

**DRAFT INTERPRETATION NOTE**

DATE:

**ACT : INCOME TAX ACT 58 OF 1962**  
**SECTION : SECTION 10(1)(cA)(i)**  
**SUBJECT : INCOME TAX EXEMPTION: BARGAINING COUNCILS**

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### **Preamble**

In this Note unless the context indicates otherwise –

- **“approved bargaining council”** means a registered bargaining council approved by the Commissioner as an institution, board, or body;
- **“Commission”** means the Commission for Conciliation, Mediation and Arbitration as defined and established under the LRA to resolve any labour disputes through conciliation;<sup>1</sup>
- **“Constitution”** means the Constitution of the Republic of South Africa, 1996;
- **“court”** means the Labour Court established under the LRA;<sup>2</sup>
- **“Income Tax Act”** means the Income Tax Act 58 of 1962;
- **“institution, board, or body”** means an institution, board, or body approved by the Commissioner under section 10(1)(cA)(i);
- **“LRA”** means the Labour Relations Act 66 of 1995;
- **“NEDLAC”** means the National Economic Development and Labour Council<sup>3</sup> established<sup>4</sup> by the National Economic, Development and Labour Council Act 35 of 1994 to, amongst other things, promote the goals of economic growth, participation in economic decision-making and social equity;
- **“parties”** means the registered trade unions and registered employers’ organisations that either establish a bargaining council or are admitted to it after establishment;
- **“prescribed activities”** mean the activities prescribed in section 10(1)(cA)(i) an institution, board, or body must undertake in the furtherance of its sole or principal object;
- **“prescribed requirements”** mean the formal conditions and requirements set out in section 10(1)(cA)(i) to qualify for approval as an institution, board, or body;
- **“registered bargaining council”** means a bargaining council registered by the registrar under section 29(15) of the LRA;
- **“registrar”** means the registrar of labour relations;<sup>5</sup>
- **“section”** means a section of the Income Tax Act; and
- any other word or expression bears the meaning ascribed to it in the Income Tax Act.

The guides referred to in this Note are available on the SARS website at [www.sars.gov.za](http://www.sars.gov.za). Unless indicated otherwise, the latest version of these documents should be consulted.

<sup>1</sup> Sections 112 and 213 of the LRA.

<sup>2</sup> Section 151 of that Act.

<sup>3</sup> Defined in section 213 of the LRA.

<sup>4</sup> Section 2 of that Act.

<sup>5</sup> Appointed under section 108 of the LRA.

## 1. Purpose

This Note provides clarity on the approval of registered bargaining councils as institutions, boards, or bodies under section 10(1)(cA)(i).

## 2. Background

The Constitution guarantees fair labour practices for all.<sup>6</sup> It grants workers<sup>7</sup> the right to form trade unions,<sup>8</sup> and employers<sup>9</sup> the right to form employers' organisations.<sup>10</sup> Both trade unions and employers' organisations are entitled to manage their own affairs, organise themselves, and form or join federations.<sup>11</sup> Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

The Constitution further provides that national legislation be enacted to regulate collective bargaining.<sup>12</sup> The LRA was enacted to give effect to these constitutional labour rights, providing for all trade unions, employers' organisations and employers to engage in collective bargaining to promote economic development, social justice and labour peace.<sup>13</sup> LAWSA provides the following on the LRA:<sup>14</sup>

“One of the primary objects of the Labour Relations Act is to provide a framework for orderly collective bargaining at sectoral level. Bargaining councils are central to this statutory imperative and provide a regulated structure designed to enable employers' organisations and trade unions to collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest in a specific sector and area.”

(Footnotes omitted)

Because of their significant role in supporting the economy, registered bargaining councils are eligible for exemption under section 10(1)(cA)(i), as explained in this Note.

## 3. Bargaining councils

### 3.1 Establishment

The LRA defines “bargaining council” as –<sup>15</sup>

“a bargaining council referred to in section 27 and includes, in relation to the public service, the bargaining councils referred to in section 35”.

<sup>6</sup> Section 23(1) of the Constitution.

<sup>7</sup> The rights of workers are prescribed in section 23(2) of the Constitution.

<sup>8</sup> The term “trade union” as defined in section 213 of the LRA means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations.

<sup>9</sup> The rights of employers are prescribed in section 23(3) of the Constitution.

<sup>10</sup> The term “employers' organisation” as defined in section 213 of the LRA means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions.

<sup>11</sup> Section 23(4) of the Constitution.

<sup>12</sup> Section 23(5) of the Constitution.

<sup>13</sup> Section 1 of the LRA.

<sup>14</sup> Van Jaarsveld, F, Bakker, A, & Dekker, L (30 November 2017). Labour Law: Part 1. In *The Law of South Africa (LAWSA)* 24(1) (Volume Third Edition) in paragraphs 514 and 515. My LexisNexis [online].

<sup>15</sup> Section 213 of the LRA.

Section 27 of the LRA deals with the establishment of bargaining councils and reads as follows:

“(1) One or more registered trade unions and one or more registered employers’ organisations may establish a bargaining council for a sector and area by –

- (a) adopting a constitution that meets the requirements of section 30; and
- (b) obtaining registration of the bargaining council in terms of section 29.

(2) The State may be a party to any bargaining council established in terms of this section if it is an employer in the sector and area in respect of which the bargaining council is established.

(3) If the State is a party to a bargaining council in terms of subsection (2), any reference to a registered employers’ organisation includes a reference to the State as a party.

(4) A bargaining council may be established for more than one sector.”

Section 35 of the LRA dealing with bargaining councils in the public service reads as follows:

“There will be a bargaining council for—

- (a) the public service as a whole, to be known as the Public Service Coordinating Bargaining Council; and
- (b) any sector within the public service that may be designated in terms of section 37.”

Bargaining councils are established by —<sup>16</sup>

- registered trade unions, sufficiently representative of the employees’ employed by an employer in a workplace, to regulate relations between such employees and their employers or employers’ organisations; and
- registered employers’ organisations comprising a number of employers associated together to regulate relations between employers and employees or trade union.

The establishment of a bargaining council is generally a voluntary process. However, in the public sector, the LRA specifically designates the Public Service Coordinating Bargaining Council as the bargaining council to serve the entire public service.<sup>17</sup> It also has the authority to establish, change, merge, or dissolve sector-specific councils as needed.<sup>18</sup> At present, there are several bargaining councils in which the State is the employer.<sup>19</sup>

<sup>16</sup> Section 27 of the LRA.

<sup>17</sup> The term “public service” as defined in section 213 of the LRA means the national departments, provincial administrations, provincial departments and government components contemplated in section 7(2) of the Public Service Act 103 of 1994 but excluding (a) the members of the South African National Defence Force, (b) the National Intelligence Agency, and (c) the South African Secret Service.

<sup>18</sup> Sections 35 to 37 of the LRA.

<sup>19</sup> Education Labour Relations Council, Public Health and Social Development Sectoral Bargaining Council, Safety and Security Sectoral Bargaining Council, General Public Service Sectoral Bargaining Council, and South African Local Government Bargaining Council.

Bargaining councils may apply to the registrar for registration under the LRA by submitting the required form along with a copy of their constitution.<sup>20</sup> If the registrar is satisfied that all registration requirements are met, the bargaining council's name is entered in the register of councils.<sup>21</sup>

Once registered, the registrar issues a certificate of registration specifying the bargaining council's registered scope (see 7.2) and provides a certified copy of the registered constitution to the council.<sup>22</sup> If a court issues an order for the winding up of a bargaining council, the registrar will cancel the registration by removing its name from the register of councils.<sup>23</sup>

As a result of registration, bargaining councils are required under the LRA to submit various details to the registrar, including their office-bearers, auditor's reports, and financial statements.<sup>24</sup>

Accreditation by the Commission is necessary for a bargaining council to perform dispute resolution functions.<sup>25</sup> Registered bargaining councils must therefore also provide the Commission with certified copies of all collective agreements concluded as well as the details regarding the admission and resignation of parties.<sup>26</sup>

### 3.2 Constitution of a bargaining council

The registered trade unions and registered employers' organisations that establish a bargaining council are required to agree on a constitution.<sup>27</sup> In accordance with the LRA, the constitution must at least provide for the following essential elements:<sup>28</sup>

- The process for making decisions.
- Procedures for appointing representatives and their alternatives, ensuring that half are appointed by the trade unions and the other half by the employers' organisations, that are party to the bargaining council.
- Guidelines for when and how representatives must vacate their positions. as well as the process for appointing replacements.
- Provisions for the representation of small and medium enterprises.
- Rules for convening and conducting meetings, including quorum requirements and the recording of meetings.
- The appointment or election of office-bearers<sup>29</sup> and officials,<sup>30</sup> their functions, and the circumstances and procedures for their removal.

<sup>20</sup> Section 29(1) of the LRA.

<sup>21</sup> Section 29(11) of the LRA.

<sup>22</sup> Section 29(15) of the LRA.

<sup>23</sup> Section 61(2) of the LRA.

<sup>24</sup> Section 54(2) of the LRA.

<sup>25</sup> Section 52 of the LRA.

<sup>26</sup> Section 54(3) of the LRA.

<sup>27</sup> Refusal to agree to the establishment of a bargaining council amounts to a refusal to bargain under section 64(2) of the LRA.

<sup>28</sup> Section 30(1) of that Act.

<sup>29</sup> The term "office-bearer" as defined in section 213 of the LRA means a person who holds office and who is not an official.

<sup>30</sup> The term "official" as defined in section 213 of the LRA means a person employed as secretary or in any other prescribed capacity, whether or not that person is employed in a full-time capacity.

- The establishment and functioning of committees.
- Procedures for resolving disputes.
- Procedures for granting exemptions from collective agreements.
- Regulations for the banking and investment of funds, as well as the use of those funds.
- Delegation of powers and functions.
- Criteria for admitting additional parties.
- Procedures for amending the constitution.
- Procedures for winding up the council.

The same requirements apply to the constitution of a bargaining council within the public service, with two exceptions, namely, that any reference to an “employers’ organisation” should be interpreted as referring to the State as the employer,<sup>31</sup> and the requirement about representation of small and medium enterprises does not apply. Additionally, the constitution may provide for the establishment and functioning of chambers of the bargaining council at both national and regional levels.<sup>32</sup>

Once a bargaining council is registered, its constitution becomes legally binding on the parties to the bargaining council.<sup>33</sup> A bargaining council’s constitution is considered a collective agreement and therefore enforceable.

#### 4. The law

Section 10(1)(cA) is quoted in the **Annexure**.

#### 5. Application of the law

The receipts and accruals of any institution, board, or body, except a company as defined in the Companies Act,<sup>34</sup> any co-operative, close corporation, trust, or water services provider established by or under any law may be exempt under section 10(1)(cA)(i) if the strict requirements of that section are met.<sup>35</sup>

The receipts and accruals will be exempt (see **11**) only if –

- the Commissioner has granted approval (see **6**), subject to any conditions considered necessary to ensure that the prescribed activities (see **7**) are wholly or mainly directed to the furtherance of the sole or principal object (see **6.3**),<sup>36</sup> and
- the founding document meets all the prescribed requirements (see **8**).<sup>37</sup>

<sup>31</sup> Section 30(2) of the LRA.

<sup>32</sup> Section 30(4) of the LRA.

<sup>33</sup> Section 29(11) of the LRA.

<sup>34</sup> Act 71 of 2008.

<sup>35</sup> For commentary, see the *Tax Exemption Guide for Institutions, Boards, or Bodies*.

<sup>36</sup> Paragraph (a) of the first proviso to section 10(1)(cA).

<sup>37</sup> Paragraph (b) of the first proviso to section 10(1)(cA).

## 6. Approval requirements

The requirements of section 10(1)(cA)(i) relevant to registered bargaining councils are considered below.

### 6.1 Meaning of institution, board, or body

The phrase “institution, board, or body” in section 10(1)(cA)(i) is not defined in the Act. The words should therefore be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used.<sup>38</sup> The *Cambridge Dictionary* describes the words separately as follows:

- “Institution” is “an organization that exists to serve a public purpose such as education or support for people who need help.”<sup>39</sup>
- “Board” is “the group of people who are responsible for controlling the operation of a public or private organization.”<sup>40</sup>
- “Body” is “a group of people who have joined together for a particular reason.”<sup>41</sup>

The well-established principles for interpreting statutes require that the words, context, and purpose of a provision must be considered.<sup>42</sup> Using these principles, with the dictionary meanings, section 10(1)(cA)(i) is understood to mean that an institution, board, or body is –

- established by or under law to perform certain functions;
- a formal structure generally with a constitution or governing rules; and
- formed to achieve a sole or principal object, such as research, education, or providing services to the State, or members of the general public.

Based on the legal status and requirements in the LRA, a registered bargaining council is considered an institution, board, or body for the purposes of section 10(1)(cA)(i).

### 6.2 Established under any law

Section 10(1)(cA)(i) applies to an institution, board, or body established by or under any law. Although the word “any” is of wide and unqualified generality, it may be restricted by the subject matter or the context.<sup>43</sup>

The Interpretation Act defines “law” as –<sup>44</sup>

“any law, proclamation, ordinance, Act of Parliament, or other enactment having the force of law”.

<sup>38</sup> Kellaway, EA (1995). *Principles of legal interpretation of statutes, contracts and wills* at page 224. Butterworths South Africa. Also, see Steyn, LC (1981). *Die uitleg van wette* (Fifth Edition) pages 4 to 7. Juta and Company (Pty) Ltd.

<sup>39</sup> <https://dictionary.cambridge.org/dictionary/english/institution> [Accessed 24 March 2026].

<sup>40</sup> <https://dictionary.cambridge.org/dictionary/english/board> [Accessed 24 March 2026].

<sup>41</sup> <https://dictionary.cambridge.org/dictionary/english/body> [Accessed 24 March 2026].

<sup>42</sup> *C:SARS v United Manganese of Kalahari (Pty) Ltd* 2020 (4) SA 428 (SCA) 82 SATC 444.

<sup>43</sup> *CIR v Ocean Manufacturing Ltd* 1990 (3) SA 610 (A), 52 SATC 151 at 161.

<sup>44</sup> Section 2 of Act 33 of 1957.

The phrase “any law” as used in section 10(1)(cA)(i) was considered in ITC 1788. The issue that needed to be decided was whether the words “any law” refers to South African statutes only, or whether laws of federal states of the United States of America are included in that definition. Bertelsmann J held:<sup>45</sup>

“Although this argument is attractive and I was initially inclined to uphold it (because the result may be regarded as iniquitous for the appellant if it is not) a moment’s reflection must show that the legislature could not but have intended South African statutes. The entire purpose of the Income Tax Act is to control the revenue accruing to the state from taxes levied upon the income of the citizenry.

To give recognition to creatures created by foreign statutes without any qualification or definition might seriously endanger the object of the entire Income Tax Act.

The entities which the legislature clearly had in mind to exempt from the tax are those to which Mr *Spilg* referred: parastatals created by statutes passed by the South African Parliament, such as the South African Bureau of Standards.”

The phrase “any law” in section 10(1)(cA)(i) includes any law such as the Constitution, which is the supreme law<sup>46</sup> of South Africa, as well as Acts passed by the South African Parliament,<sup>47</sup> which are considered national legislation.<sup>48</sup>

The reference in section 10(1)(cA)(i) to an institution, board, or body “established under any law” means that the relevant national legislation provides in general for the establishment of a type of institution, board, or body to perform specific functions.

Typically, the legislation does not mention the institution, board, or body by name. It may require that the establishment of such an institution, board, or body be published by the responsible Minister in the *Government Gazette*.

Institutions, boards, or bodies established under any law usually have constitutions that may include provisions prescribed by the regulating national legislation, such as their objectives, powers, functions, governance, duties, and financial matters.

The LRA regulates several key areas, such as how bargaining councils are established and the validity of collective agreements.<sup>49</sup> To carry out their centralised bargaining function, bargaining councils are required to adopt a constitution (see **3.2**) and apply to the registrar for registration (see **3.1**).<sup>50</sup> Only those bargaining councils that are registered under the LRA<sup>51</sup> are recognised as juristic persons, possessing their own legal rights and responsibilities as set out in the LRA. The certificate of registration issued by the registrar confirms that a bargaining council is a body corporate.<sup>52</sup>

<sup>45</sup> (2004) 67 SATC 161 (G) at 164.

<sup>46</sup> Section 2 of the Constitution.

<sup>47</sup> The term “Parliament” is defined in section 2 of the Interpretation Act 33 of 1957.

<sup>48</sup> The term “national legislation” as defined in section 239 of the Constitution generally means legislation made under an Act of Parliament.

<sup>49</sup> Collective labour landscape, an employer’s guide to collective labour law. (August 2024). *Cliffe Dekker Hofmeyr*. Available online at [www.cliffedekkerhofmeyr.com/export/sites/cdh/practice-areas/guides/downloads/Collective-Labour-Landscape-An-Employers-Guide-to-Collective-Labour-Law.pdf](http://www.cliffedekkerhofmeyr.com/export/sites/cdh/practice-areas/guides/downloads/Collective-Labour-Landscape-An-Employers-Guide-to-Collective-Labour-Law.pdf) [Accessed 24 March 2026].

<sup>50</sup> Section 27(1) of the LRA.

<sup>51</sup> Section 29 of the LRA deals with the registration of bargaining councils.

<sup>52</sup> Section 50(1) of the LRA.

Therefore, once registered under the LRA and having met all the prescribed requirements of section 10(1)(cA)(i) (see **8**), bargaining councils may be approved by the Commissioner as institutions, boards, or bodies.

### 6.3 Sole or principal object

The concept “furtherance of the sole or principal object” is fundamental to section 10(1)(cA)(i). The Income Tax Act does not define the words “furtherance”, “sole”, “principal” or “object”.

The *CollinsDictionary.com* describes “furtherance” of something as –<sup>53</sup>

“the activity of helping it to be successful or be achieved.”

The following words are described in *Dictionary.com*:

- “Sole” as “being the only one; only”.<sup>54</sup>
- “Principal” as “first or highest in rank, importance, value, chief”.<sup>55</sup>
- “Objective” as “something that one’s efforts or actions are intended to attain, accomplish, purpose, goal, target”.<sup>56</sup>

In ITC 1569<sup>57</sup> reference was made to the following two meanings of “principal” in the *Oxford English Dictionary*:

- “1. First or highest in rank or importance; that is at the head of all the rest; of the greatest account or value; foremost.
2. Less definitely: belonging to the first or highest group in rank or importance; of the first order; main, prominent, leading.”

The “object” of a bargaining council is determined not by the subjective goals of its controllers, but the activities it is mandated to perform under its founding document (see **3.2**). This object is the bargaining council’s aim, intention, purpose, or goal. The only or predominate object of a bargaining council is advanced, progressed, or achieved when any of the prescribed activities (see **7**) are carried on. Accordingly, a bargaining council must first carry on its sole or principal object and, in doing so, engage in the prescribed activities intended to advance that object. In this context, “activities” means only those activities that are prescribed to further the council’s sole or principal object, not any other activities. Since registered bargaining councils qualifying for approval and exemption under section 10(1)(cA)(i) benefit from tax privileges, the phrase “sole or principal object” must be interpreted strictly, based on the facts of each individual case.<sup>58</sup>

The sole or principal object of registered bargaining councils is to promote and facilitate collective bargaining between trade unions and employers’ organisations in an orderly, organised and regulated manner. Through this process, they determine wages, employment terms and conditions, and address other matters of mutual interest to employees and employers within a specific sector and geographical area (see **7.2**).

<sup>53</sup> [www.collinsdictionary.com/dictionary/english-word/furtherance](http://www.collinsdictionary.com/dictionary/english-word/furtherance) [Accessed 24 March 2026].

<sup>54</sup> [www.dictionary.com/browse/%20sole](http://www.dictionary.com/browse/%20sole) [Accessed 24 March 2026].

<sup>55</sup> [www.dictionary.com/browse/%20principal](http://www.dictionary.com/browse/%20principal) [Accessed 24 March 2026].

<sup>56</sup> [www.dictionary.com/browse/objective%20](http://www.dictionary.com/browse/objective%20) [Accessed 24 March 2026].

<sup>57</sup> (1993) 56 SATC 86 (C) at 90.

<sup>58</sup> *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at 182.

## 7. Prescribed activities

Section 10(1)(cA)(i) requires that an institution, board, or body must undertake specific prescribed activities in the furtherance of its sole or principal object. The prescribed activities registered bargaining councils undertake in the furtherance of their sole or principal object are considered below.

### 7.1 Necessary and useful services provided to the State, and the general public

Registered bargaining councils, in the furtherance of their sole or principal object (see 6.2), provide necessary, and useful services to both the State and members of the general public.<sup>59</sup>

The phrase necessary and useful services provided to the State generally refers to services that are necessary for the functioning of government and beneficial to the public interest. These services are generally recognised by law as contributing to the effective administration of the State and supporting its constitutional and statutory obligations.

Necessary and useful services to members of the general public are for the well-being and development of individuals and the general community.

Employees generally cannot compel employers to improve employment terms and conditions unless an agreement is reached, which is achieved through bargaining. In *Metal and Allied Workers Union v Hart Ltd*,<sup>60</sup> it was opined that “bargaining” was defined to mean “to haggle or wrangle to arrive at some agreement on terms of give and take”, while “negotiate” was considered similar, meaning “to confer with a view to compromise and agreement”. This process is dynamic, with both parties applying pressure to achieve a fair and mutually acceptable agreement.<sup>61</sup> If consensus cannot be reached, industrial action, such as strikes and lockouts, may follow.<sup>62</sup> Such industrial action can lead to financial losses, reduced investment, economic instability, and social unrest. These disruptions can decrease productivity and growth, prompting employers to adopt technology that reduces workforce needs, which negatively affects both workers and the broader economy.<sup>63</sup> The right to strike is a key mechanism that compels employers and employees to negotiate and bargain to reach agreements.

The LRA promotes collective bargaining to regulate employment terms and conditions and resolve labour disputes.<sup>64</sup> Through collective bargaining, trade unions and employers’ organisations negotiate on behalf of their members. Bargaining councils conduct collective bargaining at national, regional, and local levels on a wide range of employment matters. Nationally, they address core employment terms like wages, benefits, and leave. Regionally, they focus on allowances and specific working

<sup>59</sup> Section 10(1)(cA)(i)(bb).

<sup>60</sup> (1985) 6 ILJ 478 (IC).

<sup>61</sup> Barter, H (nd). *Bargaining councils in South African law: implications for employers*. Barter McKellar. Available online at [www.bartermckellar.law/employment-law-explained/bargaining-councils-in-south-african-law-implications-for-employers](http://www.bartermckellar.law/employment-law-explained/bargaining-councils-in-south-african-law-implications-for-employers) [Accessed 24 March 2026].

<sup>62</sup> Leppan, F, Govindvee, A, & Cripps, B (2016). Bargaining in bad faith in South African labour law an antidote? *Obiter, Academy of Science South Africa*. Available online at <https://obiter.mandela.ac.za/article/download/11515/16758/69504> [Accessed 24 March 2026].

<sup>63</sup> As above.

<sup>64</sup> Chapter III of the LRA.

conditions. Locally, they manage workplace-specific issues such as training, equity, restructuring, and health and safety.<sup>65</sup>

Various organs of state are responsible for regulating the labour relationship, and NEDLAC provides a platform for employers, employees, and the State to jointly manage these relationships through co-operation, negotiation and joint decision-making.<sup>66</sup> The State is not only a regulator but also an employer, with the LRA specifically providing for bargaining councils within the public service.<sup>67</sup>

Constructive bargaining benefits employers, employees, and the State by ensuring fair labour practices, protecting and advancing workers' socio-economic interests, and promoting reasonable working conditions, fair wages, and equitable profit sharing. These practices support a strong economy and reinforce democracy.<sup>68</sup>

## 7.2 Activities to promote industry

Registered bargaining councils in the furtherance of their sole or principal object (see 6.2) carry on of activities designed to promote industry, or any branch of such an industry.<sup>69</sup>

The words “promote”, “industry”, and “branch” are not defined in the Income Tax Act. *Dictionary.com* provides the following descriptions:

- “promote” is “to help or encourage to exist or flourish; further”;<sup>70</sup>
- “industry” is “the aggregate of manufacturing or technically productive enterprises in a particular field, often named after its principal product”;<sup>71</sup> and
- “branch” is “any member or part of a body or system; a section or subdivision.”<sup>72</sup>

After the registrar publishes the material particulars of a bargaining council's application for registration by notice<sup>73</sup> in the *Government Gazette*,<sup>74</sup> NEDLAC demarcates an appropriate sector<sup>75</sup> and an area<sup>76</sup> to the council,<sup>77</sup> forming its “registered scope”<sup>78</sup> (except for the public service). A registered scope can include

<sup>65</sup> Bhorat, H, van der Westhuizen, C, & Goga, S (September 2007). Analysing wage formation in the South African labour market: the role of bargaining councils. *School of Economics, University of Cape Town*. Available online at [www.commerce.uct.ac.za/dpru/](http://www.commerce.uct.ac.za/dpru/) [Accessed 24 March 2026].

<sup>66</sup> Ferreira, GM (1 November 2005). *South African labour: a tripartite relationship?* Journal of Public Administration 3.2 (Volume 40). Sabinet African Journals available online at <https://journals.co.za/doi/abs/10.10520/EJC51420>.

<sup>67</sup> Part D in Chapter III of that Act.

<sup>68</sup> The role of collective bargaining in South Africa. (11 July 2023). *Consolidated Employers' Organisation*. Available online at [www.mondaq.com/southafrica/employee-rights-labour-relations/1341484/the-role-of-collective-bargaining-in-south-africa](http://www.mondaq.com/southafrica/employee-rights-labour-relations/1341484/the-role-of-collective-bargaining-in-south-africa) [Accessed 24 March 2026].

<sup>69</sup> Section 10(1)(cA)(i)(cc).

<sup>70</sup> [www.dictionary.com/browse/promote](http://www.dictionary.com/browse/promote) [Accessed 24 March 2026].

<sup>71</sup> [www.dictionary.com/browse/industry](http://www.dictionary.com/browse/industry) [Accessed 24 March 2026].

<sup>72</sup> [www.dictionary.com/browse/branch](http://www.dictionary.com/browse/branch) [Accessed 24 March 2026].

<sup>73</sup> The purpose of the notice is to allow the general public to lodge, within a prescribed period, an objection to the application.

<sup>74</sup> Section 29(3) of the LRA.

<sup>75</sup> The term “sector” as defined in section 213 of the LRA means an industry or a service.

<sup>76</sup> The term “area” as defined in section 213 of the LRA includes any number of areas, whether or not contiguous.

<sup>77</sup> Section 29(7) to (10) of the LRA.

<sup>78</sup> The term “registered scope” is defined in section 213 of the LRA.

industries such as forestry, agriculture, building, clothing, civil engineering, chemical, diamond cutting, food, restaurant, catering and allied trades, fishing, electrical, furniture manufacturing, and personal care like hairdressing, cosmetology, beauty and skincare.<sup>79</sup> Registered bargaining councils can be established for more than one sector.<sup>80</sup> Except for those in the public service, a registered bargaining council's authority is limited to the sector and geographic area specified in its registration certificate,<sup>81</sup> which can be national, regional, or local.<sup>82</sup>

All trade unions, employers' organisations, and employers have the right to participate in collective bargaining.<sup>83</sup> Collective bargaining is essential for building ongoing relationships between trade unions and employers, promoting stability and co-operation within workplaces and across sectors.<sup>84</sup> Employers benefit from industrial peace and operational stability, while employees represented by their trade union use bargaining to secure fair work distribution, rewards, and job security.<sup>85</sup>

Employers within a registered scope are bound by the main collective agreement concluded by the relevant registered bargaining council for that sector and area. Both trade unions and employers' organisations have a constitutional right to apply for membership in a council.<sup>86</sup>

Registered bargaining councils play a central role in advancing industries by facilitating collective bargaining. They provide a structured platform for employers and trade unions to negotiate and conclude collective agreements on matters such as employment terms, wages, benefits, and other sector-specific concerns. Furthermore, registered bargaining councils are instrumental in resolving labour disputes, including unfair dismissals, wage disagreements and breaches of employment terms, through processes like conciliation and arbitration. This helps to maintain industrial peace and stability. By setting industry standards for minimum wages, working conditions, and disciplinary procedures, registered bargaining councils help ensure fairness and consistency for both employers and employees. They protect workers' socio-economic interests and contribute to industry development by managing employee benefit funds, such as pension, provident, medical aid, unemployment, holiday and similar schemes or funds.<sup>87</sup> Additionally, they ensure compliance with collective agreements, encourage skills development and industry training initiatives, and formulate policy recommendations for NEDLAC.

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<sup>79</sup> Bhorat, H, van der Westhuizen, C, & Goga, S (September 2007). Analysing wage formation in the South African labour market: the role of bargaining councils. *School of Economics, University of Cape Town*. Available online at [www.commerce.uct.ac.za/dpru/](http://www.commerce.uct.ac.za/dpru/) [Accessed 24 March 2026].

<sup>80</sup> Section 27(4) of the LRA.

<sup>81</sup> Section 29(15)(a) of the LRA.

<sup>82</sup> Section 28(1) and 50(2) of the LRA.

<sup>83</sup> Section 1 of the LRA.

<sup>84</sup> Leppan, F, Govindvee, A, & Cripps, B (2016). Bargaining in bad faith in South African labour law an antidote? *Obiter, Academy of Science South Africa*. Available online at <https://obiter.mandela.ac.za/article/download/11515/16758/69504> [Accessed 24 March 2026].

<sup>85</sup> Barter, H (nd). *Bargaining councils in South African law: implications for employers*. Barter McKellar. Available online at [www.bartermckellar.law/employment-law-explained/bargaining-councils-in-south-african-law-implications-for-employers](http://www.bartermckellar.law/employment-law-explained/bargaining-councils-in-south-african-law-implications-for-employers) [Accessed 24 March 2026].

<sup>86</sup> Masupye, E (2 August 2021). The role of collective bargaining systems in South Africa. *Consolidated Employers' Organisation*. Available online at <https://ceosa.org.za/the-role-of-collective-bargaining-systems-in-south-africa/> [Accessed 24 March 2026].

<sup>87</sup> These schemes or funds established by a bargaining council are under section 28(3) of the LRA subject to the laws relating to pension, provident or medical aid schemes or funds.

Collective agreements concluded by registered bargaining councils can be extended to include non-parties within the council's jurisdiction if a written request is made to the Minister of Employment and Labour.<sup>88</sup> The Minister of Employment and Labour may extend the collective agreement by publishing it in the *Government Gazette*, provided all requirements have been met. This prevents non-member employers from gaining an unfair advantage over members.

For these reasons, registered bargaining councils are recognised as carrying on activities designed to promote industry or its various sectors.<sup>89</sup>

## 8. Prescribed requirements to be met for approval by Commissioner

A registered bargaining council wishing to obtain approval from the Commissioner as an institution, board, or body under section 10(1)(cA)(i) must submit the required application to SARS.<sup>90</sup> This application standardises the approval process, ensuring all necessary information and documentation are provided to the Commissioner. However, the application itself does not determine whether approval is granted, as it serves only as an administrative tool for SARS to consider the application.

If approval and exemption under section 10(1)(cA)(i) is granted, the Commissioner will issue a letter to the approved bargaining council. This letter includes a unique exemption reference number, which is a different reference number to the taxpayer reference number<sup>91</sup> allocated on registration for income tax. The approved bargaining council must retain this approval letter as part of its records.

Should the Commissioner not grant approval, the registered bargaining council will receive written notification outlining the reasons for the decision. This decision can be challenged through objection and appeal procedures. A registered bargaining council not approved as an institution, board, or body will be liable for income tax and other taxes and duties as a normal taxpayer (see **10**).

The constitution (see **3.2**) of a registered bargaining council must be submitted to the Commissioner when applying for approval under section 10(1)(cA)(i). For a registered bargaining council to be approved as an institution, board, or body under section 10(1)(cA)(i), its founding document must meet the prescribed requirements.<sup>92</sup> The constitution will be examined as a whole to ensure compliance. Because the LRA outlines specific procedures for amending the constitution of a registered bargaining council, it may not comply with the prescribed requirements at the time the application is submitted. In these instances, the Commissioner may confirm approval, subject to conditions deemed necessary to ensure that the council's prescribed activities are wholly or mainly directed at the furtherance of its sole or principal object until the constitution is formally amended (see **9**).

The prescribed requirements for approval as an institution, board, or body under section 10(1)(cA)(i) are considered below.

<sup>88</sup> Section 32 of the LRA.

<sup>89</sup> Section 10(1)(cA)(i)(cc).

<sup>90</sup> Additional information on how to apply is available on the SARS website. Navigate to Businesses and Employers ⇒ Tax Exempt Institutions.

<sup>91</sup> The term "taxpayer reference number" as defined in section 1 of the Tax Administration Act means the number referred to in section 24 of the same Act.

<sup>92</sup> Paragraph (b) of the first proviso to section 10(1)(cA).

## 8.1 Prohibition on distributions

An institution, board, or body is, under its constitution, not permitted to distribute any amount to any person.<sup>93</sup> The reference to “any person” is not limited to natural persons, as the definition of “person”<sup>94</sup> in the Income Tax Act does not exclude companies, other incorporated entities, associations of persons, or statutory bodies.<sup>95</sup> This prohibition on distributions is absolute. Therefore, the requirement is not subject to the Commissioner’s discretion and cannot in general or in a particular instance be waived, deferred, or reduced. Even if a minimal amount is distributed or a distribution occurs as an isolated or once-off event, the institution, board, or body may be subject to the withdrawal of the approval(see **10**).

The words “distribute”, and “amount” are not defined in the Income Tax Act. The *Cambridge Dictionary* describes “distribute” as –<sup>96</sup>

“to give something out to several people, or to spread or supply something.”

The meaning of “amount”<sup>97</sup> was judicially considered in *WH Lategan v CIR*<sup>98</sup> in relation to its use in the definition of “gross income” and the following *dictum* of Watermeyer J has been cited with approval in a number of other cases:<sup>99</sup>

“In my opinion, the word ‘amount’ must be given a wider meaning, and must include not only money but the value of every form of property earned by the taxpayer, whether corporeal or incorporeal, which has a money value.”

In the landmark case of *C: SARS v Brummeria Renaissance (Pty) Ltd & others*,<sup>100</sup> it was held that if a receipt or accrual cannot be turned into money, it does not necessarily mean it has no money value. The “turn into money” test was merely one of the tests for determining whether an accrual had a money value. The court confirmed that the test was objective, not subjective.

Registered bargaining councils generally meet this prescribed requirement because their constitutions specify how their funds may be used (see **3.2**). Additionally, their funding agreements (see **8.2**) outline the specific purposes for which these funds can be used.

Non-exhaustive examples of what would **not** constitute a distribution of any amount by a registered bargaining council to any person include –

- any expenditure such as the purchasing of assets, the paying off debts or any funds expended in the operations of a registered bargaining council undertaking its prescribed activities (see **8**) in furtherance of its sole or principal object (see **6.2**);
- investments (see **8.2**);
- any *bona fide* donations made by a bargaining council; or

<sup>93</sup> Paragraph (b)(i) of the first proviso to section 10(1)(cA).

<sup>94</sup> Section 1(1).

<sup>95</sup> Foreign partnerships are specifically excluded.

<sup>96</sup> <https://dictionary.cambridge.org/dictionary/english/distribute> [Accessed 24 March 2026].

<sup>97</sup> For commentary, see the *Comprehensive Guide to Capital Gains Tax*.

<sup>98</sup> 1926 CPD 203, 2 SATC 16 at 19.

<sup>99</sup> Also, see *CIR v Butcher Bros (Pty) Ltd* 1945 AD 301, 13 SATC 21 at 34 and *CIR v People’s Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9 at 21.

<sup>100</sup> *C: SARS v Brummeria Renaissance (Pty) Ltd & others* 2007 (6) SA 601 (SCA), 69 SATC 205.

- the transfer of any remaining assets on dissolution (see **8.3**).

## 8.2 Use of funds

An institution, board, or body is, under its constitution, required to use its funds solely for investment or for the object for which it has been established.<sup>101</sup> The “object” refers to the sole or principal object (see **6.3**) of the institution, board, or body as set out in its founding document.

The word “funds” is described in *BusinessDictionary.com* as follows:<sup>102</sup>

“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 above, “funds” refers to the financial resources, namely, money available to a business for spending in the form of cash, liquid securities and credit lines.<sup>103</sup>

The funds of an institution, board, or body may be invested as desired provided the investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. However, fiduciaries<sup>104</sup> are expected to act with prudence, integrity and reasonable care. *Investopedia* explains “investment” as follows:<sup>105</sup>

“An investment is an asset or item acquired with the goal of generating income or appreciation. In an economic sense, an investment is the purchase of goods that are not consumed today but are used in the future to create wealth. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or will later be sold at a higher price for a profit.

The term ‘investment’ can refer to any mechanism used for generating future income. In the financial sense, this includes the purchase of bonds, stocks or real estate property. Additionally, a constructed building or other facility used to produce goods can be seen as an investment. The production of goods required to produce other goods may also be seen as investing.”

Registered bargaining councils generally receive their funding through levies paid by both employers and employees within the industry for which the bargaining council is registered. The registered bargaining council’s constitution (see **3.2**) specifies the purposes for which these funds can be used. Under the LRA, a bargaining council is required to enter into a funding agreement (a type of collective agreement) that outlines the allocation of funds for –<sup>106</sup>

- operational and administrative expenses, such as salaries, office costs, and meeting expenses;
- costs related to dispute resolution and negotiations;

<sup>101</sup> Paragraph (b)(ii) of the first proviso to section 10(1)(cA).

<sup>102</sup> [www.businessdictionary.com/definition/funds](http://www.businessdictionary.com/definition/funds) [Accessed 24 March 2026].

<sup>103</sup> See the meaning of “financial resources” as described in *BusinessDictionary.com* available online at [www.businessdictionary.com/definition/financial-resources](http://www.businessdictionary.com/definition/financial-resources) [Accessed 24 March 2026].

<sup>104</sup> The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/fiduciary> [Accessed 24 March 2026] describes “fiduciary” as “relating to the responsibilities of a person or organization that manages property or money belonging to another person or organization”.

<sup>105</sup> Hayes, A (31 May 2024). Investment: how and where to invest. *Investopedia*. Available online at [www.investopedia.com/terms/i/investment.asp](http://www.investopedia.com/terms/i/investment.asp) [Accessed 24 March 2026].

<sup>106</sup> Section 32A of the LRA.

- training and education schemes; or
- pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds, or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members.

Any surplus funds held by a registered bargaining council or by a fund,<sup>107</sup> it has established, may only be invested in savings accounts, permanent shares, or fixed deposits at registered banks or financial institutions, internal registered stocks as described in the Exchequer Act,<sup>108</sup> registered unit trusts, or other investment vehicles approved by the registrar.<sup>109</sup>

Registered bargaining councils generally comply with this prescribed requirement, since the LRA sets clear conditions and rules regarding how their funds must be managed and used.

### 8.3 Dissolution

On dissolution, an institution, board, or body is under its constitution required to transfer its assets to some other institution, board, or body, which has been granted exemption from tax under section 10(1)(cA)(i) and which has objects similar to those of such institution, board, or body.<sup>110</sup>

Typically, the process of winding-up of a registered bargaining council occurs before its formal dissolution. The court may order the dissolution of a bargaining council in two scenarios: firstly, if the council itself has resolved to wind up its affairs and has applied for a court order to implement that decision, or secondly, if the registrar or any party to the council applies to the court and the court is satisfied that the council can no longer function.<sup>111</sup>

Once a winding up order is issued, the court may appoint a liquidator and determine the liquidator's fees,<sup>112</sup> which are paid first from the council's assets. The court must also notify the registrar.<sup>113</sup>

During the winding-up process, all assets are recovered and realised. The proceeds of such realisation are first used to discharge the winding-up (liquidation) costs, then to pay creditors according to insolvency laws. Any remaining assets are distributed as specified in the registered bargaining council's founding document (see 3.2).

Therefore, on the dissolution of a registered bargaining council, all assets should be realised and transferred. While the LRA allows a council's constitution to specify how assets are distributed on dissolution, to qualify for approval, no assets may be distributed to individuals or taxable entities. Instead, assets must be transferred to

<sup>107</sup> Any fund refers to a pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds, or any similar schemes or funds for the benefit of the parties to the bargaining council or their members contemplated in section 28(1)(g) of the LRA.

<sup>108</sup> Act 66 of 1975.

<sup>109</sup> Section 53(5) of the LRA.

<sup>110</sup> Paragraph (b)(iii)(aa) of the first proviso to section 10(1)(cA).

<sup>111</sup> Section 59(1) of the LRA.

<sup>112</sup> Section 59(3) and (4) of the LRA.

<sup>113</sup> Section 61(1) of the LRA.

institutions, boards, or bodies that are also exempt under section 10(1)(cA)(i) and have similar, though not necessarily identical,<sup>114</sup> objectives.

Trade unions and employers' organisations that establish a bargaining council must ensure this dissolution requirement is either included in the constitution or complied with if they want the registered bargaining council to be eligible for approval and for its receipts and accruals to qualify for exemption under section 10(1)(cA)(i).

If, after all liabilities have been discharged, any assets remain that cannot be disposed of according to the constitution, the liquidator must in accordance with the LRA, realise them and pay the proceeds to the Commission for its own use.<sup>115</sup> This will meet the prescribed dissolution requirement, provided the Commission is an institution, board, or body approved by the Commissioner.

Assets and liabilities of any pension, provident or medical aid scheme or fund established by a registered bargaining council are treated as those of the registered bargaining council, unless –<sup>116</sup>

- the parties agree to continue the scheme or fund separately after council's winding-up;
- the Minister of Employment and Labour approves the continuation of the scheme or fund; and
- an application has been made in accordance with the provisions of the laws applicable to pension, provident or medical aid schemes or funds, for the registration of that scheme or fund under those provisions.<sup>117</sup>

If an approved bargaining council fails to transfer, or to take reasonable steps to transfer to a similar entity, the remaining assets as required, the undistributed accumulated net revenue will be deemed taxable income accruing to that council during the year of assessment<sup>118</sup> in which dissolution took place.<sup>119</sup>

The concept "accumulated net revenue" is not defined in the Income Tax Act. *Dictionary.com* describes "accumulated" as –<sup>120</sup>

"to gather or collect, often in gradual degrees, heap up".

The words "net revenue" are described in *BusinessDictionary.com* as follows:<sup>121</sup>

"Gross total minus any returns and any other negative revenue."

<sup>114</sup> See the meaning of "similar" as described in the *Free Dictionary* available online at [www.thefreedictionary.com/similar](http://www.thefreedictionary.com/similar) [Accessed 24 March 2026] as "having a resemblance in appearance or nature; alike though not identical".

<sup>115</sup> Section 59(5) of the LRA.

<sup>116</sup> Section 59(6) of the LRA.

<sup>117</sup> The Minister of Employment and Labour under section 59(8) of the LRA may by notice in the *Government Gazette* declare the rules of a scheme or fund that continues to be a separate scheme or fund despite the winding-up of the bargaining council is binding on any employees and employer(s) that fell within the registered scope of the council immediately before it was wound up.

<sup>118</sup> The term "year of assessment" is defined in section 1(1).

<sup>119</sup> Paragraph (b) of the second proviso to section 10(1)(cA).

<sup>120</sup> [www.dictionary.com/browse/accumulated](http://www.dictionary.com/browse/accumulated) [Accessed 24 March 2026].

<sup>121</sup> [www.businessdictionary.com/definition/net-revenue](http://www.businessdictionary.com/definition/net-revenue) [Accessed 24 March 2026].

The amount of accumulated net revenue is therefore the total undistributed profits or revenue, which can include amounts of a capital or revenue nature.

The term “taxable income” is defined as –<sup>122</sup>

“the aggregate of—

- (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I<sup>123</sup> of Chapter II<sup>124</sup> 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 in terms of this Act”.

(Footnotes added)

If an approved bargaining council is found to be guilty of such a transgression (failing to transfer or take reasonable steps to transfer to a similar entity, its remaining assets as required), it will not be permitted to deduct any further tax allowances or deductions from its accumulated net revenue. This is because its accumulated net revenue is deemed to be taxable income, calculated after all allowances and deductions have already been allowed.

## 9. Approval conditions imposed by the Commissioner

The Commissioner may grant approval to a registered bargaining council even if its constitution does not fully meet the prescribed requirements (see 8). However, the Commissioner will impose specific conditions deemed necessary to ensure that the registered bargaining council’s prescribed activities (see 7) are wholly or mainly directed towards the furtherance of its sole or principal object (see 6.2).<sup>125</sup>

Determining whether a prescribed activity undertaken by a registered bargaining council is wholly or mainly directed towards the furtherance of its sole or principal object will be a question of fact. The prescribed activity does not need to be wholly directed to the furtherance of its sole or principal object. It is sufficient if the activity is mainly directed for that purpose. In practice, SARS requires that more than 50% of a prescribed activity, measured by factors such as time or area usage, should be directed towards the furtherance of the registered bargaining council’s sole or principal object.

The prescribed requirements, which may include the proper use of funds, prohibition on distributions, and the transfer of remaining assets on dissolution, can be included as conditions in the Commissioner’s approval letter (see 6). This letter is binding on the approved bargaining council, and any non-compliance will result in the same penalties and actions<sup>126</sup> (see 10) as if the conditions were part of the approved bargaining council’s founding document (see 3.2). As each registered bargaining council’s circumstances may differ, the Commissioner will consider each case on its own merits to determine the appropriate conditions to be imposed.

<sup>122</sup> Section 1(1).

<sup>123</sup> Deals with normal tax and comprises of section 5 to 37G.

<sup>124</sup> The heading of that chapter is “The Taxes”.

<sup>125</sup> Paragraph (a) of the first proviso to section 10(1)(cA).

<sup>126</sup> Second proviso to section 10(1)(cA).

The approved bargaining council will be required to incorporate the relevant prescribed requirements (see 8) into its founding document within a reasonable period. This period is generally 12 months from the date of the approval letter issued by the Commissioner, or the date on which any other amendment is effected to its constitution, whichever comes first.

#### 10. Withdrawal of the approval and exemption

The Commissioner may withdraw the approval and exemption of any approved bargaining council if satisfied that such council has during any year of assessment failed to comply with section 10(1)(cA)(i). The approval and exemption may be withdrawn with effect from the commencement of the year of assessment in which the non-compliance or failure by an approved bargaining council occurred. The decision by the Commissioner to withdraw the approval and exemption is subject to objection and appeal.

However, in accordance with the Promotion of Administrative Justice Act,<sup>127</sup> the Commissioner must provide adequate reasons<sup>128</sup> relating to the non-compliance or failure to comply with section 10(1)(cA)(i) before the approval and exemption is withdrawn.<sup>129</sup>

If a registered bargaining council's approval and exemption is withdrawn, it will be regarded as a normal taxpayer and 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,<sup>130</sup> which is currently 27%.<sup>131</sup>

#### 11. Exemption from income tax

All the receipts and accruals of an approved bargaining council are fully exempt from income tax under section 10(1)(cA). All receipts and accruals falling within gross income,<sup>132</sup> being the total amount, in cash or otherwise, received by or accrued to or in favour of an approved bargaining council is exempt from income tax under section 10(1)(cA). The type of receipts or accruals envisaged are those, which are included in the definition of "gross income". Receipts or accruals of a capital nature, which are not deemed to be included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cA), since they do not require exemption.

Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain, which is included directly in taxable income. Paragraph 63 of the Eighth Schedule to the Act contains the rules for disregarding capital gains and losses of a fully exempt person.

<sup>127</sup> Act 3 of 2000.

<sup>128</sup> Section 5 of that Act.

<sup>129</sup> *Minister of Environmental Affairs & Tourism v Phambili Fisheries & another* [2003] 2 All SA 616 (SCA).

<sup>130</sup> Paragraph (a) of the definition of "company" in section 1(1).

<sup>131</sup> The Minister of Finance under section 5(2)(a) may announce different rates in the national annual budget, which are published annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.

<sup>132</sup> The term "gross income" is defined in section 1(1).

Approved bargaining councils, in addition to being exempt from the payment of income tax on their receipts and accruals, also enjoy the benefit of being exempt from certain other taxes,<sup>133</sup> such as donations tax, dividends tax,<sup>134</sup> and capital gains tax.<sup>135</sup>

Registered bargaining councils must, however despite their exempt status, fulfil various tax and administrative responsibilities under the Income Tax Act and the Tax Administration Act.<sup>136</sup> These include providing required information, updating any changes to registered details, retain and maintain proper records, submit annual income tax returns, appoint a representative taxpayer, and follow the procedures for objection and appeal.<sup>137</sup> In addition, registered bargaining councils must ensure compliance with other taxes, such as employees' tax, the skills development levy, unemployment insurance fund contributions, and value-added tax.

The *Tax Exemption Guide for Institutions, Boards, or Bodies* deals comprehensively with other tax exemptions as well as the administrative responsibilities and will therefore not be repeated in this Note.

## 12. Section 18A tax-deductible receipts

Section 18A provides for tax deductions of *bona fide* donations that are actually paid or transferred during a year of assessment to institutions, boards, or bodies that carry on public benefit activities<sup>138</sup> in Part II<sup>139</sup> of the Ninth Schedule to the Act, in South Africa, and are approved by the Commissioner.<sup>140</sup> However, approved bargaining councils do not qualify for section 18A approval<sup>141</sup> because their sole or principal object (see 6.2) is not to carry on any public benefit activity in Part II of the Ninth Schedule to the Act. As a result, even if a registered bargaining council is approved and exempt under section 10(1)(cA)(i), it is not permitted to issue section 18A receipts<sup>142</sup> for donations it receives.

<sup>133</sup> For commentary, see the *Taxation in South Africa*.

<sup>134</sup> For commentary, see the *Comprehensive Guide to Dividends Tax*.

<sup>135</sup> For commentary, see the *Comprehensive Guide to Capital Gains Tax*.

<sup>136</sup> Act 28 of 2011.

<sup>137</sup> Section 3(4)(b). The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Regulation Notice 3146 in *Government Gazette* 48188 of 10 March 2023. For commentary, see the *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and the *Alternative Dispute Resolution: Quick Guide*.

<sup>138</sup> The term "public benefit activity" as defined in section 30(1) means any public benefit activity listed in Part I and any other activity determined by the Minister of Finance by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public.

<sup>139</sup> The public benefit activities are listed in the Ninth Schedule to the Act and are divided into Part I and Part II. Not all public benefit activities listed in Part I are included in Part II. Part II contains a limited number of PBAs approved by the Minister of Finance for purposes of the approval under section 18A.

<sup>140</sup> Section 18A(1)(a)(ii).

<sup>141</sup> Qualifying organisations include certain organisations. For commentary, see the *Basic Guide to Section 18A Approval*, the *Tax Exemption Guide for Public Benefit Organisations in South Africa*, the *Tax Exemption Guide for Institutions, Boards or Bodies*, and the *Guide to Section 18A Approval for a Department in the National, Provincial and Local Sphere of Government*.

<sup>142</sup> A section 18A receipt is a receipt with mandatory information issued by an organisation approved by the Commissioner for purposes of section 18A potentially entitling the donor taxpayer to an income tax deduction for *bona fide donations* actually paid or transferred during a year of assessment to that section 18A-approved organisation.

Therefore, donations made to approved bargaining councils are not tax-deductible under section 18A(1), and these councils may not issue section 18A receipts to donor taxpayers. If a donor taxpayer receives such an invalid receipt, they cannot claim a deduction under section 18A when calculating their taxable income.

### **13. Conclusion**

Bargaining councils registered under the LRA are central to promoting and facilitating collective bargaining and maintaining orderly industrial relations in South Africa. Their activities not only advance economic development but also provide necessary and useful services to both the State, and members of the general public, and also promote the industries within their registered scope.

Registered bargaining councils are granted preferential tax treatment under section 10(1)(cA)(i) if their constitutions meet the prescribed requirements. These requirements include the proper use of funds, a prohibition on distributions, and the transfer of remaining assets on dissolution. This preferential treatment provides a complete exemption from income tax on all receipts and accruals, as well as exemption from certain other taxes. The preferential tax treatment further ensures that the resources of registered bargaining councils that have been approved by the Commissioner as institutions, boards, or bodies are directed towards advancing collective bargaining, industrial stability, and the broader socio-economic objectives.

**Leveraged Legal Products**  
**SOUTH AFRICAN REVENUE SERVICE**

## Annexure – The law

### Section 10(1)(cA)(i)

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

(cA) the receipts and accruals of—

(i) any institution, board or body (other than a company as defined in the Companies Act, any co-operative, close corporation, trust or water services provider) established by or under any law and which, in the furtherance of its sole or principal object—

(aa) conducts scientific, technical or industrial research;

(bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or

(cc) carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;

(ii) any association, corporation or company contemplated in paragraph (a) of the definition of “company” in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body:

Provided that such institution, board, body or company—

(a) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;

(b) is by law or under its constitution—

(i) not permitted to distribute any amount to any person, other than, in the case of such company, to the holders of shares in that company;

(ii) required to utilize its funds solely for investment or the object for which it has been established; and

(iii) required on dissolution—

(aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(bb) where the institution, board or body is established by law, to transfer its assets to—

(A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(B) to the State:

Provided further that—

(a) where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;

- (b) where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b)(iii) of the first proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and

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