

DRAFT INTERPRETATION NOTE 64 (Issue 5)

DATE:

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

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Preamble

In this Note unless the context indicates otherwise –

- **"association of persons"** means an association of persons as envisaged in section 10(1)(e)(i)(cc) formed solely to manage the collective interests common to all members and the collection of levies for which members are liable;
- **"basic exemption"** means the exemption of the receipts and accruals from all other sources except the levy income, up to a maximum of R50 000;
- **"body corporate"** means a body corporate as defined in the Sectional Titles Schemes Management Act;
- **"Close Corporations Act"** means the Close Corporations Act 69 of 1984;
- **"Commissioner"** means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act as defined in section 1(1);
- **"Companies Act"** means the Companies Act 71 of 2008;
- **"founding document"** means the written instrument such as a constitution or memorandum of incorporation under which an association of persons is established or incorporated;
- **"levy" or "levy income"** is the amount received or accrued from members for the purposes of funding expenditure relating to their collective interests;

- **“member”** means a member of a body corporate, a shareholder of a share block company or a member of an association of persons;
- **“NPC”** means a “non-profit company” as defined in the Companies Act;
- **“NPO”** means a “nonprofit organisation” as defined in section 1 of the NPO Act, which includes a trust, company or other association of persons established for a public purpose, and the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered;¹
- **“NPO Act”** means the Nonprofit Organisations Act 71 of 1997;²
- **“Property Time-Sharing Control Act”** means the Property Time-Sharing Control Act 75 of 1983;³
- **“Regulations”** means the Regulations⁴ to the Property Time-Sharing Control Act issued by the Minister⁵ regarding the control over and the operation of property time-sharing schemes,⁶ including the payment of levies by purchasers and the establishment of levy funds;⁷
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“Sectional Titles Act”** means the Sectional Titles Act 95 of 1986;⁸
- **“Sectional Titles Schemes Management Act”** means the Sectional Titles Schemes Management Act 8 of 2011;⁹
- **“share block company”** means a “share block company” as defined in the Share Blocks Control Act;
- **“Share Blocks Control Act”** means the Share Blocks Control Act 59 of 1980;
- **“Spatial Planning and Land Use Management Act”** means the Spatial Planning and Land Use Management Act 16 of 2013;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“the Act”** means the Income Tax Act 58 of 1962;

¹ An association of persons may fall within the definition of an NPO under the NPO Act.

² Further information relating to NPOs is available from the NPO Directorate’s website at www.dsd.gov.za.

³ The purpose of that Act is to regulate the alienation of time-sharing interests in accordance with property time-sharing schemes.

⁴ Government Notice R327 in *Government Gazette* 9071 of 24 February 1984 and amended by Government Notice R1240 in *Government Gazette* 9269 of 22 June 1984 and Government Notice R1750 in *Government Gazette* 10861 of 14 August 1987.

⁵ The term “Minister” as defined in section 1 of that Act means the Minister of Industries, Commerce and Tourism.

⁶ The term “property time-sharing scheme” is defined in section 1 of the Property Time-sharing Control Act.

⁷ Section 12(1)(d) of that Act.

⁸ This Act, since the introduction during 2006 of the Sectional Titles Schemes Management Act, contains provisions relating only to the registration and conveyancing aspects of sectional title schemes.

⁹ Contains all the scheme management provisions previously contained in the Sectional Titles Act.

- **“Trust Property Control Act”** means the Trust Property Control Act 57 of 1988; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

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

2. Background

Section 10(1)(e) exempts from income tax the levy income of a body corporate, a share block company and any other association of persons. The section provides also for a basic exemption. Expenditure incurred in respect of the levy income is not an allowable deduction.

3. The law

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

4. Application of the law

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

In the case of an association of persons, the levy income exemption and basic exemption will apply only if such an association of persons has been granted approval by the Commissioner (see **12.2**).

5. Bodies corporate

The Sectional Titles Act provides for separate ownership¹⁰ of a unit¹¹ in a development scheme.¹²

Generally, the buildings¹³ and land¹⁴ of the development scheme are divided into sections¹⁵ and common property.¹⁶

The Sectional Titles Schemes Management Act, amongst other things, provides for the establishment of bodies corporate to manage and regulate sections and the common property in sectional titles schemes.¹⁷ A body corporate is generally established from the date on which any person other than the developer¹⁸ becomes an owner of a unit in a scheme.¹⁹ The developer and any such person are members of the body corporate. Any person who becomes an owner of a unit in that scheme after the establishment of that body corporate also becomes a member. Membership of the body corporate is compulsory and is linked to ownership in the development scheme.²⁰

¹⁰ The term “owner” as defined in section 1(1) of the Sectional Titles Act generally means the person in whose name the unit is registered at a deeds registry under that Act or in whom ownership is vested by statute. The terms “owned” and “ownership” have a corresponding meaning.

¹¹ The term “unit” as defined in section 1(1) of the Sectional Titles Act refers to a particular section and an undivided share in the common property associated with that section.

¹² The term “development scheme” as defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act generally means a scheme under which buildings on land within the jurisdiction of a local authority will be divided into two or more sections for the purposes of selling or letting.

¹³ The term “building” as defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act generally means a structure of a permanent nature erected or to be erected and shown on a sectional plan as part of a development scheme.

¹⁴ The term “land” as defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act means the land comprised in a development scheme as shown on a sectional plan.

¹⁵ The term “section” as defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act means a section shown as such on a sectional plan.

¹⁶ The term “common property” is defined in section 1(1) of the Sectional Titles Act and the Sectional Titles Schemes Management Act.

¹⁷ The term “body corporate” is defined in section 1(1) of the Sectional Titles Schemes Management Act and section 2 of that Act.

¹⁸ The term “developer” as defined in section 1(1) of the Sectional Titles Schemes Management Act generally means a person who is the registered owner of land, situated within the area of jurisdiction of a local municipality, on which is situated or to be erected a building or buildings, which he or she has divided or proposes to divide into two or more sections under a scheme.

¹⁹ Section 10(1) of the Sectional Titles Schemes Management Act.

²⁰ Section 2(1) of the Sectional Titles Schemes Management Act.

A development scheme must from the date of the establishment of the body corporate be regulated and managed, subject to the provisions of the Sectional Titles Schemes Management Act, by means of rules comprising management²¹ and conduct rules,²² which apply equally to all owners of units²³ and any person occupying a section, for example, a tenant.²⁴

A body corporate is established to take responsibility for the enforcement of rules²⁵ and for the regulation, administration, management, use and enjoyment of the sections and common property in the sectional titles scheme for the benefit of all owners.²⁶ The members are required to contribute levies to meet the costs of the common property.²⁷

6. Share block companies

The Share Blocks Control Act defines a “share block company” as –²⁸

“a company the activities of which comprise or include the operation of a share block scheme”.

The same Act defines a “share block scheme” as –²⁹

“any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property”.

The main object of a share block company is to operate a share block scheme in respect of immovable property³⁰ owned or leased by it.³¹ A shareholder owning a share in a share block company acquires the right of use and occupation of a specific unit or portion of the immovable property owned by the company subject to the terms and conditions contained in a use agreement³² entered into between the share block company and such member.³³ The shareholder does not become the owner of the specific part of the immovable property.³⁴

²¹ Annexure 1 to the Government Regulation Notice 1231 in *Government Gazette* 40335 of 7 October 2016 for standard management rules.

²² Annexure 2 to the Government Regulation Notice 1231 in *Government Gazette* 40335 of 7 October 2016 for standard conduct rules.

²³ Section 10 of the Sectional Titles Schemes Management Act.

²⁴ Section 10(4) of the Sectional Titles Schemes Management Act.

²⁵ The term “rules” as defined in section 1(1) of the Sectional Titles Schemes Management Act means the management rules and conduct rules.

²⁶ Section 2(5) of the Sectional Titles Schemes Management Act.

²⁷ Section 3(1)(f) of the Sectional Titles Schemes Management Act.

²⁸ Section 1 of that Act.

²⁹ As above.

³⁰ The term “immovable property” as defined in section 1 of the Share Blocks Control Act means land, and any building erected or to be erected.

³¹ Section 7(1) of the Share Blocks Control Act.

³² The term “use agreement” as defined in section 1 of the Share Blocks Control Act means any agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated.

³³ Section 7(2) of the Share Blocks Control Act.

³⁴ An entity that administers the collective interests of members’ time-sharing interests in holiday accommodation under the Share Blocks Control Act may qualify for exemption under section 10(1)(e)(i)(bb). Each case must be considered on its own merits.

A share block company must establish a levy fund to which the shareholders contribute. The levy fund is used to defray expenditure relating to the repairs, upkeep, control and management and administration of the share block company and of the immovable property for which it operates the share block scheme as well as the payment of rates and other local authority charges for services.³⁵ It is compulsory for the members to contribute to the levy fund.³⁶ On disposal of a share, the new member automatically becomes a contributor to the levy fund.

7. Any other association of persons

Security complexes, country and golf estates and gated communities, amongst other things, are types of developments that have become increasingly popular. They offer a safer living environment often including private security, large and safe play areas for children, closer proximity to schools and shops and access to communal facilities and amenities such as pools, tennis courts, hiking and cycling trails. These benefits are generally unavailable to homeowners under freeholding property ownership. Living costs in such types of developments are generally more cost effective since individual owners share in the costs relating to the common benefits offered by such a lifestyle.

A municipality, which is obligated to administer matters pertaining to municipal planning,³⁷ may under its by-laws³⁸ approve an application for a subdivision of land³⁹ subject to reasonable conditions to ensure the effective administration and regulation of the use⁴⁰ and development⁴¹ of land.⁴² Conditions imposed by a municipality, amongst other things, may include the establishment of a homeowners', residents' or property association. These associations perform functions similar to bodies corporate or share block companies.

³⁵ Section 13(1) of the Share Blocks Control Act.

³⁶ Section 13(2) of the Share Blocks Control Act.

³⁷ Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996.

³⁸ Any by-law passed by a municipal council must in accordance with section 13(a) of the Local Government Municipal Systems Act 32 of 2000 be published, amongst other things, in a *Provincial Gazette*.

³⁹ The term "land" as defined in section 1(1) of the Spatial Planning and Land Use Management Act means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land.

⁴⁰ The term "land use" as defined in section 1(1) of the Spatial Planning and Land Use Management Act means the purpose for which land is or may be used lawfully under a land use scheme, existing scheme or under any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes.

⁴¹ The term "land development" as defined in section 1(1) of the Spatial Planning and Land Use Management Act means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted under an applicable land use scheme.

⁴² Section 156(2) of the Constitution of the Republic of South Africa, 1996, and the Spatial Planning and Land Use Management Act.

Similarly to body corporates and share block companies, section 10(1)(e)(i)(cc) provides for income tax exemption of any levy received or accrued to associations of persons established to take responsibility for the collection of levies and payment of expenditure for the common immovable property. Any other association of persons envisaged in section 10(1)(e)(i)(cc) may therefore include the following:

- Homeowners' associations.
- Residents' associations.
- Property associations.
- Tenants or merchants' associations of a shopping centre or mall formed to control and manage the maintenance, security or appearance of the immovable property common to the members.
- Management associations,⁴³ established when a person other than the developer⁴⁴ acquires a time-sharing interest⁴⁵ in a property time-sharing scheme, to control, manage and administer the common property⁴⁶ for the benefit of all occupants of accommodation⁴⁷ in the scheme.⁴⁸ The members of the management association are purchasers and holders of timeshare interests in the property time-sharing scheme and whose names are entered in the timeshare register and generally agree and record the rules under which the scheme will be operated and their respective rights and obligations in the scheme rules.⁴⁹ The management association, amongst other things, has the power to –⁵⁰
 - establish a levy fund for the repair, upkeep, control, management and administration of the property time-sharing scheme and the building or buildings relating thereto, payment of rates and taxes, for the supply of electric current, gas, water, fuel and sanitary and other services to the building and land, payment of any insurance premiums, discharge of any duty or other obligation;
 - require the purchasers to make contributions to such levy fund; and

⁴³ The term “management association” as defined in section 1 of the Property Time-sharing Control Act means an association consisting of representatives of a developer and purchasers of time-sharing interests as provided for in paragraph 7 in the Regulations.

⁴⁴ The term “developer” as defined in section 1 of the Property Time-sharing Control Act means a person whose business is the creation or the selling of time-sharing interest in his own property time-sharing scheme and includes an agent of such person.

⁴⁵ Paragraph 7 of the Regulations.

⁴⁶ The term “common property” as defined in section 1 in the Property Time-Sharing Control Act in relation to any accommodation in connection with a property time-sharing scheme means (a) the land, and (b) such parts of the land as do not form part of a time-sharing interest.

⁴⁷ The term “accommodation” as defined in section 1 of the Property Time-Sharing Control Act means any immovable property or any portion or part thereof in relation to a time-sharing interest.

⁴⁸ Paragraph 8(1)(h) of the Regulations. Other duties of the management association includes keeping the common property as well as all accommodation in a state of good and serviceable repair, ensuring compliance with any laws relating to the common property or to any improvement on land comprised in the common property, controlling, managing and administering the common property for the benefit of all owners, and keeping the plant, machinery, fixtures and fittings, including elevators, used in connection with the common property, in a state of good and serviceable repair and properly maintained.

⁴⁹ Scheme rules generally govern the method and basis of operation of the scheme and may be contained within the founding document of the management association.

⁵⁰ Paragraph 9(1) of the Regulations.

- enforce of the rules and the control, management and administration of the common property.

These associations of persons, however, must be approved by the Commissioner (see **12.2**) for their levy income to be exempt from income tax (see **9**) and to qualify for a basic exemption on other sources of income (see **10**).

Whether an association of persons qualifies for exemption under section 10(1)(e)(i)(cc) will be a factual determination and each case must be considered on its own merits.

7.1 Qualifying association of persons

The expression “any other association of persons” in section 10(1)(e)(i)(cc) is not defined in the Act. The method of attributing meaning to the words used in legislation involves, as a point of departure, examining the language of the provision at issue, the language and design of the statute as a whole and its statutory purpose.⁵¹ In *C: SARS v Dunblane (Transkei) (Pty) Ltd*⁵² the court held that words in a section of an Act of Parliament must not be looked at in isolation but in the context in which they are found, both in the immediate context of the sub-section in which they occur and in the general context of the Act.

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

- “any” is “one, some, or all indiscriminately of whatever quantity”;⁵³
- “other” is “being the one or ones distinct from that or those first mentioned or implied”;⁵⁴
- “association” is “an organization of persons having a common interest”;⁵⁵ and
- “person” is “one (such as a human being, a partnership, or a corporation) that is recognized by law as the subject of rights and duties”.⁵⁶

Any other association of persons, having regard to the above dictionary meanings and the context of section 10(1)(e)(i)(cc), must therefore be constituted as –

- a voluntary association established and governed by a constitution adopted by its members;⁵⁷ or
- an NPC.

Any other association of persons constituted as either a voluntary association of persons or an NPC, do not automatically qualify for exemption from income tax, and must therefore apply to SARS and satisfy the Commissioner that the statutory requirements of section 10(1)(e)(i)(cc) (see **7.2**) are met.

⁵¹ *Chetty t/a Nationwide Electrical v Hart & another* 2015 (6) SA 424 (SCA), 4 All SA 401.

⁵² 2002 (1) SA 38 (SCA), 64 SATC 51 at 57.

⁵³ www.merriam-webster.com/dictionary/any [Accessed 27 August 2025].

⁵⁴ www.merriam-webster.com/dictionary/other [Accessed 27 August 2025].

⁵⁵ www.merriam-webster.com/dictionary/association [Accessed 27 August 2025].

⁵⁶ www.merriam-webster.com/dictionary/person [Accessed 27 August 2025].

⁵⁷ Pienaar, G. J. (28 February 2015). Association. In *Law of South Africa LAWSA 2* (Third Edition Volume) in paragraph 155. My LexisNexis: [online].

The following entities are specifically excluded as an association of persons for purposes of section 10(1)(e)(i)(cc):

- A company, other than an NPC, as defined in the Companies Act.⁵⁸
- Any co-operative.⁵⁹
- Any close corporation.⁶⁰
- Any trust.⁶¹

Time-sharing exchange entities or managing agents⁶² selling time-sharing interests and managing the exchange of points or weeks for holidays at other time-sharing destinations for the benefit of time-share owners do not meet the requirements of section 10(1)(e)(i)(cc). A timeshare exchange is a system that allows timeshare owners to swap their ownership rights or usage weeks with owners of other timeshares. The primary goal of a timeshare exchange is to allow owners to vacation at different resorts or locations without having to purchase additional timeshares. The mentioned entities therefore do not manage the collective interests common to members of the individual time-share properties. Any fees received by or accrued to these entities for the services provided are not exempt from income tax under section 10(1)(e)(i)(cc).

7.2 Requirements for approval

Section 10(1)(e)(i)(cc) does not specify that the Commissioner must approve an association of persons for the levy income exemption to apply. The section, however, provides that an income tax exemption applies to any levy received by or accrued to any other association of persons if the Commissioner is satisfied that, subject to conditions deemed necessary, such an association of persons –

- has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable;⁶³
- is not permitted to distribute any of its funds to any person other than a similar association of persons;⁶⁴ and
- is not party to any prohibited transaction, operation or scheme (see 8).⁶⁵

⁵⁸ See the definition of “company” in section 1 of the Companies Act. This may include a state-owned company (SOC Ltd), private company [(Pty) Ltd], personal liability company (Inc.) or public company (Ltd).

⁵⁹ The term “co-operative” is defined in section 1(1). For further commentary, see the *Tax Guide for Small Businesses*.

⁶⁰ The term “close corporation” is defined in section 1(1). For further commentary, see the *Tax Guide for Small Businesses*.

⁶¹ The term “trust” is defined in section 1(1). A trust does not have members sharing collectively in a common purpose. In addition, the beneficiaries of a trust are not members of the trust.

⁶² The term “managing agent” as defined in paragraph 1 of the Regulations means the person engaged by a developer or a management association, to manage a property time-sharing scheme pursuant to a written management agreement.

⁶³ Section 10(1)(e)(i)(cc)(A).

⁶⁴ Section 10(1)(e)(i)(cc)(B).

⁶⁵ The proviso to section 10(1)(e)(i)(cc).

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

- *Cambridge Dictionary* as “that something is true, you believe it”;⁶⁶ and
- *Dictionary.com* as “that something is true or has been done properly, you are convinced about this after checking it.”⁶⁷

For the Commissioner to be satisfied that an association of persons meets the requirements of section 10(1)(e)(i)(cc), it has always been the practice,⁶⁸ that an application is required (see **12.2**). The Commissioner will be satisfied only after confirming that the application, supporting information and documentation meet the requirements of section 10(1)(e)(i)(cc). If satisfied, the Commissioner will grant the approval and exemption. This practice is supported by the fact that the decision exercised by the Commissioner under section 10(1)(e)(i)(cc) not to grant approval, if satisfied that the association of persons does not comply with the requirements relative to that section, is subject to objection and appeal (see **13**).⁶⁹

7.2.1 Retrospective approval

The approval of the exemption under section 10(1)(e)(i)(cc) is generally effective from the date of the letter issued confirming such approval, that is, it is prospective, unless the Commissioner advises otherwise. Section 10(1)(e)(i)(cc) does not prohibit the Commissioner to exempt levy income and allow the basic exemption retrospectively, that is, to a period preceding the period from which the application is made. There is therefore no limitation on the date that the Commissioner may grant approval. The Commissioner is therefore not precluded from approving the exemption from a year of assessment before the date on which an association of persons applied. Such approval is subject to the Commissioner’s satisfaction that the association complied with the requirements relative to that section during the requested period before it lodged its application for approval. An association of persons bears the burden of proving that an amount is exempt or otherwise not taxable.⁷⁰

⁶⁶ <https://dictionary.cambridge.org/dictionary/english/satisfied> [Accessed 27 August 2025].

⁶⁷ www.collinsdictionary.com/dictionary/english/satisfied [Accessed 27 August 2025].

⁶⁸ The practice was initially set out in Practice Note 8 “Income Tax – Exemption from Income Tax in terms of Section 10(1)(e) of the Income Tax Act, 1962” dated 26 March 2001, which was withdrawn with effect from 22 February 2012 and replaced by Interpretation Note 64 (Issue 1) “Income Tax Exemption: Bodies Corporate Established Under the Sectional Titles Act, No. 95 of 1986, Share Block Companies Established under the Share Blocks Control Act, No. 59 of 1980 and Associations of Persons Managing the Collective Interests Common to all Members”, which has been archived.

⁶⁹ Section 3(4)(b).

⁷⁰ Section 102(a) of the TA Act.

Since section 10(1)(e)(i)(cc) does not expressly prohibit retrospective approval, the decision to grant retrospective approval to associations of persons is aligned with the similar retrospective approval of entities envisaged in sections 30⁷¹ and 30A.⁷²

The retrospective approval of an association of persons complying with all its obligations under Chapter 4,⁷³ Chapter 10⁷⁴ and Chapter 11⁷⁵ of the TA Act, may not be extended to years of assessment for which an assessment may not be made under section 99(1) of the TA Act.⁷⁶ If an association of persons did not comply with these obligations, the Commissioner may not extend the retrospective approval to a year of assessment for which an assessment could not have been made had the income tax returns been submitted under section 25(1) of the TA Act.⁷⁷

An assessment may not be made three years after the date of assessment of an original assessment by SARS.⁷⁸

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

In the instance of an association of persons that did not comply with the mentioned TA Act requirements, it is necessary to determine when those years of assessment would have been assessed had the association of persons complied with the return submission requirements. For example, the 2024 public notice required a company (see **15**) to lodge its return for the 2024 year of assessment within 12 months of its financial year-end. A company with a February year-end would therefore have had to submit its 2024 return on or before 28 February 2024, and it is the latter date that must fall within the three years preceding the date of application for retrospective approval of the exemption.

⁷¹ The approval of an organisation by the Commissioner as a “public benefit organisation” as defined in section 30(1) under section 30(3) for purposes of the exemption of its receipts and accruals under section 10(1)(cN). Section 30(3B) provides for retrospective approval of a public benefit organisation. For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

⁷² The approval of a club by the Commissioner as a “recreational club” as defined in section 30A(1) under section 30A(2) for purposes of the exemption of its receipts and accruals under section 10(1)(cO). Section 30A(4) provides for retrospective approval of a recreational club. For commentary, see the *Tax Exemption Guide for Recreational Clubs*.

⁷³ That chapter deals with returns and records.

⁷⁴ That chapter deals with tax liability and payment.

⁷⁵ That chapter deals with the recovery of tax.

⁷⁶ Section 99 of the TA Act places limitations on the making of assessments that have prescribed.

⁷⁷ The annual public notice issued by the Commissioner under section 25(1) of the TA Act specifying the periods within which income tax returns must be submitted, should be consulted. For the latest public notice, see Government Notice 4918 in *Government Gazette* 50741 of 31 May 2024.

⁷⁸ Section 99(1)(a) of the TA Act.

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

7.2.2 Sole purpose

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

- “Solely” is “only and not involving anyone or anything else.”⁷⁹
- “Purpose” is “why you do something or why something exists.”⁸⁰

The sole purpose for which an association of persons must be formed is to manage the collective interests common to its members which includes the expenditure applicable to the common immovable property of such members and collection of levies for which its members are liable.

The association of persons must therefore under its founding document be formed only for the above sole purpose. The sole purpose should be determined by interpreting the founding document of the association of persons in accordance with the ordinary rules of construction of a document.⁸¹

Example 1 – Sole purpose

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

- ABC Residents’ Association is an association of persons formed to control and manage the security of a gated area. The residents in this gated community are collectively responsible for the costs of security patrols, the security gates and perimeter fencing. The residents are required to pay a monthly levy to defray the security costs.
- Green Estate Homeowners’ Association has been formed to control and manage the maintenance and general expenditure on the common immovable property of Birchwood Estate, a security estate consisting of 30 residential stands. It is compulsory under its founding document for all the owners to be members of the association and to contribute levies to defray expenditure incurred on the common immovable property. These expenses include maintenance of the pavements, perimeter fence or wall, entrance gardens, guard house and security.
- City Mall Merchants’ Association was formed by the developers of a shopping mall to control and manage the décor and aesthetics of the common immovable property of the mall. It is compulsory for all the tenants to belong to the association and the members contribute levies to cover the relevant expenses.

⁷⁹ <https://dictionary.cambridge.org/dictionary/english/solely> [Accessed 27 August 2025].

⁸⁰ <https://dictionary.cambridge.org/dictionary/english/purpose> [Accessed 27 August 2025].

⁸¹ *Mitchells Plain Town Centre Merchants Association v McLeod & another* 1996 (4) SA 159 (A), [1996] 3 All SA 297.

- Gated Community Residents' Association was formed by private homeowners in a residential area for purposes of controlling and managing the maintenance of the common road, security fencing, entrance boom gates and the cost of hiring security personnel. Membership of the association is voluntary. The owners of the residential stands contribute to the collective maintenance and upkeep of the common facilities.

(a) Managing the collective interests common to all members

The sole purpose for which an association of persons must be formed is to manage the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable.⁸² The words “which include” suggests that the expenditure applicable to the common immovable property of such members is an example and is not limited to only that collective interest of the members.

The meaning and effect of “include”⁸³ was considered in ITC 1878⁸⁴ in which reference was made to its dictionary meaning as well as a number of previous judgements, which considered its effect. Vally J pointed out that it was well established that our courts have recognised that the term “includes” is sometimes employed as an exhaustive list, but “as a general rule, it is a term of extension”.⁸⁵ Thus, it brings within the ambit of a term circumstances that would ordinarily not be regarded as falling within its scope. After reviewing the history of the use of the term, Vally J concluded the following:⁸⁶

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

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

- “Manage” is “to be responsible for controlling or organizing someone or something, especially a business or employees.”⁸⁷
- The expression “collective interests” separately as –
 - “collective” is “of or shared by every member of a group of people”,⁸⁸ and
 - “interests” is “something that bring advantages to or affects someone or something”.⁸⁹
- “Common” is “belonging to or shared by two or more people, or things.”⁹⁰

⁸² Section 10(1)(e)(i)(cc)(A).

⁸³ *CSARS v Glencore Operations SA (Pty) Ltd* [2021] ZASCA 111 in 45, 46 and 50 to 53.

⁸⁴ (2015) 77 SATC 349 (J).

⁸⁵ In 26.

⁸⁶ In 29.

⁸⁷ <https://dictionary.cambridge.org/dictionary/english/managing> [Accessed 27 August 2025].

⁸⁸ <https://dictionary.cambridge.org/dictionary/english/collective?q=collective+> [Accessed 27 August 2025].

⁸⁹ <https://dictionary.cambridge.org/dictionary/english/interest?q=interests> [Accessed 27 August 2025].

⁹⁰ <https://dictionary.cambridge.org/dictionary/english/common> [Accessed 27 August 2025].

- "Member" is "a person who joins a group to take part in a particular activity."⁹¹
- "Immovable property" is "property such as land or buildings, not a person's possessions."⁹²

An association of persons accepts the responsibility to control and manage the financial and administrative affairs pertaining to the common immovable property on behalf of its members. The common immovable property may include a club house, tennis courts, a swimming pool, parking area, security personnel and system, booms and gates, guard house, entrance gardens, internal roads, pavements, walkways and fences. An association of persons is therefore responsible for determining an annual budget to defray the expenditure relating to the common immovable property of the members. This includes the setting of an appropriate levy (see **9.1.1**) or special levy (see **9.1.2**) for which members are liable as well as the determination and the enforcement of appropriate fines (see **9.2.1**) or penalties (see **9.2.2**) applicable to members transgressing the management or conduct rules of the association of persons.

Managing the collective interests common to all members therefore in addition to the expenditure applicable to the common immovable property of such members may also include other functions the members have mandated an association of persons to perform on their behalf, which is generally set out in its founding document. This usually involves the responsibility of drafting and enforcing of the management and conduct rules for the benefit of all members, which rules may relate to –

- ensuring a clean, aesthetically acceptable and safe environment, for example, security access, speed limits, noise levels and the periods in which building activities must be commenced or completed; and
- the use and enjoyment of the common immovable property, for example, the club house, golf course or hiking trails.

Membership⁹³ of an association of persons is normally linked to the ownership or occupation of a particular unit or portion of the property. Members may include residents or owners of a particular residential area such as security estates, complexes or gated communities or tenants of a shopping centre or mall.

(b) Collection of levies

The Commissioner must be satisfied that in addition to managing the members' collective interest, the association of persons has been formed solely for purposes of the collection of levies (see **9**) for which such members are liable.⁹⁴

⁹¹ <https://dictionary.cambridge.org/dictionary/english/member> [Accessed 27 August 2025].

⁹² <https://dictionary.cambridge.org/dictionary/english/immovable-property> [Accessed 27 August 2025].

⁹³ Generally, the rules of an association determine the persons who are eligible for membership of the association. Members, amongst other things, are entitled to enjoy the amenities and other privileges provided by the association for which they must pay an entrance, subscription fee or levy whichever may be called for under the founding document.

⁹⁴ Section 10(1)(e)(i)(cc)(A).

7.2.3 Prohibition on distribution of funds

The Commissioner must be satisfied that the association of persons is not permitted to distribute any of its funds to any person other than a similar association of persons.⁹⁵

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

- “Distribute” is “to divide and give out in shares; deal out; allot.”⁹⁶
- “Funding” is “funds, money immediately available; pecuniary resources.”⁹⁷

The word “funds” is described in the *BusinessDictionary.com* as follows:⁹⁸

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

Having regard to the aforementioned, “funds” refer to the financial resources, namely, money available to a business for spending in the form of cash, liquid securities and credit lines.⁹⁹ A distribution is generally the giving of funds or assets by an association of persons to another association of persons without the expectation or obligation of repayment by that association.

The association of persons may, based on the ordinary dictionary meanings of the words, distribute its financial resources only for the collective interest common to the members. The following are non-exhaustive examples of allowable distribution of funds –

- any expenditure relating to the common immovable property;
- the paying of any debts incurred by the association of persons;
- any funds expended in the operations of the association of persons;
- loans;
- investments;
- *bona fide* donations made by the association of persons (see **14.2**); or
- the transfer of any funds to a similar association of persons.

The prohibition on distributions is an absolute prohibition. Thus, the requirement is not subject to the discretion of the Commissioner and cannot in general or in a particular instance be waived, deferred or reduced.

An association of persons must use all of its funds for its sole purpose for which it was formed (see **7.2.2**). Any funds not used for its sole purpose may be distributed to a similar association of persons. The *Free Dictionary* describes “similar” as follows:¹⁰⁰

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

⁹⁵ Section 10(1)(e)(i)(cc)(B).

⁹⁶ www.dictionary.com/browse/distribute [Accessed 27 August 2025].

⁹⁷ www.dictionary.com/browse/funding [Accessed 27 August 2025].

⁹⁸ www.businessdictionary.com/definition/funds.html [Accessed 27 August 2025].

⁹⁹ See the meaning of “financial resources” in *BusinessDictionary.com* available online at www.businessdictionary.com/definition/financial-resources.html [Accessed 27 August 2025].

¹⁰⁰ www.thefreedictionary.com/similar [Accessed 27 August 2025].

Thus, a similar association of persons must have similar, although not necessarily identical, objects to those of the association of persons distributing its funds. Generally, such a distribution occurs on dissolution of an association of persons (see **7.3**). An association of persons may not distribute any of its funds to individuals or other tax-paying association of persons and in so doing enable the recipients to share in the tax concession it enjoys. The similar association of persons must therefore also be exempt by the Commissioner under section 10(1)(e)(i)(cc).

7.3 Conditions the Commissioner may impose

The Commissioner may under section 10(1)(e)(i)(cc) impose conditions deemed necessary, which, amongst other things, may include the following:

- Any amendments to the founding document of the association of persons must be submitted to the Commissioner as soon as it has been effected.
- On dissolution of the association of persons, its remaining assets must be distributed to an association of persons exempt from income tax under section 10(1)(e)(i)(cc).
- An association of persons must comply with any reporting requirements determined from time to time by the Commissioner (see **15**).¹⁰¹

The conditions the Commissioner may deem necessary will be contained in the letter confirming approval and the exemption of the receipts and accruals of the association of persons under section 10(1)(e)(i)(cc) (see **12.2**).

The requirements (see **7.2**) and the above conditions, including the conditions relating to the stabilisation fund (see **9.1.4**), if appropriate, to ensure that such income qualifies as levy income (see **9**) must be included in the founding document of an association of persons. The founding document will depend on the type of association of persons formed, for example, either the constitution adopted by the members of a voluntary association of persons or the memorandum of incorporation of an NPC. The founding document must be submitted to the Commissioner as part of the application for exemption (see **12.2**). The founding document as a whole will be examined to ensure that the above prescribed conditions are included.

¹⁰¹ The prescribed Income Tax Return for Exempt Organisations (IT 12EI) applicable to association of persons must be submitted on an annual basis.

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

A person is disqualified¹⁰² from managing the collective interests common to all the members of an association of persons if that person is disqualified under the Trust Property Control Act, the NPO Act or the Companies Act (see 7.4.1).¹⁰³

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

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

Having regard to the above dictionary meaning it is submitted that a person managing the collective interests of an association of persons therefore is the person who acts in a fiduciary¹⁰⁴ capacity.

The following explanation is provided by LAWSA on the management of an association:¹⁰⁵

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

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

(Footnotes omitted)

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

¹⁰² The grounds for disqualification for an association of persons was inserted to align with the National Strategy on Anti Money Laundering Countering, Terrorism Financing and Countering the Financing of Proliferation and to achieve consistency with the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022. See the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2023*, in 2.3.

¹⁰³ Section 10(5)(a), which was inserted by section 3 of the Tax Administration Laws Amendment Act 18 of 2023 and came into operation on 22 December 2023, the date of promulgation of that Act.

¹⁰⁴ The word “fiduciary” means a person who holds a position of trust or responsibility including decision-making powers over the affairs of an association of persons.

¹⁰⁵ Pienaar, G. J. (28 February 2015). Association. In *Law of South Africa LAWSA 2* (Third Edition Volume) in paragraph 166 and 178. My LexisNexis: [online].

An association of persons incorporated as an NPC is required under the Companies Act to have a minimum of three persons to incorporate the NPC¹⁰⁶ and to appoint at least three directors.¹⁰⁷ A director's standard of conduct is incorporated into the Companies Act and provides that all powers and functions arising from the capacity of a director must be exercised –¹⁰⁸

- in good faith;
- for a proper purpose;
- in the best interest of the company; and
- with a degree of care, skill and diligence expected of a reasonable person –
 - carrying out the same functions in relation to the company as those carried out by that director; and
 - having the general knowledge, skill and experience of that director.

In view of the above, any person appointed as a director or alternate director, by whatever name designated, may manage the collective interests common to the members of the association of persons constituted as an NPC.

The use of the disjunctive word “or” in the disqualification requirement in section 10(5)(a) means that a person will be disqualified from managing the collective interests common to all the members of an association of persons if that person has been disqualified under either one or a combination of the Trust Property Control Act, NPO Act or the Companies Act. A disqualified person who manages an association of persons will be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.¹⁰⁹

7.4.1 Persons disqualified under the Trust Property Control Act, the Nonprofit Organisations Act, and the Companies Act

The grounds of disqualification of a person authorised as a trustee under the Trust Property Control Act,¹¹⁰ the grounds of disqualification of a person from being appointed or elected as an officer-bearer under the NPO Act,¹¹¹ as well as the grounds of disqualification of a person as a director of a company under the Companies Act¹¹² are similar. The grounds for disqualification under those Act have 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 unrehabilitated¹¹³ insolvent;¹¹⁴

¹⁰⁶ Section 13(1) read together with item 3 of Schedule 1 to the Companies Act.

¹⁰⁷ Section 66(2)(b) of the Companies Act.

¹⁰⁸ Section 76(3) of the Companies Act.

¹⁰⁹ Section 10(5)(b), which was inserted by section 3 of the Tax Administration Laws Amendment Act 18 of 2023 and came into operation on 22 December 2023, the date of promulgation of that Act.

¹¹⁰ Section 6 of that Act.

¹¹¹ Section 25 of that Act.

¹¹² Section 69 of that Act.

¹¹³ 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.

¹¹⁴ 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.

- has been prohibited by a court to be a director of a company, or declared by a court to be delinquent¹¹⁵ under the Companies Act or the Close Corporations Act;¹¹⁶
- is prohibited under any law to be a director of a company;¹¹⁷
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty;¹¹⁸
- 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 Act¹¹⁹ for theft, fraud, forgery, perjury or an offence –¹²⁰
 - involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities;¹²¹
 - in connection with the promotion, formation or management of a company,¹²² or in connection with consenting to act or acting as a director when ineligible or disqualified;¹²³ or
 - under the Trust Property Control Act, the NPO Act, the Companies Act, the Insolvency Act 24 of 1936, the Close Corporations Act, the Competition Act 89 of 1998, the Financial Intelligence Centre Act 38 of 2001, the Financial Markets Act 19 of 2012, Prevention and Combating of Corrupt Activities Act 12 of 2004, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004, or the TA Act;¹²⁴
- is subject to a resolution adopted¹²⁵ by the Security Council of the United Nations;¹²⁶ or
- is an unemancipated minor or is under a similar legal disability.¹²⁷

¹¹⁵ A declaration of delinquency may be made under section 162 of the Companies Act or under section 47 of the Close Corporations Act.

¹¹⁶ 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.

¹¹⁷ 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.

¹¹⁸ 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.

¹¹⁹ Section 69 of the Companies Act.

¹²⁰ 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.

¹²¹ 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.

¹²² Section 69(2) or (5) of the Companies Act.

¹²³ 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.

¹²⁴ 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.

¹²⁵ Chapter VII of the Charter of the United Nations, which provides for financial sanctions entailing the identification of persons or entities against whom member states of the United Nations must take action specified in the resolution.

¹²⁶ 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.

¹²⁷ 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.

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;¹²⁸
- office-bearers, under an order of a court pursuant to the NPO Act or any other law, by the NPO Directorate;¹²⁹ and
- a director, or who is 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.¹³⁰

8. Prohibited transactions, operations or schemes

The exemption under section 10(1)(e) does not apply to a body corporate, share block company, or an association of persons that is a party to a transaction, operation or scheme the sole or main purpose of which is or was to reduce, postpone or avoid any tax, levy or duty otherwise payable by any person under the Act or any other Act administered¹³¹ by the Commissioner.¹³²

The denial of the relief will apply only if the body corporate, share block company, or association of persons was knowingly a party to such an arrangement. This rule will apply irrespective of whether the body corporate, share block company, or association of persons itself or any other person, for example, a shareholder, unit holder, or member benefitted from the reduction, postponement or avoidance of any applicable tax, duty or levy. The type of tax, duty or levy that has been so reduced, postponed or avoided may arise under the Act, for example, donations tax, income tax, or dividends tax, or under any other Act administered by the Commissioner, for example, value-added tax or transfer duty.

9. Levy income exemption

The exemption under section 10(1)(e)(i) is limited to the levy income received by or accrued to –

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

The term “levy” is not defined in the Act. The *Cambridge Dictionary* describes the word “levy” as –¹³³

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

Levies are the amounts collected by bodies corporate, share block companies and associations of persons from their members to pay certain expenditure resulting from the management of the collective interests of the members. The members would be responsible for paying and administering their share of the expenditure if it were not

¹²⁸ Section 6(1H) of the Trust Property Control Act.

¹²⁹ Section 25A(9)(a) of the NPO Act.

¹³⁰ Section 69(13) of the Companies Act.

¹³¹ The Acts administered by the Commissioner involving tax, duties or levies are set out in Schedule 1 of the South African Revenue Service Act 34 of 1997.

¹³² The proviso to section 10(1)(e).

¹³³ <https://dictionary.cambridge.org/dictionary/english/levy> [Accessed 27 August 2025].

for the bodies corporate, share block companies and associations of persons managing their collective interests.

In determining whether an amount is a levy, regard must be had to the true nature of the transaction. For example, a charge for the late payment of a levy is likely to be in the nature of interest.

The words “received” and “accrued” are not defined in the Act but have received judicial consideration.

Steyn J stated in *Geldenhuys v CIR* that the words “received by” must mean –¹³⁴

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

In *CIR v Genn & Co (Pty) Ltd*, Schreiner JA stated the following:¹³⁵

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

Watermeyer J stated in *WH Lategan v CIR* the following on the meaning of “accrued”:¹³⁶

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

9.1 Receipts and accruals qualifying as levy income

The receipts and accruals qualifying as levy income are considered below.

9.1.1 General levies

A “general” levy usually covers the day-to-day running, maintenance or operating costs.

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

9.1.2 Special levies

A “special” levy may be raised to pay for capital improvements such as the installation of a satellite dish, the laying of paving or upgrading of security fencing or to create a reserve for future capital expenditure such as the future resurfacing of a tennis court or the future upgrading of an entrance and guard house.

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

¹³⁴ 1947 (3) SA 256 (C), 14 SATC 419 at 430.

¹³⁵ 1955 (3) SA 293 (A), 20 SATC 113 at 123.

¹³⁶ 1926 CPD 203, 2 SATC 16 at 20. The correctness of the interpretation of “accrued to” in *Lategan’s* case was confirmed by Hefer JA in *CIR v People’s Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9 at 24.

9.1.3 Building penalty levies

The management rules of an association of persons (see 7) sometimes provide for a higher levy to be paid by a member for failing to commence or complete building activities within a certain period. Typically, such a “building penalty levy” is expressed as a multiple of the general levy (see 9.1.1), the primary purpose of which is to recover additional costs incurred by the association of persons as a result of delayed construction. Such costs include, for example, the cost of repairing damage to roads and kerbs caused by heavy construction vehicles and the additional cost of hiring security personnel to ensure that the security of other homeowners is not compromised by the presence of vacant stands or by the influx of construction workers.

A building penalty levy of this nature will qualify for exemption as a levy and must be distinguished from a penalty or fine (see 9.2.1).

9.1.4 Stabilisation fund levies

An association of persons (see 7) sometimes establish a levy stabilisation fund for the purposes of subsidising day-to-day expenditure and to provide a reserve for future capital improvements or unforeseen expenditure on the common immovable property.

A fund of this nature is intended to ensure that the monthly (see 9.1.1) and special levies (see 9.1.2) remain affordable by smoothing out the levies to avoid undue increases in monthly levies. The levy may be imposed as a once-off payment either when the owner disposes of a unit (a departure or exit levy) or when a person purchases a unit (an entry levy). The payments may be fixed or determined as a percentage of a certain amount such as a percentage of the selling price of the unit.

The contribution to the stabilisation fund of an association of persons will be regarded as levy income provided the founding document provides –

- for the establishment of a levy stabilisation fund;
- rules relating to the governance of the stabilisation fund;
- that the funds of the stabilisation fund may be used only to defray expenditure on the common immovable property governed by the association of persons;
- that the levy must be a charge imposed by the association of persons on the member;
- that the amount to be paid into the levy stabilisation fund on joining the association of persons is a liability due, although the levy is only payable by the member when the member alienates the unit or property; and
- the methodology used to determine the amount payable to the levy stabilisation fund.

9.2 Receipts and accruals not qualifying as levy income

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

9.2.1 Fines

A member may be required to pay an additional amount over and above any general (see 9.1.1) or special levy (see 9.1.2), which is not related to expenditure incurred or to be incurred in relation to the common immovable property. Receipts of this nature often occur as a result of a member’s conduct or lack of conduct and are instituted to

encourage a desired behaviour, for example, amounts charged as a penalty for littering or engaging in activities that disturb other residents.

In these instances, the receipts and accruals will not qualify as levy income, since they do not represent an amount collected with the intention of funding expenditure relating to the common immovable property.

9.2.2 Late payments

Late payment penalties or interest charged on outstanding levies or other amounts payable to a body corporate, share block company or an association of persons do not constitute levy income (see **9.1**).

10. Basic exemption

The basic exemption applies to all the receipts and accruals other than levy income (see **9.1**) of bodies corporate, share block companies and associations of persons. The basic exemption, however, will apply to an association of persons only if approved by the Commissioner under section 10(1)(e)(i)(cc) and has confirmed that its levy income is exempt under section 10(1)(e)(i) (see **12.2**).

The type of receipt or accrual envisaged is one that is included in the definition of “gross income” (see **11.1**). The term “gross income” includes the total amount received by or accrued to a person that is not of a capital nature unless specifically included under one of the sub-paragraphs of the definition.

Receipts or accruals of a capital nature not specifically included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(e)(ii) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain.¹³⁷ A taxable capital gain (see **14.4**) is potentially subject to income tax, however, the exemptions in section 10 do not apply to it because a taxable capital gain is included directly in taxable income¹³⁸ and does not comprise “income”, namely, gross income less exempt income.¹³⁹

The basic exemption of R50 000 is applied to the total receipts and accruals, excluding the levy income (see **9.1**), which are taxable and not to each separate source of income. The basic exemption cannot create an assessed loss (see **11.3**) since it is not a deduction, but is a threshold amount applied to the total receipts and accruals from sources other than levy income to determine the receipts and accruals subject to tax (see **11**).

The portion of the receipts and accruals that are not exempt from income tax, namely the receipts and accruals other than levy income, must be determined before calculating allowable deductions (see **11.3**).

¹³⁷ The term “taxable capital gain” as defined in section 1(1) means an amount determined in accordance with paragraph 10 of the Eighth Schedule.

¹³⁸ Paragraph (b) of the definition “taxable income” in section 1(1).

¹³⁹ Section 26A.

Example 2 – Basic exemption*Facts:*

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

The following income is reflected in the financial statements:

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

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

Levies received from members	<u>460 240</u>
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Receipts and accruals subject to income tax

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

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

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

11. Calculation of taxable income

The starting point for the general framework to calculate taxable income is “gross income” (see 11.1). The meaning of “exemptions” is also relevant for this calculation (see 11.2). The defined term “taxable income”¹⁴⁰ is the amount on which a person’s income tax¹⁴¹ at the applicable rate (see 11.4) is calculated.

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

¹⁴⁰ The term “taxable income” as defined in section 1(1) means the aggregate of (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II (sections 5 to 37G) to be deducted from or set off against such income, and (b) all amounts to be included or deemed to be included in the taxable income of any person under the Act.

¹⁴¹ The term “tax” as defined in section 1(1) means tax, or a penalty imposed under the Act.

11.1 Gross income

Gross income in relation to any year of assessment¹⁴² 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.¹⁴³ Receipts or accruals of a capital nature are generally excluded from gross income, such as *bona fide* donations. Certain other receipts and accruals specified within the definition of “gross income” are included regardless of their nature.¹⁴⁴

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

The definition of “resident” in the context of a person other than a natural person, amongst other things, means a person, which is incorporated, established or formed in South Africa.¹⁴⁵ The definition of “resident” therefore applies to bodies corporate, share block companies and any other associations of persons incorporated, formed or established in South Africa.

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

After determining a person’s gross income, the next step is to determine income,¹⁴⁶ by deducting from gross income all receipts and accruals that are exempt from income tax.

11.2 Exemptions under section 10(1)

There are basically two categories of exemptions, namely, certain income that is exempt from income tax and the receipts and accruals of certain entities¹⁴⁷ that are exempt from income tax.

11.2.1 Receipts and accruals from levy income

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

11.2.2 Receipts and accruals from sources other than levy income

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

- fees charged for the use of facilities and equipment such as squash courts, golf courses, tennis courts and washing machines;
- rental income from the letting of immovable property such as parking bays, servants’ quarters and a demarcated area for a cell phone mast;

¹⁴² The term “year of assessment” as defined in section 1(1) generally means any year or other period in respect of which any tax or duty leviable under the Act is chargeable.

¹⁴³ The term “gross income” is defined in section 1(1).

¹⁴⁴ See paragraphs (a) to (n) of the definition of “gross income”.

¹⁴⁵ The term “resident” is defined in section 1(1).

¹⁴⁶ The term “income” is defined in section 1(1).

¹⁴⁷ For example, the national, provincial or local sphere of government under section 10(1)(a), institutions, boards or bodies under section 10(1)(cA)(i), public benefit organisations under section 30, recreational clubs under section 10(1)(cO) and small business funding entities under section 10(1)(cQ).

- investment income;
- amounts charged on unpaid levies or late payment of levies (see **9.2.2**);
- income received for services rendered; and
- fines (see **9.2.1**) paid for not adhering to the management rules excluding building penalties (see **9.1.3**).

Finally, the receipts and accruals derived from these sources, less the basic exemption (see **10**), less allowable expenditure, losses and allowances under the Act (see **11.3**), will constitute taxable income which is subject to tax (see **11.4**).

The exemption for interest income under section 10(1)(i) does not apply to bodies corporate, share block companies and associations of persons, since the application of that section is limited to natural persons.

11.3 Expenditure and assessed loss

Expenditure relating directly to the receipts and accruals not qualifying for exemption will qualify for deduction in determining taxable income provided it meets the requirements for deductibility under the Act.

Expenditure and losses are deductible under section 11(a) read with section 23(g) (also referred to as the general deduction formula). To be deductible, the expenditure and losses must be –

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

In addition, expenditure and losses must be claimed during the year of assessment in which they are actually incurred. Besides the general deductions, the Act provides for a number of special and additional deductions and allowances. A consideration of the general deduction formula and other deductions and allowances does not form part of the scope of this Note.

General expenditure such as bank charges and audit fees must be allocated to the various sources of income on a logical, fair and reasonable basis. The use of a fixed percentage of the general expenditure for the purpose of allocating it to a particular source of income is not acceptable. For example, depending on the facts, it may be acceptable to allocate the general expenses *pro rata* by applying the ratio that a particular source of receipts and accruals bears to the total receipts and accruals derived by the body corporate, share block company or association of persons.

An assessed loss is created when the allowable expenditure exceeds income from sources other than levy income and the basic exemption of bodies corporates, share block companies or other associations of persons. That assessed loss must be carried forward to the following year of assessment.

The balance of assessed loss from a preceding year of assessment can be set off against the taxable income of the current year of assessment provided a trade is

carried on during the current year of assessment.¹⁴⁸ The amount allowed to be set off is limited to the higher of R1 million and 80% of the amount of taxable income determined before taking into account the application of section 20.¹⁴⁹

The carrying on of a trade of bodies corporate, share block companies and any other associations of persons include the trade resulting in the receipts and accruals derived by such entities in the form of levies. If a balance of assessed loss is carried forward to a year of assessment in which no taxable income is derived, but the bodies corporate, share block companies or any other associations of persons collected levies, which are exempt from tax, the balance of assessed loss will not be forfeited.

The assessed loss carried forward will be forfeited only when there is no trade carried on, namely, when such bodies corporate, share block companies and any other associations of persons no longer carry on the purpose for which they have been established.

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

11.4 Rate of tax

Bodies corporate,¹⁵⁰ share block companies¹⁵¹ and associations of persons¹⁵² fall within the definition of “company”. Bodies corporate, share block companies and associations of persons, irrespective of whether that association is established as an NPC or as a voluntary association of persons, will be liable to tax at the rate applicable to companies on their taxable income,¹⁵³ or as prescribed annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.¹⁵⁴

12 Application for exemption

12.1 Bodies corporate and share block companies

A body corporate (see 5) or share block company (see 6) are not required to apply for exemption under section 10(1)(e)(i)(aa) or (bb), respectively. These entities are required to register at a SARS Service Centre for purposes of income tax and submit annual income tax returns¹⁵⁵ even if they are unlikely to have an income tax liability. The levy income exemption (see 9.1) and the basic exemption (see 10) are applied on assessment.

¹⁴⁸ Section 20(1)(a)(i).

¹⁴⁹ For a detailed consideration, see Interpretation Note 33 “Assessed Losses: Companies: the “Trade” and “Income from Trade” Requirements.

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

¹⁵¹ Paragraph (a) of the definition of “company” in section 1(1).

¹⁵² Paragraph (d) of the definition of “company” in section 1(1).

¹⁵³ For tax rates relating to previous years of assessment, see the *Guide for Tax Rates / Duties / Levies*.

¹⁵⁴ The Minister of Finance in accordance with section 5(2)(a) may announce different rates in the national annual budget.

¹⁵⁵ The Commissioner annually publishes a notice in accordance with section 25(1)(b) of the TA Act stipulating under which circumstances companies must submit income tax returns.

12.2 Association of persons

An association of persons (see 7) must complete and submit to SARS the prescribed application form EI 1 for approval under section 10(1)(e)(i)(cc).¹⁵⁶

Any levy (see 9.1) received by or accrued to an association person as well as the receipts and accruals other than levies not exceeding R50 000 (see 10) will be exempt from income tax only if an association of persons has been approved by the Commissioner under section 10(1)(e)(i)(cc).

On application it will be determined whether the requirements considered in 7.2 and 8 have been met. Additional conditions deemed necessary may be imposed to ensure that the relevant requirements are met (see 7.3).

The notification of the exemption under section 10(1)(e)(i)(cc) is issued by the Commissioner by letter. The letter contains a unique reference number generally referred to as an exemption reference number, which is a different reference number to the taxpayer reference number allocated on completion of registration as a taxpayer for income tax purposes.¹⁵⁷ The association of persons approved by the Commissioner is required to retain the letter confirming exemption as part of its records.¹⁵⁸

A written notification will also be issued by the Commissioner to the association of persons should the exemption under section 10(1)(e)(i)(cc) not be granted together with reasons why the association of persons failed to meet the conditions and requirements of that section. An association of persons not approved by the Commissioner will be liable for income tax and other taxes and duties as a normal taxpayer.¹⁵⁹

13 Objection and appeal

Any decision in the exercise of the Commissioner's discretion under section 10(1)(e)(i)(cc) is subject to objection and appeal.¹⁶⁰ Such a decision may be objected to and appealed against in the same manner as an assessment.¹⁶¹

The Commissioner's discretion under section 10(1)(e)(i)(cc) will be exercised to determine whether –

- an organisation may be approved as an association of persons; and
- any conditions (see 7.3) are deemed necessary to ensure that the association of persons is formed solely for the purpose contemplated in that section (see 7.2.1).

¹⁵⁶ Additional information on how to apply is available on the SARS website at www.sars.gov.za.

¹⁵⁷ The term "taxpayer reference number" as defined in section 1 of the TA Act means the number referred to in section 24 of the same Act.

¹⁵⁸ Section 29(3) of the TA Act. Records are generally kept for five years from the date of the submission of a return. However, records must be kept indefinitely if a document is relevant for future years of assessment such as the prescribed application form for approval from income tax EI 1 and the required supplementary information and documentation on which the Commissioner based the decision to approve or not to approve an exemption from income tax.

¹⁵⁹ An entity will be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies.

¹⁶⁰ Section 3(4)(b).

¹⁶¹ Section 104(2)(c) of the TA Act.

A body corporate, share block company or association of persons aggrieved by an assessment¹⁶² may before lodging an objection, request SARS to provide reasons¹⁶³ for the assessment to enable the body corporate, share block company or association of persons to formulate an objection. The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days¹⁶⁴ from the date of the assessment.

Any body corporate, share block company or an association of persons may object to an assessment¹⁶⁵ in accordance with Chapter 9 of the TA Act read with the “rules”¹⁶⁶ as published in the *Government Gazette* within 80¹⁶⁷ business days¹⁶⁸ after the –¹⁶⁹

- delivery of the notice providing reasons requested of an assessment, if applicable;¹⁷⁰
- notice issue by SARS notifying the body corporate, share block company or association of persons that the reasons requested to enable it to formulate an objection have been provided;¹⁷¹ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –¹⁷²

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment¹⁷³ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the body corporate, share block company or association of persons 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 body corporate, share block company or association of persons is dissatisfied with SARS’s decision, it may appeal against the

¹⁶² 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.

¹⁶³ Rule 6 deals with reasons for an assessment.

¹⁶⁴ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

¹⁶⁵ For commentary, see the Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

¹⁶⁶ The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Regulation Notice 3146 in *Government Gazette* 48188 of 10 March 2023. For further commentary, see the *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and the *Alternative Dispute Resolution: Quick Guide*.

¹⁶⁷ Rule 7(1) was amended from 30 to 80 days, effective from 10 March 2023.

¹⁶⁸ The term “business day” is defined in section 1 of the TA Act.

¹⁶⁹ Rule 7 deals with objections.

¹⁷⁰ Rule 7(1)(a) read with Rule 6.

¹⁷¹ Rule 7(1)(a) read with Rule 6(4).

¹⁷² Rule 7(2).

¹⁷³ 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).

disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.¹⁷⁴

14 Other taxes

14.1 Provisional tax

Bodies corporate, share block companies and associations of persons are excluded from the definition of “provisional taxpayer”¹⁷⁵ and are not required to make provisional tax payments or submit provisional tax returns.

A body corporate, share block company or an association of persons that has taxable income (see **11**) must settle its tax liability on assessment.

14.2 Donations tax

Donations made by or to a body corporate, share block company or an association of persons are exempt from donations tax.¹⁷⁶

14.3 Section 18A tax-deductible receipts

A body corporate, share block company and association of persons may not issue section 18A receipts¹⁷⁷ for levies or donations received.¹⁷⁸

Any claim for a deduction by taxpayers for a section 18A receipt issued by a body corporate, share block company or association of persons will be disallowed in the determination of that taxpayer’s taxable income.

14.4 Capital gains tax

All capital gains and capital losses made on the disposal of assets must be taken into account in determining a taxable capital gain or assessed capital loss unless excluded by specific provisions. The capital gains tax (CGT) provisions are contained in the Eighth Schedule. CGT forms part of the income tax system and a taxable capital gain must be included in taxable income under section 26A. A body corporate, a share block company and an association of persons have an inclusion rate of 80%.¹⁷⁹ This inclusion rate means that 80% of a capital gain will be included in the taxable income of a company.

In practice it would be unusual for a body corporate, a share block company or an association of persons to derive a capital gain during the normal course of its operations as illustrated by the following examples:

- Movable depreciable assets such as washing machines used in a common laundry room are unlikely to yield capital gains on disposal because this would require a consideration in excess of the original cost.

¹⁷⁴ Rule 10.

¹⁷⁵ Paragraph 1 of the Fourth Schedule.

¹⁷⁶ Section 56(1)(h).

¹⁷⁷ 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.

¹⁷⁸ For commentary, see the *Basic Guide to Section 18A Approval*.

¹⁷⁹ The inclusion rate in paragraph 10 of the Eighth Schedule was increased from 66,6% to 80% with effect from years of assessment commencing on or after 1 March 2016. The inclusion rate was 50% for years of assessment commencing before 1 March 2012.

- The common property in a development scheme is owned by the sectional title holder's jointly in undivided shares and not by the body corporate.¹⁸⁰ The sale of a portion of the common property will therefore not have CGT consequences for the body corporate; rather the unit holders must account for any capital gain or capital loss.
- The transfer of immovable property in a share block company to a holder of shares in the company will not give rise to a capital gain or capital loss in the company. Such a transfer could involve a conversion to sectional title or a transfer of freehold title.¹⁸¹ In this regard the share block company must disregard any capital gain or capital loss determined on the disposal.¹⁸² The holder of shares must disregard any capital gain or loss on disposal of the share,¹⁸³ which of necessity includes the right of use and occupation attaching to the share.¹⁸⁴ The capital gain or capital loss made by the person acquiring the immovable property is deferred until the person actually disposes of it. This roll-over treatment is achieved by carrying across to the immovable property details of the cost and date of acquisition of the shares, cost and date of effecting improvements, usage, and any market valuation performed on valuation date.¹⁸⁵

Capital gains may arise on conversion of a company to a share block company as a result of the disposal of the right of use and occupation to holders of the company's shares.¹⁸⁶

Any capital gain or capital loss determined in respect of the donation or bequest of an asset to bodies corporate, share block companies or association of persons must be disregarded.¹⁸⁷

14.5 Dividends tax

A beneficial owner is liable for dividends tax on a cash dividend paid by a company unless the dividend is exempt.¹⁸⁸ A cash dividend paid to a beneficial owner that is a resident company is exempt from dividends tax.¹⁸⁹ A cash dividend paid to a body corporate, share block company or an association of persons that is a resident company will therefore be exempt from dividends tax.

¹⁸⁰ Section 16 of the Sectional Titles Act.

¹⁸¹ Section 8(3)(c) of the Share Blocks Control Act prohibits the transfer of a unit to a member otherwise than through Schedule 1 of that Act, which deals with conversion to sectional title. Thus, to the extent that shareholders wish to take transfer under freehold title it would first be necessary for them to cancel their rights of use and occupation before transfer can be affected.

¹⁸² Paragraph 67B(3)(a) of the Eighth Schedule.

¹⁸³ Paragraph 67B(3)(b)(i) of the Eighth Schedule.

¹⁸⁴ Section 10(b) of the Share Blocks Control Act.

¹⁸⁵ For commentary on paragraph 67B of the Eighth Schedule, see the *Comprehensive Guide to Capital Gains Tax*.

¹⁸⁶ For commentary, see the *Comprehensive Guide to Capital Gains Tax*.

¹⁸⁷ Paragraph 62(d) of the Eighth Schedule.

¹⁸⁸ Section 64F(1).

¹⁸⁹ Section 64F(1)(a).

A resident company paying a dividend *in specie* is potentially liable for dividends tax subject to the exemptions.¹⁹⁰ Any dividend constituting a disposal,¹⁹¹ for example, when a share block company distributes immovable property to a holder of its shares (see **14.4**), will be exempt from dividends tax.¹⁹²

15 Reporting requirements

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.¹⁹³ Generally, the persons who are required to submit returns include every resident company during that particular year of assessment, subject to specific conditions and requirements set out in the relevant public notice. The term “company” as defined, amongst other things, includes –

- any association, corporation or company incorporated or deemed to be incorporated by or under any law in force or previously in force in South Africa or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law;¹⁹⁴ or
- any association formed in South Africa to serve a specified purpose, beneficial to the public or a section of the public.¹⁹⁵

A body corporate, share block company, and association of persons constituted as an NPC, or a voluntary association of persons established by a constitution fall within the definition of “company”. A body corporate, share block company, and association of persons must therefore submit income tax returns.

The income tax return enables the Commissioner to annually determine whether the basic exemption (see **10**) has been applied to receipts and accruals derived from sources other than from levy income.

A return must be a full and true return¹⁹⁶ and be signed by the body corporate, share block company or association of persons or by the duly authorised representative (see **16**) of the body corporate, share block company or association of persons. The person signing the return will be regarded as being cognisant of the statements made in the return.¹⁹⁷

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.¹⁹⁸

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.¹⁹⁹

¹⁹⁰ Section 64FA.

¹⁹¹ Paragraph 67B(2) of the Eighth Schedule.

¹⁹² Section 64FA(1)(d).

¹⁹³ Section 25 of the TA Act read with section 66(1).

¹⁹⁴ Paragraph (a) of the definition of “company” in section 1(1).

¹⁹⁵ Paragraph (d) of the definition of “company” in section 1(1).

¹⁹⁶ Section 25(2) of the TA Act.

¹⁹⁷ Section 25(3) of the TA Act.

¹⁹⁸ Section 25(4) of the TA Act.

¹⁹⁹ Section 234(2)(d) of the TA Act.

The public notice issued annually by the Commissioner also prescribes the period within which income tax returns must be submitted for the years of assessment specified in that notice.

An appropriate penalty²⁰⁰ will be imposed by SARS if satisfied that the body corporate, share block company, or association of persons failed to comply with the obligation to submit an income tax return.²⁰¹ The appropriate penalty for non-compliance will be imposed according to a fixed amount penalty table.²⁰²

It is not a requirement for supporting documents to be submitted together with the income tax return. A body corporate, share block company, or association of persons will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

A body corporate, share block company, or association of persons whose income tax return is supported by any balance sheet, statement of assets and liabilities or account prepared by any other person, may be requested to submit a certificate or statement recording —²⁰³

- the extent of the examination by the preparer of the books of account and of the documents from which the books of account were prepared; and
- in so far as may be ascertained by the examination, whether the entries in those books and documents disclose the true nature of any transaction, receipt, accrual or payment or debit.

A person responsible to manage the body corporate, share block company, or association of persons must sign the accounts in a fiduciary²⁰⁴ capacity and by the person who prepared them on behalf of the body corporate, share block company, or association of persons.

16 Representative taxpayer

Persons other than natural persons, such as a body corporate, share block company and an association of persons act through representatives.²⁰⁵ The representatives, amongst other things, are responsible for the tax compliance and liabilities of such a body corporate, share block company and association of persons.

²⁰⁰ The terms “administrative non-compliance penalty” and “penalty” are defined in section 208 of the TA Act and means a penalty impose 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.

²⁰¹ Section 210 of the TA Act. For commentary, see the *Guide to Understatement Penalties*.

²⁰² Section 211 of the TA Act.

²⁰³ Section 28 of the TA Act.

²⁰⁴ Fiduciary means a person who holds a position of trust or responsibility including decision-making powers over the affairs of a body corporate, share block company, or an association of persons.

²⁰⁵ See the term “representative taxpayer” in section 1(1) for the complete definition.

For purposes of a body corporate, share block company and an association of persons the representative taxpayer is a natural person residing in South Africa and includes the –

- person in a fiduciary capacity of the income of a body corporate;²⁰⁶
- public officer of the income of a share block company;²⁰⁷
- person in a fiduciary capacity of the income of an association of persons under his or her management, disposition, or control (see 7.4);
- public officer of the income of an NPC (see 7.4); and
- business rescue practitioner of a body corporate, share block company, or an NPC 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 agent²⁰⁸ and includes, amongst other things, a person who is a representative taxpayer under the Act.²⁰⁹ Every person who becomes or ceases to be a representative taxpayer under the 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.²¹⁰

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.²¹¹

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 in respect of which the tax was chargeable was disposed of.²¹² An assessment on a representative taxpayer for any tax is regarded as made on the representative taxpayer only in that capacity.²¹³

A taxpayer²¹⁴ 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.²¹⁵

²⁰⁶ Any trustee holding office under the rules contemplated in section 7 and 8 of the Sectional Titles Schemes Management Act. Generally, where there is more than one trustee, the practice is for the trustees to nominate a single trustee to carry out all the duties and responsibilities imposed as a representative taxpayer. The other trustees despite this practice remain subject to the same duties, responsibilities, and liabilities of a representative taxpayer. see Davis, D. M. & Jooste, R. D. (2023). *Estate Planning* at page 6.4. My LexisNexis [online].

²⁰⁷ Any person who is appointed as a director in accordance with section 12 of the Share Block Controls Act.

²⁰⁸ 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.

²⁰⁹ The term "representative taxpayer" is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act.

²¹⁰ Section 153(2) of the TA Act.

²¹¹ Section 234(2)(b) of the TA Act.

²¹² Section 155 of the TA Act.

²¹³ Section 154(2) of the TA Act.

²¹⁴ The term "taxpayer" is defined in section 1(1).

²¹⁵ Section 153(3) of the TA Act.

Every company²¹⁶ carrying on business or having an office in South Africa must at all times be represented by an individual residing in South Africa,²¹⁷ who must be –²¹⁸

- 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;²¹⁹
- appointed by the company or by an agent or legal practitioner²²⁰ who has authority to appoint such a representative for the purposes of a tax Act;²²¹ and
- 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.²²²

A person may not be appointed as a public officer if that person is disqualified (see 7.4).²²³

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 appointed public officer.²²⁴ If a public officer is not appointed as required, the public officer is regarded to be –²²⁵

- the first person who is eligible to represent the company as public officer, in order of priority, namely, the –
 - managing director or equivalent;
 - financial director or equivalent;
 - company secretary;²²⁶

²¹⁶ The term “company” is defined in section 1(1).

²¹⁷ Section 246(1) of the TA Act.

²¹⁸ Section 246(2) of the TA Act.

²¹⁹ Section 246(2)(a) of the TA Act.

²²⁰ The term “legal practitioner” as defined in section 1 of the TA Act 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.

²²¹ An agent or legal practitioner appointed by the public officer does not replace the public officer.

²²² Section 246(5) of the TA Act.

²²³ Section 246(8) of the TA Act.

²²⁴ Section 246(7) of the TA Act

²²⁵ Section 246(3) of the TA Act 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.

²²⁶ See section 88 of the Companies Act for the duties of a company secretary.

- director²²⁷ or prescribed officer²²⁸ 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.²²⁹ 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.²³⁰

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.²³¹ 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.²³²

17 Conclusion

In conclusion –

- bodies corporate and share block companies qualify for an automatic exemption from income tax under section 10(1)(e)(i)(aa) and (bb), respectively, therefore no approval by the Commissioner is required;
- associations of persons must apply to the Commissioner for approval under section 10(1)(e)(i)(cc);
- retrospective approval may be considered by the Commissioner provided the conditions and requirements as considered in this Note are met by an association of persons;
- a person is disqualified from managing the collective interests common to all the members of an association of persons if that person is disqualified under the Trust Property Control Act, the NPO Act or the Companies Act;

²²⁷ 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.

²²⁸ 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.

²²⁹ Paragraph (a) of the definition of “representative taxpayer” in section 1(1) and section 248(2) of the TA Act.

²³⁰ Section 248(1) of the TA Act.

²³¹ Section 249(2)(a) of the TA Act.

²³² Section 249(2)(b) of the TA Act.

- the levy income of bodies corporate, share block companies and associations of persons approved by the Commissioner is fully exempt from income tax under section 10(1)(e)(i);
- the sum of any other income, other than levy income, received by or accrued to bodies corporate, share block companies or associations of persons is subject to a basic exemption under section 10(1)(e)(ii);
- an assessed loss created when the allowable expenditure exceeds income from sources other than levy income and the basic exemption of bodies corporates, share block companies or other associations of persons is carried forward to a future year of assessment and a balance of assessed loss is not forfeited if bodies corporate, share block companies and any other associations of persons receive only levy income;
- bodies corporate, share block companies and associations of persons are excluded from the payment of provisional tax and are not required to submit provisional tax returns;
- donations made by or to a body corporate, share block company or an association of persons are exempt from donations tax under section 56(1)(h);
- bodies corporate, share block companies and associations of persons are not permitted to issue section 18A receipts for levies or donations received;
- the transfer of immovable property in a share block company to a holder of shares in the company will not give rise to a capital gain or capital loss in the company under paragraph 67B(3)(a) of the Eighth Schedule;
- a cash dividend paid to a body corporate, share block company or an association of persons is exempt from dividends tax under section 64F(1)(a); and
- a dividend *in specie* declared and paid by a share block company that comprises a disposal contemplated in paragraph 67B(2) of the Eighth Schedule is exempt from dividends tax under section 64FA(1)(d).

Annexure A – The law

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

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

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

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

Annexure B – Calculation of taxable income

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

Example 3 – Calculation of taxable income

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

Facts 1:

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

Receipts and accruals	R
Monthly levies from members	80 000
Building penalty levies	30 000
Penalty on late payment of levies and fines for non-compliance	50 000
Interest on investments	<u>30 000</u>
Total receipts and accruals	<u>190 000</u>
Expenditure	R
Administration and management fees	1 180 000
Maintenance guard house	15 000
Maintenance security fence and gates	102 800
Security services	234 000
Garden services	107 200
Insurance	160 000
Water	200 000
Electricity	195 000
Bank charges	160 000
Audit fees	<u>100 000</u>
Total expenses	<u>2 454 000</u>

Result 1:

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

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

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

4. Apportion general expenditure to income

Levy income of R80 000 and building penalty levies of R30 000 are exempt from income tax under section 10(1)(e)(i). Income from sources other than levy income qualifies for the basic exemption of R50 000 under section 10(1)(e)(i). The expenditure directly related to such levy income and subject to the basic exemption (amounts other than audit fees and bank charges) are prohibited under section 23(f)²³³ from being deducted under section 11(a). Audit fees and bank charges will qualify for deduction but only to the extent that they are incurred in respect of amounts received or accrued, which constitute income, and an apportionment is therefore required.

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

General expenditure not deductible:

<u>Exempt receipts and accruals + Basic exemption</u> ×	<u>general expenditure</u>
Total receipts and accruals	1
$\frac{160\,000}{190\,000} \times \frac{260\,000}{1} = \text{R}218\,947$	

Deductible general expenditure:

<u>Receipts and accruals constituting income</u> ×	<u>general expenditure</u>
Total receipts and accruals	1
$\frac{30\,000}{190\,000} \times \frac{260\,000}{1} = \text{R}41\,053$	

5. Calculate taxable income

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

²³³ Section 23(f) prohibits any expenses incurred in respect of any amounts received or accrued, which do not constitute income as defined in section 1(1).

Facts 2:

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

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

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

Result 2:

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

4. Apportion general expenditure to income

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

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

General expenditure not deductible:

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

Deductible general expenditure:

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

5. Calculate taxable income

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

6. Calculate income tax payable

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