

The term “friendly society” is defined in the Friendly Societies Act as –⁴⁸

- “(a) any association of persons established for any of the objects specified in section two; or
 - (b) any business carried on under a scheme or arrangement instituted for any of those objects,
- and includes any central society referred to in section thirty-nine,⁴⁹ whether or not it is liable to provide any benefits mentioned in section two, and any central society, association or business as

⁴⁰ The term “collective agreement” as defined in section 213 of the Labour Relations Act means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand (a) one or more employers, (b) one or more registered employers’ organisations, or (c) one or more employers and one or more registered employers’ organisations.

⁴¹ The term “council” as defined in section 213 of the Labour Relations Act includes a bargaining council and a statutory council.

⁴² Section 3(1)(a) of the Friendly Societies Act. Such a friendly society will be required to furnish the Authority with such statistical information as may be requested by the Authority. Despite this provision a friendly society may elect to apply for registration under section 3(1A)(a) the Friendly Societies Act.

⁴³ The term “insurance business” as defined in section 1(1) of the Insurance Act means life insurance business or non-life insurance business conducted or regarded as being conducted in South Africa and includes reinsurance business.

⁴⁴ Section 38C(1)(b) of that Act.

⁴⁵ Section 3(2)(a), (b) and (c) of that Act.

⁴⁶ The term “insurance policy” as defined in section 1(1) of the Insurance Act means a life insurance policy or a non-life insurance policy.

⁴⁷ The term “person” as defined in section 1(1) of the Insurance Act has the same meaning in the Financial Sector Regulation Act, which means a natural person or a juristic person, and includes an organ of state.

⁴⁸ Section 1(1) of that Act.

⁴⁹ The term “central society” as defined in section 39(1) of the Friendly Societies Act means a friendly society, which controls two or more affiliated friendly societies, which is under the control of a central society and is bound to contribute to a fund administered by such central society liable for the payment of contributions to its funds.

aforesaid which is or may become liable for any such benefits, whether or not it continues to admit or to collect contributions from members”.

(Footnotes added)

The term “association of persons” and the words “business”, “carried on”, “scheme”⁵⁰ and “arrangement” are not defined in the Friendly Societies Act.

LAWSA describes an “association” as follows:⁵¹

“There are different kinds of associations namely (1) statutory associations (with or without legal personality),⁵² (2) corporate bodies (*universitates*) with legal personality under the common law and (3) unincorporated associations without legal personality.

It is today accepted that an association is founded on a basis of mutual agreement. This entails that it will come into being if the individuals who propose forming it have the serious intention to associate and are in agreement on the essential characteristics and objectives of the *universitas* or unincorporated association. The latter aspect is usually manifested by the approval and adoption of a constitution.

The constitution of an association together with all its rules or regulations collectively constitute the agreement which is entered into by its members. This agreement is the crucial factor in the existence of an association. It not only determines the nature and scope of the association’s existence and activities but also, where necessary, prescribes and demarcates the powers of, *inter alia*, the executive committee, the secretary and the members of the association in general meeting. In addition, it expresses and regulates the rights of members and provides for certain procedural aspects.”

(Footnote added)

Investopedia describes the word “business” as follows:⁵³

“An organization or enterprising entity engaged in commercial, industrial, or professional activities. The purpose of a business is to organize some sort of economic production of goods or services. Businesses can be for-profit entities or non-profit organizations fulfilling a charitable mission or furthering a social cause. Businesses range in scale and scope from sole proprietorships to large, international corporations. The efforts and activities undertaken by individuals to produce and sell goods and services for profit.”

In *Estate G v COT*, Beadle C J made the following comments on what constitutes “carrying on business”:⁵⁴

“The sensible approach, I think, is to look at the activities concerned as a whole, and then to ask the question: Are these the sort of activities which, in commercial life, would be regarded as ‘carrying on business’? The principal features of the activities which might be examined in order to determine this are their nature, their scope and magnitude, their object (whether to make a profit or not), the continuity of the activities concerned, if the acquisition of property is involved, the intention with which the property was acquired. This list of features does not purport to be

⁵⁰ Section 21 of that Act dealing with amalgamations and transfers refers to a “scheme”. A copy of the scheme of the proposed transaction involving the amalgamation of any business carried on by a registered friendly society with any business carried on by any other person, irrespective of whether such person is a registered friendly society, must be deposited with the Authority.

⁵¹ Pienaar, G. J. (28 February 2015). Association. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraphs 152, 155 and 156. My LexisNexis [online].

⁵² Associations classified as statutory associations include, for example, banks as defined in the Banks Act 94 of 1990, building societies as defined in the Mutual Banks Act 124 of 1993, co-operative societies as defined in the Co-operatives Act 14 of 2005 and friendly societies as defined in the Friendly Societies Act.

⁵³ www.investopedia.com/terms/b/business.asp [Accessed 16 May 2025].

⁵⁴ 1964 (2) SA 701 (SR), 26 SATC 168 at pages 173 and 174.

exhaustive, nor are any one of these features necessarily decisive, nor is it possible to generalize and state which feature should carry most weight in determining the problem. Each case must depend on its own particular circumstances.”

The question whether business is carried on is a factual question. In this regard one can, amongst other things, consider the activities undertaken as a whole. The question is whether these activities are regarded in commercial life as carrying on of business. The principal features of the activities must therefore be examined to determine whether they are in nature, scope and magnitude, contributing to the object and the continuity of the activities concerned.⁵⁵

The *Cambridge Dictionary* describes –

- “carry (something) on” as “to continue doing something, or to cause something to continue”,⁵⁶
- “scheme” as “an officially organized plan or system”;⁵⁷ and
- “arrangement” as “an agreement between two people or groups about how something happens or will happen”.⁵⁸

A registered friendly society may not carry on any business other than the business connected with the objects (see 3.4) for which it is established and that are specified in section 2 of the Friendly Societies Act. The Authority, however, may approve a friendly society carrying on any other business for a prescribed period subject to conditions to safeguard investments⁵⁹ made by the friendly society.⁶⁰

From the above descriptions and having regard to the context and purpose of friendly societies as well as the exclusion of legal entities to which the Friendly Societies Act applies, namely, friendly societies converted to companies (see 3.2) and trusts administered under the Trust Property Control Act, such friendly societies are generally established as voluntary associations of persons or businesses instituted under a written instrument such as a constitution, scheme or arrangement to carry on a social object as prescribed in the Friendly Societies Act (see 3.4) for the benefit of its members (see 3.5).

3.3 Rules of a friendly society under the Friendly Societies Act

A friendly society registered under the Friendly Societies Act must have rules,⁶¹ which include –⁶²

- the act, charter, deed of settlement, memorandum of association, or other document by which the friendly society is constituted;
- articles of association or other rules for the conduct of the business of the friendly society; and

⁵⁵ *Estate G v COT* (above). See also *CIR v Stott* 1928 AD 252, 3 SATC 253 at 257 and ITC 1283 (1978) 41 SATC 36 (SW) at page 43.

⁵⁶ <https://dictionary.cambridge.org/dictionary/english/carry-on?q=carried+on> [Accessed 16 May 2025].

⁵⁷ <https://dictionary.cambridge.org/dictionary/english/scheme> [Accessed 16 May 2025].

⁵⁸ <https://dictionary.cambridge.org/dictionary/english/arrangement> [Accessed 16 May 2025].

⁵⁹ A friendly society under section 20(1) of the Friendly Societies Act may invest its funds in any manner provided by its rules.

⁶⁰ Section 12 of the Friendly Societies Act.

⁶¹ Section 5 of the Friendly Societies Act.

⁶² The term “rules” is defined in section 1(1) of the Friendly Societies Act.

- provisions relating to the benefits, which may be granted by and the contributions, which may become payable to the friendly society.

The Friendly Societies Act provides for the conversion of a friendly society into a company. Such a conversion generally occurs when a registered friendly society applies under the Insurance Act to carry on a particular class of insurance business.⁶³ An application for approval of the conversion must be submitted to the Registrar of Friendly Societies⁶⁴ and accompanied by the proposed memorandum⁶⁵ and articles⁶⁶ of association of the public company to be established.⁶⁷ On registration of a company converted from a friendly society all assets, liabilities, rights and obligations of the society will vest in the company and the Friendly Societies Act will no longer apply to it.⁶⁸ Thus, it appears that the reference to rules such as the memorandum and articles of association is to the transitional period during which friendly societies submit an application for conversion to a company to carry on a particular class of insurance business. In such instances, the converted friendly society will no longer fall within the definition of “benefit fund” from the date of registration as a company under the Companies Act.

The Friendly Societies Act does not define the words “the act”, “charter” or “deed of settlement”, which must contain the rules of a friendly society. The words are described in the *Cambridge Dictionary* as –

- “the act” is “a law or formal decision made by a parliament or other group of people who make the laws for their country.”⁶⁹
- “charter” is “a formal statement, esp. by a government or ruler, of the rights of a group organized for some purpose.”⁷⁰
- the phrase “deed of settlement” is described separately as –
 - “deed” is “a legal document that is an official record of an agreement or official proof that someone owns land or a building”;⁷¹ and
 - “settlement” is “an official agreement or decision that ends an argument, often involving a payment of money”.⁷²

⁶³ Section 38A of that Act.

⁶⁴ The term “registrar” in section 1(1) of the Friendly Societies Act was deleted by section 290 read with Schedule 4 of the Financial Sector Regulation Act and is a reference in relation to the Financial Sector Conduct Authority to the term “Commissioner” as defined in section 1(1) of the Financial Sector Regulation Act, which means the Commissioner of the Financial Sector Conduct Authority appointed under section 61(1) and includes a person acting as the Commissioner.

⁶⁵ The term “memorandum” as defined in section 1(1) of the repealed Companies Act 61 of 1973, in relation to a company, means the memorandum of association of that company for the time being in force; and in relation to an external company, means the charter, statutes, memorandum of association and articles, or other instrument constituting or defining the constitution of the company.

⁶⁶ The term “articles” as defined in section 1(1) of the repealed Companies Act 61 of 1973 in relation to a company, means the articles of association of that company for the time being in force, and includes any provision, in so far as it applies to that company.

⁶⁷ Section 38A(2)(a) of the Friendly Societies Act.

⁶⁸ Section 38C of the Friendly Societies Act.

⁶⁹ <https://dictionary.cambridge.org/dictionary/english/act> [Accessed 16 May 2025].

⁷⁰ <https://dictionary.cambridge.org/dictionary/english/charter> [Accessed 16 May 2025].

⁷¹ <https://dictionary.cambridge.org/dictionary/english/deed> [Accessed 16 May 2025].

⁷² <https://dictionary.cambridge.org/dictionary/english/settlement> [Accessed 16 May 2025].

From the above it is concluded that the “rules” required under the Friendly Societies Act constitutes the founding document of the friendly society, which is a formal, official statement and legal document under which such a friendly society is established and governed.

The rules of the friendly society must under the Friendly Societies Act, amongst other things, contain the —⁷³

- name of the society;
- objects of the society (see **3.4**);
- registered office;⁷⁴
- manner in which funds are to be raised and collected and the purposes for which they are to be applied;
- various classes (if any) of members (see **3.5**) and the requirements for admission to membership and the circumstances under which membership is to cease;
- conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit;
- manner of determining profits and losses and of disposing of such profits or providing for such losses;
- manner in which contracts and other documents binding the society must be executed and the custody of the securities, books, papers, and other effects of the society;
- procedures relating to annual or special general meetings of members, the quorum necessary for the transaction of business at such meetings and the manner of voting; and
- manner in which rules can be added or amended.⁷⁵

The rules are binding on a registered friendly society and its members (see **3.5**), shareholders,⁷⁶ officers (see **3.8**), and any person who may derive benefits from the friendly society.⁷⁷

⁷³ Section 13 of the Friendly Societies Act.

⁷⁴ Every registered friendly society under section 9(1) of the Friendly Societies Act must have a registered office in South Africa.

⁷⁵ The principal officer is required under section 14(2) of the Friendly Societies Act to submit within one month from the date of the passing of a resolution for the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution to the Authority, together with a certificate signed by the person managing the business of the friendly society to the effect that such resolution has been adopted in accordance with the provisions of the rules of the friendly society.

⁷⁶ This relates to a friendly society with share capital referred to in section 13(s) of the Friendly Societies Act.

⁷⁷ Section 15 of the Friendly Societies Act.

3.4 Objects of a friendly society under the Friendly Societies Act

A friendly society registered under the Friendly Societies Act may be established for one or more of the following objects:⁷⁸

- The relief⁷⁹ or maintenance⁸⁰ of members (see 3.5) or their husbands, wives, widows, widowers, children or other relatives or dependants during –
 - minority;⁸¹
 - old age;
 - widowhood;
 - sickness; or
 - other infirmity,⁸² whether bodily or mental.
- The granting of annuities,⁸³ whether immediate or deferred to members or to nominees of members, or the endowment⁸⁴ of members or nominees of members.
- The insurance of a sum of money to be paid or other benefit to be provided –
 - on birth of a member's child;
 - on the death of a member or their husbands, wives, widows, widowers, children or other relatives or dependants or in the form of an endowment insurance on the life of a member or any other such person;
 - towards the expenses of the death or funeral of any member or any other such person; or
 - during a period of confined mourning by a member or any other such person.

⁷⁸ Section 2(1) of the Friendly Societies Act.

⁷⁹ The word “relief” is not defined in the Friendly Societies Act. The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/relief> [Accessed 16 May 2025] describes “relief” as food, money, or services that provide help for people in need.

⁸⁰ The word “maintenance” is not defined in the Friendly Societies Act. The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/maintenance> [Accessed 16 May 2025] describes “maintenance” as a situation in which something continues to exist or is not allowed to become less.

⁸¹ The word “minority” is not defined in the Friendly Societies Act. The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/minority [Accessed 16 May 2025] describes “minority” as a part of a population thought of as differing from the rest of the population in some characteristics and often subjected to differential treatment.

⁸² The word “infirmity” is not defined in the Friendly Societies Act. The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/infirmity> [Accessed 16 May 2025] describes “infirmity” as illness, especially for long periods or because of old age.

⁸³ The word “annuities” is not defined in the Friendly Societies Act. The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/annuity?q=annuities> [Accessed 16 May 2025] describes “annuities” as a fixed amount of money paid to someone every year, usually until their death, or the insurance agreement or investment that provides the money that is paid.

⁸⁴ The word “endowment” is not defined in the Friendly Societies Act. The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/endowment> [Accessed 16 May 2025] describes “endowment” as a type of insurance in which you pay a regular amount of money over a particular period of time, or until you die, after which the insurance company pays an amount of money.

- The insurance against fire or other contingencies of the implements of the trade or calling⁸⁵ of any member.
- The provision of a sum of money when a member leaves his employers' service because of dismissal, resignation or otherwise.⁸⁶
- The relief or maintenance of members, or any group of members, when unemployed or in distressed circumstances, except as a consequence of a strike or lock-out.⁸⁷
- The provision of sums of money for the advancement of the education or training of members or of the children of members.
- Any other business the Minister of Finance may declare by proclamation in the *Government Gazette*.

No association of persons or business (see **3.2**) will be regarded as a friendly society under the Friendly Societies Act if –⁸⁸

- none of the persons entitled to the benefits specified above contribute to such association or business;
- any of its activities fall within the objects of a pension fund organisation;⁸⁹
- under its rules each member is always entitled to withdraw the full contributed amount, subject to such notice as may be prescribed in its rules; or
- the benefits specified above are provided exclusively by way of loans,⁹⁰ which under its rules must be repaid.

⁸⁵ The word “calling” is not defined in the Friendly Societies Act. The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/calling> [Accessed 16 May 2025] describes “calling” as an activity that is a person’s most important job, especially one in which the person has an unusually strong interest and ability.

⁸⁶ Money may not in accordance with section 2(1)(f) of the Friendly Societies Act be provided if the reason for a member leaving his employers’ service is because of marriage or intended marriage.

⁸⁷ The term “lock-out” as defined in section 213 of the Labour Relations Act means the exclusion by an employer of employees from the employer’s workplace, for the purpose of compelling the employees to accept a demand of any matter of mutual interest between employer and employee, whether the employer breaches those employees’ contracts of employment in the course of or for the purpose of that exclusion.

⁸⁸ Section 2(2) of the Friendly Societies Act.

⁸⁹ Paragraph (a) or (b) of the definition of “pension fund organisation” in section 1(1) of the Pension Funds Act 24 of 1956. See section 2(2)(f) of the Friendly Societies Act.

⁹⁰ A friendly society under section 20(5)(b) of the Friendly Societies Act may, if its rules so allow, grant loans secured by first mortgages of immovable property, by way of investment of its funds, to any of its members if the mortgaged property is property on which a dwelling house has been or is to be erected, provided that such loans may not exceed 75% of the market value of the property to be acquired.

3.5 Members of a friendly society under the Friendly Societies Act

A member in relation to a friendly society registered under the Friendly Societies Act is –⁹¹

- any person who contributes to the society to obtain any benefit (see 3.4) either for themselves or for any other person, such as their husbands, wives, widows, widowers, children or other relatives or dependants; and
- any association, which contributes to a central society.⁹²

3.6 Registered friendly society under the Friendly Societies Act

The term “registered” as defined in the Friendly Societies Act includes the provisional registration or registration⁹³ under that Act.⁹⁴

Every friendly society, except any friendly society to which the Friendly Societies Act does not apply (see 3.2), must apply to the Authority for registration under the Friendly Societies Act.⁹⁵

An application must be submitted, amongst other things, with the –

- particulars of the name and address of the person charged with the management of the affairs of the friendly society (see 3.8);
- copy of the rules (see 3.3) of the friendly society;
- certificate by a valuator⁹⁶ as to the soundness of such rules from a financial perspective, or if no valuator has been employed the applicant must provide information in their possession regarding their financial soundness; and
- the prescribed registration fee.⁹⁷

The Authority will provisionally register the friendly society if satisfied that the friendly society has complied with the prescribed requirements and such registration is in the public interest. The Authority issues a certificate of provisional registration.⁹⁸ The provisional registration of a friendly society is valid for a period of five years.⁹⁹

The Authority will register a provisionally registered friendly society if satisfied that the following requirements have been met:¹⁰⁰

- The rules of the friendly society are not inconsistent with the Friendly Societies Act and are based on sound financial principles.
- The method of transacting business is not undesirable.

⁹¹ The term “member” is defined in section 1(1) of the Friendly Societies Act.

⁹² The term “affiliated society” as defined in section 39(1) of the Friendly Societies Act means a society under the control of a central society (see footnote 49) and is bound to contribute to a fund administered by such central society. Affiliated societies under section 39(2) of that Act contributing to the funds of a central society are deemed to be its members, and a central society must not admit as members any persons other than its affiliated societies.

⁹³ The registration of friendly societies is set out in section 5 of that Act.

⁹⁴ Section 1(1) of that Act.

⁹⁵ Section 5(1) of that Act.

⁹⁶ The term “valuator” as defined in section 1(1) of the Friendly Societies Act means an actuary or any other person who, in the opinion of the Authority, has sufficient actuarial knowledge to perform the duties required of a valuator under that Act.

⁹⁷ Section 5(2) of the Friendly Societies Act.

⁹⁸ Section 5(3) of the Friendly Societies Act.

⁹⁹ Section 5(6) of the Friendly Societies Act.

¹⁰⁰ Section 5(4) of the Friendly Societies Act.

- The friendly society is in a financially sound condition.
- The rules (see **3.3**) of the friendly society, having regard to the circumstances, are not unduly inequitable between different members or groups of members.

The Authority will issue a certificate of registration under the Friendly Societies Act and an endorsed copy of its rules with the date of registration. The friendly society will therefore no longer be provisionally registered.¹⁰¹

The registration of a friendly society under the Friendly Societies Act can be cancelled by the Authority –

- if satisfied that the friendly society has ceased to exist;¹⁰²
- if the friendly society was registered by mistake (not as a result of fraud);¹⁰³ or
- by application to the court.¹⁰⁴

3.7 Effect of registration of a friendly society under the Friendly Societies Act

The assets, rights, liabilities, and obligations of the friendly society (including any assets held in trust for the friendly society by any person) prior to its registration under the Friendly Societies Act will on registration vest in and devolve on the registered friendly society, without any formal transfer or cession.¹⁰⁵

3.7.1 Association of persons contemplated in the Friendly Societies Act

An association of persons contemplated in paragraph (a) of the definition of “friendly society” in section 1(1) of the Friendly Societies Act becomes a body corporate¹⁰⁶ on registration as a friendly society and is capable of suing and being sued in its corporate name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions set out in its rules (see **3.3**).¹⁰⁷

3.7.2 Business contemplated under the Friendly Societies Act

All the assets, rights, liabilities and obligations pertaining to the business contemplated in paragraph (b) of the definition of “friendly society” in section 1(1) of the Friendly Societies Act will on registration as a friendly society be deemed to be assets, rights, liabilities and obligations of the friendly society to the exclusion of any other person, notwithstanding anything contained in any law or in the memorandum, articles of association, constitution or rules of any body corporate or unincorporate having control of the business of the friendly society.

¹⁰¹ Section 5(8) of the Friendly Societies Act.

¹⁰² Section 36(1)(a) of the Friendly Societies Act.

¹⁰³ Section 36(1)(b) of the Friendly Societies Act.

¹⁰⁴ Section 36(2) and (3) of the Friendly Societies Act.

¹⁰⁵ Section 7(1)(c) of the Friendly Societies Act.

¹⁰⁶ The expression “body corporate” as described in the *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/body-corporate> [Accessed 16 May 2025] is “an organization such as a company or government that is considered to have its own legal rights and responsibilities”.

¹⁰⁷ Section 7(1)(a) of the Friendly Societies Act.

No person will have any claim on the assets or rights or be responsible for any liabilities or obligations of the friendly society, except in so far as the claim has resulted or the responsibility has been incurred in connection with transactions relating to the business of the friendly society.¹⁰⁸

3.8 Person managing the affairs of a friendly society under the Friendly Societies Act

The person¹⁰⁹ appointed to manage the affairs of a friendly society¹¹⁰ under the Friendly Societies Act may include any member of a committee, or any individual so appointed, or any manager, principal officer, treasurer, clerk or other agent or employee of the friendly society but excludes an auditor.¹¹¹

Every friendly society registered under the Friendly Societies Act must have a principal executive officer who is resident in South Africa.¹¹² The person managing the business of the friendly society must within 30 days of registration of the friendly society notify the Authority of the name of the principal officer and also notify the Authority whenever a new principal officer is appointed.¹¹³

3.9 Dissolution or liquidation of a friendly society under the Friendly Societies Act

The Authority or any registered friendly society may apply for a court order, if of the opinion that the society is not in a sound financial condition or for any other reason, and it is therefore desirable that such an order be made in regard to that friendly society.¹¹⁴

The Friendly Societies Act provides that the Companies Act 61 of 1973 applies *mutatis mutandis* to a winding-up by the court and in so far as the provisions are applicable and not inconsistent with any provision of the Friendly Societies Act or with any direction issued by the court.¹¹⁵ The liquidation of an insolvent friendly society is dealt with under the Companies Act 61 of 1973.¹¹⁶

The Friendly Societies Act provides also for voluntary dissolution if the rules of a registered friendly society provide for the dissolution or termination on –¹¹⁷

- the expiry of a period;
- the occurrence of an event; or
- a resolution by the members of the society that such society will be terminated.

¹⁰⁸ Section 7(1)(b) of the Friendly Societies Act.

¹⁰⁹ The term “person” as defined in section 1(1) of the Friendly Societies Act includes any committee appointed to manage the affairs of a friendly society.

¹¹⁰ See the term “officer” defined in section 1(1) of the Friendly Societies Act.

¹¹¹ Section 11 of the Friendly Societies Act sets out the appointment, powers, and duties of an auditor. Every registered society must in the manner prescribed by its rules appoint an auditor registered under the Public Accountants’ and Auditors’ Act 80 of 1991. This provision does not apply to a friendly society audited by the Auditor-General under the provisions of any law.

¹¹² Section 10(1) and (2) of the Friendly Societies Act.

¹¹³ Section 10(3) and (4) of the Friendly Societies Act.

¹¹⁴ Section 33 of the Friendly Societies Act.

¹¹⁵ Section 35(2) of the Friendly Societies Act.

¹¹⁶ Paragraph 9 of Schedule 5 to the Companies Act.

¹¹⁷ Section 37 of the Friendly Societies Act.

The friendly society will terminate in the manner provided by its rules on the expiry of such period, the occurrence of such event, or the passing of such resolution. The friendly society will be liquidated in the manner provided its rules, and the assets of the friendly society will, subject to the Friendly Societies Act, be distributed in the manner provided by in its rules.

The Friendly Society Act provides that the provisions of the Companies Act 61 of 1973 will apply *mutatis mutandis* to the voluntary dissolution of a friendly society as far as they are applicable and not inconsistent with any provision of the Friendly Societies Act.¹¹⁸

The Companies Act 61 of 1973, except for certain provisions, has been repealed by the Companies Act 71 of 2008. Section 12 of the Interpretation Act 33 of 1957, however, stipulates that where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed will, unless the contrary intention appears, be construed as references to the provision so re-enacted. Where applicable in the Friendly Societies Act, reference to the Companies Act of 1973 should therefore be read as reference to the Companies Act of 2008.

The winding-up of a solvent friendly society may therefore occur voluntarily or compulsorily by the court. A winding-up by the court is initiated by an application to court,¹¹⁹ while a voluntary winding-up¹²⁰ is initiated by a resolution of the friendly society.¹²¹ A friendly society will remain a juristic person and retain all of its powers during winding-up.¹²² From the beginning of the friendly societies winding-up, it must stop carrying on its business except to the extent required for its beneficial winding-up.¹²³ On dissolution or liquidation of the friendly society the Authority will cancel its registration under the Friendly Societies Act if satisfied that the friendly society has ceased to exist¹²⁴ or by application to the court.¹²⁵

The members (see **3.5**) of a friendly society will be treated as deferred creditors, and their claims against the friendly society in their capacity as members will not be settled until the debts of ordinary creditors have been paid.¹²⁶

If a friendly society has a share capital, the liability of a shareholder in the event of liquidation will either be limited to the amount (if any) unpaid on any share held by the shareholder or will be unlimited in accordance with the rules (see **3.3**) of the friendly society.¹²⁷

¹¹⁸ Section 37(13) of the Friendly Societies Act.

¹¹⁹ For example, an application to the court by the Authority or any creditor.

¹²⁰ Section 80 of the Companies Act.

¹²¹ Section 80(6) of the Companies Act.

¹²² Section 19 of the Companies Act.

¹²³ Section 80(8) of the Companies Act.

¹²⁴ Section 36(1)(a) of the Friendly Societies Act.

¹²⁵ Section 36(2) and (3) of the Friendly Societies Act.

¹²⁶ Section 38(1)(a) of the Friendly Societies Act.

¹²⁷ Section 38(2) of the Friendly Societies Act.

3.10 Financial Sector Information Register

National Treasury¹²⁸ established and maintains a Financial Sector Information Register¹²⁹ to provide reliable access to accurate, authoritative, and up to date information relating to financial sector laws, regulations, regulatory instruments, and their implementation¹³⁰ in an electronic form.¹³¹

The Authority, amongst other things, must publish in the Financial Sector Information Register the –¹³²

- registration of a friendly society under the Friendly Societies Act;¹³³
- cancellation of a registration under the Friendly Societies Act; and
- rules and amendments of each registered friendly society.

4. Medical schemes registered under the Medical Schemes Act

4.1 Introduction

The Authority provides the following on medical schemes:¹³⁴

“Medical aid schemes are ‘not for profit’ organisations. They do not have shareholders nor pay dividends from profits made. Medical aid schemes exist for their members as all funds are pooled and safeguarded to be used to pay claims in accordance with the scheme’s rules and to ensure that all members are equitably and fairly cared for (relative to their choice of benefit plan). All surpluses (the ‘profits’ from the previous year) are invested on behalf of the members who have joined the medical aid scheme, in accordance with the law.

Members belonging to a medical aid scheme make contributions (monthly payments) and in return receive medical cover according to the rules of the scheme. There are two kinds of medical aid schemes, namely, open and closed (restricted) schemes. Any person can join an open scheme, but closed schemes are for the employees, specific employer groups, or membership of a specific profession, industry, association or union.

All medical aid schemes in South Africa operate in accordance with the Medical Schemes Act (Act No. 131 of 1998) and are regulated by the Council of Medical Schemes (CMS).”

¹²⁸ Established under section 5(1) of the Public Finance Management Act 1 of 1999 and is responsible for managing South Africa's national government finances. Further information is available online at www.treasury.gov.za.

¹²⁹ Section 256 of the Financial Sector Regulation Act.

¹³⁰ Section 257 of the Financial Sector Regulation Act. Also, see Schedule 3 to that Act for the documents to be published in the Financial Sector Information Register.

¹³¹ Section 259(1) of the Financial Sector Regulation Act.

¹³² Section 1A(5) of the Friendly Societies Act. Also, see www.fsca.co.za/regulated%20entities/pages/fais-verifications.aspx [Accessed 16 May 2025].

¹³³ The Financial Sector Conduct Authority Integrated Annual Report 2023/2024 states there are currently 197 registered friendly societies. The annual report is available online at www.fsca.co.za/Pages/Annual-Reports.aspx [Accessed 16 May 2025].

¹³⁴ The Financial Sector Conduct Authority (2021) *Medical Aid Scheme vs Health Insurance Policy: What is the difference, and which one is right for me?* Available online at www.fscamymoney.co.za/Pages/Resources/Booklets-and-Brochures.aspx [Accessed 16 May 2025].

4.2 Medical Schemes Act

The purpose of the Medical Schemes Act is to –¹³⁵

- consolidate the laws relating to registered medical schemes;¹³⁶
- provide for the establishment¹³⁷ of the Council as a juristic person;¹³⁸
- provide for the appointment of the Registrar;¹³⁹
- provide for the registration and control of certain activities of medical schemes;
- protect the interests of members of medical schemes; and
- provide for measures for the co-ordination of medical schemes.

The Medical Schemes Act also applies to a medical scheme established by any organ of the State,¹⁴⁰ and bargaining councils¹⁴¹ under the Labour Relations Act¹⁴² but does not apply¹⁴³ to the State Security Agency.¹⁴⁴

4.3 Definition of “medical scheme” in the Medical Schemes Act

The term “medical scheme” as defined in the Medical Schemes Act means –¹⁴⁵

“any medical scheme registered under section 24(1)”.

All medical schemes must be registered with the Council (see 4.7).¹⁴⁶

¹³⁵ Preamble of that Act.

¹³⁶ Any medical scheme registered under section 24(1) of the Medical Schemes Act.

¹³⁷ Section 3 of the Medical Schemes Act.

¹³⁸ The functions of the Council are set out in section 7 of the Medical Schemes Act, which include, amongst other things, the protection of the interests of a member or a person admitted as a dependant of a member (beneficiaries), to control and co-ordinate the functioning of medical schemes to complement the national health policy, to investigate complaints and settle disputes relating to the affairs of medical schemes, and the collect and dissemination of information about private health care.

¹³⁹ Section 18 of the Medical Schemes Act. The Minister of Health after consultation with the Council appoints the Registrar to manage the affairs of the Council.

¹⁴⁰ The term “organ of state” as defined in section 239 of the Constitution of the Republic of South Africa, 1996, means (a) any department of state or administration in the national, provincial or local sphere of government, or (b) any other functionary or institution (i) exercising a power or performing a function of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.

¹⁴¹ A bargaining council (see definition in section 213 of the Labour Relations Act) may be established for a sector and area by one or more registered trade unions and one or more registered employers’ organisations (see section 27(1) of that Act). A bargaining council under section 28(g) of that Act has the powers and functions, amongst other things, to establish and administer a medical aid for the benefit of one or more of the parties to the bargaining council or their members.

¹⁴² Section 2(2) of the Medical Schemes Act.

¹⁴³ Section 2(3) of the Medical Schemes Act.

¹⁴⁴ Section 3 of the Intelligence Services Act 65 of 2002.

¹⁴⁵ Section 1(1) of that Act.

¹⁴⁶ Section 20(1) of the Medical Schemes Act.

4.4 Business of a medical scheme under the Medical Schemes Act

The term “business of a medical scheme” as defined in the Medical Schemes Act means —¹⁴⁷

“the business of undertaking, in return for a premium or contribution, the liability associated with one or more of the following activities:

- (a) Providing for the obtaining of any relevant health service;¹⁴⁸
- (b) granting assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; or
- (c) rendering a relevant health service, either by the medical scheme itself, or by any supplier or group of suppliers of a relevant health service or by any person, in association with or in terms of an agreement with a medical scheme”.

(Footnote added)

Any person who wishes to carry on the business of a medical scheme must apply to the Registrar for registration under the Medical Schemes Act.¹⁴⁹ No person is allowed to carry on the business of a medical scheme unless registered as a medical scheme under the Medical Schemes Act.¹⁵⁰

4.5 Members of a medical scheme under the Medical Schemes Act

A member of a medical scheme is a person who has been enrolled or admitted as a member of that scheme, or who under the rules of a medical scheme, is a member of such a scheme.¹⁵¹ Every medical scheme must issue to each of its members written proof of membership containing certain prescribed particulars.¹⁵²

4.6 Rules of a medical scheme under the Medical Schemes Act

The rules of a medical scheme include —¹⁵³

- the provisions of the law, the charter, deed of settlement, memorandum of association or any other document by which the medical scheme is constituted;
- the articles of association or other rules for the conduct of the business of the medical scheme; and
- the provisions relating to the benefits which may be granted by and the contributions which may become payable to the medical scheme.

The rules of a medical scheme must provide for certain prescribed provisions before the Registrar will register such a medical scheme. These prescribed provisions, amongst other things, include the following:¹⁵⁴

- The appointment or election of a board of trustees (see 4.9).
- The appointment of a principal officer (see 4.9).

¹⁴⁷ Section 1(1) of that Act.

¹⁴⁸ The term “related health service” is defined in section 1(1) of the Medical Schemes Act.

¹⁴⁹ Section 22(1) of the Medical Schemes Act.

¹⁵⁰ Section 20(1) of the Medical Schemes Act.

¹⁵¹ The term “member” is defined in section 1(1) of the Medical Schemes Act.

¹⁵² The particulars are prescribed in paragraph 3 of the Regulations.

¹⁵³ The term “rules” is defined in section 1(1) of the Medical Schemes Act.

¹⁵⁴ Section 29(1) of the Medical Schemes Act. Section 29(3) of that Act sets out the exclusions that may not be included in the rules and section 30 contains general provisions that may be included in the rules.

- The appointment, removal from office, powers, and remuneration of officers (see **4.9**).
- The custody of the securities, books, documents, and other effects of the medical scheme.¹⁵⁵
- The appointment of an auditor of a medical scheme and the duration of such appointment.¹⁵⁶
- The power to invest funds.¹⁵⁷
- Termination and dissolution of a medical scheme (see **4.10**).¹⁵⁸
- The amendment of the rules.¹⁵⁹
- Annual general meeting and special general meetings of members, the quorum necessary for the transaction of business at such meetings and the manner of voting.

The rules of a medical scheme may provide for –¹⁶⁰

- donations to any hospital, clinic, nursing home, maternity home, infirmary, or home for aged persons in the interest of all or some of its beneficiaries;¹⁶¹
- the granting of loans to any of its members (see **4.5**) or to make *ex gratia* payments on behalf of or to members to assist such members to meet commitments in regard to any matter specified in the definition of “business of a medical scheme” (see **4.4**);
- the contribution to any association instituted for the benefit of medical schemes;
- the contribution to any fund of any kind whatsoever which is conducted for the benefit of the officers (see **4.9**) of the medical scheme or to pay for insurance policies on the lives of officers of the medical scheme for the benefit of such officers or their dependants;¹⁶²
- the allocation to a member of a personal medical savings account, within the limit and in the manner prescribed from time to time, to be used for the payment of any relevant health service; or
- the membership of a minor who is assisted by his or her parent or guardian.

¹⁵⁵ Section 37 of the Medical Scheme Act and paragraph 24 and 25 of the Regulations.

¹⁵⁶ Section 36 of the Medical Schemes Act, and paragraph 20 of the Regulations sets out the appointment, powers, and duties of an auditor. A medical scheme must appoint at least one auditor registered under the Public Accountants’ and Auditors’ Act 80 of 1991. The Registrar must approve the appointment of the auditor.

¹⁵⁷ A medical scheme under section 35(7) of the Medical Schemes Act may invest its funds in any manner provided for in its rules but may not under section 35(8) of that Act invest any of its assets in the business of or grant loans to (a) an employer who participates in the medical scheme or any administrator or any arrangement associated with the medical scheme, (b) any other medical scheme, (c) any administrator, and (d) any person associated with any of the above-mentioned.

¹⁵⁸ Section 64 of the Medical Schemes Act.

¹⁵⁹ Section 31 of the Medical Schemes Act. The Registrar must approve any amendment to the rules.

¹⁶⁰ Section 30(1) of the Medical Schemes Act.

¹⁶¹ The term “beneficiary” as defined in section 1(1) of the Medical Schemes Act means a member or a person admitted as a dependant of a member.

¹⁶² The term “dependant” as defined in section 1(1) of the Medical Schemes Act means (a) the spouse or partner, dependent children or other members of the member’s immediate family for whom the member is liable for family care and support, or (b) any other person who, under the rules of a medical scheme, is recognised as a dependant of a member.

The rules of a medical scheme and any amendment is binding on the medical scheme.¹⁶³

4.7 Registered medical scheme under the Medical Schemes Act

An application under the Medical Schemes Act must be accompanied by such documents and particulars as may be prescribed from time to time.¹⁶⁴ Every application for registration of a medical scheme must be in writing and signed by the person applying for the registration of the medical scheme and must, amongst other things, contain –¹⁶⁵

- the full name under which the proposed medical scheme is to be registered;
- the date on which the proposed medical scheme is to come into operation;
- the physical and postal addresses of the registered office¹⁶⁶ of the proposed medical scheme;
- two certified copies of the rules (see 4.6) of the proposed medical scheme;
- the full names, physical and postal addresses and *curriculum vitae* of the principal officer and trustees (see 4.9) of the proposed medical scheme;
- the name and address of the person who will administer the medical scheme;
- a detailed statement of services to be undertaken, directly or indirectly, on behalf of the proposed medical scheme by an administrator,¹⁶⁷ broker¹⁶⁸ and managed care organisation;¹⁶⁹ and
- a detailed business plan.

¹⁶³ Section 32 of the Medical Schemes Act.

¹⁶⁴ Section 22(2) of the Medical Schemes Act.

¹⁶⁵ Paragraph 2(1) of the Regulations in accordance with section 67 of the Medical Schemes Act.

¹⁶⁶ Every medical scheme under section 26(10) of the Medical Schemes Act must have a registered office in South Africa.

¹⁶⁷ The term “administrator” as defined in section 1(1) of the Medical Schemes Act generally means any person who has been accredited by the Council under section 58 of that Act to administer a medical scheme as an intermediary. Chapter 6 of the Regulations deals with administrators of medical schemes.

¹⁶⁸ The term “broker” as defined in section 1(1) of the Medical Schemes Act is subject to specific prescribed exclusions, however, generally means a person whose business, or part thereof, entails providing broker services. The term “broker services” as defined in section 1(1) of that Act includes the provision of service or advice for the introduction or admission of members to a medical scheme, or the ongoing provision of service or advice of access to, or benefits or services offered by a medical scheme. Chapter 7 of the Regulations deals with the conditions that brokers must comply with.

¹⁶⁹ The term “managed health care organisation” as defined in paragraph 15 of the Regulations means a person who has contracted with a medical scheme under paragraph 15A of the Regulations to provide a managed health care service. The term “managed health care” as defined in paragraph 15 of the Regulations means clinical and financial risk assessment and management of health care, with a view to facilitating appropriateness and cost-effectiveness of relevant health services within the constraints of what is affordable, through the use of rules-based (defined in paragraph 15 of the Regulations) and clinical management-based programmes (defined in paragraph 15 of the Regulations).

The Council will register a medical scheme under the Medical Schemes Act only if satisfied that the proposed medical scheme —¹⁷⁰

- has members on the board of trustees and a principal officer (see 4.9) who are fit and proper persons to hold office;
- complies with or will be able to comply with any other provision of the Medical Schemes Act;
- is or will be financially sound;¹⁷¹
- has sufficient members (see 4.5)¹⁷² who contribute or are likely to contribute to the medical scheme;
- does not or will not unfairly discriminate directly or indirectly against any person on one or more arbitrary grounds including race, age, gender, marital status, ethnic or social origin, sexual orientation, pregnancy, disability, and state of health; and
- is in the public interest.

The Registrar in agreement with the Council will register the medical scheme and may impose terms and conditions deemed necessary.¹⁷³ The Registrar will provide the person applying for registration with a certificate of registration and a copy of the rules (see 4.6) of the medical scheme reflecting the date of registration of the rules.¹⁷⁴

The Registrar must publish in the *Government Gazette* a notification of the registration of a medical scheme under the Medical Schemes Act setting out —¹⁷⁵

- the name and address of the medical scheme;
- the date of registration; and
- any terms and conditions imposed.

Every medical scheme must have a registered office in South Africa.¹⁷⁶

A medical scheme must not use or refer to itself by a name other than the name under which it is registered and approved by the Registrar or a literal translation or an abbreviation thereof.¹⁷⁷

The Registrar, after investigation and affording the medical scheme, or its legal representative an opportunity of being heard, may cancel its registration in agreement with the Council if that medical scheme —¹⁷⁸

- has ceased to operate;
- was registered by virtue of misleading information;

¹⁷⁰ Section 24(2) of the Medical Schemes Act.

¹⁷¹ A medical scheme under section 35 of the Medical Schemes Act will be financially sound if it has assets, provides for its liabilities, and conducts its business to be able to always meet its liabilities.

¹⁷² Paragraph 2(3) of the Regulations provides that the minimum number of members required for registration of a medical scheme is 6 000, and this number must be admitted within a period of three months of registration of the medical scheme.

¹⁷³ Section 24(1) of the Medical Schemes Act.

¹⁷⁴ Section 24(3) of the Medical Schemes Act.

¹⁷⁵ Section 25 of the Medical Schemes Act.

¹⁷⁶ Section 26(10) of the Medical Schemes Act.

¹⁷⁷ Section 23(2) of the Medical Schemes Act.

¹⁷⁸ Section 27(1) of the Medical Schemes Act.

- is unable to maintain a financially sound condition;
- is unable to enrol within the period determined by the Council, or to maintain the minimum number of members required for the registration of a medical scheme; and
- persists, after written notification from the Registrar, with non-compliance with any provision of the Medical Schemes Act.

The Council may, in lieu of the cancellation of the registration as a medical scheme, suspend the cancellation, if satisfied that the medical scheme will be able to rectify the situation relating to its financial condition, membership requirements and non-compliance.¹⁷⁹ The Registrar must inform the medical scheme concerned of any decision taken regarding the cancellation of its registration by means of a written notice served on the medical scheme. The notice must specify the date on which the cancellation will come into operation.¹⁸⁰

4.8 Effect of registration of a medical scheme under the Medical Schemes Act

Any medical scheme registered under the Medical Schemes Act becomes a body corporate capable of suing and being sued and of doing or causing to be done all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions under its rules (see 4.6).¹⁸¹

No person will have any claim on the assets or rights or be responsible for any liabilities or obligations of a medical scheme, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the medical scheme.¹⁸²

The assets, rights, liabilities and obligations of a medical scheme, including any assets held in trust for the medical scheme by any person, as existing immediately prior to its registration, will vest in and devolve on the medical scheme without any formal transfer or cession.¹⁸³

4.9 Person managing the affairs of a medical scheme under the Medical Schemes Act

Every medical scheme must have a board of trustees to manage the business (see 4.4) of the medical scheme in accordance with the applicable laws and the rules (see 4.6) of such medical scheme.¹⁸⁴ The term “board of trustees” as defined in the Medical Schemes Act means –¹⁸⁵

“the board of trustees charged with the managing of the affairs of a medical scheme, and which has been elected or appointed under its rules”.

The board of trustees must consist of persons who are fit and proper to manage the business of a medical scheme. The board of trustees are elected or appointed in accordance with the rules of the medical scheme.¹⁸⁶ At least 50% of the members of the board of trustees must be

¹⁷⁹ Section 27(2) of the Medical Schemes Act.

¹⁸⁰ Section 27(3) of the Medical Schemes Act.

¹⁸¹ Section 26(1)(a) of that Act.

¹⁸² Section 26(2) of the Medical Schemes Act.

¹⁸³ Section 26(3) of the Medical Schemes Act.

¹⁸⁴ Section 57(1) of the Medical Schemes Act.

¹⁸⁵ Section 1(1) of that Act.

¹⁸⁶ Section 46 of the Medical Schemes Act provides for the removal of a member from the board of trustees.

elected from its members (see 4.5).¹⁸⁷ A person may not be a member of the board of trustees of a medical scheme, if that person is an employee, director, officer, consultant or contractor of the administrator of the medical scheme, or of the holding company, subsidiary, joint venture or associate of that administrator, or a broker.¹⁸⁸

The board of trustees must —¹⁸⁹

- take all reasonable steps to ensure that the interests of beneficiaries under the rules of the medical scheme and the provisions of the Medical Schemes Act are always protected;
- act with due care, diligence, skill and good faith;
- take all reasonable steps to avoid conflicts of interest; and
- act with impartiality in respect of all beneficiaries.

The duties of the board of trustees, amongst other things, are to —¹⁹⁰

- appoint a principal officer and within 30 days of such appointment give notice in writing to the Registrar;¹⁹¹
- ensure that proper registers, books, and records of all operations of the medical scheme are kept;
- ensure that adequate and appropriate information is communicated to the members regarding their rights, benefits, contributions, and duties in terms of the rules of the medical scheme;
- take all reasonable steps to ensure that contributions are paid timeously to the medical scheme;
- obtain and maintain professional indemnity insurance and fidelity guarantee insurance; and
- obtain expert advice on legal, accounting and business matters as required, or on any other matter the members of the board of trustees may lack sufficient expertise.

4.10 Winding-up, voluntary, or automatic dissolution of a medical scheme under the Medical Schemes Act

The Registrar, in agreement with the Council, in regard to any medical scheme if of the opinion that it is in the best interest of beneficiaries¹⁹² or because material irregularities have come to the Registrar's notice may apply to the High Court for an order.¹⁹³

A medical scheme may itself apply to the High Court for an order if of the opinion that it is desirable because the medical scheme is not in a sound financial condition or for any other reason that such an order be made.¹⁹⁴

¹⁸⁷ Section 57(2) of the Medical Schemes Act.

¹⁸⁸ Section 57(3) of the Medical Schemes Act.

¹⁸⁹ Section 57(6) of the Medical Schemes Act.

¹⁹⁰ Section 57(4) of the Medical Schemes Act.

¹⁹¹ Section 57(7) of the Medical Schemes Act lists the persons excluded from the appointment as a principal officer.

¹⁹² The term "beneficiary" as defined in section 1(1) of the Medical Schemes Act means a member or a person admitted as a dependant of a member.

¹⁹³ Section 51(1) of the Medical Schemes Act.

¹⁹⁴ Section 51(2) of the Medical Schemes Act.

A medical scheme may be dissolved or terminated if the rules (see 4.6) provide for the dissolution or termination on the expiry of a certain period, on the occurrence of an event or on resolution by the members of the medical scheme. In such circumstances the medical scheme will be liquidated and the assets,¹⁹⁵ subject to the Medical Schemes Act, must be distributed in the manner provided for in the rules of the medical scheme.¹⁹⁶

5. Exemption from income tax

Section 10(1)(d)(ii) exempts from income tax all the receipts and accruals of any benefit fund. The exemption is an absolute exemption of all receipts and accruals of a benefit fund.

The receipts and accruals envisaged in section 10(1)(d)(ii) are those that are included in the definition of “gross income”.¹⁹⁷

Gross income in relation to any year of assessment¹⁹⁸ is the total amount of income (worldwide), in cash or otherwise, received by or accrued to or in favour of any person who is a resident. Receipts and accruals of a capital nature are generally excluded from gross income, such as *bona fide* donations.¹⁹⁹ Certain other receipts and accruals specified within the definition of “gross income” are included regardless of their nature.²⁰⁰

In *CIR v Genn & Co (Pty) Ltd*²⁰¹ it was held that not every obtaining of physical control over money and money’s worth constitutes a receipt for purposes of the definition of gross income. The words “received” and “accrued” are not defined in the Income Tax Act, and therefore reliance is placed on various principles established in this regard by way of case law. An amount will be “received” by a person as envisaged in the Income Tax Act only if the person receives it on the person’s own behalf and for the person’s own benefit.²⁰² An amount “accrues” to a person when the person is entitled to it and when the person’s right to the amount is unconditional.²⁰³ An amount is included in a person’s gross income in the year of assessment in which that person receives it, or the year of assessment in which it accrues to that person, whichever comes first.²⁰⁴

¹⁹⁵ See column 2 of Annexure B to the Regulations for the categories of assets that a medical scheme should have under paragraph 30(1) of the Regulations. See 3.9 for consideration of the Companies Act that applies.

¹⁹⁶ Section 64(1) of the Medical Schemes Act.

¹⁹⁷ The term “gross income” is defined in section 1(1).

¹⁹⁸ The term “year of assessment” as defined in section 1(1) generally means any year or other period for which any tax or duty leviable under the Income Tax Act is chargeable.

¹⁹⁹ The term “donation” is defined in section 55 and is generally regarded as a gratuitous disposal by the donor out of liberality or generosity, under which the donee is enriched, and the donor impoverished, a voluntary gift freely given to the donee, no *quid pro quo*, no reciprocal obligations, and no personal benefit for the donor. *Bona fide* donations received on a gratuitous, voluntary, unconditional and irrevocable basis will not constitute gross income by the recipient.

²⁰⁰ See paragraphs (a) to (n) of that definition.

²⁰¹ 20 SATC 113.

²⁰² *Geldenhuys v CIR* 1974 (3) SA 256 (C), 14 SATC 419.

²⁰³ *Lategan v CIR* 1926 CPD 203, 2 SATC 16; *Ochberg v CIR* 1933 CPD, 6 SATC 1.

²⁰⁴ *SIR v Silverglen Investments (Pty) Ltd* 1969 (1) SA 365 (A), 30 SATC 199.

The receipt or accrual in a form other than money could constitute an amount.²⁰⁵ Unless this amount is of a capital nature and is not specifically included in the definition of “gross income”, it should be valued and included in the gross income of the taxpayer in the year of assessment in which it is received or accrued.

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)(d) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain (see 6.1).²⁰⁶ A taxable capital gain 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 income²⁰⁷ and does not comprise “income” (gross income less exempt income).²⁰⁸ Paragraph 63 and 64 of the Eighth Schedule contain the rules for disregarding capital gains and losses of exempt persons, such as benefit funds (see 6.1).

6. Exemption from other taxes and duties

In addition to being exempt from the payment of income tax on receipts and accruals, benefit funds also enjoy the benefit of being exempt from certain other taxes and duties,²⁰⁹ which are considered below.

6.1 Capital gains tax

CGT is a complex subject and a full explanation of all its aspects extends beyond the scope of this guide.²¹⁰

A person must disregard any capital gain or capital loss on the disposal of an asset when any amount constituting gross income of whatever nature would be exempt from tax under section 10 were it to be received by or to accrue to that person.²¹¹ Since all receipts and accruals of qualifying benefit funds are exempt from tax, they will not be liable to CGT on the disposal of an asset.

6.2 Dividends tax

The provisions relating to dividends tax are contained in sections 64D to 64N and apply to any dividend paid by a company, other than a headquarter company. Although dividends tax is part of the Income Tax Act, it is a separate tax from income tax.²¹²

²⁰⁵ *Commissioner, SARS v Brummeria Renaissance (Pty) Ltd* 2007 (6) SA 601 (SCA), 69 SATC 205. Also, see Interpretation Note 58 “The Brummeria case and the right to use loan capital interest free”.

²⁰⁶ The term “taxable capital gain” as defined in section 1(1) means an amount determined in accordance with paragraph 10 of the Eighth Schedule.

²⁰⁷ Paragraph (b) of the definition “taxable income” in section 1(1).

²⁰⁸ Section 26A.

²⁰⁹ For commentary, see *Taxation in South Africa*.

²¹⁰ For commentary, see the *Comprehensive Guide to Capital Gains Tax* and the *Guide on Determining the Market Value of Assets for Capital Gains Tax Purposes*.

²¹¹ Paragraph 63 of the Eighth Schedule.

²¹² For commentary, see the *Comprehensive Guide to Dividends Tax*.

Dividends tax is levied at the rate of 20%²¹³ of the amount of a dividend paid by a company that is a resident.²¹⁴ Dividends tax is also payable on a foreign dividend to the extent that the foreign dividend does not constitute the distribution of an asset *in specie*, and it is paid by a foreign company in respect of a listed share.²¹⁵

Dividends tax on a cash dividend is levied on the person entitled to the benefit of the dividend attaching to the share. This person is known colloquially as the beneficial owner.²¹⁶

Generally, a company declaring and paying a dividend must withhold an amount of dividends tax, except to the extent that the dividend consists of a distribution of an asset *in specie*, in that case the company paying the dividend is potentially liable for dividends tax unless an exemption applies.

It is not the responsibility of the company or regulated intermediary²¹⁷ paying the dividend to determine who the beneficial owner of a dividend is and whether that person qualifies for an exemption from dividends tax. The exemptions from dividends tax for cash dividends are contained in section 64F while the exemptions for dividends *in specie* are contained in section 64FA(1).

Any benefit fund that is the beneficial owner of a dividend is exempt from dividends tax.²¹⁸ This exemption applies only if the benefit fund has submitted a declaration to the company that declared and paid the dividend or to the regulated intermediary that paid the dividend, that it is exempt from dividends tax. The benefit fund is also required to submit a written undertaking to the company or regulated intermediary that it will inform such company or regulated intermediary in writing should it cease to be the beneficial owner of the shares or if the circumstances affecting the exemption change.²¹⁹

The Commissioner has not issued actual forms to be used for purposes of a declaration or written undertaking but has prescribed the required wording and minimum information required in the forms that are to be prepared by the company, regulated intermediary or beneficial owner.²²⁰

The obligation lies with the benefit fund, which is the beneficial owner of the dividend, to ensure that the prescribed declaration and written undertaking are filed timeously with the company or regulated intermediary paying the dividend.

Any benefit fund that is a beneficiary of a trust should determine whether it has a vested right to a dividend received by or which accrued to the trust before the dividend is paid by the relevant company to ensure that the necessary declaration of exemption is filed with the company or regulated intermediary. A beneficiary that has a vested right in a dividend received

²¹³ Section 64E(1). The rate of dividends tax increased from 15% to 20% on any dividend paid on or after 22 February 2017.

²¹⁴ A reduced or nil rate may apply under specific circumstances.

²¹⁵ The term "listed share" as defined in section 1(1) means a share that is listed on an exchange as defined in section 1 of the Financial Markets Act 19 of 2012 and licensed under section 9 of that Act. A listed share could therefore include a share in a foreign company whose shares are listed on a South African exchange.

²¹⁶ The term "beneficial owner" is defined in section 64D.

²¹⁷ The term "regulated intermediary" is defined in section 64D. A regulated intermediary is generally an entity that temporarily holds a dividend paid by a company before it is paid over to the ultimate beneficial owner.

²¹⁸ Sections 64F(1)(f) and 64FA(1)(a).

²¹⁹ Sections 64G(2)(a) and 64H(2)(a).

²²⁰ For commentary, see the *Business Requirements Specifications: Administration of Dividends Tax*.

by or which accrued to a trust will be regarded as the beneficial owner. Should the trust be the beneficial owner of the dividend, dividends tax at the rate of 20% may become payable. A trust whose beneficiary acquires a vested right to a dividend after it is paid but before the end of the trust's year of assessment may be able to claim a refund of the dividends tax withheld.

6.3 Donations tax

Donations tax is payable²²¹ on the value of any property disposed of by donation, whether directly or indirectly, by any resident²²² (the donor) to another person (the donee),²²³ unless an exemption applies, at the rate²²⁴ of —²²⁵

- 20% on that value if the aggregate of that value and the value of any other property disposed of under a taxable donation on or after 1 March 2018 until the date of that donation does not exceed R30 million; and
- 25% of that value to the extent that it exceeds R30 million.

A donation comprises any gratuitous disposal of property, which includes cash or non-cash property, including any gratuitous waiver or renunciation of a right, for example, the waiver of debt. The disposal of property at less than its market value will also constitute a donation to the extent that the Commissioner is not satisfied that the consideration was adequate.²²⁶

The term “property”²²⁷ is legally a very wide concept and inclusive to not only movable or immovable property, corporeal (tangible) or incorporeal (intangible), but also a right in that property. Property is an object of legal rights and includes anything tangible or intangible over which a person has a legal title. Property is considered to be movable if it can be moved from one place to another without being damaged and without losing its identity.²²⁸ Some examples include stocks, money, notes, patents, as well as intangible property such as copyrights. Animals that can move on their own are also moveable property. Immovable property is considered to be land, things attached to it as well as certain rights registered against the title deed of the land.

The main function of money is distinguished as a medium of exchange or a unit of account and therefore falls within the definition of “property”.

Donations tax is payable by the donor, but if the donor fails to pay the tax within the prescribed period, the donor and donee are jointly and severally liable for the tax.²²⁹

Donations made by or to a benefit fund are exempt from the payment of donations tax.²³⁰

²²¹ Section 54.

²²² The term “resident” is defined in section 1(1).

²²³ The term “donee” is defined in section 55(1).

²²⁴ Section 64.

²²⁵ Section 56.

²²⁶ Section 58.

²²⁷ Section 55(1).

²²⁸ van der Merwe, C. G. (31 January 2014). Things. In *Law of South Africa (LAWSA) 27* (Second Edition Volume) in paragraph 50. My LexisNexis [online].

²²⁹ Section 59.

²³⁰ Section 56(1)(h).

7. Compliance with other taxes and duties

It is important that benefit funds comply with the relevant requirements and conditions relative to other taxes and duties. A general overview relating to certain other taxes and duties is considered.

7.1 Employees' tax

Employees' tax is dealt with in the Fourth Schedule.²³¹ The purpose of the employees' tax system is to ensure that an employee's income tax liability is settled at the same time that the employee's remuneration is earned, therefore avoiding burdening the employee with a large tax bill on assessment. Employees' tax deducted serves as an income tax credit that is set off against the income tax liability²³² of an employee, calculated on an annual basis, to determine the employees' final income tax liability for a year of assessment.

Employees' tax must be deducted or withheld²³³ by every employer that is a resident (or, by an employer that is not a resident but conducts business through a permanent establishment in South Africa, or by a representative employer) who pays or becomes liable to pay an amount of remuneration²³⁴ to any person.

A benefit fund is not exempted from the obligation to deduct or withhold employees' tax. The benefit fund must register as an employer for employees' tax purposes. The PAYE to be deducted or withheld is calculated according to the tax deduction tables prescribed by the Commissioner.

A benefit fund that is an employer must, if any of its employees are liable for income tax, register for employees' tax within 21 business days²³⁵ of becoming an employer.²³⁶ Registration is done by completing the prescribed application form EMP 101e.²³⁷ A benefit fund already registered for another tax type on **eFiling** may as part of the single registration initiative register for PAYE on **eFiling**.²³⁸ A registered employer will receive a monthly return, the EMP 201 form, which must be completed and submitted together with the payment of employees' tax within seven days after the end of the month during which the deduction was made.

An employer must issue an employee with an employees' tax certificate (IRP 5 certificate) if employees' tax was deducted or withheld from the employee's remuneration.²³⁹ This certificate discloses, amongst other things, the total remuneration earned during a year of assessment and the employees' tax and unemployment insurance fund contributions (see 7.8) deducted by the employer.

²³¹ For commentary, see the *External Guide – Guide for Employers in respect of Employees' Tax*.

²³² Paragraph 28 of the Fourth Schedule.

²³³ Paragraph 2(1) of the Fourth Schedule.

²³⁴ The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.

²³⁵ See section 244 of the TA Act for a discussion on deadlines.

²³⁶ Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.

²³⁷ For commentary, see the *External Guide – Guide for Completion of Employer Registration Application*.

²³⁸ For commentary, see the *External Guide – How to Complete the Registration, Amendments and Verification Form (RAV01)*.

²³⁹ Paragraph 14 of the Fourth Schedule.

7.2 Estate duty

Estate duty is levied under the Estate Duty Act 45 of 1955 (Estate Duty Act) at the rate of 20% on the first R30 million of the dutiable amount of the estate of a deceased person, and at the rate of 25% of the dutiable amount that exceeds R30 million.²⁴⁰

No exemption for estate duty is provided for bequests to a benefit fund. Any property bequeathed to a benefit fund will therefore not qualify as a deduction and therefore will be excluded from the net value of the estate and subject to estate duty.

7.3 Section 18A tax-deductible receipts

Section 18A provides for the tax-deductibility of *bona fide* donations made to certain organisations approved by the Commissioner²⁴¹ carrying on in South Africa public benefit activities²⁴² in Part II²⁴³ of the Ninth Schedule. A benefit fund is not an eligible organisation for purposes of section 18A.²⁴⁴

Any organisation not qualifying for approval under section 18A, irrespective of whether that organisation enjoys approval or exemption from income tax under any other section of the Act, may not issue section 18A receipts for *bona fide* donations received.

A benefit fund may therefore not issue section 18A receipts²⁴⁵ to donor taxpayers for *any bona fide* donations received. Any claim for a deduction by taxpayers for a section 18A receipt issued by a benefit fund will therefore be disallowed in the determination of that taxpayer's taxable income.

²⁴⁰ Section 2(2) and at the rate set out in the First Schedule to the Estate Duty Act.

²⁴¹ Section 18A(1)(a), (b), (bA) and (c).

²⁴² The term "public benefit activity" as defined in section 30(1) means any public benefit activity listed in Part I of the Ninth Schedule and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public.

²⁴³ Part I of the Ninth Schedule lists a variety of public benefit activities for approval as a public benefit organisation for purposes of section 30. Part II of the Ninth Schedule lists some, but not all, of the public benefit activities listed in Part I of the Ninth Schedule for approval as a public benefit organisation for purposes of section 18A approval.

²⁴⁴ For further commentary, see the *Basic Guide to Section 18A Approval*, the *Tax Exemption Guide for Public Benefit Organisations in South Africa*, the *Tax Exemption Guide for Institutions, Boards or Bodies*, and the *Guide to Section 18A Approval for a Department in the National, Provincial or Local Sphere of Government*.

²⁴⁵ 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.

7.4 Securities transfer tax

The STT Act provides that STT must be levied at the rate of 0.25%²⁴⁶ on the taxable amount²⁴⁷ of the transfer²⁴⁸ of every security²⁴⁹ issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on an exchange.²⁵⁰

The Securities Transfer Tax Administration Act 26 of 2007 contains the administration provisions governing the payment of STT.²⁵¹ Any STT payment must be made electronically through SARS e-STT system.²⁵²

The exemptions from STT are contained in section 8(1) of the STT Act. There, however, is no specific exemption for STT for a benefit fund.

7.5 Skills development levy

The SDL is a compulsory levy to fund education and training under the SDL Act. SARS administers the collection of this levy. Employers providing training to employees may receive grants from the relevant Sector Education and Training Authority (SETA).²⁵³

The SDL Act²⁵⁴ imposes on every employer an SDL of 1% of the leviable amount,²⁵⁵ calculated on the total amount of remuneration paid or payable or deemed to be paid or payable by an employer²⁵⁶ to its employees²⁵⁷ during any month. The amount of such remuneration is the same as the amount of remuneration²⁵⁸ determined under the Fourth Schedule from which an employer is obligated to withhold employees' tax taking into consideration certain exclusions.²⁵⁹

Section 4 of the SDL Act contains a number of exemptions from the SDL. There, however, is no specific exemption from SDL for a benefit fund. A benefit fund that is an employer whose annual payroll will not exceed R500 000 in the following 12 months will be exempt from paying SDL.²⁶⁰

²⁴⁶ Section 2(1) of the STT Act.

²⁴⁷ Sections 3(1), 4, 5 and 6 of the STT Act determine the relevant taxable amount.

²⁴⁸ The term "transfer" is defined in section 1 of the STT Act and save for certain exclusions, includes the transfer, sale, assignment or cession or disposal in any other manner of a security or the cancellation or redemption of that security.

²⁴⁹ The term "security" as defined in section 1 of the STT Act means any share or depository receipt in a company, or any member's interest in a close corporation.

²⁵⁰ The term "exchange" means an "exchange" as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act.

²⁵¹ For commentary, see the *Taxation in South Africa*.

²⁵² Sections 3(2) and (5) of the STT Administration Act 26 of 2007. For commentary on the electronic submission of STT declarations and payments on the e-STT system via **eFiling**, see the *External Reference Guide – Securities Transfer Tax*.

²⁵³ For commentary, see the *External Guide – Guide for Employers in respect of Skills Development Levy*.

²⁵⁴ Section 3(1) of that Act.

²⁵⁵ Section 3(3) of the SDL Act.

²⁵⁶ The term "employer" is defined in section 1(1) of the SDL Act and includes an "employer" as defined in the Fourth Schedule.

²⁵⁷ The term "employee" is defined in section 1(1) of the SDL Act and includes an "employee" as defined in the Fourth Schedule.

²⁵⁸ The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.

²⁵⁹ See section 3(4) of the SDL Act for the exclusions.

²⁶⁰ Section 4(b) of the SDL Act.

7.6 Transfer duty

Transfer duty is levied under the Transfer Duty Act on a sliding scale on the value of any property²⁶¹ acquired by any person. The rates vary from 0% to 13% for all persons. The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.²⁶²

Section 9 of the Transfer Duty Act provides for certain exemptions that may apply in different circumstances. There, however, is no specific exemption that applies to a benefit fund. One of the main exemptions is contained in section 9(15) of the Transfer Duty Act, which provides that if a supply of property is subject to VAT, it will be exempt from transfer duty.

Subject to any exemption that may apply, a benefit fund will be liable to pay transfer duty on the acquisition of any property from any person that is not a VAT vendor. Transfer duty will also be payable on property acquired from a vendor that did not use the property for enterprise purposes under the VAT Act. This situation will apply, for example, to a property that was used for private purposes, exempt supplies, or other non-taxable purposes by the vendor immediately before being supplied.

7.7 Value-added tax

VAT is an indirect tax levied under the VAT Act. VAT is presently levied at a standard rate of 15% on most supplies and services in South Africa and on most goods imported into the country. There is a limited range of goods and services that are subject to VAT at the zero rate when supplied in South Africa and on exports to other countries. Certain goods are also exempt when supplied in or imported into South Africa. VAT is payable only on imported services that are acquired for non-taxable purposes.

VAT is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor. Supplies that attract VAT at either the standard or zero rate are called “taxable supplies”. Any person that makes taxable supplies above the compulsory registration threshold or has been allowed to register voluntarily for VAT is referred to as a “vendor”. A vendor includes a person that is liable to register for VAT, even if that person has not actually registered.

If a benefit fund (see 2) falls within the definition of an “association not for gain” as defined in the VAT Act²⁶³ and complies with the requirements for compulsory or voluntary registration such a benefit fund will be treated like any other business making taxable supplies and will be liable to register and account for VAT according to the normal VAT rules applying to all vendors. There, however, are a few special provisions applying to associations not for gain.²⁶⁴

An entity required to register for VAT, or which has registered voluntarily, must charge VAT (output tax) on any taxable supplies of goods or services made in the course of conducting the entity’s enterprise. The term “taxable supplies” includes supplies that are subject to VAT at the standard rate (currently 15%), or at the zero rate.

²⁶¹ See the definition of “property” in section 1(1) of the Transfer Duty Act.

²⁶² For commentary on transfer duty in general and the processing of transactions on **eFiling**, see the *Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

²⁶³ See paragraph (b) of the definition of “association not for gain” in section 1(1) of the VAT Act.

²⁶⁴ For commentary on VAT and “associations not for gain”, see the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

An entity registered for VAT, subject to a few exceptions, will be able to claim credit for any VAT paid (input tax) on goods or services acquired to make taxable supplies, subject to the documentary requirements being met.

Should a ruling be required relating to a specific VAT issue, a ruling application may be submitted by e-mail to **VATRulings@sars.gov.za**.²⁶⁵

7.8 Unemployment insurance fund contributions

The UIF gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave or illness. It also provides relief to the dependants of a deceased contributor.²⁶⁶

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act, and the Unemployment Insurance Contributions Act.²⁶⁷ These statutes, amongst other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

UIF contributions, that are equal to 2% of the remuneration paid or payable by an employer to its employees, subject to specified exclusions, are payable by employers on a monthly basis. The employer must pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period. A contribution will not apply to so much of the remuneration paid or payable by an employer to an employee, as exceeds R17 712 per month (R212 544 annually) with effect from 1 June 2021.²⁶⁸

An entity paying remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.²⁶⁹

These contributions must be paid to the UIF office of the Department of Labour²⁷⁰ or to SARS within seven days after the end of the month during which the amount was deducted. Payment can be made via **eFiling**, electronic funds transfer or at a branch of an approved banking institution.²⁷¹

²⁶⁵ For commentary, see the *VAT Ruling Process Quick Reference Guide*.

²⁶⁶ Section 2 of the Unemployment Insurance Act.

²⁶⁷ Act 4 of 2002.

²⁶⁸ Section 6(2) of the UIC Act, read with Government Notice 475 in *Government Gazette* 44641 of 28 May 2021.

²⁶⁹ Section 4(1) of the UIC Act.

²⁷⁰ Information is available from the Department of Labour's website at **www.labour.gov.za**.

²⁷¹ For commentary, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.

8. Administrative provisions

SARS is responsible for the administration of the TA Act under the control or direction of the Commissioner.²⁷² The Commissioner to administer a tax Act may obtain full information relating to anything that affects the liability of a person for tax for any tax period,²⁷³ tax event,²⁷⁴ or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.²⁷⁵ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.²⁷⁶

The TA Act²⁷⁷ deals with tax administration and seeks, amongst other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.²⁷⁸

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Income Tax Act imposing that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.²⁷⁹ If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.²⁸⁰

General administrative provisions contained in the TA Act relating to, for example, furnishing of information (see **8.1**), changes in registered particulars (see **8.2**), record-keeping (see **8.3**) and dispute resolution (see **10**) applies to benefit funds.

8.1 Furnishing of information

SARS may under the TA Act for purposes of the administration of a tax Act request a taxpayer to submit relevant material²⁸¹ (whether orally or in writing) that SARS requires.²⁸² A request for relevant material from a person other than the taxpayer is limited to material maintained or kept that should reasonably be maintained or kept by the person relating to the taxpayer.²⁸³

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions posed by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁸⁴

²⁷² Section 3(1) of the TA Act.

²⁷³ Section 3(2)(a)(i) of the TA Act.

²⁷⁴ Section 3(2)(a)(ii) of the TA Act. The term “tax event” as defined in section 1 of the TA Act means an occurrence which affects or may affect the liability of a person to tax.

²⁷⁵ Section 3(2)(a)(iii) of the TA Act.

²⁷⁶ Section 3(2)(h) of the TA Act.

²⁷⁷ The TA Act came into effect on 1 October 2012.

²⁷⁸ For commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

²⁷⁹ Section 4(2) of the TA Act.

²⁸⁰ Section 4(3) of the TA Act.

²⁸¹ The term “relevant material” as defined in section 1 of the TA Act means any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act as referred to in section 3 of that Act.

²⁸² Section 46(1) of the TA Act.

²⁸³ Section 46(3) of the TA Act.

²⁸⁴ Sections 234(1)(c)(i), (2)(f) and (2)(h) of the TA Act.

8.2 Changes in registered particulars

A benefit fund must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A benefit fund must communicate to SARS any change of postal, physical, or electronic addresses, representative taxpayer (see 8.4), and banking particulars and such other details as the Commissioner may require by public notice.²⁸⁵

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁸⁶

8.3 Record-keeping

A person is required to keep records, books of account or documents that enable the person to observe the requirements of a tax Act, are specifically required under a tax Act or by the Commissioner by public notice and enable SARS to be satisfied that the person has observed these requirements.²⁸⁷ The period that the person needs to retain the records, books of account or documents is also prescribed.

Records are required to be kept and retained for five years,²⁸⁸ however, there are circumstances in which they are required to be retained for longer periods.²⁸⁹ The required retention periods for records, books of account or documents are as follows:

- Five years from the date of the submission of a return.²⁹⁰
- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.²⁹¹
- If an objection or appeal (see 10) against an assessment or decision is lodged, the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.²⁹²
- A person that has been notified of or is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded, or the applicable five-year period has elapsed, whichever is the later.²⁹³

The records, books of account, or documents that must be kept and retained may include anything that contains a written, sound, or pictorial record or other record of information whether in physical or electronic form.

²⁸⁵ Section 23 of the TA Act.

²⁸⁶ Section 234(2)(a) of the TA Act.

²⁸⁷ Section 29(1) of the TA Act.

²⁸⁸ Section 29(3) of the TA Act.

²⁸⁹ Section 32 of the TA Act.

²⁹⁰ Section 29(2)(a) read with section 29(3)(a) of the TA Act.

²⁹¹ Section 29(2)(b) of the TA Act.

²⁹² Section 32(b) of the TA Act.

²⁹³ Section 32(a) of the TA Act.

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, any benefit fund is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.²⁹⁴

The Electronic Record-Keeping Rules regulate the electronic form of record-keeping.²⁹⁵ The rules require that electronic records must be kept in their original form,²⁹⁶ and should within a reasonable time, be accessible to and readable by SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups, and conversions.²⁹⁷

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁹⁸

8.4 Representative taxpayer

Persons other than natural persons act through representatives who, amongst other things, are responsible for the tax compliance and liabilities of a benefit fund. The Income Tax Act defines a representative taxpayer.²⁹⁹ For purposes of a benefit fund, the representative taxpayer is a natural person residing in South Africa and includes the –

- trustee of the income of a trust;
- person in a fiduciary capacity of the income of an association of persons under his or her management, disposition, or control;
- public officer of the income of a company; and
- business rescue practitioner of a company under business rescue under the Companies Act.

A representative taxpayer under the TA Act means a person who is responsible for paying the tax liability of another person as an agent³⁰⁰ and includes, amongst other things, a person who is a representative taxpayer under the Income Tax Act.³⁰¹ Every person who becomes or ceases to be a representative taxpayer under the Income Tax Act, except a public officer of a company, must notify SARS within 21 business days, as the case may, in such form as the Commissioner may prescribe.³⁰²

²⁹⁴ Section 30 of the TA Act.

²⁹⁵ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

²⁹⁶ Section 14 of the Electronic Communications and Transactions Act 25 of 2002 provides that a document will be regarded as being in its original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

²⁹⁷ For commentary, see the *Electronic Communications Guide*.

²⁹⁸ Section 234(2)(e) of the TA Act.

²⁹⁹ See complete definition of “representative taxpayer” in section 1(1).

³⁰⁰ 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.

³⁰¹ The term “representative taxpayer” is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act.

³⁰² Section 153(2) of the TA Act.

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 on conviction is subject to a fine or imprisonment for a period not exceeding two years.³⁰³

A representative taxpayer is personally liable for tax payable in that capacity if the tax could have been paid to SARS but was not, or the amount of the tax was chargeable was disposed of.³⁰⁴ An assessment on a representative taxpayer for any tax is regarded as made on the representative taxpayer only in that capacity.³⁰⁵

A taxpayer³⁰⁶ is not relieved from any liability, responsibility or duty imposed under a tax Act because the taxpayer's representative taxpayer failed to perform those responsibilities or duties, or the representative taxpayer is liable for the tax payable by the taxpayer.³⁰⁷

The representative taxpayer for any –

- friendly society (see **3**) may be any person appointed to manage the affairs of a friendly society (see **3.8**); and
- medical scheme (see **4**) may be any officer³⁰⁸ of a medical scheme, which may include any member of the board of trustees (see **4.9**), any manager, principal officer, treasurer, clerk or other employee of the medical scheme.

The Act defines a “company”,³⁰⁹ amongst other things, to include an association formed in South Africa to serve a specific purpose, beneficial to the public or a section of the public. For purposes of the application of the Income Tax Act, a benefit fund is therefore considered to be a company. The conditions and requirements, which apply to a public officer³¹⁰ of a company, are therefore also applicable to the representative taxpayer of any benefit fund.

Every company carrying on business or having an office in South Africa must at all times be represented by an individual residing in South Africa,³¹¹ who must be –³¹²

- 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;³¹³
- appointed by the company or by an agent or legal practitioner³¹⁴ who has authority to appoint such a representative for the purposes of a tax Act; and

³⁰³ Section 234(2)(b) of the TA Act.

³⁰⁴ Section 155 of the TA Act.

³⁰⁵ Section 154(2) of the TA Act.

³⁰⁶ The term “taxpayer” is defined in section 1(1).

³⁰⁷ Section 153(3) of the TA Act.

³⁰⁸ The term “officer” is defined in section 1(1) of the Medical Schemes Act.

³⁰⁹ Section 1(1) of the Act.

³¹⁰ The term “public officer” in section (1) of the TA Act means an officer referred to in section 246(1), (2) and (3) of that Act.

³¹¹ Section 246(1) of the TA Act.

³¹² Section 246(2) of the TA Act.

³¹³ Section 246(2)(a) of the TA Act.

³¹⁴ 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 and came into operation on 24 December 2024, the promulgation of that Act, means a legal practitioner as defined in section 1 of the Legal Practice Act 28 of 2014. The term “legal practitioner” as defined in the Legal Practice Act means an advocate or attorney admitted and enrolled under sections 24 and 30 of that Act, respectively.

- called the public officer of the company responsible for all acts, matters, or things that the public officer's company must do under a tax Act, and in the case of default, the public officer is subject to penalties for the company's defaults.³¹⁵

A person may not be appointed as a public officer if that person is disqualified under —³¹⁶

- section 6 of the Trust Property Control Act;
- section 25A of the NPO Act; or
- section 69 of the Companies Act.

The use of the disjunctive word “or” means that a person will be disqualified from being appointed as a public officer if that person has been disqualified under either one or a combination of the Trust Property Control Act, NPO Act or the Companies Act. The grounds of disqualification of a person under those Acts are similar and therefore been summarised and considered below.

A person will be disqualified under the Trust Property Control Act, the NPO Act and the Companies Act if that person —

- is an unrehabilitated³¹⁷ insolvent;³¹⁸
- has been prohibited by a court to be a director of a company, or declared by a court to be delinquent³¹⁹ under the Companies Act or the Close Corporations Act;³²⁰
- is prohibited under any law or any public regulation to be a director of a company;³²¹
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty;³²²
- 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 Act³²³ for theft, fraud, forgery, perjury or an offence —³²⁴
 - involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities;³²⁵

³¹⁵ Section 246(5) of the TA Act.

³¹⁶ Section 246(8) of the TA Act.

³¹⁷ 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.

³¹⁸ 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.

³¹⁹ A declaration of delinquency may be made under section 162 of the Companies Act or under section 47 of the Close Corporations Act.

³²⁰ 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.

³²¹ 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.

³²² 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.

³²³ Section 69 of the Companies Act.

³²⁴ 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.

³²⁵ 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 definition of those terms.

- in connection with the promotion, formation, or management of a company,³²⁶ or in connection with consenting to act or acting as a director when ineligible or disqualified;³²⁷ or
- under the Trust Property Control Act, the NPO Act, the Companies Act, the Insolvency Act,³²⁸ the Close Corporations Act, the Competition Act,³²⁹ the Financial Intelligence Centre Act,³³⁰ the Financial Markets Act, the Prevention and Combating of Corrupt Activities Act,³³¹ the Protection of Constitutional Democracy Against Terrorist and Related Activities Act,³³² or the TA Act;³³³
- is subject to a resolution adopted³³⁴ by the Security Council of the United Nations;³³⁵ or
- is an unemancipated minor or is under a similar legal disability.³³⁶

Public registers have been established and maintained of persons disqualified from serving as –

- trustees, under an order of a court pursuant to the Trust Property Control Act or any other law, by the Master;³³⁷
- office-bearers, under an order of a court pursuant to the NPO Act or any other law, by the NPO Directorate;³³⁸ and
- directors, or who are subject to an order of probation as a director, under an order of a court pursuant to the Companies Act or any other law, by the CIPC.³³⁹

A company will be regarded as not having appointed a public officer if the public officer is not eligible to be appointed because the above requirements are not met, or notified by SARS that such person is not considered suitable to represent the company as public officer. In such circumstances the company has 21 business days to notify SARS in writing of the newly

³²⁶ Section 69(2) or (5) of the Companies Act.

³²⁷ 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.

³²⁸ Act 24 of 1936.

³²⁹ Act 89 of 1998.

³³⁰ Act 38 of 2001.

³³¹ Act 12 of 2004.

³³² Act 33 of 2004.

³³³ 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.

³³⁴ 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 act specified in the resolution.

³³⁵ 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.

³³⁶ 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.

³³⁷ Section 6(1H) of the Trust Property Control Act.

³³⁸ Section 25A(9)(a) of the NPO Act.

³³⁹ Section 69(13) of the Companies Act.

appointed public officer.³⁴⁰ If a public officer is not appointed as required, the public officer is regarded to be —³⁴¹

- the first person who is eligible to represent the company as public officer, in order of priority, namely, the —
 - managing director or equivalent;
 - financial director or equivalent;
 - company secretary;³⁴²
 - director³⁴³ or prescribed officer³⁴⁴ who has the largest shareholding in the company;
 - director or prescribed officer who has held office for the longest period of time; and
 - senior employee of the company according to the company's reporting hierarchy; or
- any suitable person that SARS designates for that purpose.

The business rescue practitioner is the representative taxpayer of such a company if placed under business rescue under the Companies Act.³⁴⁵ In the event of a company being placed in voluntary or compulsory liquidation, the liquidator or the liquidators appointed are to exercise all the functions and assume all responsibilities of a public officer during the continuance of the liquidation.³⁴⁶

³⁴⁰ Section 246(7) of the TA Act

³⁴¹ Section 246(3) of the TA Act, which was amended by section 31(b) of the Tax Administration Laws Amendment Act 43 of 2024 and came into operation on 24 December 2024, the date of promulgation of that Act.

³⁴² The duties of a company secretary are set out in section 88 of the Companies Act, which, amongst other things, include providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers, making the directors aware of any law relevant to or affecting the company, reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or the Companies Act, ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with the Companies Act, and certifying in the company's annual financial statements whether the company has filed required returns and notices, and whether all such returns and notices appear to be true, correct and up to date.

³⁴³ The term "director" as defined in section 1 of the Companies Act means a member of the board of a company, as contemplated in section 66 of that Act, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated. The term "alternate director" as defined in section 1 of the Companies Act means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company.

³⁴⁴ The term "prescribed officer" as defined in section 1 of the Companies Act means a person who, within a company, performs any function that has been designated by the Minister, the member of the Cabinet responsible for companies, under section 66 (10) of that Act.

³⁴⁵ Paragraph (a) of the definition of "representative taxpayer" in section 1(1) and section 248(2) of the TA Act.

³⁴⁶ Section 248(1) of the TA Act.

A company must keep the office of public officer constantly filled and must at all times maintain a place for the service or delivery of notices.³⁴⁷ A company must notify SARS of every change of public officer or the place of the service or delivery of notices within 21 business days of the change taking effect.³⁴⁸

9. Reporting requirements

9.1 Income tax returns

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.³⁴⁹ Generally, the persons who are required to submit returns include every resident company, trust, or other juristic person during that particular year of assessment, subject to specific conditions and requirements set out the relevant public notice.

The *Claassen's Dictionary of Legal Words and Phrases* describes "juristic person" as follows:³⁵⁰

"From cases such as *Webb & Co Ltd v Northern Rifles* 1908 TS 462; *Madrassa Anjuman Islamia v Johannesburg Municipality* 1919 AD 449; *Morrison v Standard Building Society* 1932 AD 229 and many others, it follows that a juristic person exists in the contemplation of law and the law confers a personality on it so that it can normally sue and be sued in its own name, because it is capable of acquiring rights and incurring liabilities; it can own property and has perpetual succession, until liquidated. See Hahlo and Kahn SA Legal System 107; Wille's Principles of South African Law 6ed 153."

(Footnotes omitted)

The *Bill of Rights Compendium* provides the following regarding juristic persons:³⁵¹

"The Constitution does not define juristic persons. In principle, section 8(4) applies to all entities recognised as juristic persons by South African law. In the first instance, it applies to all private juristic persons. In South African law, the state itself is also regarded as a juristic person, and various types of public juristic persons are recognised, such as city councils, universities and state enterprises that have been accorded juristic personality by legislation."

(Footnotes omitted)

Generally, any friendly society registered under the Friendly Societies Act (see 3.6) and any medical scheme registered under the Medical Schemes Act (see 4.7) become bodies corporate capable of suing and being sued and of doing or causing to be done all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in accordance with its rules (see 3.7 and 4.8).

³⁴⁷ Section 249(2)(a) of the TA Act.

³⁴⁸ Section 249(2)(b) of the TA Act.

³⁴⁹ Section 66(1) read together with section 25 of the TA Act.

³⁵⁰ Claassen, R. C. (June 2024) *Claassen's Dictionary of Legal Words and Phrases*. My LexisNexis online].

³⁵¹ Rautenbach, I. M. (2018) Bill of Rights Compendium: General. In *Commentary: Constitutional and Administrative Law* in § 1A21. My LexisNexis [online].

A “company” as defined in the Income Tax Act,³⁵² amongst other things, includes any association formed in South Africa to serve a specified purpose, beneficial to the public or a section of the public.³⁵³ A benefit fund meets the definition of a “company” and therefore will be registered as such for income tax purposes.

A benefit fund is therefore regarded as a juristic person and will be registered as a company for purposes of income tax and must in accordance with the annual public notice published by the Commissioner submit income tax returns, even though its receipts and accruals are exempt and the exemption results in no tax liability.

A benefit fund must apply to SARS for registration for income tax purposes within 21 business days of becoming obliged to register.³⁵⁴

It therefore is a requirement, even though a benefit fund’s receipts and accruals are not subject to income tax and the exemption results in no tax liability, that income tax returns must be annually submitted.

9.1.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of registration for purposes of income tax.³⁵⁵ The taxpayer reference number must be included when filing a return or any document with SARS.

9.1.2 Filing an income tax return

The public notice issued annually by the Commissioner also prescribes the period within which returns must be submitted for the years of assessment (see **9.1.3**) specified in that notice. Income tax returns may be submitted manually to the SARS Service Centre where the benefit fund has been taken on register for reporting purposes or electronically on the **eFiling**.

A return³⁵⁶ includes any form, declaration, document, or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS.

A return must be a full and true return³⁵⁷ and be signed by the benefit fund’s duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.³⁵⁸

Non-receipt of an income tax return form does not affect the obligation to submit an income tax return.³⁵⁹ A person who wilfully and without cause refuses or neglects to submit a return or document to SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.³⁶⁰

³⁵² Section 1(1).

³⁵³ Paragraph (d) of the definition of “company” in section 1(1).

³⁵⁴ Section 22 of the TA Act.

³⁵⁵ The term “taxpayer reference number” as defined in section 1 of the TA Act means the number referred to in and allocated under section 24 of that Act.

³⁵⁶ The term “return” is defined in section 1 of the TA Act.

³⁵⁷ Section 25(2) of the TA Act.

³⁵⁸ Section 25(3) of the TA Act.

³⁵⁹ Section 25(4) of the TA Act.

³⁶⁰ Section 234(2)(d) of the TA Act.

An appropriate penalty³⁶¹ will be imposed by SARS if satisfied that a benefit fund failed to comply with the obligation to submit an income tax return.³⁶² The appropriate penalty for non-compliance will be imposed according to a fixed amount penalty table.³⁶³

9.1.3 Year of assessment

The financial year of a friendly society is the period of 12 months ending on the 31 December or any other period as may be determined by the Authority at the request of the friendly society.³⁶⁴

The financial year of a medical scheme is the period of 12 months ending on 31 December.³⁶⁵

A benefit fund will therefore have a year of assessment ending on the date that coincides with its financial year-end. The financial year-end of a friendly society and medical scheme and their year of assessment will therefore run from 1 January to 31 December of the following year.

9.1.4 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return (see 9.1.2). The benefit fund will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

9.1.5 Financial statements

(a) Friendly society

Every registered friendly society (see 3), except friendly societies required to be audited by the Auditor-General under the provisions of one or other law, must appoint an auditor registered under the Public Accountants' and Auditors' Act³⁶⁶. Such an auditor may not be an officer of the friendly society.³⁶⁷

(b) Medical scheme

Every medical scheme (see 4), except where the accounts are to be audited by the Auditor-General under the provisions of any law, must be audited by an accountant or auditor registered under the Public Accountants' and Auditors' Act.³⁶⁸

³⁶¹ 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.

³⁶² Section 210 of the TA Act. For commentary, see the *Guide to Understatement Penalties*.

³⁶³ Section 211 of the TA Act.

³⁶⁴ See the definition of "financial year" in section 1(1) of the Friendly Societies Act.

³⁶⁵ See the definition of "financial year" in section 1(1) of the Medical Schemes Act.

³⁶⁶ Act 80 of 1991.

³⁶⁷ Section 11(1) of the Friendly Societies Act.

³⁶⁸ Section 37(3) of the Medical Schemes Act.

9.2 Third party return

The Commissioner may by public notice,³⁶⁹ at the time and place and by the due date specified, require a person that employs, pays amounts to, receives amounts on behalf of, or otherwise transacts with another person, or has control over assets of another person, to submit a third-party return by the date specified in the notice.³⁷⁰ A person required to submit a third-party return must do so in the prescribed form and manner and the third-party return, amongst other things, must contain the information prescribed by the Commissioner.³⁷¹

A medical scheme (see 2.2) must submit a third party return³⁷² to SARS³⁷³ on information relating to the contributions made by a person to a medical scheme and all expenses paid by a medical scheme on behalf of such a person and a dependant of such person.³⁷⁴

The return containing all prescribed information for the period from —³⁷⁵

- 1 March to 31 August, must be submitted by 31 October of each year; and
- 1 March to the end of February, must be submitted by 31 May of each year.

Declarations of third-party returns must be submitted electronically using the designated eFiling service.³⁷⁶

10 Objection and appeal

A decision made by a SARS official³⁷⁷ or a notice to a specific person issued by SARS under a tax Act,³⁷⁸ excluding a decision given effect to in an assessment or a notice of assessment that is subject to objection and appeal, may in the discretion of a SARS official mentioned below or at the request of the relevant person, be withdrawn or amended by —³⁷⁹

- the SARS official;³⁸⁰
- a SARS official to whom the SARS official reports;³⁸¹ or

³⁶⁹ Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023.

³⁷⁰ Section 26(1) of the TA Act.

³⁷¹ Section 26(2)(a) of the TA Act.

³⁷² The return to be submitted is an IT3(f) or data compiled in accordance with the Business Requirements Specification: Medical Scheme Contributions (MSC). See Column 3: Form in paragraph 3 of the Public Notice 3631 of 30 June 2023.

³⁷³ Section 26 of the TA Act.

³⁷⁴ See Column 2: Information concerning in paragraph 3 of the Public Notice 3631 of 30 June 2023.

³⁷⁵ Paragraph 4.1 of the Public Notice 3631 of 30 June 2023.

³⁷⁶ Paragraph 5 of the Public Notice 3631 of 30 June 2023.

³⁷⁷ The term “SARS official” as defined in section 1 of the TA Act means (a) the Commissioner, (b) an employee of SARS, or (c) a person contracted or engaged by SARS, other than an external legal representative, for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner.

³⁷⁸ The term “tax Act” as defined in section 1 of the TA Act means the TA Act, or an Act, or portion of Act referred to in section 4 of the South African Revenue Service Act 34 of 1997.

³⁷⁹ Section 9(1) of the TA Act.

³⁸⁰ Section 9(1)(a) of the TA Act.

³⁸¹ Section 9(1)(b) of the TA Act.

- a senior SARS³⁸² official.³⁸³

If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to above may not be withdrawn or amended with retrospective effect, after three years from the later of the date of —³⁸⁴

- the written notice of that decision;³⁸⁵ or
- assessment of the notice of assessment giving effect to the decision (if applicable).³⁸⁶

A decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act is regarded as made by a SARS official authorised to do so or duly issued by SARS, until proven to the contrary.³⁸⁷

Any decision of SARS under the definition of “benefit fund” is subject to objection and appeal.³⁸⁸ Such a decision may be objected to and appealed against in the same manner as an assessment.³⁸⁹

A benefit fund aggrieved by an assessment³⁹⁰ may before lodging an objection, request SARS to provide reasons for the assessment to enable the benefit fund to formulate an objection.³⁹¹ The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days³⁹² from the date of the assessment.

Any benefit fund may object to an assessment³⁹³ in accordance with Chapter 9 of the TA Act read with the “rules”³⁹⁴ as published in the *Government Gazette* within 80³⁹⁵-business days³⁹⁶ after the —³⁹⁷

- delivery of the reasons requested of an assessment, if applicable;³⁹⁸
- notice issue by SARS notifying the benefit fund that the reasons requested to enable it to formulate an objection have been provided;³⁹⁹ or
- date of assessment.

³⁸² The term “senior SARS official” as defined in section 1 and read with section 6(3) of the TA Act refers to persons exercising the powers and duties required under the TA Act to be exercised by (a) the Commissioner, (b) a SARS official who has specific written authority from the Commissioner, or (c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.

³⁸³ Section 9(1)(c) of the TA Act.

³⁸⁴ Section 9(2) of the TA Act.

³⁸⁵ Section 9(2)(a) of the TA Act.

³⁸⁶ Section 9(2)(b) of the TA Act.

³⁸⁷ Section 9(3) of the TA Act.

³⁸⁸ Section 3(4)(a). Section 9(1) of the TA Act applies only to decisions or notices made by SARS, which are not subject to objection and appeal under section 3(4).

³⁸⁹ Section 104(2)(c) of the TA Act.

³⁹⁰ 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.

³⁹¹ Rule 6 deals with reasons for an assessment.

³⁹² The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

³⁹³ For further commentary, see the Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

³⁹⁴ The rules for objections and appeals are formulated under section 103 of the TA Act.

³⁹⁵ Rule 7(1) was amended from 30 to 80 days. The amendment is effective from 10 March 2023.

³⁹⁶ The term “business day” is defined in section 1 of the TA Act.

³⁹⁷ Rule 7 deals with objections.

³⁹⁸ Rule 7(1)(a) read with Rule 6.

³⁹⁹ Rule 7(1)(a) read with Rule 6(4).

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –⁴⁰⁰

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment⁴⁰¹ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the benefit fund has not previously delivered to SARS for purposes of the disputed assessment.

SARS will consider the objection and may disallow the objection or allow the objection completely or in part.

If on disallowance of the objection the benefit fund is dissatisfied with SARS's decision, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.⁴⁰²

⁴⁰⁰ Rule 7(2).

⁴⁰¹ The term “grounds of assessment” as defined in Rule 1, for purposes of the rules, include, amongst other things, 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).

⁴⁰² Rule 10.

Annexure A – The law

Section 1(1): Definition of “benefit fund”

1. Interpretation.—(1) In this Act, unless the context otherwise indicates—

“**benefit fund**” means—

- (a) any friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any fund established before 13 June 1986 which is not so registered solely because of the provisions of section 2(2)(a) of that Act; or
- (b) any medical scheme registered under the provisions of the Medical Schemes Act;

Section 10(1)(d)(ii)

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

- (d) the receipts and accruals of any—
 - (ii) benefit fund; or