

Tax Exemption Guide for Recreational Clubs

Issue 5



Income Tax

Tax Exemption Guide for Recreational Clubs

Preface

This guide provides general guidance on the –

- approval by the Commissioner of a recreational club under section 30A; and
- partial taxation of approved recreational clubs under section 10(1)(cO) of the Income Tax Act 58 of 1962 (the Act).

The guide considers the following taxes and duties that may affect recreational clubs:

- Capital gains tax (see **11.3**)
- Dividends tax (see **11.2**)
- Donations tax (see **11.1**)
- Employees' tax (see **12.5**)
- Estate duty (see **12.2**)
- Securities transfer tax (see **12.4**)
- Skills development levy (see **12.7**)
- Transfer duty (see **12.3**)
- Unemployment insurance fund contributions (see **12.6**)
- Value-added tax (see **12.8**)

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

It is also not a binding general ruling (BGR) under section 89 of the TA Act. Taxpayers requiring an advance tax ruling¹ or a VAT ruling² should visit the SARS website at **www.sars.gov.za**³ for details of the application procedure

This guide is based on legislation as at the time of issue. Information relating to taxes, duties, levies, and contributions reflect the rates applicable as at the date of issue of this guide.⁴

For more information, assistance, and guidance you may –

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

¹ For further commentary, see the *Comprehensive Guide to Advance Tax Rulings*.

² For further commentary, see the *VAT Rulings Process Reference Guide*.

³ Navigate to Legal Counsel ⇒ Legal Counsel Publications ⇒ Find a Guide, and select the category Tax Administration (for the guide relating to advanced tax rulings) **or** Value-Added Tax (VAT) (for the guide relating to VAT rulings).

⁴ For historical rates of various taxes, duties, and levies, see the *Guide for Tax Rates/Duties/Levies*.

- if calling from abroad, on +27 11 602 2093;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

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

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
26 June 2025

DISCLAIMER

Operational information contained in this guide is up to date as at date of publication. However, always refer to the **SARS website** for any guidelines specifically issued on such operational matters.

Hyperlinks, and cross-references display as **bold** text to assist our visually impaired readers. For example, **SARS website**, and see **11.3**.

Contents

Preface	i
Glossary	1
1. Introduction	3
2. Definition of “recreational club”	4
2.1. Type of clubs eligible for approval as a recreational club	4
2.1.1. Non-profit company	5
2.1.2. Society.....	5
2.1.3. Association	6
2.2. Sole or principal object	6
2.3. Provision of social and recreational amenities or facilities	7
2.4. Members	9
2.4.1. Members of a non-profit company	10
2.4.2. Members of a society or an association.....	10
3. Application procedure for approval as recreational club	11
4. Effective date of the approval as a recreational club	11
4.1. Effective date of the approval as a recreational club complying with obligations under the Tax Administration Act.....	13
4.2. Effective date of the approval as a recreational club not complying with obligations under the Tax Administration Act.....	13
5. Requirements for approval by the Commissioner	13
6. Founding document	14
6.1. Memorandum of incorporation.....	15
6.2. Constitution	15
7. Prescribed requirements	16
7.1. Fiduciary responsibility	16
7.1.1. Persons accepting fiduciary responsibility for a non-profit company	17
7.1.2. Persons accepting fiduciary responsibility for a society or an association	18
7.2. Persons disqualified to act in a fiduciary capacity.....	19
7.3. Decision-making powers	21
7.4. Activities carried on in a non-profit manner	22
7.5. Prohibition on distributions	23
7.6. Dissolution.....	25
7.6.1. Dissolution of a non-profit company.....	26
7.6.2. Dissolution of a society or an association	27
7.7. Remuneration.....	27
7.8. Membership.....	28
7.9. Membership rights	29
7.10. Amendments to the founding document	30
7.10.1. Amendments to the memorandum of incorporation.....	30
7.10.2. Amendments to the constitution.....	31
7.11. Participation in tax avoidance schemes.....	31
8. Written undertaking	32
9. Withdrawal of the approval	32
9.1. Circumstances under which the approval may be withdrawn	32

9.2.	Consequences of the withdrawal	33
10.	Income tax exemption	34
10.1.	Introduction	34
10.2.	Exempt receipts and accruals derived from membership fees or subscriptions	35
10.3.	Exempt receipts and accruals derived from qualifying business undertakings or trading activities	36
10.3.1.	Integral and directly related to the provision of social and recreational amenities or facilities	38
10.3.2.	Substantially the whole towards the recovery of cost	39
10.3.3.	Unfair competition with entities liable for normal tax	41
10.4.	Fundraising activities	43
10.5.	Basic exemption	44
10.6.	Partial taxation	46
11.	Exemption from other taxes and duties	46
11.1.	Donations tax	46
11.2.	Dividends tax	47
11.3.	Capital gains tax	48
12.	Other applicable tax liabilities	49
12.1.	Provisional tax	49
12.2.	Estate duty	50
12.3.	Transfer duty	50
12.4.	Securities transfer tax	50
12.5.	Employees' tax	51
12.6.	Unemployment insurance contributions	52
12.7.	Skills development levy	52
12.8.	Value-added tax	53
12.9.	Micro businesses	55
13.	Administrative provisions – Tax Administration Act	55
14.	Furnishing of information	56
15.	Changes in registered particulars	56
16.	Representative taxpayer	57
17.	Record-keeping	59
18.	Income tax returns	61
18.1.	Taxpayer reference number	62
18.2.	Filing an income tax return	62
18.3.	Year of assessment	62
18.4.	Supporting documentation	63
18.5.	Financial statements	63
19.	Objection and appeal	63
20.	Non-profit organisations	65
	Annexure A – Section 10(1)(cO)	67
	Annexure B – Section 30A	68
	Annexure C – Step-by-step guide to calculating the taxable income of a recreational club by applying the basic exemption	71

Preamble

In this guide unless the context indicates otherwise –

- **“basic exemption”** means the exempt amount determined as a threshold contemplated in section 10(1)(cO)(iv) and applied to the receipts and accruals derived from any other source⁵ that do not in total exceed the greater of 5% of the total membership fees and subscriptions due and payable by members during the relevant year of assessment, or R120 000“;
- **“CGT”** means capital gains tax, being the portion of income tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eighth Schedule;
- **“CIPC”** means the Companies and Intellectual Property Commission established under section 185 of the Companies 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;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“fiduciary”** means a person who holds a position of trust or responsibility including decision-making powers over the affairs of a recreational club;
- **“founding document”** means the written instrument such as the constitution or memorandum of incorporation under which a recreational club is established and governed;
- **“general public”** means natural persons who are members of the community at large⁶ as opposed to natural persons who are members of a recreational club;
- **“non-member”** means a person who is not a member of a club but may be entitled to the enjoyment and use of a recreational club’s amenities or facilities by virtue of being a family member or a guest of a member of that club;
- **“Master”** means the Master of the High Court;
- **“NPC”** means a “non-profit company” as defined in section 1 of the Companies Act;
- **“NPO”** means a “non-profit organisation” as defined in section 1 of the NPO Act;
- **“NPO Act”** means the Nonprofit Organisations Act 71 of 1997;
- **“partial taxation”** means the method of taxing the receipts and accruals exceeding the basic exemption;
- **“PAYE”** means employees’ tax, colloquially referred to, as Pay-As-You-Earn;
- **“PBO”** means a “public benefit organisation” as defined in section 30(1) and approved by the Commissioner under section 30(3);

⁵ This excludes receipts and accruals derived in the form of membership fees or subscriptions paid by its members, from permissible business undertakings and trading activities, and any fundraising activities of that club, which are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.

⁶ *CIR v Plascon Holdings Ltd* 1964 (2) SA 464 (A), 26 SATC 101 at page 109.

- **"qualifying business undertakings or trading activities"** means qualifying business undertakings or trading activities a recreational club may conduct under section 10(1)(cO)(ii) that –
 - are integral and directly related to the provision of social and recreational amenities or facilities for the members of that club;
 - are carried out on a basis substantially the whole of which is directed towards the recovery of cost; and
 - does not result in unfair competition in relation to taxable entities;
- **"prescribed requirements"** mean the formal conditions and requirements set out in section 30A(2)(a), which a club must comply with to qualify for approval as a recreational club;
- **"recreational club"** means any NPC, society, or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that entity as defined in section 30A(1) and approved by the Commissioner under section 30A(2);
- **"Schedule"** means a Schedule to the Act;
- **"SDL"** means the skills development levy;
- **"SDL Act"** means the Skills Development Levies Act 9 of 1999;
- **"section"** means a section of the Act;
- **"section 10(1)(cO)"** means the section providing for the exemption from income tax of the receipts and accruals of a recreational club derived in the form of membership fees or subscriptions paid by its members, permissible business undertakings or trading activities, any fundraising activities, and the partial taxation of the receipts and accruals derived from any other source, which in total exceeds the basic exemption;
- **"section 30A"** means the section setting out the prescribed requirements a club must comply with to qualify for and retain approval as a recreational club;
- **"STT"** means securities transfer tax;
- **"STT Act"** means the Securities Transfer Tax Act 25 of 2007;
- **"TA Act"** means the Tax Administration Act 28 of 2011;
- **"the Act"** means the Income Tax Act 58 of 1962;
- **"Transfer Duty Act"** means the Transfer Duty Act 40 of 1949;
- **"Trust Property Control Act"** means the Trust Property Control Act 57 of 1988;
- **"UIF"** means the unemployment insurance fund;
- **"Unemployment Insurance Act"** means the Unemployment Insurance Act 63 of 2001;
- **"VAT"** means value-added tax;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the Act.

All amendment acts, BGRs, explanatory memoranda, forms, *Government Gazettes* relating to income tax, guides, interpretation notes, returns, tables, and written

undertakings referred to in this guide are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest issue of these documents should be consulted.

1. Introduction

The underlying principle in establishing a recreational club is that members provide money by way of membership fees or subscriptions that in turn are used by the club to finance amenities or facilities for their collective enjoyment. Members therefore contribute to share the cost of providing a collective benefit, namely, the social or recreational amenity or facility. Essentially no business or trade is carried on and there is no personal financial gain for the individual members. Under this principle, the sharing of expenses by various members joining based on mutuality does not generate additional taxable income for a recreational club.

A recreational club will enjoy preferential tax treatment only after it has been granted approval by the Commissioner and continues to comply with the relevant prescribed requirements (see 7). These prescribed requirements must continuously be met to retain this status. The qualifying receipts and accruals of an approved recreational club are exempt from income tax under section 10(1)(cO) (see 10.2, 10.3 and 10.4). The receipts and accruals of an approved recreational club derived from any other source are exempt from income tax if they do not in total exceed the greater of the amounts contemplated in the basic exemption (see 10.5). In addition to being partially exempt from income tax on qualifying receipts and accruals, eligible clubs may also enjoy the benefit of being exempt from certain other taxes and duties (see 11). These tax benefits are designed to assist recreational clubs by augmenting their financial resources and providing them with an enabling environment in which to achieve their object.

Recreational clubs fall outside the scope and tax rules for PBOs.⁷ The main difference between a recreational club and a PBO is that a PBO operates for the benefit of the general public at large, while a recreational club operates for the benefit of its members. A PBO predominantly relies on donations, grants, or bequests to fund its objects, while a club receives its income from its members who contribute by way of membership fees or subscriptions.

Bona fide donations made to recreational clubs are not tax-deductible under section 18A(1).⁸ A recreational club may therefore not issue section 18A receipts⁹ to donor taxpayers.¹⁰ Donor taxpayers to whom such invalid section 18A receipts have been issued may therefore not claim a deduction under section 18A(1) in determining their taxable income.

⁷ For commentary, see the Tax Exemption Guide for Public Benefit Organisations in South Africa.

⁸ Section 18A provides for the tax-deductibility of *bona fide* donations actually paid or transferred to organisations approved by the Commissioner for purposes of section 18A envisaged in section 18A(1)(a) to (c) during a year of assessment.

⁹ 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 approved organisation.

¹⁰ For commentary, see the Basic Guide to Section 18A Approval.

2. Definition of “recreational club”

The term “recreational club” as defined means –¹¹

“any non-profit company as defined in section 1 of the Companies Act, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association”.

The *Claassen’s Dictionary of Legal Words and Phrases* describes “club” as follows:¹²

“Clubs are associations of a peculiar nature. They are societies the members of which are perpetually changing, They are not partnerships, they are not associations for gain, and the feature which distinguishes them from other societies is that no member as such becomes liable to pay to the funds of the society or to any one else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed, but understood by everyone, that clubs are formed, and this distinguishing feature has been often judicially recognised.”

Although the types of clubs that may qualify under the definition of “recreational club” may seem infinite and diverse in nature, an important common distinguishing feature is that such clubs do not have a profit motive, nor do they provide any pecuniary gain or material advantage for their individual members.

A club must meet all the requirements of the definition of “recreational club” to be considered by the Commissioner for approval under section 30A(2) for purposes of the exemption of qualifying receipts and accruals under section 10(1)(cO). The relevant requirements are considered below.

2.1 Type of clubs eligible for approval as a recreational club

A club must be constituted in one of the following ways to be eligible for approval as a recreational club:

- An NPC incorporated in South Africa.¹³
- A society formed or established in South Africa.
- An association formed or established in South Africa.

A trust¹⁴ is not a society or an association and therefore does not qualify for approval as a recreational club. A trust does not have members sharing collectively in a common purpose. In addition, the beneficiaries¹⁵ of a trust are not members of the trust.

¹¹ Section 30A(1).

¹² Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases* My LexisNexis [online].

¹³ Pre-existing companies as defined in section 1 of the Companies Act incorporated or deemed to be incorporated under section 21 of the repealed Companies Act 61 of 1973 continue to exist under the Companies Act and will qualify for approval as a recreational club provided all the conditions and requirements of section 30A are complied with.

¹⁴ The term “trust” as defined in section 1(1) means any trust fund consisting of cash or other assets that are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person.

¹⁵ The term “beneficiary” as defined in section 1(1) in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts or accruals or the assets of that trust.

2.1.1 Non-profit company

The term “non-profit company” as defined in the Companies Act means a company –¹⁶

- “(a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1;¹⁷ and
- (b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3)¹⁸ of Schedule 1”.

An NPC does not automatically qualify for exemption from income tax¹⁹ and must satisfy the statutory requirements of the Act to be eligible for approval as a recreational club and for certain of its receipts and accruals to be exempt from income tax.

The primary difference between an NPC and a for-profit company is that an NPC does not have shares or shareholders, and the members of an NPC are not entitled to receive distributions of profits or gains from the operations of an NPC. Profits and gains generated by an NPC approved as a recreational club must be used by the recreational club for its sole or principal object (see 2.2), and generally for general administration and for making capital improvements.

2.1.2 Society

The word “society” is not defined in the Act and should therefore be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used.²⁰

The *Free Dictionary* describes “society” as –²¹

“a group of people broadly distinguished from other groups by mutual interests, participation in characteristic relationships, shared institutions, and a common culture”.

A society may be formed or established when a group of people joined by mutual consent meet periodically to deliberate, act toward a common goal, or engage in a common interest or profession. A society may have a specific focus, for example a scientific society or a historical society. A society is usually a larger and more formal organisation often having a hierarchical structure with a governing board or council that makes decisions on behalf of the members. It may also have sub-committees or working groups to carry out specific tasks. Societies can also have different levels of organisation, such as local, provincial, or national.²²

¹⁶ Section 1 of that Act.

¹⁷ The reference to an “other object” in item 1(1) of Schedule 1 to the Companies Act is to an object relating to one or more cultural or social activities or communal or group interests.

¹⁸ An NPC under item 1(3) of Schedule 1 to the Companies Act, for example, may pay reasonable remuneration for goods or services rendered, pay or reimburse expenses incurred to advance a stated object of the company, or make payments in accordance with any legal obligation binding on the company.

¹⁹ See item 1(6) of Schedule 1 of the Companies Act.

²⁰ Kellaway, E. A. (1995) *Principles of Legal Interpretation of Statutes, Contracts and Wills*. Butterworths. Also, see Steyn, L. C. (1981). *Die Uitleg van Wette* 5th ed at paragraphs 4 to 7. Juta and Company (Pty) Ltd.

²¹ www.thefreedictionary.com/society [Accessed 26 June 2025].

²² Manaher, S. *Association vs society: decoding common word mix-ups*. The Content Authority. Available online at <https://thecontentauthority.com/blog/association-vs-society> [Accessed 26 June 2025].

2.1.3 Association

The word “association” is not defined in the Act. The *Cambridge Dictionary* describes “association” as –²³

“a group of people who work together in a single organization for a particular purpose”.

LAWSA describes an “association” as follows:²⁴

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

(Footnotes omitted)

An association is a group of individuals who come together for a common purpose, goal, or interest, which could include anything from healthcare, education, finance, sports, business, social or politics. It provides a platform for individuals or organisations to come together and share their expertise, knowledge, and resources to achieve a common objective. An association can be a formal organisation or an informal group. Typically, the members have a say in the decision-making process of an association and may elect officer bearers to manage the group. Associations can be non-profit²⁵ or for-profit,²⁶ and they can be run by volunteers or paid staff.²⁷ An association is colloquially referred to as a voluntary association.

2.2 Sole or principal object

A recreational club must have as its sole or principal object the provision of social and recreational amenities or facilities (see 2.3) for its members (see 2.4).²⁸

The words “sole”, “principal” and “object” are not defined in the Act. They are described in the *Dictionary.com* as follows:

- “Sole” as “being the only one; only”.²⁹
- “Principal” as “first or highest in rank, importance, value, chief”.³⁰
- “Objective” as “something that one’s efforts or actions are intended to attain, accomplish, purpose, goal, target”.³¹

²³ <https://dictionary.cambridge.org/dictionary/english/association> [Accessed 26 June 2025].

²⁴ Pienaar, G. J. (28 February 2015) Associations. In *Law of South Africa (LAWSA) 2* (Third Edition Volume) in paragraph 155. My LexisNexis [online].

²⁵ The word “non-profit” is described in the *Cambridge Dictionary* as “not intended to make a profit, but to make money for a social or political purpose or to provide a service that people need”. See <https://dictionary.cambridge.org/dictionary/english/non-profit> [Accessed 26 June 2025].

²⁶ The word “for-profit” is described in the *Cambridge Dictionary* as “an organization or service that exists to make a profit”. See <https://dictionary.cambridge.org/dictionary/english/for-profit> [Accessed 26 June 2025].

²⁷ Manaher, S. *Association vs society: decoding common word mix-ups* The Content Authority. Available online at <https://thecontentauthority.com/blog/association-vs-society> [Accessed 26 June 2025].

²⁸ Section 30A(1).

²⁹ www.dictionary.com/browse/sole [Accessed 26 June 2025].

³⁰ www.dictionary.com/browse/principal?s=t [Accessed 26 June 2025].

³¹ www.dictionary.com/browse/objective [Accessed 26 June 2025].

In ITC 1569,³² the judge referred 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 word “principal” is used in conjunction with “sole” and this concept therefore implies that the recreational club must have as the only, predominant, or foremost aim or objective the provision of social and recreational amenities or facilities for its members. The word “sole” equates to 100%. The word “principal” within this context is interpreted and concluded to mean not less than 90%, having regard to the expression “substantially the whole”,³³ which in the strict sense is interpreted by SARS as 90% but not less than 85% (see **10.3.2**).

The “object” of a recreational club is not the subjective goals of its controllers but the activities that it is mandated by its founding document (see **6**) to perform and is the aim, intention, purpose, thing sought to be accomplished and the goal to be obtained.

Since a recreational club approved under section 30A receives tax privileges, the expression “sole or principal” must be considered strictly having regard to the facts of each case.³⁴

The sole or principal object of a recreational club set out in its founding document (see **6**) should be determined by interpreting its founding document in accordance with the ordinary rules of construction of a document.³⁵

2.3 Provision of social and recreational amenities or facilities

The definition of “recreational club” requires that such a club provide social and recreational amenities or facilities for its members. This requirement is fundamental because a recreational club must have this as its sole or principal object (see **2.2**) and the purpose for the establishment of the club.

The words “provide”, “social”, “recreational”, “amenities”, and “facilities” are not defined in the Act. The words “provide”, “social” and “recreational” are described in the *Cambridge English Dictionary* as follows:

- “Provide” is “to give something to a person, company, or organization, or to make it available for them to use, to produce something useful that can be used as part of a process or activity.”³⁶
- “Social” is “related to meeting and spending time with other people for pleasure.”³⁷

³² (1993) 56 SATC 86 (C) at 90.

³³ The expression “substantially the whole” was introduced in the revised tax system for PBOs in 2000 to achieve a more supportive fiscal environment and to give effect to the proposals and recommendations of the Katz Commission set out in the Katz, M. M. *et al.* (1999). Trading Activities in paragraph 5.6.6. *Ninth interim rReport of the commission of inquiry into certain aspects of the tax structure of South Africa*. The expression “substantially the whole” has also been introduced into legislation dealing with the exemption from income tax of a recreational club.

³⁴ *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at page 182.

³⁵ *Capitec Bank Holdings Ltd and another v Coral Lagoon Investments 194 (Pty) Ltd and others* [2021] 3 All SA 647 (SCA).

³⁶ <https://dictionary.cambridge.org/dictionary/english/provide> [Accessed 26 June 2025].

³⁷ <https://dictionary.cambridge.org/dictionary/english/social> [Accessed 26 June 2025].

- “Recreational” is “connected with ways of enjoying yourself when you are not working.”³⁸

The *White Paper on Sport and Recreation for the Republic of South Africa* describes “recreation” as –³⁹

“includes services and programmes which an individual would voluntarily engage in during one’s free time to achieve a satisfying experience”.

The *Merriam-Webster Dictionary* describes the following words:

- “Amenity” is “something that helps provide comfort, convenience, or enjoyment”⁴⁰ and “something adding to pleasure or comfort but not absolutely necessary.”⁴¹
- “Facility” is “something that makes an action, operation, or course of conduct easier”⁴² and “a structure that is designed and built for a particular purpose.”⁴³

The main difference between amenities and facilities appears to be that amenities refer to things that are designed to provide comfort and enjoyment while facilities essentially refer to places or even equipment built to facilitate specific needs. Amenities are therefore additional features or comfort things inside a property or building, for example, high-quality products or equipment, internet, free Wireless Fidelity (Wi-Fi), air-conditioning, television, hairdryers in dressing rooms, a playground, childcare services or centre, or a swimming pool. Facilities are places that are built, constructed, installed, or established to perform some particular function to render a specific service to meet certain needs.⁴⁴ Club facilities are the physical recreational facilities the members of a club are entitled to use by virtue of their membership of a particular club. The amenities or facilities provided by the recreational club must be of a social and recreational nature that the members use for a pastime, hobby or to engage socially.

The provision of holiday accommodation is not regarded as the provision of a social and recreational amenity or facility for purposes of section 30A.

A club may also enter into reciprocal arrangements with other clubs. The *Cambridge Dictionary* describes “reciprocal” as follows:⁴⁵

“A reciprocal action or arrangement involves two people or groups of people who behave in the same way or agree to help each other and give each other advantages.”

Reciprocal arrangements therefore generally allow members of both clubs to use each other’s amenities and facilities in accordance with a reciprocal agreement. A member visiting a reciprocal club is treated as a member of that club. Reciprocal arrangements are an additional benefit of membership. Since the facts and circumstances, pertaining to each recreational club may differ, each case will be considered on its own merits.

³⁸ <https://dictionary.cambridge.org/dictionary/english/recreational> [Accessed 26 June 2025].

³⁹ www.gov.za/documents/white-papers/white-paper-sport-and-recreation-01-jun-2011 [Accessed 26 June 2025].

⁴⁰ www.merriam-webster.com/dictionary/amenity [Accessed 26 June 2025].

⁴¹ www.merriam-webster.com/thesaurus/amenity [Accessed 26 June 2025].

⁴² www.merriam-webster.com/dictionary/facilities [Accessed 26 June 2025].

⁴³ www.merriam-webster.com/thesaurus/facilities [Accessed 26 June 2025].

⁴⁴ <https://pediaa.com/difference-between-amenities-and-facilities/> [Accessed 26 June 2025].

⁴⁵ <https://dictionary.cambridge.org/us/dictionary/english/reciprocal> [Accessed 26 June 2025].

Example 1 – Recreational clubs providing social and recreational amenities or facilities

The following are non-exhaustive examples of recreational clubs providing social and recreational amenities or facilities to their members:

- A golf club providing grounds and facilities for the playing of the game golf.
- Social and recreational clubs providing recreational facilities such as tennis courts, a swimming pool, squash courts and social facilities such as a restaurant or a bar.
- Soccer, tennis, polo, or rugby clubs providing members with the facility to play the relevant sport.
- A venue such as a clubhouse for meetings or members to gather to socialise or partake in hobbies of mutual interest.
- Vintage car, motorcycle or cycling clubs.
- Angling, flying, hang gliding, hiking, mountaineering or yacht clubs.
- Hobby clubs such as stamp collecting, literary, quilting or gardening clubs.
- Bird watching, dog breeders or photography clubs.

2.4 Members

It is a requirement that a recreational club must provide social and recreational amenities or facilities to its members. Section 30A does not define the word “member” or prescribe a minimum or maximum number of members that should belong to a recreational club. Section 30A, however, does require that members of a recreational club must be entitled to annual or seasonal membership (see 7.7). A member of a club will therefore be a person who pays an annual or seasonal membership for the right to use the social and recreational amenities or facilities provided by the club. Such a person may include an inactive member who pays an annual membership fee but infrequently uses the social and recreational amenities or facilities of the club.

The word “member” is described in the *Cambridge Dictionary* as –⁴⁶

“a person who joins a group to take part in a particular activity”.

Members of a recreational club will be natural persons and not artificial or juristic persons such as companies or corporations, since it is natural persons who obtain the right to use and enjoy the social and recreational amenities or facilities provided by the recreational club. It is, however, acceptable for a company or corporate business or another association to pay or sponsor an individual’s membership to a recreational club.

A recreational club irrespective of whether it is constituted as an NPC (see 2.1.1), a society (see 2.1.2) or an association (see 2.1.3) should set out the requirements and conditions for that club’s membership in its founding document (see 6). Membership will usually be granted if the particular qualifying criteria and requirements relating to membership of the recreational club have been met.

The qualifying criteria and requirements as well as the membership categories a member may qualify for will differ from club to club. A member may or may not be required to pay a registration, joining or entrance fee, a membership fee, or a subscription to belong to a club.

⁴⁶ <https://dictionary.cambridge.org/us/dictionary/english/member> [Accessed 26 June 2025].

The membership fees or subscriptions (see **10.2**) applicable to a particular membership category may also vary from club to club. A club may have a fee structure charging different amounts to different membership categories proportional to the use of the club's social and recreational amenities or facilities.

The validity of membership of a club is evidenced by the presence of formal procedures for membership eligibility, acceptance, and admittance as well as membership rights (see **7.9**) obtained after being accepted as a member. The personal particulars of qualifying members together with their privileges and rights are generally recorded in a membership register. This distinguishes members of a recreational club from members of the general public because a member of the general public does not have any continual interest in the club and does not share in the mutuality principle.

The *CollinsDictionary.com* describes "general public" as –⁴⁷

"you can refer to the people in a society as the general public, especially when you are contrasting people in general with a small group".

The general public merely using the club's social and recreational amenities or facilities on an informal or *ad hoc* basis will not be regarded as members of that recreational club having regard to the annual or seasonal membership requirement (see **7.8**). A club operated in such a manner will not qualify for approval as a recreational club or if approved, will jeopardise its approval as a recreational club. Whether a person is merely a member of the general public and not a member of a recreational club is a question of fact, which should be determined by considering the circumstances of each case.

Even though clubs are established to conduct their activities with and for the benefit of their members, they are not prohibited from dealing with non-members or the general public within certain parameters.

2.4.1 Members of a non-profit company

A recreational club incorporated as an NPC electing to have members must set out in its memorandum of incorporation the –⁴⁸

- qualifications for membership;
- process for applying for membership;
- cost of membership in any class;
- rights and obligations of membership in any class; and
- grounds on which the membership may be suspended or terminated.

2.4.2 Members of a society or an association

LAWSA provides the following explanation regarding the membership of associations:⁴⁹

"The rules of an association determine in the first instance which persons are eligible for membership of the association, The rules of an association will usually set out the procedure which must be followed before prospective members are admitted. This could take the form of a written application coupled with formal notification of acceptance from the management committee,

⁴⁷ www.collinsdictionary.com/dictionary/english/general-public [Accessed 26 June 2025].

⁴⁸ See item 4 of Schedule 1 to the Companies Act.

⁴⁹ Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraphs 162 to 164. My LexisNexis [online].

the payment of the prescribed membership fee and the placing of a new member's name on the membership list.”

(Footnotes omitted)

It is submitted that the abovementioned explanation applies also to a society.

3 Application procedure for approval as recreational club

Any club seeking approval as a recreational club must complete and submit to SARS, the prescribed application form EI 1 together with the required supporting information and documentation.⁵⁰

The application form EI 1 was developed to allow clubs seeking approval from the Commissioner to do so in a uniform and consistent manner. The application form EI 1 consolidates all the information and documentation required by the Commissioner to evaluate the approval being sought by the applicant club. The content of the application form EI 1 is not a deciding factor for approval by the Commissioner since it is merely an administrative tool used by SARS to consider the application.

In the event that the founding document (see 6) does not comply with the prescribed requirements (see 7), the application must include a signed written undertaking (see 8) by the persons responsible in a fiduciary capacity (see 7.1) for the funds and assets of the club.

4 Effective date of the approval as a recreational club

The notification of approval as a recreational club 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 (see 18.1). The recreational club is required to retain the letter confirming approval as part of its records (see 17).

A written notification will also be issued by the Commissioner to the club should the approval not be granted together with reasons why the club failed to meet the prescribed requirements (see 7). The decision of the Commissioner to not grant approval as a recreational club is subject to objection and appeal (see 19).

The approval by the Commissioner of a club as a recreational club is generally effective from the date of the notice of approval, that is, it is prospective, unless granted with retrospective effect.⁵¹ The receipts and accruals of an approved recreational club are exempt from income tax with effect from the beginning of the year of assessment during which approval is granted by the Commissioner.⁵²

⁵⁰ Information on the application process can be obtained from the **SARS website**.

⁵¹ Section 30A(4) was amended by section 36 of the Taxation Laws Amendment Act 34 of 2019. The amendment is effective from 15 January 2020, the date of promulgation of that Act.

⁵² Income tax subject to the Fourth Schedule is paid in respect of the taxable income received by or accrued to or in favour of any company during every financial year of such company annually in accordance with section 5(1)(d).

A recreational club may apply for the approval to be applied to years of assessment before the application date. The purpose of retrospective approval⁵³ is explained in the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2009*, as follows:⁵⁴

“Many PBOs and clubs applying for exemption do so after several years of activity. This delay may stem from a lack of expertise or due to an over-emphasis on starting activities. Failure to seek prompt approval then keeps the relevant parties from subsequently seeking relief on a going forward basis because of concerns about the potential tax liability from pre-existing activities.

If a PBO or recreational club applies for tax exempt status, it is proposed that the Commissioner be given discretionary powers to retroactively approve tax exemption status. In order to obtain this relief, the Commissioner must be satisfied that the relevant PBO or club was substantially within its given status in terms of existing law (i.e. satisfied the current definitional requirements for being a PBO or club).”

In *XY Mining v CSARS*⁵⁵ the court had to decide whether a trust approved by the Commissioner as a PBO qualified for retrospective approval. The following was held:⁵⁶

“In this matter one is grappling with two clear words retrospective and approval. Nevertheless, the context where the words appear need to be meticulously examined. The context needs [sic] to be approached as to the extent that the Commissioner should be satisfied that organisation during the period prior to its application complied with the requirements of a “public benefit organisation “as defined in subsection 1.

Furthermore, the purpose of the provisions of section 30(3B) is to empower the Commissioner to grant the qualifying PBO retrospective status. The statute makes it clear that the Commissioner needs to be satisfied that the applicant meets the requirements of section 30(1), nothing less and nothing more.”

Retrospective approval will be granted only if the Commissioner is satisfied that the club complied with the requirements of a “recreational club” as defined in section 30A(1), during the period before it lodged its application for approval as a recreational club.⁵⁷ The burden to prove such compliance rests on the club.⁵⁸ Each request for retrospective approval will be considered by the Commissioner on its own merits and specific facts.

The receipts and accruals of any years of assessment not complying with the retrospective approval requirements, as considered below, will be subject to income tax and other taxes and duties as any other taxpayer⁵⁹ (see 7.6).

⁵³ Section 30A(4).

⁵⁴ In paragraph 5.3.

⁵⁵ Judgement of the Tax Court: Johannesburg delivered on 18 May 2021 in case number ITC 25390.

⁵⁶ ITC 25390 at page 13 and 14.

⁵⁷ Section 30A(4)(a).

⁵⁸ Section 102 of the TA Act.

⁵⁹ The term “taxpayer” as defined in section 1(1) means any person chargeable with any tax leviable under this Act.

4.1 Effective date of the approval as a recreational club complying with obligations under the Tax Administration Act

The Commissioner may not extend retrospective approval as a recreational club⁶⁰ to a club that has complied with all its obligations under Chapter 4,⁶¹ Chapter 10⁶² and Chapter 11⁶³ of the TA Act to years of assessment that have prescribed.⁶⁴ An assessment may not be made three years after the date of assessment of an original assessment by SARS.⁶⁵ If the club complied with the above chapters of the TA Act, it would have submitted its returns when due, and the three-year period will include the earliest year of assessment (see **18.3**) for which an assessment was issued during that period. For example, if the club applied for approval as a recreational club on 31 March 2024, the three-year period would begin on 1 April 2021. If the club has a February year-end and its first assessment after 1 April 2021 was for the 2021 year of assessment, the retrospective approval can be made for the 2021 to 2023 years of assessment.

4.2 Effective date of the approval as a recreational club not complying with obligations under the Tax Administration Act

Retrospective approval may not be extended by the Commissioner if a club has not complied with Chapters 4, 10 and 11 of the TA Act to years of assessment that would have prescribed if the income tax returns relating to those years had been submitted in accordance with section 25(1) of the TA Act.⁶⁶

In the case of a club that has not complied with the above chapters of the TA Act it will be necessary to determine when it would have been assessed had it complied with the return submission requirements under that section of the TA Act. This determination will require the club to establish when its returns should have been submitted under the public notice issued annually by the Commissioner (see **18**). For example, the 2021 public notice requires that a company lodge its return for the 2021 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 2021 return on or before 28 February 2022, and it is the latter date that must fall within the three years preceding the date of application for retrospective approval.

5 Requirements for approval by the Commissioner

The Commissioner must approve a recreational club under section 30A(2) for purposes of exempting certain of its receipts and accruals under section 10(1)(cO) (see **10**) if –⁶⁷

- that club has submitted a copy of its founding document (see **6**) to the Commissioner (see **3**) under which it is established and that meets the prescribed requirements (see **7**);⁶⁸
- the club undertakes to submit to the Commissioner a copy of any amendment to its founding document (see **7.10**);⁶⁹

⁶⁰ Section 30A(4)(b)(i).

⁶¹ That chapter deals with returns and records.

⁶² That chapter deals with tax liability and payment.

⁶³ That chapter deals with the recovery of tax.

⁶⁴ Section 99 of the TA Act.

⁶⁵ Section 99(1)(a) of the TA Act.

⁶⁶ Section 30A(4)(b)(ii).

⁶⁷ Section 30A(2).

⁶⁸ Section 30A(2)(a).

⁶⁹ Section 30A(2)(b).

- the Commissioner is satisfied that the club did not knowingly participate in any tax-avoidance scheme (see **7.11**);⁷⁰ and
- the Commissioner is satisfied that the club does not have a person acting in a fiduciary capacity (see **7.1**), who is disqualified under the Trust Property Control Act, the NPO Act, or the Companies Act (see **7.2**).⁷¹

6 Founding document

A club applying for approval as a recreational club must have a founding document. A copy of the founding document must be submitted to the Commissioner as part of the application for approval as a recreational club (see **3**).⁷²

The founding document will depend on the type of club incorporated, formed, or established:

- An NPC (see **2.1.1**) will have a memorandum of incorporation (see **6.1**).⁷³
- A society (see **2.1.2**) or an association (see **2.1.3**) will have a constitution adopted by its members (see **6.2**).

The founding document establishing and governing a recreational club, irrespective of the type of founding document, should, amongst other things, set out the following affairs of the club:

- Membership privileges, for example, a description of the club amenities or facilities a member is entitled to use and any membership privileges extending to non-members.
- Member disputes, for example, guidelines on refund rights on resignation or other termination of membership, ownership of membership in the event of death, divorce or bankruptcy, rights of members and the club regarding suspension, cancellation or withdrawal of membership owing to violations of club rules.
- Operational matters, for example, rules for the use and reservation of the club's social and recreational amenities or facilities, hours of operation and club governance.
- Financial matters, for example, a description of the club's revenue sources such as membership or subscription fees and other charges a member may be liable to pay.

In addition to a founding document, a recreational club may also have a separate document setting out rules or regulations addressing matters not fully dealt with in the founding document. These rules or regulations, for example, may cover the regulation of the governance of a club such as the frequency of member meetings, notice, quorum, voting requirements, number of directors, nomination, election or removal procedures, powers and duties, and officers required together with their relevant duties. The rules or regulations may include specific requirements and prohibitions, for example, on the use of the recreational amenities or facilities of the recreational club, issuing of membership cards, payment of fees, procedures for the reservation of facilities, attire, non-member privileges, and rules regarding the use of the amenities or facilities offered by the club. The content of the rules or regulations may differ from club to club. Any rules or regulations must also be submitted to the Commissioner as part of the application for approval as a recreational club (see **3**).

⁷⁰ Section 30A(2)(c).

⁷¹ Section 30A(2)(d) was Inserted by section 7(d) of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023, the date of promulgation of that Act.

⁷² Section 30A(2)(a).

⁷³ See definition of "memorandum of incorporation" in section 1 and 15 of the Companies Act.

6.1 Memorandum of incorporation

The memorandum of incorporation is the document by which an NPC is incorporated and sets out, amongst other things, the object of the NPC, the rights, duties and responsibilities of members, directors, and others within and in relation to the NPC. The Companies Act provides a standard form of the memorandum of incorporation. The registration of a company is confirmed by the CIPC⁷⁴ through the issuing and delivery to the NPC of a registration certificate⁷⁵ after it has filed a completed and signed memorandum of incorporation⁷⁶ and a notice of incorporation.⁷⁷

LAWSA provides the following on the registration of a company:⁷⁸

“From date and time that the incorporation of a company is registered as stated in its registration certificate, the company is a juristic person which exists continuously until its name is removed from the companies register in accordance with the Companies Act. A duly issued registration certificate is conclusive evidence that all the requirements for the incorporation of the company have been complied with and that the company is incorporated under the Act as from the date, and the time, if any, stated in the certificate.”

(Footnotes omitted)

6.2 Constitution

LAWSA provides the following information on the founding document of an association:⁷⁹

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

(Footnotes omitted)

⁷⁴ Section 14(1) of the Companies Act.

⁷⁵ Section 14(1)(b)(iii) and (4) of the Companies Act. Also, see Form CoR 14.3, Registration Certificate, included in the Government Notice Regulation 351 in *Government Gazette* 34239 of 26 April 2011.

⁷⁶ Section 13(1)(a) of the Companies Act and paragraph 15 in Government Notice Regulation 351 in *Government Gazette* 34239 of 26 April 2011 and Form CoR 15.1C.

⁷⁷ Section 13(1)(b) and 13(2) of the Companies Act, read with Government Notice Regulation 351 in *Government Gazette* 34239 of 26 April 2011. Also, see Form CoR 14.1, Notice of Incorporation, included in the Regulations.

⁷⁸ Stoop, H. H. (30 April 2022). Companies Part 1. In *Law of South Africa (LAWSA)* 6(1) (Third Edition Volume) in paragraph 29. My LexisNexis [online].

⁷⁹ Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraph 156. My LexisNexis [online].

7 Prescribed requirements

All the prescribed requirements, which are considered below, must be included in the founding document (see 6).⁸⁰ The founding document as a whole will be examined to ensure that the prescribed requirements are included.

There are adverse consequences, which may include a fine or imprisonment, for persons in a fiduciary capacity responsible for the management or control of the income and assets of the club who intentionally fail to comply with the prescribed requirements (see 7).

7.1 Fiduciary responsibility

A recreational club is required to have at least three natural⁸¹ persons who are not connected persons in relation to each other to accept fiduciary responsibility for the recreational club.

The expression “fiduciary responsibility” is not defined in the Act. The words are described separately in the *Cambridge Dictionary* as follows:

- “Fiduciary” is “relating to the responsibilities of a person or organization that manages property or money belonging to another person or organization.”⁸²
- “Responsibility” is “something that it is your job or duty to deal with.”⁸³

The *BusinessDictionary.com* describes “fiduciary duty” as follows:⁸⁴

“A legal obligation of one party to act in the best interest of another. The obligated party is typically a fiduciary, that is, someone entrusted with the care of money or property. Also called fiduciary obligation.”

The persons accepting fiduciary responsibility for a recreational club are therefore always required to act in the best interest of the recreational club and put the interests of the recreational club ahead of their own self-interest and are prohibited from profiting when dealing on behalf of the recreational club.

It is a further requirement that the three natural persons accepting fiduciary responsibility for the recreational club may not be connected persons in relation to each other.⁸⁵

The term “connected person” in relation to a natural person as defined means —⁸⁶

“any relative; and any trust (other than a portfolio of a collective investment scheme)⁸⁷ of which such natural person or such relative is a beneficiary”.

(Footnote added)

⁸⁰ Section 30A(2)(a).

⁸¹ Section 30A(2)(a)(i) was amended by section 7(a) of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023, the date of promulgation of that Act.

⁸² <https://dictionary.cambridge.org/dictionary/english/fiduciary> [Accessed 26 June 2025].

⁸³ <https://dictionary.cambridge.org/dictionary/english/responsibility> [Accessed 26 June 2025].

⁸⁴ www.businessdictionary.com/definition/fiduciary-duty [Accessed 26 June 2025].

⁸⁵ For commentary, see Interpretation Note 67 “Connected Persons”.

⁸⁶ Section 1(1).

⁸⁷ The term “portfolio of a collective investment scheme” as defined in section 1(1) means (a) any portfolio of a collective investment scheme in participation bonds as defined, (b) any portfolio of a collective investment scheme in property as defined, (c) any portfolio of a collective investment scheme in securities as defined, or (d) any portfolio of a declared collective investment scheme as defined.

The term “relative” in relation to any person as defined means –⁸⁸

“the spouse of that person or anybody related to that person or that person’s spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of ‘child’⁸⁹ in this section and any other person, that child shall be deemed to be related to the adoptive parent of that child within the first degree of consanguinity”.

(Footnote added)

Natural persons are therefore connected persons in relation to one another if they are relatives in relation to one another. A relative includes a person’s spouse and anyone related to the person or the person’s spouse within the third degree of consanguinity.⁹⁰

Natural persons are also connected persons in relation to one another if, for example, they are beneficiaries of the same trust or members of a partnership or a foreign partnership.⁹¹

Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of a recreational club who intentionally fails to comply with section 30A or a provision of the founding document (see **6**) to the extent that it relates to section 30A, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.⁹²

7.1.1 Persons accepting fiduciary responsibility for a non-profit company

A recreational club incorporated as an NPC is required under the Companies Act, to have a minimum of three persons to incorporate the NPC⁹³ and to appoint at least three directors.⁹⁴

A director of a company must –⁹⁵

- not use the position of director, or any information obtained while acting in the capacity of a director –
 - to gain an advantage for the director, or for another person other than the company or a wholly owned subsidiary of the company; or
 - to knowingly cause harm to the company or a subsidiary of the company; and
- communicate to the board at the earliest practical opportunity any information that comes to the director’s attention, unless the director –
 - reasonably believes that the information is immaterial to the company, or generally available to the public, or known to the other directors; or

⁸⁸ Section 1(1).

⁸⁹ The term “child” in relation to any person as defined in section 1(1) includes any person adopted by him or her (a) under the law of the Republic, or (b) under the law of any country other than the Republic, provided the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country.

⁹⁰ The word “consanguinity” is described in the *Cambridge Dictionary* as “the condition of being blood relations (= related to someone by birth, not marriage).” See <https://dictionary.cambridge.org/dictionary/english/consanguinity> [Accessed 26 June 2025].

⁹¹ Paragraph (bA) and (c)(i) of the definition of “connected person” in section 1(1).

⁹² Section 30A(9).

⁹³ Section 13(1) read together with item 3 of Schedule 1 to the Companies Act.

⁹⁴ Section 66(2)(b) of the Companies Act.

⁹⁵ Section 76(2) of the Companies Act.

- is bound not to disclose that information by a legal or ethical obligation of confidentiality.

A director's standard of conduct is incorporated in the Companies Act and provides that all powers and functions arising from the capacity of a director must be exercised —⁹⁶

- in good faith;
- for a proper purpose;
- in the best interest of the company; and
- with a degree of care, skill and diligence reasonably expected from a 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.

LAWSA explains a director's fiduciary duty relating to a company as follows:⁹⁷

"The Companies Act defines 'director' as a member of the board of a company or an alternate director of a company and includes a person occupying the position of a director or alternate director, by whatever name designated.

In addition to the duties imposed on them by the Companies Act and the wide-ranging power similarly given them to manage its business and affairs (save as otherwise provided by the memorandum of incorporation), the memorandum of incorporation often gives explicit power to directors of companies to manage the company's business, to transact on its behalf, and to delegate their powers and functions. They exercise their powers collectively, by majority vote, as a board. A director therefore stands in a fiduciary relationship to the company and is subject to essentially the same fiduciary duties as are imposed on other fiduciaries who stand in a similar relationship of confidence and trust to another."

(Footnotes omitted)

In view of the above, any director or alternate director may accept fiduciary responsibility for a recreational club incorporated as an NPC.

7.1.2 Persons accepting fiduciary responsibility for a society or an association

The following explanation is provided by LAWSA on the fiduciaries of an association:⁹⁸

"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.

⁹⁶ Section 76(3) of the Companies Act.

⁹⁷ Stoop, H. H. (30 June 2022). Companies Part 2. In *Law of South Africa (LAWSA)* 6(2) (Third Edition Volume) in paragraphs 1 and 3. My LexisNexis [online].

⁹⁸ Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraphs 166 and 178. My LexisNexis [online].

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)

It is submitted that the explanation above applies also to a society.

In view of the above, any person elected to office, such as the chairperson, vice-chairperson, treasurer, secretary, or any person appointed to the management or executive committee may accept fiduciary responsibility for a recreational club established as a society or an association.

7.2 Persons disqualified to act in a fiduciary capacity

The Commissioner must be satisfied that a person acting in a fiduciary capacity (see 7.1) is not disqualified under –⁹⁹

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

The use of the disjunctive word “or” means that a person will be disqualified from acting in a fiduciary capacity if that person has been disqualified under either one or a combination of the of the Trust Property Control Act, NPO Act or the Companies Act.¹⁰⁰ A disqualified person may not act in a fiduciary capacity for a recreational club.¹⁰¹ A disqualified person who acts in a fiduciary capacity will be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.¹⁰²

The grounds of disqualification of a person authorised as a trustee under the Trust Property Control Act,¹⁰³ the grounds of disqualification of a person from being appointed or elected as an officer-bearer under the NPO Act,¹⁰⁴ as well as the grounds of disqualification of a person as a director of a company under the Companies Act¹⁰⁵ are similar. The grounds for disqualification under those Acts have therefore been summarised and considered below.

⁹⁹ Section 30A(2)(d) was inserted by section 7(d) of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023, the date of promulgation of that Act.

¹⁰⁰ The requirement relating to the grounds for disqualification of fiduciary 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 paragraph 2.3.

¹⁰¹ Section 30A(10) was inserted by section 7(e) of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023 the date of promulgation of that Act.

¹⁰² Section 30A(11) was inserted by section 7(e) of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023 the date of promulgation of that Act.

¹⁰³ Section 6 of that Act.

¹⁰⁴ Section 25 of that Act.

¹⁰⁵ Section 69 of that Act.

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

- is an unrehabilitated¹⁰⁶ insolvent;¹⁰⁷
- has been prohibited by a court to be a director of a company, or declared by a court to be delinquent¹⁰⁸ under the Companies Act or the Close Corporations Act;¹⁰⁹
- is prohibited under any law¹¹⁰ to be a director of a company;¹¹¹
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty;¹¹²
- 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 Act¹¹³ for theft, fraud, forgery, perjury or an offence –¹¹⁴
 - involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities;¹¹⁵
 - in connection with the promotion, formation, or management of a company,¹¹⁶ or in connection with consenting to act or acting as a director when ineligible or disqualified;¹¹⁷ 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, 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;¹¹⁸

¹⁰⁶ 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.

¹⁰⁷ 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.

¹⁰⁸ A declaration of delinquency may be made under section 162 of the Companies Act or under section 47 of the Close Corporations Act.

¹⁰⁹ 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.

¹¹⁰ The term “law” as defined in section 2 of the Interpretation Act 33 of 1957 means any law, proclamation, ordinance, Act of Parliament or other enactment having the force of law.

¹¹¹ 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.

¹¹² 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.

¹¹³ Section 69 of the Companies Act.

¹¹⁴ 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.

¹¹⁵ 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.

¹¹⁶ Section 69(2) or (5) of the Companies Act.

¹¹⁷ 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.

¹¹⁸ 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.

- is subject to a resolution adopted¹¹⁹ by the Security Council of the United Nations;¹²⁰ or
- is an unemancipated minor or is under a similar legal disability.¹²¹

Public registers have been established and maintained by the –

- Master of persons disqualified from serving as trustees, under an order of a court pursuant to the Trust Property Control Act or any other law;¹²²
- NPO Directorate of persons disqualified from serving as office-bearers, under an order of a court pursuant to the NPO Act or any other law;¹²³ and
- CIPC of persons disqualified from serving as 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.¹²⁴

7.3 Decision-making powers

No single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of a recreational club.¹²⁵

The expression “decision-making powers” is not defined in the Act. The words are described separately in the *Britannica Dictionary* as follows:

- “Decision-making” is “the act or process of deciding something with a group of people.”¹²⁶
- “Power” is “the ability or right to control people or things”.¹²⁷

The organisational and managerial activities of a recreational club are determined by decisions taken by persons given such authority in accordance with the founding document (see 6). No individual person, however, is permitted to control the decision-making powers of a recreational club directly or indirectly.

The *Claassen’s Dictionary of Legal Words and Phrases* describes “control” as follows:¹²⁸

“The ordinary meaning of control is that the person who has the control of a thing has the possession of it, and that he has the management (to a limited extent, it may be) of it (per WESSELS, J in *R v Harvey* 1913 TPD 605). See *Chatwin v Central South African Railways* 1909 TH 50.”

(Footnotes omitted)

¹¹⁹ Chapter VII of the Charter of the United Nations, which provides for financial sanctions entailing the identification of persons or entities against whom member states of the United Nations must act specified in the resolution.

¹²⁰ 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.

¹²¹ 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.

¹²² Section 6(1H) of the Trust Property Control Act.

¹²³ Section 25A(9)(a) of the NPO Act.

¹²⁴ Section 69(13) of the Companies Act.

¹²⁵ Section 30A(2)(a)(i).

¹²⁶ www.britannica.com/dictionary/decision-making [Accessed 26 June 2025].

¹²⁷ www.britannica.com/dictionary/power [Accessed 26 June 2025].

¹²⁸ Claassen, R. C., (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

Direct control of the decision-making powers by an individual person means that any decision can be inextricably linked to that person whereas the indirect control of the decision-making powers means that any decision may not be clearly linked to an individual person since decisions are made by others on behalf of, under the influence of, and in the interests of another person. The facts and circumstances of each case are critical in determining who is controlling a recreational club because the presence and influence of controlling individuals can have a significant impact any may be contrary to this prescribed requirement.

Example 2 – Decision-making powers

Facts:

A club has applied for approval as a recreational club and submitted to the Commissioner a copy of its constitution. The constitution provides that an Honorary Member by virtue of the Honorary Membership of that club obtains, amongst other things, the following rights:

- Special voting rights (whether direct or indirect).
- Veto voting rights, namely, 51% of the total votes that may be cast.
- To appoint three individuals to the board of governors.

The constitution of the club also provides that the executive board will –

- comprise of five members, two members who will be elected by the voting members of the club at a general meeting and the remaining three members who will be appointed by the Honorary Member; and
- have a quorum of three members of which at least two of the members must be appointees of the Honorary Member.

Result:

The constitution permits the Honorary Member to obtain rights and be empowered to control the decision-making powers of the club, directly through veto voting rights and indirectly through the appointment of the majority persons on the executive board. The above provisions contained in the constitution are contrary to the prescribed requirement that no single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of a recreational club.

The club therefore does not meet the prescribed requirement and will not be approved by the Commissioner as a recreational club.

7.4 Activities carried on in a non-profit manner

The activities of the recreational club must be carried on in a non-profit manner.¹²⁹

The words “non-profit” and “manner” are not defined in the Act.

The *Cambridge Dictionary* describes “non-profit” as –¹³⁰

“not intended to make a profit, but to make money for a social or political purpose or to provide a service that people need”.

¹²⁹ Section 30A(2)(a)(iA).

¹³⁰ <https://dictionary.cambridge.org/dictionary/english/non-profit> [Accessed 26 June 2025].

Investopedia describes “not for profit” as –¹³¹

“a type of organization that does not earn profits for its owners. All of the money earned by or donated to a not-for-profit organization is used in pursuing the organization’s objectives and keeping it running”.

The word “manner” is described in the *Dictionary.com* as –¹³²

“a way of doing, being done, or happening; mode of action, occurrence, etc.”.

A club operating for the financial gain of individual persons or members will not qualify for approval as a recreational club. A recreational club may not conduct activities for purposes of making a distributable profit (see 7.5). It will be unacceptable for a recreational club to conduct profit-making activities to fund the cost of running the club.

It is not always desirable from a club’s perspective to run on a break-even basis since clubs may need to create reserves for future expenditure such as the cost of replacing equipment, resurfacing tennis courts and replanting grass. The activities carried on by a recreational club should not be to maximise profits but rather to recover direct and reasonable indirect costs (see 10.3.2).

Profitable activities carried on by a recreational club may not necessarily result in the withdrawal of the club’s approval. However, the club must take every measure possible to ensure that the profits derived from such activities result only as an incidental effect of the sole or principal object of the club (see 2.2). Income derived from a club’s restaurant and bar facilities for the use by the general public or the hiring out of its amenities or facilities to the general public will, however, be regarded as the carrying on of a commercial business undertaking or trading activity and will be taxed if the receipts and accruals from such source in total exceeds the basic exemption (see 10.5). The facts of each case will be considered in determining whether the activities of the recreational are carried on in a non-profit manner.

7.5 Prohibition on distributions

A recreational club may not distribute any surplus funds directly or indirectly to any person unless the distribution occurs on dissolution of the recreational club (see 7.6).¹³³

The words “distribute”, “surplus”, and “funds” are not defined in the Act.

The *Cambridge Dictionary* describes “distribute” as –¹³⁴

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

Investopedia provides the following explanation regarding distributions:¹³⁵

“The word ‘distribution’ has several meanings in the financial world, most of them pertaining to the payment of assets from a fund, account, or individual security to an investor or beneficiary.

Distributions come from several different financial products. However, whatever the source, the distribution payment usually goes directly to the beneficiary, either electronically or by check.”

A distribution is therefore generally the giving of funds or assets by a club to a beneficiary without the expectation or obligation of repayment by that beneficiary.

¹³¹ www.investopedia.com/terms/n/not-for-profit.asp [Accessed 26 June 2025].

¹³² www.dictionary.com/browse/manner [Accessed 26 June 2025].

¹³³ Section 30A(2)(a)(ii).

¹³⁴ <https://dictionary.cambridge.org/dictionary/english/distribute> [Accessed 26 June 2025].

¹³⁵ www.investopedia.com/terms/d/distribution.asp [Accessed 26 June 2025].

Investopedia explains “surplus” within an accounting context as follows:¹³⁶

“A surplus is the amount of an asset or resource that exceeds the portion that is utilized. A surplus is used to describe many excess assets including income, profits, capital, and goods. A surplus often occurs in a budget, when expenses are less than the income taken in or in inventory when fewer supplies are used than were retained.”

The Dictionary.com describes “funding” as –¹³⁷

“funds, money immediately available; pecuniary resources”.

The word “funds” is described in the *Cambridge Dictionary* as follows:¹³⁸

“money needed or available to spend on something.”

Having regard to the above, the word “funds” refer to money available to finance a club’s activities and investments. The prohibition on distributions is an absolute prohibition. 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. Even if a minimal amount is distributed or a distribution occurs as an isolated or once-off event, the recreational club may be subject to the withdrawal of the approval (see 9).

The term “person” as defined includes –¹³⁹

- “(a) an insolvent estate;
 - (b) the estate of a deceased person;
 - (c) any trust; and
 - (d) any portfolio of a collective investment scheme,
- but does not include a foreign partnership”.

A person for purposes of this prohibition requirement is not limited to only a natural person since the definition of “person” does not exclude companies, other incorporated entities, associations of persons, or statutory bodies, however, foreign partnerships are specifically excluded. A South African partnership is not a legal entity¹⁴⁰ and a partnership is not a person at common law.¹⁴¹ A partnership is not a person for income tax purposes. Rather, the individual partners are persons for income tax purposes.

A recreational club must use its income to carry on its sole or principal object (see 2.2), namely, to provide social and recreational amenities or facilities (see 2.3) for its members (see 2.4). Any surplus funds not used for this purpose may, however, not be distributed in any way to any person. It will be acceptable for a recreational club to accumulate or invest surplus funds for future use in carrying on its sole or principal object. The surplus funds may be invested as chosen provided such investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that the fiduciaries (see 7.1) should act with prudence, integrity, and reasonable care. Investment income, however, is taxable (see 10.6), subject to the basic exemption (see 10.5).

¹³⁶ www.investopedia.com/terms/s/surplus.asp [Accessed 26 June 2025].

¹³⁷ www.dictionary.com/browse/funding [Accessed 26 June 2025].

¹³⁸ <https://dictionary.cambridge.org/dictionary/english/funds> [Accessed 26 June 2025].

¹³⁹ Section 1(1).

¹⁴⁰ *Michalow, N. O, v Premier Milling Co Ltd* 1960 (2) SA 59 (W) at page 61.

¹⁴¹ *Chipkin (Natal) (Pty) Ltd v C: SARS* 2005 (5) SA 566 (SCA), 67 SATC 243 at page 246.

Distributions to club members by way of prizes for winning social or recreational events hosted by a recreational club is acceptable provided the prize is considered reasonable.

Example 3 – Prohibited distributions

The following are non-exhaustive examples of prohibited distributions. It will be unacceptable if funds are distributed by a recreational club by way of –

- loans to members;
- excessive salaries or wages not commensurate with services rendered (see 7.7);
- any remuneration determined as a percentage of any amounts received or accrued to the recreational club;
- transactions with members on terms not reflecting an arm's length transaction;¹⁴² or
- donating assets to members.

7.6 Dissolution

On dissolution, a recreational club must transfer its remaining assets and funds to one or more of the following organisations:¹⁴³

- Another recreational club.
- A PBO.¹⁴⁴
- Any institution, board or body¹⁴⁵ exempt under section 10(1)(cA)(i) having as its sole or principal object the carrying on of any public benefit activity listed in Part I of the Ninth Schedule.
- The government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a).¹⁴⁶

The formal dissolution process is usually preceded by a process referred to as “winding-up”. During the winding-up process all the assets of a recreational club are recovered and realised. The proceeds of such realisation are applied firstly to discharge the costs of liquidation, and then to pay claims of creditors in accordance with the relevant provisions of the law relating to insolvency. On dissolution of a recreational club, all its assets, or the proceeds of realised

¹⁴² An arm's length transaction refers to a transaction in which the parties act independently without one party influencing the other. Both parties act in their own self-interest and are not subject to pressure from the other. The determination of "dealing at arm's length" will be a factual inquiry and must be decided on the facts and circumstances of each case. To determine whether the transactions are conducted at “arm's length”, the relationship between the parties, the substance and nature of the transactions and the surrounding circumstances should be examined. See *Philip Claasen t/a Mostly Media v Andre Delport t/a AD Industrial Chemicals* [2009] JOL 23885 (WCC) in paragraph 4. The “arms-length principle” requires that the amount charged and the terms and conditions for a given transaction must be the same as if the parties acted in their own self-interest and not subject to pressure from the other. See www.ustransferpricing.com/arms_length_principle.html [Accessed 26 June 2025].

¹⁴³ Sections 30A(2)(a)(iii) and (7A).

¹⁴⁴ This excludes a branch of a foreign tax-exempt organisation contemplated in paragraph (a)(ii) of the definition of “public benefit organisation” in section 30(1). For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

¹⁴⁵ For commentary, see the Tax Exemption Guide for Institutions, Boards or Bodies.

¹⁴⁶ For commentary, see the Guide to Section 18A Approval of a Department in the National, Provincial and Local Sphere of Government.

assets should have been realised and transferred. However, if any assets or funds remain after debts have been satisfied, they must be distributed in accordance with the dissolution requirement.

A recreational club may not, on dissolution, distribute any of its assets and funds to individuals or other taxpaying entities and in so doing enable the recipients to share in the tax concession that it has enjoyed. A recreational club may choose to whom it will distribute its remaining assets and funds on dissolution, without the prior approval from the Commissioner, provided the recipient meets the dissolution requirement. Compliance with this requirement will be verified on assessment of the final income tax return (see **18**) submitted for purposes of income tax deregistration.

Failure to transfer or take reasonable steps to transfer the remaining assets as required on dissolution will result in an amount equal to the market value of the assets not transferred less the amount of the *bona fide* liabilities of the recreational club, being deemed to be taxable income accruing to the recreational club during the year of assessment in which dissolution took place.¹⁴⁷

The term “taxable income” as defined means —¹⁴⁸

“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 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”.

A recreational club guilty of such a transgression will therefore not be allowed to deduct any further tax allowances or deductions from its net revenue since its net revenue is deemed to be taxable income, which is after allowances and deductions.

7.1.3 Dissolution of a non-profit company

The winding-up of a solvent company may occur voluntarily or compulsorily by the court.¹⁴⁹ A winding-up by the court is initiated by an application to court, while a voluntary winding-up¹⁵⁰ is initiated by a resolution of the company.¹⁵¹ A company remains a juristic person and retains all of its powers during winding-up.¹⁵² From the beginning of the company’s winding-up, it must stop carrying on its business except to the extent required for its beneficial winding-up.¹⁵³ A company is dissolved as from the date that its name is removed from the companies register.¹⁵⁴

¹⁴⁷ Section 30A(8).

¹⁴⁸ Section 1(1).

¹⁴⁹ Section 79 of the Companies Act.

¹⁵⁰ Section 80 of the Companies Act.

¹⁵¹ Section 80(6) of the Companies Act.

¹⁵² Section 19 of the Companies Act.

¹⁵³ Section 80(8) of the Companies Act.

¹⁵⁴ Section 83(1) of the Companies Act.

7.1.4 Dissolution of a society or an association

The dissolution of an association is described by *LAWSA* as follows:¹⁵⁵

“If an association ceases or is unable to carry on with the main object and purpose for which it was formed, it may be validly dissolved. It may also be dissolved in accordance with the terms of its constitution or with the consent of all its members.

An association cannot simply disregard the provisions of its constitution and ‘by silent and unexpressed individual concurrence of members dissolve into thin air’. In the case of a club, where the rules do not regulate the matter differently, dissolution is effected by a resolution of a general meeting of members of the club called for this purpose. Upon its dissolution, the assets of an association will, after debts have been satisfied, devolve in accordance with the provisions of the constitution.”

(Footnotes omitted)

It is submitted that the above explanation applies also to a society.

7.7 Remuneration

A recreational club may not pay any remuneration to any person, for example, employees, office bearers, members, directors, or any other person that is excessive, considering the particular service rendered and what is considered reasonable in the particular sector. A recreational club may also not pay any remuneration determined as a percentage of any amounts received or accrued to the recreational club.¹⁵⁶

The word “reasonable” is not defined in the Act. The word is described in the *Cambridge Dictionary* as –¹⁵⁷

“based on or using good judgement and therefore fair and practical”.

The term “remuneration”¹⁵⁸ is defined widely for purposes of employees’ tax (see **12.5**) to include any amount of income paid or payable to any person whether in cash or otherwise, for example, a fringe benefit, and whether or not for services rendered. Remuneration, amongst other things, may include amounts of income paid or payable by way of any salary, fee, bonus, wage, gratuity, pension, leave encashment, emolument, voluntary award, commission, annuity, stipend, overtime, superannuation allowance, retirement allowance, lump sum benefit payment, or director’s remuneration. The normal employees’ tax rules will apply to any remuneration received by or accrued to any employees of the recreational club.

The *Claassen’s Dictionary of Legal Words and Phrases* describes “services rendered” as follows:¹⁵⁹

“The phrase for services rendered is in common use and its ordinary meaning is that something has been done for the benefit or some person, eg, supplying of a particular need. When one speaks of a fee for services rendered one means the payment of a sum of money as compensation for an act which has been performed, or a need which has been provided.”

There must be a causal connection between the remuneration paid, in relation to the service rendered by that person and the amount generally charged for such a service in that sector.

¹⁵⁵ Pienaar, G. J. Associations. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraphs 192 and 195. My LexisNexis [online].

¹⁵⁶ Section 30A(2)(a)(iv).

¹⁵⁷ <https://dictionary.cambridge.org/dictionary/english/reasonable> [Accessed 26 June 2025].

¹⁵⁸ Paragraph 1 in Part I of the Fourth Schedule.

¹⁵⁹ Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

The determination whether remuneration paid to any person is excessive will be a question of fact, and, since the facts and circumstances, pertaining to each recreational club may differ, each case will be considered on its own merits.

It will be unacceptable for office bearers to be paid a salary without any obligation to perform any services other than attending meetings. It, however, will be acceptable to reimburse them for reasonable and actual expenses incurred. An honorarium paid to the secretary or treasurer will be acceptable provided it is reasonable. A salary paid to a person in the capacity of chairperson would generally not be acceptable. It may, for example, be acceptable for a manager, under an employment contract, to qualify for an incentive bonus of R10 000 if the annual target for a recreational club exceeds R100 000. However, it would be unacceptable if the manager qualified for an incentive bonus of 10% of the excess of the annual budgeted turnover.

The ultimate test remains whether the remuneration is reasonable in the sector in relation to the service rendered and the burden¹⁶⁰ is on the recreational club to motivate that the remuneration is not excessive.

7.8 Membership

All members of a recreational club must be entitled to annual or seasonal membership.¹⁶¹ The words “entitled”, “annual”, “seasonal”, and “membership” are not defined in the Act.

The word “entitled” is described in the *BusinessDictionary.com* as follows:¹⁶²

“Having rights and privileges to something either by legal mandates or by policies set in place.”

The word “annual” is described in the *Cambridge Dictionary* as –¹⁶³

“happening once every year, relating to a period of one year”.

The word “annual” referred to in the membership requirement means lasting for a year, which is a period of 12 months. The annual period is not required to coincide with a calendar year, the financial year or year of assessment (see **18.3**) of a recreational club.

The *Cambridge Dictionary* describes “seasonal” as –¹⁶⁴

“relating to or happening during a particular period in the year”.

It is clear from the above ordinary meaning that the distinction between “annual” and “seasonal” membership is that seasonal membership is for a period of less than 12 months, while annual membership is for a period of 12 months. It will therefore be acceptable for a member who joins a recreational club halfway through the year to pay only a *pro rata* amount of the annual or seasonal membership fee.

¹⁶⁰ Section 102 of the TA Act.

¹⁶¹ Section 30A(2)(a)(v).

¹⁶² www.businessdictionary.com/definition/entitled [Accessed 26 June 2025].

¹⁶³ <https://dictionary.cambridge.org/dictionary/english/annual> [Accessed 26 June 2025].

¹⁶⁴ <https://dictionary.cambridge.org/dictionary/english/seasonal> [Accessed 26 June 2025].

The *Cambridge Dictionary* describes “membership” as –¹⁶⁵

“the state of belonging to an organization, or an agreement by which someone joins and organization”.

Reciprocal membership will be acceptable provided the member (see **2.4**) has either seasonal or annual membership at his or her home club.

It will be unacceptable for a recreational club to register members of the general public on a temporary basis or only for the duration of the use of its facilities. Although it is a requirement that members of a recreational club must be entitled to annual or seasonal membership it, however, will be acceptable for a recreational club to offer other membership periods in addition to annual or seasonal, for example, month-to-month membership.

Example 4 – Annual or seasonal membership

The following are non-exhaustive examples of annual or seasonal membership:

- A club provides recreational facilities in the form of squash courts. It requires members to pay an annual membership fee of R960 plus R20 per half hour for the use of the court. The half-hourly fee is determined on a cost-recovery basis considering the use of electricity and maintenance of the squash court. The club will meet the requirement of annual membership.
- A club providing outdoor swimming facilities makes its facility available annually only during the summer months from October to March. It requires that members pay a membership fee only for the duration of this period. This arrangement will be regarded as a seasonal membership.

7.9 Membership rights

Members are not allowed to sell their membership rights or any entitlement to such rights.¹⁶⁶ The rights and duties originate from a person’s membership to a club. Members pay a membership fee or subscription entitling them to certain privileges and the entitlement to the usage of the club’s social and recreational amenities or facilities. A member will typically have some right to vote, be eligible to hold office, and determine the club’s management, operation, and control. The membership rights and duties will generally be set out in the founding document (see **6**) of a club. The extension of membership rights to non-members should be stipulated in the founding document of the club.

A club granting membership to a qualifying person will typically enter into a membership agreement with the member. Such an agreement may set out, amongst other things, the amount and the payment terms of the initiation or joining fee and membership fee or subscription, membership obligations, the membership period and procedures for resignation, resale, or reissuance of membership. The membership agreement is a contractual agreement between the club and the member. Members are therefore not allowed to sell their membership rights or any entitlement to such rights.

¹⁶⁵ <https://dictionary.cambridge.org/dictionary/english/membership> [Accessed 26 June 2025].

¹⁶⁶ Section 30A(2)(a)(vi).

Example 5 – Membership rights

Facts:

The AP Cultural Club provides social facilities to its members who are required to pay an annual membership fee. It also provides restaurant and bar facilities to its members on a cost-recovery basis (that is, not on a market-related basis).

Result:

It will be unacceptable for members of the club to sell their right to membership or right to enjoy the restaurant and bar facilities to any third party.

7.10 Amendments to the founding document

A recreational club must submit a copy of any amendment to its founding document (see 6) to the Commissioner as soon as it has been effected.¹⁶⁷ This requirement will enable the Commissioner to ensure that any amendment is not contrary to the prescribed requirements (see 7).

It will be unacceptable for a club to submit a founding document that complies with the Act at the time of applying for approval (see 3) and then, after obtaining such approval (see 4), to amend the founding document to include non-qualifying provisions.

7.1.5 Amendments to the memorandum of incorporation

The following is provided by LAWSA on the amendment of the memorandum of incorporation:¹⁶⁸

“The amendment of the memorandum of incorporation may take the form of a new memorandum of incorporation in substitution for the existing one, or one or more alterations by changing the name of the company, deleting, altering, or replacing any of its provisions, or inserting new provisions or any combination of these.

An amendment to a company’s memorandum of incorporation takes effect, in the case of an amendment that changes the name of the company, on the date set out in the amended registration certificate issued by the commission or, in any other case, on the later of the date on and time at which the notice of amendment is filed or the date, if any, set out in the notice of amendment.”

(Footnotes omitted)

Pre-existing companies approved as recreational clubs that may have amended their memoranda and articles of association or replaced the latter with a memorandum of incorporation under the Companies Act must ensure that the prescribed requirements (see 7) remain included in the amended or replacement founding documents. A copy of the amended or replacement founding documents must be submitted to the Commissioner.

¹⁶⁷ Section 30A(2)(b).

¹⁶⁸ Stoop, H. H. (30 November 2022). Companies: Part I. In *Law of South Africa (LAWSA)* 6(1) (Third Edition Volume) in paragraph 37. My LexisNexis [online].

7.1.6 Amendments to the constitution

LAWSA states the following on amendments to a constitution:¹⁶⁹

“Where a constitution does not provide for its amendment by majority (or special majority) vote, the amendment can be effected only by the unanimous vote of the members concerned. But even where the constitution empowers the majority of members to amend it, there are other factors which must be taken into account. So, for instance, the proposed amendment must be passed in the *bona fide* belief that it is to the benefit of the association and in accordance with the procedure prescribed by the constitution. Whether or not the majority can alter a fundamental object depends on the nature and character of the association, as well as its constitution and objects. A rule in the constitution which provides for the alteration of the constitution may itself be amended in the prescribed way.”

(Footnotes omitted)

Example 6 – Amendments to the founding document

Facts:

The EV Gardening Club incorporated all the prescribed requirements in its constitution and was approved by the Commissioner as a recreational club. Two years after having obtained approval, the membership of the club diminished. The constitution was amended to make provision for only two persons, who may be connected persons in relation to each other, to accept the fiduciary responsibility of the club. The Commissioner was not informed of the amendment to the club's constitution as required in section 30A(2)(b).

Result:

The amendment to the constitution is contrary to the fiduciary (see 7.1) requirements for approval as a recreational club. Furthermore, the club did not submit a copy of the amendment to its constitution under which it is established to the Commissioner (see 7.10). Consequently, the tax status of the club is placed in jeopardy and the club is exposed to transgression penalties (see 9).

7.11 Participation in tax avoidance schemes

A recreational club may not be a party to or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone or avoid any tax, duty or levy¹⁷⁰ that would otherwise have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner.¹⁷¹ This rule will apply irrespective of whether the recreational club itself or any other person benefitted from the reduction, postponement or avoidance of any applicable tax, duty or levy.

In *Smith v CIR* the court noted that the ordinary meaning of avoiding a liability for a tax is –¹⁷²

“to get out of the way of, escape or prevent an anticipated liability”.

¹⁶⁹ Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA) 2* (Third Edition Volume) in paragraph 158. My LexisNexis [online].

¹⁷⁰ These taxes, duties, or levies, amongst other things, may include income tax including CGT, VAT, or employees' tax.

¹⁷¹ Section 30A(2)(c).

¹⁷² 1964 (1) SA 324 (A), 26 SATC 1 at page 12.

In these circumstances, the Commissioner is entitled to determine the taxpayer's liability for any tax, duty or levy imposed by the Act as if the transaction, operation, or scheme had not been entered into.

8 Written undertaking

The founding document (see 6) of a club may in some instances not comply with the prescribed requirements (see 7) for approval (see 4) at the time of application (see 3). In these circumstances, the persons who are acting in a fiduciary capacity (see 7.1) may provide a written undertaking that the club will be administered in accordance with the prescribed requirements.¹⁷³ The written undertaking must be submitted to the Commissioner as part of the application for approval as a recreational club. In such instances, the founding document will be deemed to comply with the prescribed requirements. The written undertaking will be binding on the recreational club and non-compliance with its terms will result in the same penalties and actions as if the prescribed requirements were contained in the founding document (see 9).

The written undertaking is an interim measure, and the prescribed requirements must be incorporated into the founding document within a reasonable period. SARS considers a reasonable period to be 12 months from the date of the letter confirming approval (see 4), or the date on which any other amendment is effected to the founding document (see 7.10), whichever comes first. A different period, however, may be prescribed by the Commissioner depending on the facts and circumstances of the particular case.

A specimen written undertaking EI 2C is available to assist persons accepting fiduciary responsibility to administer a recreational club in accordance with the prescribed requirements.

9 Withdrawal of the approval

9.1 Circumstances under which the approval may be withdrawn

The Commissioner may withdraw the approval of a recreational club under section 30A(2) only if the Commissioner is satisfied that such club has during any year of assessment in any material respect, or has on a continuous or repetitive basis failed to comply with section 30A (see 7) or with its founding document (see 6) as it relates to section 30A.¹⁷⁴

The Act does not specify what constitutes a “material, continuous, or repetitive” failure by a recreational club to comply with section 30A or with the founding document as it relates to that section. The words are described in the *Cambridge Dictionary* as follows:

- “Material” is “important or having an important effect.”¹⁷⁵
- “Continuous” is “without a pause or interruption.”¹⁷⁶
- “Repetition” is “something that happens in the same way as something that happened before.”¹⁷⁷

¹⁷³ Section 30A(3).

¹⁷⁴ Section 30A(5)(a) and (b).

¹⁷⁵ <https://dictionary.cambridge.org/dictionary/english/material?q=material+> [Accessed 26 June 2025].

¹⁷⁶ <https://dictionary.cambridge.org/dictionary/english/continuous> [Accessed 26 June 2025].

¹⁷⁷ <https://dictionary.cambridge.org/dictionary/english/repetition> [Accessed 26 June 2025].

A failure by a recreational club to comply with section 30A in any material respect may therefore include a significant, relevant, and important failure. A failure on a continuous basis may be prolonged without interruption, while a failure on a repetitive basis may be done many times in the same manner by the recreational club.

The Commissioner may withdraw the approval in any of the above circumstances but must decide each case on its own facts and circumstances. Notice, however, must be given to the transgressing club to take corrective steps in a specified period failing which the intention is to withdraw the approval as a recreational club.¹⁷⁸ If no corrective steps have been taken, the Commissioner must withdraw the approval of that club with effect from the beginning of the year of assessment in which corrective steps are not taken.¹⁷⁹

The decision of the Commissioner to withdraw the approval is subject to objection and appeal (see 19).

9.2 Consequences of the withdrawal

On withdrawal of the approval as a recreational club, the affected club must transfer or take reasonable steps to transfer its remaining assets within six months or a longer period allowed by the Commissioner to –¹⁸⁰

- another recreational club;
- a PBO;
- any institution, board or body exempt under section 10(1)(cA)(i) having as its sole or principal object the carrying on of any public benefit activity listed in Part I of the Ninth Schedule; or
- any sphere of the government of South Africa.

Failure to transfer, or to take reasonable steps to transfer the remaining assets of the club on withdrawal of its approval as a recreational club will result in an amount equal to the market value of the assets not transferred less the amount of the *bona fide* liabilities of the club, being deemed to be taxable income that accrued to the club during the year of assessment in which the approval was withdrawn.¹⁸¹ The same principle will apply to taxable income as considered in 7.6.

A recreational club that has had its approval withdrawn will become a normal taxpayer. A club, which is constituted as an NPC (see 2.1.1), society (see 2.1.2), or an association (see 2.1.3) fall within ambit of the definition of “company”¹⁸² and will therefore be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies, which is currently 27%.¹⁸³ The Minister of Finance may announce different rates in the national annual budget. The rates are published annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.¹⁸⁴

¹⁷⁸ Section 30A(5).

¹⁷⁹ Section 30A(6).

¹⁸⁰ Section 30A(7).

¹⁸¹ Section 30A(8).

¹⁸² See paragraph (a) and (d) of the definition of “company” in section 1(1).

¹⁸³ The current rate of tax levied on the taxable income of any year of assessment of a company ending on or after 1 April 2023. See paragraph 2(3) of Schedule I to the Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2023.

¹⁸⁴ Section 5(2)(a).

10 Income tax exemption

10.1 Introduction

Section 10(1)(cO) provides for the exemption from income tax of the receipts and accruals of any recreational club approved by the Commissioner to the extent that the receipts and accruals are derived from –

- membership fees or subscriptions paid by its members (see **10.2**);¹⁸⁵
- permissible business undertakings or trading activities provided certain requirements are met (see **10.3**);¹⁸⁶
- any fundraising activities provided certain requirements are met (see **10.4**);¹⁸⁷ and
- any other source that does not in total exceed the greater of (see **10.5**) –¹⁸⁸
 - 5% of the total membership fees and subscriptions (see **10.2**) due and payable by its members (see **2.4**) during the relevant year of assessment (see **18.3**); or
 - R120 000.

The receipts and accruals envisaged in section 10(1)(cO) are those included in the definition of “gross income”.¹⁸⁹

Gross income in relation to any year of assessment (see **18.3**)¹⁹⁰ is the total amount of income (worldwide), in cash or otherwise, received by or accrued to or in favour of any person who is a resident. Receipts or accruals of a capital nature are generally excluded from gross income, such as *bona fide* donations (see **11.1**). Certain other receipts and accruals specified within the definition of “gross income” are included regardless of their nature.¹⁹¹

In *CIR v Genn & Co (Pty) Ltd*¹⁹² it was held that not every obtaining of physical control over money and money’s worth constitutes a receipt for purposes of the definition of gross income. The words “received” and “accrued” are not defined in the Act, and therefore reliance is placed on various principles established in this regard by way of case law. An amount will be “received” by a person as envisaged in the Act, only if the person receives it on his or her own behalf and for his or her own benefit.¹⁹³ An amount “accrues” to a person when the person is entitled to it and when the person’s right to the amount is unconditional.¹⁹⁴ An amount is included in a person’s gross income in the year of assessment in which that person receives it or the year of assessment in which it accrues to that person, whichever comes first.¹⁹⁵

¹⁸⁵ Section 10(1)(cO)(i).

¹⁸⁶ Section 10(1)(cO)(ii).

¹⁸⁷ Section 10(1)(cO)(iii).

¹⁸⁸ Section 10(1)(cO)(iv).

¹⁸⁹ See definition in section 1(1).

¹⁹⁰ 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.

¹⁹¹ See paragraphs (a) to (n) of that definition.

¹⁹² 20 SATC 113.

¹⁹³ *Geldenhuys v CIR* 1974 (3) SA 256 (C), 14 SATC 419.

¹⁹⁴ *Lategan v CIR* 1926 CPD 203, 2 SATC 16; *Ochberg v CIR* 1933 CPD 256, 6 SATC 1.

¹⁹⁵ *SIR v Silverglen Investments (Pty) Ltd* 1969 (1) SA 365 (A), 30 SATC 199.

The receipt or accrual in a form other than money could constitute an amount.¹⁹⁶ Unless this amount is of a capital nature and is not specifically included in the definition of “gross income”, it should be valued and included in the gross income of the taxpayer in the year of assessment in which it is received or accrued.

Receipts or accruals of a capital nature not specifically included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cO) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain.¹⁹⁷ A taxable capital gain is potentially subject to income tax, however, the exemptions in section 10 do not apply to it because a taxable capital gain is included directly in taxable income¹⁹⁸ and does not comprise “income” (gross income less exempt income).¹⁹⁹ Paragraph 62 of the Eighth Schedule provides exemption from CGT for donations and bequests to clubs and paragraph 65B of the Eighth Schedule grants roll-over relief for the disposal of recreational club property (see **11.3**).

Example 7 – Receipts and accruals of a recreational club

The following are non-exhaustive examples of receipts and accruals of a recreational club:

- Membership fees or subscriptions paid by its members (see **10.2**).
- Donations and bequests.²⁰⁰
- Rental of amenities and facilities from general public (see **10.3.1** and **Example 8**).
- Income from fundraising activities (see **10.4**).
- Investment income (see **10.5** and **Example 13**).

10.2 Exempt receipts and accruals derived from membership fees or subscriptions

The receipts and accruals of any approved recreational club is exempt from income tax to the extent that the receipts and accruals are derived in the form of membership fees or subscriptions paid by its members.²⁰¹

Membership fees and subscriptions may include –

- amounts paid by members (see **2.4**) for the right to belong to the recreational club and to use its amenities or facilities (see **2.3**);
- entrance fees; and
- annual or seasonal membership fees or subscription fees (see **7.8**).

All receipts and accruals derived by a recreational club in the form of membership fees and subscriptions paid by members are fully exempt from income tax.

¹⁹⁶ *C SARS v Brummeria Renaissance (Pty) Ltd* 2007 (6) SA 601 (SCA), 69 SATC 205. Also, see Interpretation Note 58 “The Brummeria Case and the Right to Use Loan Capital Interest Free”.

¹⁹⁷ The term “taxable capital gain” as defined in section 1(1) means an amount determined in accordance with paragraph 10 of the Eighth Schedule.

¹⁹⁸ Paragraph (b) of the definition “taxable income” in section 1(1).

¹⁹⁹ Section 26A.

²⁰⁰ Receipts or accruals of a capital nature are generally excluded from gross income, such as *bona fide* donations.

²⁰¹ Section 10(1)(cO)(i).

Separate payments by members for the use of facilities, such as squash courts, green fees or golf carts are not regarded as membership fees or subscriptions. For these payments to be exempt from income tax, they must meet the permissible business undertaking or trading activity requirements (see **10.3**).

10.3 Exempt receipts and accruals derived from qualifying business undertakings or trading activities

The receipts and accruals of any approved recreational club is exempt from income tax to the extent that the receipts and accruals are derived from any qualifying business undertaking or trading activity that —²⁰²

- is integral and directly related to the provision of social and recreational amenities or facilities (see **2.3**) for the members (see **2.4**) of that club (see **10.3.1**);²⁰³
- is carried out on a basis substantially the whole of which is directed towards the recovery of cost (see **10.3.2**);²⁰⁴ and
- does not result in unfair competition in relation to taxable entities (see **10.3.3**).²⁰⁵

The term “business” or “business undertaking” is not defined in the Act. The *Claassen’s Dictionary of Legal Words and Phrases* defines “business” as follows:²⁰⁶

“Business is anything which occupies the time and attention of a man for the purpose of profit Generally, the word business is capable of a very wide meaning. It may be a charitable business Even a single, isolated activity enterprise or pursuit may constitute a business.”

On the issue of what constitutes “carrying on business”, Beadle CJ, in *Estate G v COT* said the following:²⁰⁷

“The sensible approach, I think, is to look at the activities concerned as a whole, and then to ask the question: Are these the sort of activities which, in commercial life, would be regarded as ‘carrying on business’? The principal features of the activities which might be examined in order to determine this are their nature, their scope and magnitude, their object (whether to make a profit or not), the continuity of the activities concerned, if the acquisition of property is involved, the intention with which the property was acquired. This list of features does not purport to be exhaustive, nor are any one of these features necessarily decisive, nor is it possible to generalize and state which feature should carry most weight in determining the problem. Each case must depend on its own particular circumstances.”

Based on case law, “business” is therefore generally accepted to include anything that occupies the time, attention, and labours of a person for profit. There are not set rules to determine what constitutes “business” and as a result, the answer to the question of whether a person is carrying on “business” requires an inference from facts, considering certain factors such as intention, motive frequency, and nature of the activity.²⁰⁸

²⁰² Section 10(1)(cO)(ii).

²⁰³ Section 10(1)(cO)(ii)(aa).

²⁰⁴ Section 10(1)(cO)(ii)(bb).

²⁰⁵ Section 10(1)(cO)(ii)(cc).

²⁰⁶ Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

²⁰⁷ 1964 (2) SA 701 (SR), 26 SATC 168 at pages 173 and 174.

²⁰⁸ *Estate G v COT* (above). See also *CIR v Stott* 1928 AD 252, 3 SATC 253 at page 257 and ITC 1283 (1978) 41 SATC 36 (SW) at page 43.

The words “trading activity” are not defined in the Act. The term “trade” is defined to include – ²⁰⁹

“every profession, trade, business, employment, calling, occupation or venture, including the letting of property and the use of or the grant of permission to use any patent as defined in the Patents Act²¹⁰ or any design as defined in the Designs Act²¹¹ or trade mark as defined in the Trade Marks Act²¹² or any copyright as defined in the Copyright Act²¹³ or any other property which is of a similar nature”.

The *Claassen’s Dictionary of Legal Words and Phrases* defines “trade” as follows:²¹⁴

“A handicraft, occupation or a business carried on by a person for profit.”

The courts have also interpreted trade to be neither exhaustive nor restrictive and will include any activity involving risking something with the object of making a profit, including the continuous turnover of floating capital.²¹⁵ The absence of profit will, however, not preclude a taxpayer’s activities from being classified as a trade.²¹⁶ Each case will be considered on its own merits to determine whether a trading activity²¹⁷ is being carried on.²¹⁸

The carrying on of a “trade” is not the same as the conducting of a “business”. However, the word “business” is included in the definition of “trade”. The conducting of a “business undertaking” will therefore also constitute “trade”.

The Act does not specify that the recreational club must carry on the business undertaking or trading activity. Legislation merely specifies that receipts and accruals from a business undertaking or trading activity of a recreational club may be exempt from income tax within certain limitations. A club, for example, may be an income beneficiary of a discretionary trust carrying on a business undertaking or trading activity. Any income distributed to the recreational club through the exercise of the trustees’ discretion will therefore be regarded as income from a business undertaking or trading activity. This distribution will be considered in the determination of the basic exemption (see **10.5**).

Section 10(1)(cO)(ii) must be interpreted and applied as a whole having regard to the context in which it appears and the apparent purpose to which it is directed. The individual requirements should therefore not be read in isolation because they are joined together by the conjunctive word “and”, which means that all the requirements must be met for the receipts and accruals to be regarded as being derived from this permissible business undertaking or trading activity. There is no limit on the amount of receipts and accruals qualifying for exemption from income tax under a permissible business undertaking or trading activity.

²⁰⁹ Section 1(1).

²¹⁰ Act 57 of 1978.

²¹¹ Act 195 of 1993.

²¹² Act 194 of 1993.

²¹³ Act 98 of 1978.

²¹⁴ Claassen, R. C. (June 2024) *Claassen’s dictionary of legal wrds and phrases* My LexisNexis [online].

²¹⁵ ITC 1675 (1998) 62 SATC 219 (G); *Burgess v CIR* 1993 (4) SA 161 (A), 55 SATC 185 at page 196; ITC 770 (1953) 19 SATC 216 (T) at pages 216 and 7; ITC 615 (1946) 14 SATC 399 (U) at page 402 and *Modderfontein Deep Levels Ltd & another v Feinstein* 1920 TPD 288.

²¹⁶ *De Beers Holdings (Pty) Ltd v CIR* 1986 (1) SA 8 (A), 47 SATC 229 at page 260.

²¹⁷ Section 10(1)(cO)(ii).

²¹⁸ For commentary, see the Interpretation Note 33 “Assessed Losses Companies: The ‘Trade’ and ‘Income from Trade’ Requirements”.

The conditions and requirements of the qualifying business undertakings or trading activities are considered below.

10.1.1 Integral and directly related to the provision of social and recreational amenities or facilities

The receipts and accruals from a business undertaking or trading activity will be exempt from income tax only if such business undertaking or trading activity is integral and directly related to the provision of social and recreational amenities or facilities (see **2.3**) for the members (see **2.4**) of the club.

The words “integral”, “directly” and “related” are not defined in the Act. The *Cambridge Dictionary* provides the following descriptions:

- “Integral” is “necessary and important as a part of a whole, contained within something, not separate.”²¹⁹
- “Directly” is “without anything else being involved or in between.”²²⁰
- “Related” is “connected to, influenced by, or caused by something.”²²¹

A business undertaking or trading activity will not be regarded as related to a recreational club’s approved sole or principal object (see **2.2**) if it does not directly contribute to achieving the sole or principal object of the club, which must be to provide social and recreational amenities or facilities (see **2.3**) for the members (see **2.4**). Whether an activity contributes to achieving the club’s sole or principal object will depend on the facts of each case. The size and extent of the activities involved must be considered in relation to the nature and extent of the approved function that they intend to serve to determine whether those activities contribute directly to achieving the approved sole or principal object of a recreational club. The use by the recreational club of the profits derived from any unrelated business undertaking or trading activity does not make the activity directly related to the performance by the recreational club of its approved sole or principal object.

Many clubs engage in business or trading activities such as bars, restaurants, and shops on the club premises where sporting equipment, clothing and other goods are sold to members, non-members, and the general public. It has also become common practice for clubs to hire out their amenities and facilities to members, non-members, and the general public for social events such as weddings, parties, and corporate events such as conferences.

A recreational club may operate a restaurant or bar service for its members and non-members. Thus, the provision of refreshments and meals by a recreational club on the sharing or mutuality principle to members and non-members may be regarded as promoting the club’s sole or principal object and may not necessarily jeopardise its approval or tax-exempt status even if this source of income becomes its primary source of income, provided those activities are carried out on a basis substantially the whole of which is directed towards the recovery of cost (see **10.3.2**) and do not result in unfair competition with other taxable entities (see **10.3.3**).

The receipts and accruals derived by a recreational club from making their amenities or facilities available to the general public will be regarded as receipts and accruals from any other source other than from a permissible business undertaking or trading activity. Receipts and accruals derived in such a manner will be taxable income subject to the basic exemption

²¹⁹ <https://dictionary.cambridge.org/dictionary/english/integral> [Accessed 26 June 2025].

²²⁰ <https://dictionary.cambridge.org/dictionary/english/directly> [Accessed 26 June 2025].

²²¹ <https://dictionary.cambridge.org/dictionary/english/related> [Accessed 26 June 2025].

(see **10.5**). Any income derived from activities that are not integral and directly related to the sole or principal object of the recreational club is taxable (see **10.6**) if it exceeds the basic exemption.

Example 8 – Integral and directly related permissible business undertakings or trading activities

The following are non-exhaustive examples of integral and directly related permissible business undertakings or trading activities:

- A golf club provides cart, club and caddy hire services for a set fee to its members and non-members.
- A country club provides squash, bowls, golf, and tennis facilities as well as restaurant and bar facilities to its members and non-members.

Example 9 – Business undertakings or trading activities not integral and directly related

The following are non-exhaustive examples of business undertakings or trading activities not integral and directly related to the provision of social or recreational amenities and facilities for members:

- The letting of immovable property for purposes of accommodation.
- The letting of immovable property on which a cell phone mast or billboard has been erected.

10.1.2 Substantially the whole towards the recovery of cost

It is a requirement that the permissible business undertaking or trading activity is carried out on a basis substantially the whole of which is directed towards the recovery of cost.²²²

The words “carried out”, “basis”, “substantially”, “whole”, “recovery” and “cost” are not defined in the Act. The *Cambridge Dictionary* provides the following descriptions:

- “Carried out something” is “to perform or complete a job or activity; to fulfil.”²²³
- “Basis” is “the most important facts, ideas, etc. from which something is developed.”²²⁴
- “Substantially” is “to a large degree.”²²⁵
- “Whole” is “complete or not divided.”²²⁶
- “Recovery” is “the process of getting something back.”²²⁷
- “Cost” is “the amount of money needed to buy, do, or make something, or an amount spent for something.”²²⁸

²²² Section 10(1)(cO)(ii)(bb).

²²³ <https://dictionary.cambridge.org/dictionary/english/carry-out?q=carried+out> [Accessed 26 June 2025].

²²⁴ <https://dictionary.cambridge.org/dictionary/english/basis> [Accessed 26 June 2025].

²²⁵ <https://dictionary.cambridge.org/dictionary/english/substantially> [Accessed 26 June 2025].

²²⁶ <https://dictionary.cambridge.org/dictionary/english/whole> [Accessed 26 June 2025].

²²⁷ <https://dictionary.cambridge.org/dictionary/english/recovery> [Accessed 26 June 2025].

²²⁸ <https://dictionary.cambridge.org/dictionary/english/cost> [Accessed 26 June 2025].

The expression “substantially the whole” is used in various sections of the Act although not defined in the Act. Strictly interpreted, SARS regards the expression to mean 90% or more. However, because recreational clubs operate in an uncertain environment making proper planning difficult, SARS in these circumstances accepts a percentage of not less than 85%.²²⁹ This percentage must be determined using a method appropriate to the circumstances and may be motivated by considering time or cost.

It is not always possible to base business undertakings or trading activities on a 100% cost-recovery basis and it is for this reason that legislation requires that substantially the whole, not less than 85%, of the business undertaking or trading activity must be based on the recovery of cost. The concept “recovery of cost” means that the business undertaking or trading activity is not conducted at a mark-up to maximise profits, but rather with the intention of recovering direct and reasonable indirect costs relating to the business undertaking or trading activity.

In *C v COT Goldin J* stated the following on the meaning of “cost”:²³⁰

“The word ‘cost’, when undefined, may be used in various senses. As Jordan CJ said in the case of *Ex parte Brierley, Re Elvidge* (1947) 47 NSWSR 423 at 427; *Words and Phrases Legally Defined* 2 ed –

‘It may, in the case of manufacture, be used to mean the price paid for the raw material plus the wages paid for turning it into finished articles; and, in the case of trading, the price paid for what is re-sold. Or, in either case, it may include all the other expenses incurred in bringing into existence, or obtaining, and then selling a vendible article – what are generally described as ‘overheads’. ”

Goldin J stated further that –²³¹

“[t]he word ‘cost’ has to be construed according to its context.”

Trollip JA held in *SIR v Eaton Hall (Pty) Ltd* that –²³²

“in the absence of any definition in the Act of such cost one must look at its ordinary meaning. The *Oxford English Dictionary* defines ‘cost’ as meaning: ‘That which must be given or surrendered in order to acquire, produce, accomplish, or maintain something; the price paid for a thing’ ”.

The word “cost” in this context includes reasonable direct and indirect operational costs that may also include reasonable provision for future expenditure such as that incurred in repairing and replacing assets.

²²⁹ For further commentary, see the Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’ ”.

²³⁰ 1973 (4) SA 449 (R), 35 SATC 241 at page 246 and 247.

²³¹ At paragraph 247.

²³² 1975 (4) SA 953 (A), 37 SATC 343 at 347.

10.1.3 Unfair competition with entities liable for normal tax

It is a requirement that the qualifying business undertaking or trading activity must not result in unfair competition in relation to taxpaying entities.²³³

The *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa*²³⁴ provides the following on unfair competition:²³⁵

“In granting privileged tax status to particular organisations, the fiscus needs to have regard to the issue of ‘unfair competition’ between bodies which are subject to tax and those which are tax-exempt. The broad issue of fairness or equity within a free-market economy is a fundamental one that warrants some degree of vigilance. However, the Commission is of the view that this value should not be elevated to the status of a ‘*summum bonum*’²³⁶ and needs to be counter-balanced with other important values in society, including the need for a strong, independent, and viable NPO sector.”

A recreational club should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity. A recreational club has an advantage in that it is not required to sacrifice a portion of its profit in the form of tax. Each case will be considered on its own merits to determine whether a recreational club has an unfair advantage. In determining whether a recreational club has an unfair advantage, various factors could be considered such as –

- whether the club engages in active advertising or marketing;
- whether the activity is conducted on a competitive basis with the intention of maximising profits;
- the amount of membership fees or other income received;
- location and availability of similar facilities; or
- voluntary assistance provided by other persons.

Example 10 – Qualifying business undertakings or trading activities complying with all three requirements under section 10(1)(cO)(ii)

Facts 1:

The AG Club provides social and cultural facilities solely for its members and also serves meals and refreshments on Saturdays and Sundays to the members for a consideration that is determined based on cost plus a small mark-up. The cost in this instance includes the purchase price of the goods supplied, salaries and wages, costs such as telephone, electricity, repairs and maintenance, stationery, cleaning materials and an amount for a reserve created for future replacement costs of capital assets such as a refrigerator, microwave oven and deepfreeze.

²³³ Section 10(1)(cO)(ii)(cc).

²³⁴ Katz, M. M. et al. (1999) Trading Activities and Specific Proposals in paragraph 5.10. In *Ninth interim report of the commission of inquiry into certain aspects of the tax structure of South Africa*. Available online at www.treasury.gov.za/publications [Accessed 26 June 2025].

²³⁵ At paragraph 10.

²³⁶ Described in the *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/summum%20bonum [Accessed 26 June 2025] as “supreme good from which all others are derived”.

Result 1:

It may be argued that the provision of meals and refreshments is integral and directly related to the provision of social and recreational amenities or facilities of the club to its members considering factors such as the –

- restaurant is available only to the members of the club; and
- price charged for meals and refreshments is on a cost-recovery basis.

Facts 2:

The BG Golf Club provides its members and non-members with recreational facilities for playing golf. Green fees are payable by each player. The club charges a fee for the use of its golf carts considering depreciation and the cost of repairs and maintenance.

Result 2:

Green fees charged by a golf club to members and non-members could qualify for the exemption, provided all three requirements of section 10(1)(cO)(ii) are met. The rental income received from the letting of the golf carts may be regarded as being integral and directly related to the provision of the recreational facility to the members and non-members and not being in competition with other taxable entities, in that the golf carts are made available to members and non-members only at the BG Golf Club.

Example 11 – Qualifying business undertakings or trading activities not complying with all three requirements under section 10(1)(cO)(ii)

Facts 1:

The CP Bowling Club has permitted a cell phone provider to erect a cell phone mast on its property for an annual consideration. It has also permitted a car dealer to erect a billboard on its property for which it receives rental income.

Result 1:

The rental income received for the use of the land constitutes income derived from a trading activity that is not integral and directly related to the provision of the recreational facility to the club's members. It is also regarded as being in competition with other taxable entities that are required to pay income tax on rental income received for the use of immovable property.

Facts 2:

The SA Yacht Club rents its restaurant and bar facilities to a third-party company operating the business for its own benefit. Rental income is paid to the club for the use of the restaurant and bar facilities.

Result 2:

The rental income received by SA Yacht Club is regarded as income derived from the letting of immovable property comprising income derived from a trading activity not integral and directly related to the provision of social or recreational facilities to the club's members.

If the club itself were to operate the restaurant and in that way provide a social facility to its members and non-members, it could qualify for the income tax exemption, provided all three requirements of section 10(1)(cO)(ii) are met.

10.4 Fundraising activities

The receipts and accruals from any fundraising activities of any approved recreational club will be exempt from income tax to the extent that they are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.²³⁷

The Act does not define “occasional”, “nature”, “substantially”, “assistance”, “voluntary” or “compensation”. The *Cambridge Dictionary* provides the following descriptions:

- “Occasional” is “not happening or done often or regularly.”²³⁸
- “Nature” is “the type or main characteristic of something.”²³⁹
- “Assistance” is “help.”²⁴⁰
- Voluntary” is “done, made, or given willingly, without being forced or paid to do it.”²⁴¹
- “Compensation” is “the combination of money and other benefit (= rewards) that an employee receives for doing their job.”²⁴²

A fundraising activity of an occasional nature is one conducted on an irregular, infrequent basis or as a special event. It is a requirement that a large or significant part of the occasional fundraising activity must be undertaken with assistance from volunteers without compensation. For example, fundraising activities that take place on an annual basis with the assistance of helpers or volunteers who are not compensated for their services. The repayment of reasonable and necessary out-of-pocket expenditure to volunteers in assisting in the carrying on of the recreational club’s occasional fundraising activity is allowed.

The difference between occasional and frequent is that “occasional” occurs irregularly, from time to time, once in a while, therefore rarely, while “frequent” occurs regularly, very often or many times. Fundraising activities will therefore not be regarded as occasional if there is a frequency and continuity to them, and if such activities are pursued in a manner similar to commercial activities²⁴³ of taxpaying entities.

Example 12 – Fundraising activities

The following are non-exhaustive examples of qualifying fundraising activities:

- Fêtes, cake sales, raffles and jumble sales that usually take place on an annual basis and with the assistance of helpers or volunteers who are not remunerated for their services.
- Fun runs, dinners or dances held occasionally with the assistance of volunteers.
- A gala dinner or gala prize giving held to raise funds.

²³⁷ Section 10(1)(cO)(iii).

²³⁸ <https://dictionary.cambridge.org/dictionary/english/occasional> [Accessed 26 June 2025].

²³⁹ <https://dictionary.cambridge.org/dictionary/english/nature> [Accessed 26 June 2025].

²⁴⁰ <https://dictionary.cambridge.org/dictionary/english/assistance> [Accessed 26 June 2025].

²⁴¹ <https://dictionary.cambridge.org/dictionary/english/voluntary> [Accessed 26 June 2025].

²⁴² <https://dictionary.cambridge.org/dictionary/english/compensation> [Accessed 26 June 2025].

²⁴³ Depending on the facts applicable there may be additional considerations that need to be considered in determining whether a commercial business undertaking or trading activity is being conducted. All relevant facts and circumstances must be examined on a case-by-case basis.

- An annual golf, tennis or bowling day hosted by volunteers at which the prizes have been donated or items donated for auction and the proceeds used to fund capital improvements to the recreational club.

10.5 Basic exemption

Any receipts and accruals (other than amounts from membership or subscription fees, qualifying business undertakings or fundraising activities) of any approved recreational club is exempt from income tax to the extent that they do not in total exceed the greater of –²⁴⁴

- 5% of the total membership fees or subscriptions (see **10.2**) due and payable by the recreational club's members (see **2.4**) during the relevant year of assessment (see **18.3**); or
- R120 000.

The basic exemption is the amount determined as a threshold and applied to the total membership fees or subscriptions paid by the recreational club's members during the relevant year of assessment.

The basic exemption cannot create a loss since it is not a deduction but a calculation to determine the threshold amount to be applied to the total membership fees or subscriptions due and payable by the recreational club's members during the relevant year of assessment to determine the receipts and accruals qualifying for exemption and the receipts and accruals subject to tax (see **10.6**).

The words “due” and “payable” have been considered in various judgments. In *CIR v Janke*²⁴⁵ Stratford J cited the following observation of Searle J in *Stafford v Registrar of Deeds*:²⁴⁶

“It is clear that the word ‘payable’ is sometimes construed as meaning ‘payable at a future time’ or ‘in respect of which there is a liability to pay’. It is also true that it is sometimes used to mean ‘payable immediately’ or ‘actually due and presently demandable’.”

In *Singh v C: SARS*, Olivier JA stated the following:²⁴⁷

“The word ‘payable’ can have at least two different meanings, viz ‘... (a) that which is due or must be paid, or (b) that which may be paid or may have to be paid ... The sense of (a) is a present liability – due and payable – ... (b) ... a future or contingent liability’.”

The point in time at which membership fees and subscriptions are due and payable may be later than the point in time at which they accrue to a club. An amount may thus be due under a contract but not payable. An amount will be payable only when the time for payment arrives. For an amount to be “due and payable”, the amount must not only be owing, but a person must have the right to claim payment of it.

If a recreational club is operational for only a part of a year of assessment its total membership fees or subscriptions due and payable by its members will equate to the membership fees or subscriptions due and payable for the relevant operational period derived during that year of assessment. The basic exemption is therefore not applied on a *pro rata* basis to the number of months a recreational club operated in a year of assessment because it applies to the

²⁴⁴ Section 10(1)(cO)(iv).

²⁴⁵ 1930 AD 474, 4 SATC 269 at 276.

²⁴⁶ 1913 CPD 379 at 385.

²⁴⁷ 2003 (4) SA 520 (SCA), 65 SATC 203 at 216.

recreational club's total membership fees or subscriptions due and payable by members during a year of assessment.

The basic exemption threshold amount must be applied collectively to the total receipts and accruals from all other sources and not individually to such other sources.

A recreational club may potentially be taxable on investment income on surplus funds (see **7.5**) invested, investment income on capital reserves created to fund future capital expenditure and business or trading income other than permissible business undertakings or trading activities or receipts or accruals from any other source. If such receipts and accruals in total exceed the basic exemption, they will constitute taxable income and be subject to income tax (see **10.6**).

See **Annexure C** for a step-by-step guide to calculating the taxable income of a recreational club by applying the basic exemption.

Example 13 – Basic exemption

Facts:

The BB Social Club has been approved by the Commissioner as a recreational club. The total receipts and accruals for the year of assessment ended 30 June 2024 was as follows:

	R
Membership fees and subscriptions	450 000
Interest income	<u>45 000</u>
Total receipts	<u>495 000</u>

Result:

Interest income does not qualify to be exempt from income tax since it is not receipts and accruals derived from –

- membership fees or subscriptions paid by members contemplated in section 10(1)(cO)(i) (see **10.2**);
- permissible business undertaking or trading activity contemplated in section 10(1)(cO)(ii) (see **10.3**); or
- fundraising activities contemplated in section 10(1)(cO)(iii) (see **10.4**).

The basic exemption is calculated as an amount equal to the greater of –

- 5% of the total membership fees or subscriptions due and payable by its members; or
- R120 000.

5% of the total membership fees and subscriptions during the year of assessment of R450 000 amounts to R22 500.

The total receipts from investment income amounting to R45 000 will be exempt since the recreational club receives the benefit of the greater of –

- R22 500; or
- R120 000.

10.6 Partial taxation

An approved recreational club deriving receipts and accruals from any source other than membership fees or subscriptions paid by members (see **10.2**), qualifying business undertakings or trading activities (see **10.3**) or fundraising activities (see **10.4**) will, subject to the basic exemption (see **10.5**), be taxed on the receipts and accruals derived from all such other sources that in total exceed the basic exemption.

A recreational club liable to income tax on taxable income will pay income tax at a rate of —²⁴⁸

- 28% in the case of a recreational club that is a company, society or association for any year of assessment ending on or after 1 April 2022; and
- 27% in the case of a recreational club that is a company, society or association for any year of assessment ending on or after 31 March 2023.

The Minister may announce different rates in the national annual budget, which are prescribed annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.²⁴⁹

11 Exemption from other taxes and duties

In addition, to being exempt from the payment of income tax on certain receipts and accruals, approved recreational clubs also enjoy the benefit of being exempt from certain other taxes and duties,²⁵⁰ which are considered below.

11.1 Donations tax

Donations tax is payable²⁵¹ on the value of any property wheresoever situated disposed of by donation, whether directly or indirectly and whether in trust or not, by any resident²⁵² (the donor) to another person (the donee),²⁵³ unless an exemption²⁵⁴ applies, at the rate²⁵⁵ of —

- 20% of that value if the aggregate of that value and the value of any other property disposed of under a taxable donation on or after 1 March 2018 until the date of that donation does not exceed R30 million;²⁵⁶ and
- 25% of that value to the extent that that value exceeds R30 million.²⁵⁷

A donation comprises any gratuitous disposal of property, which includes cash or non-cash property, including any gratuitous waiver or renunciation of a right, for example, the waiver of debt.²⁵⁸ The disposal of property at less than its market value will also constitute a donation to the extent that the Commissioner is not satisfied that the consideration was adequate.²⁵⁹

²⁴⁸ Paragraph 5 and 6 of Schedule I (Section 1) in the Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2022.

²⁴⁹ Section 5(2)(a).

²⁵⁰ For further commentary, see the *Taxation in South Africa*.

²⁵¹ Section 54.

²⁵² The term “resident” is defined in section 1(1).

²⁵³ The term “donee” is defined in section 55(1).

²⁵⁴ Section 56.

²⁵⁵ Section 64.

²⁵⁶ Section 64(1)(a)(i).

²⁵⁷ Section 64(1)(a)(ii).

²⁵⁸ The term “donation” is defined in section 55(1).

²⁵⁹ Section 58(1).

The term "property"²⁶⁰ is legally a very wide concept and inclusive to not only movable or immovable property, corporeal (tangible) or incorporeal (intangible), but also a right in that property. Property is an object of legal rights and includes anything tangible or intangible over which a person has a legal title. Property is movable if it can be moved from one place to another without being damaged and without losing its identity.²⁶¹ Some examples include stocks, money, notes, patents, as well as intangible property such as copyrights. Animals that can move on their own are also moveable property. Immovable property is land, things attached to it as well as certain rights registered against the title deed of the land.

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

Donations tax is payable by the donor, but if the donor fails to pay the tax within the prescribed period, the donor and donee are jointly and severally liable for the tax.²⁶²

Donations made by or to a recreational club are exempt from the payment of donations tax.²⁶³

11.2 Dividends tax

The provisions relating to dividends tax are contained in sections 64D to section 64N and apply to any dividend paid by a company, other than a headquarter company. Although dividends tax is part of the Act, it is a separate tax from income tax.²⁶⁴

Dividends tax is levied at the rate of 20%²⁶⁵ of the amount of a dividend paid by a company that is a resident.²⁶⁶ Dividends tax is also payable on a foreign dividend to the extent that the foreign dividend does not constitute the distribution of an asset *in specie* and it is paid by a foreign company in respect of a listed share.²⁶⁷

Dividends tax on a cash dividend is levied on the person entitled to the benefit of the dividend attaching to the share. This person is generally known as the beneficial owner.²⁶⁸

Generally, a company declaring and paying a dividend must withhold an amount of dividends tax, except to the extent that the dividend consists of a distribution of an asset *in specie*, in which case, the company paying the dividend is potentially liable for dividends tax unless an exemption applies. The exemptions from dividends tax for cash dividends are contained in section 64F while the exemptions for dividends *in specie* are contained in section 64FA(1).

²⁶⁰ Section 55(1).

²⁶¹ Van der Merwe, C. G. (31 January 2014). Things. In *Law of South Africa (LAWSA)* 27 (Second Edition Volume) in paragraph 50. My LexisNexis [online].

²⁶² Section 59.

²⁶³ Section 56(1)(h).

²⁶⁴ For further commentary, see the *Comprehensive Guide to Dividends Tax*.

²⁶⁵ Section 64E(1). The rate of dividends tax increased from 15% to 20% on any dividend paid on or after 22 February 2017.

²⁶⁶ A reduced or nil rate may apply under specific circumstances.

²⁶⁷ The term "listed share" is defined in section 1(1) and means a share that is listed on an exchange as defined in section 1 of the Financial Markets Act 19 of 2012 and licensed under section 9 of that Act. A listed share could thus include a share in a foreign company whose shares are listed on a South African exchange.

²⁶⁸ The term "beneficial owner" is defined in section 64D.

It is not the responsibility of the company or regulated intermediary²⁶⁹ paying the dividend to determine who the beneficial owner of a dividend is and whether that person qualifies for an exemption from dividends tax.

Any recreational club that is the beneficial owner of a dividend is exempt from dividends tax.²⁷⁰ This exemption applies only if the recreational club has submitted a declaration to the company that declared and paid the dividend or to the regulated intermediary that paid the dividend, that it is exempt from dividends tax. The recreational club is also required to submit a written undertaking to the company or regulated intermediary that it will inform such company or regulated intermediary in writing should it cease to be the beneficial owner of the shares or if the circumstances affecting the exemption change.²⁷¹

The Commissioner has not issued actual forms to be used for purposes of a declaration or written undertaking but has prescribed the required wording and minimum information required in the forms that are to be prepared by the company, regulated intermediary or beneficial owner.²⁷²

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

Any recreational club that is a beneficiary of a trust should determine whether it has a vested right to a dividend received by or which accrued to the trust before the dividend is paid by the relevant company to ensure that the necessary declaration of exemption is filed with the company or regulated intermediary. A beneficiary that has a vested right in a dividend received by or which accrued to a trust will be regarded as the beneficial owner. Should the trust be the beneficial owner of the dividend, dividends tax at the rate of 20% may become payable. A trust whose beneficiary acquires a vested right to a dividend after it is paid but before the end of the trust's year of assessment may be able to claim a refund of the dividends tax withheld.²⁷³

11.3 Capital gains tax

CGT²⁷⁴ was introduced in South Africa on 1 October 2001 but in relation to recreational clubs, it became effective only some years later on a variety of dates ranging between 1 April 2007 and 1 April 2010, depending on the year of assessment of the club and when it applied for approval.

²⁶⁹ The term "regulated intermediary" is defined in section 64D. A regulated intermediary is generally an entity that temporarily holds a dividend paid by a company before it is paid over to the ultimate beneficial owner.

²⁷⁰ Section 64F(1)(a) and section 64FA(1)(a).

²⁷¹ Section 64G(2)(a) and section 64H(2)(a).

²⁷² For further commentary, see the Business Requirements Specifications: Administration of Dividends Tax in paragraph 14.

²⁷³ For further commentary, see the *Comprehensive Guide to Dividends Tax* in paragraph 2.3.1.

²⁷⁴ For further commentary, see the *ABC of Capital Gains Tax for Companies* for a very basic overall understanding of the subject, the *Tax Guide for Share Owners*, which contains a detailed commentary on most aspects of CGT impacting on the holding of shares, and the *Comprehensive Guide to Capital Gains Tax* for a very detailed examination of the subject including recreational clubs.

With the introduction of the system of partial taxation for recreational clubs under section 10(1)(cO),²⁷⁵ clubs fell outside paragraph 63 of the Eighth Schedule²⁷⁶ and were no longer able to automatically disregard capital gains and losses on the disposal of any of their assets. The valuation date of a club²⁷⁷ is therefore the date on which a recreational club became partially taxable under section 10(1)(cO) that caused it to fall outside paragraph 63 of the Eighth Schedule under which it had previously enjoyed a complete exclusion.²⁷⁸

CGT is a complex subject and a full explanation of all its aspects extends beyond the scope of this guide. All capital gains and capital losses of recreational clubs made on the disposal of assets are potentially subject to CGT unless excluded by a specific provision. A recreational club does not qualify under paragraph 64 of the Eighth Schedule, since that provision specifically excludes any asset used to produce exempt receipts and accruals contemplated in section 10(1)(cO).

Paragraph 65B of the Eighth Schedule provides roll-over relief for assets used in carrying on the club's activities. The roll-over relief granted to clubs entails a deferment or delay in paying the CGT on a taxable capital gain made on the disposal of an asset, provided the proceeds are used to acquire a replacement asset.²⁷⁹ The liability for CGT will arise on the subsequent disposal of the new asset purchased to replace the asset disposed of.

A person must disregard any capital gain or capital loss determined in respect of the donation or bequest of an asset to an approved recreational club.²⁸⁰

12 Other applicable tax liabilities

12.1 Provisional tax

Provisional tax²⁸¹ is dealt with in the Fourth Schedule.²⁸² It is not a separate tax but merely a mechanism to assist taxpayers in meeting their tax liability by spreading it over the relevant year of assessment as opposed to paying a large amount at the end of a year of assessment. A provisional taxpayer²⁸³ is required to estimate taxable income for a year of assessment and calculate provisional tax payable on that estimate.

Recreational clubs are excluded from the definition of "provisional taxpayer" in the Fourth Schedule and are not required to submit provisional tax payments.²⁸⁴ Any liability to income tax on taxable income will become payable on assessment.

²⁷⁵ Section 10(1)(d)(iv)(aa), now repealed.

²⁷⁶ Paragraph 63 provides that a person must disregard a capital gain or loss when any amount constituting gross income of whatever nature would be exempt from tax under section 10 were it to be received by or to accrue to that person.

²⁷⁷ The *Comprehensive Guide to Capital Gains Tax* contains two sets of tables that can be consulted to assist in determining the valuation date of a club.

²⁷⁸ Paragraph (a) of the definition of "valuation date" in paragraph 1.

²⁷⁹ Paragraph 65B of the Eighth Schedule.

²⁸⁰ Paragraph 62(e) of the Eighth Schedule.

²⁸¹ The term "provisional tax" is defined in paragraph 1 of the Fourth Schedule.

²⁸² For commentary on provisional tax, see the *Taxation in South Africa* and the *External Guide – Guide for Provisional Tax*.

²⁸³ The term "provisional taxpayer" is defined in paragraph 1 of the Fourth Schedule.

²⁸⁴ Paragraph (bb) of the exclusions to the definition of "provisional taxpayer" in paragraph 1 of the Fourth Schedule.

12.2 Estate duty

Estate duty is levied under the Estate Duty Act 45 of 1955 (Estate Duty Act) at the rate of 20% on the first R30 million of the dutiable amount of the estate of a deceased person, and at the rate of 25% of the dutiable amount that exceeds R30 million.²⁸⁵

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

12.3 Transfer duty

Transfer duty is levied under the Transfer Duty Act on a sliding scale on the value of any property²⁸⁶ acquired by any person. The rates vary from 0% to 13% for all persons.²⁸⁷ The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.²⁸⁸

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

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

12.4 Securities transfer tax

The STT Act provides that STT must be levied at the rate of 0.25%²⁸⁹ on the taxable amount²⁹⁰ of the transfer²⁹¹ of every security²⁹² issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on an exchange.²⁹³

²⁸⁵ Section 2(2) and at the rate set out in the First Schedule to the Estate Duty Act.

²⁸⁶ See the definition of “property” in section 1(1) of the Transfer Duty Act.

²⁸⁷ Section 2(1)(b) of the Transfer Duty Act.

²⁸⁸ For further commentary on transfer duty in general and the processing of transactions on **eFiling**, see the *Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

²⁸⁹ Section 2(1) of the STT Act.

²⁹⁰ Sections 3(1), 4, 5 and 6 of the STT Act determine the relevant taxable amount.

²⁹¹ The term “transfer” is defined in section 1 of the STT Act and save for certain exclusions, includes the transfer, sale, assignment or cession or disposal in any other manner of a security or the cancellation or redemption of that security.

²⁹² The term “security” is defined in section 1 of the STT Act and means any share or depository receipt in a company, or any member’s interest in a close corporation.

²⁹³ The term “exchange” means an “exchange” as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act.

The Securities Transfer Tax Administration Act 26 of 2007 contains the administration provisions governing the payment of STT.²⁹⁴ Any STT payment must be made electronically through SARS e-STT system.²⁹⁵

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

12.5 Employees' tax

Employees' tax²⁹⁶ is dealt with in the Fourth Schedule. The purpose of the employee's tax system is to ensure that an employee's income tax liability is settled at the same time that the employee's remuneration is earned, therefore avoiding burdening the employee with a large tax bill on assessment. Employees' tax deducted serves as an income tax credit that is set off against the income tax liability²⁹⁷ of an employee, calculated on an annual basis, to determine the employees' final income tax liability for a year of assessment.

Employees' tax must be deducted or withheld²⁹⁸ by every employer that is a resident (or, by an employer that is not a resident but conducts business through a permanent establishment in South Africa, or by a representative employer) who pays or becomes liable to pay an amount of remuneration²⁹⁹ to any person.

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

A recreational club that is an employer must, if any of its employees are liable for income tax, register for employees' tax within 21 business days³⁰⁰ of becoming an employer.³⁰¹ Registration is done by completing the prescribed application form EMP 101e.³⁰² A recreational club already registered for another tax type on **eFiling** may as part of the single registration initiative register for PAYE on **eFiling**.³⁰³ A registered employer will receive a monthly return, the EMP 201 form, which must be completed and submitted together with the payment of employees' tax within seven days after the end of the month during which the deduction was made.

²⁹⁴ For further commentary, see the *Taxation in South Africa*.

²⁹⁵ Sections 3(2) and (5) of the STT Administration Act 26 of 2007. For further commentary on the electronic submission of STT declarations and payments on the e-STT system via **eFiling**, see the *External Reference Guide – Securities Transfer Tax*.

²⁹⁶ For further commentary, see the External Guide – Guide for Employers in respect of Employees' Tax.

²⁹⁷ Paragraph 28 of the Fourth Schedule.

²⁹⁸ Paragraph 2(1) of the Fourth Schedule.

²⁹⁹ The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.

³⁰⁰ Section 4 of the Interpretation Act 33 of 1957 deals with the calculation of days and provides that when any particular number of days is prescribed for the doing of any act, or for any other purpose, the same will be reckoned exclusively of the first and inclusively of the last day.

³⁰¹ Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.

³⁰² For commentary, see the External Guide – Guide for Completion of Employer Registration Application.

³⁰³ For further commentary, see the External Guide – How to Complete the Registration, Amendments and Verification Form (RAV01).

An employer must issue an employee with an employees' tax certificate (IRP 5 certificate) if employees' tax was deducted or withheld from the employees' remuneration.³⁰⁴ This certificate discloses, amongst other things, the total remuneration earned during a year of assessment and the employees' tax and UIF contributions deducted by the employer.

12.6 Unemployment insurance contributions

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act and the Unemployment Insurance Contributions Act 4 of 2002 (UIC Act). These statutes, amongst other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

The UIF³⁰⁵ gives short-term relief to workers when they become unemployed or unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependents of a deceased contributor.³⁰⁶

UIF contributions, which are equal to 2% of remuneration paid or payable by an employer to its employees, subject to specified exclusions, are payable by employers on a monthly basis. The employer must pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period. A contribution shall not apply to so much of the remuneration paid or payable by an employer to an employee, as exceeds R17 712 per month (R212 544 annually) with effect from 1 June 2021.³⁰⁷

A recreational club paying remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.³⁰⁸

These contributions must be paid to the UIF office of the Department of Labour³⁰⁹ or to SARS within seven days after the end of the month during which the amount was deducted. Payment can be made via eFiling, electronic funds transfer (EFT) or at a branch of an approved banking institution.³¹⁰

12.7 Skills development levy

The SDL is a compulsory levy to fund education and training under the SDL Act.³¹¹ SARS administers the collection of the SDL, which is based broadly on 1% of the payroll of employers.³¹² Employers providing training to employees may receive grants from the relevant Sector Education and Training Authority (SETA).

³⁰⁴ Paragraph 14 of the Fourth Schedule.

³⁰⁵ For further commentary, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.

³⁰⁶ Section 2 of the Unemployment Insurance Act.

³⁰⁷ Section 6(2) of the UIC Act, read with Government Notice 475 in *Government Gazette* 44641 of 28 May 2021.

³⁰⁸ Section 4(1) of the UIC Act.

³⁰⁹ Information is available on the Department of Labour's website at www.labour.gov.za.

³¹⁰ For commentary, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.

³¹¹ For commentary, see the *Quick Reference Guide for Skills Development Levy*.

³¹² For commentary, see the *Guide for Tax Rates / Duties / Levies and Taxation in South Africa*.

The SDL Act³¹³ imposes on every employer an SDL on the total amount of remuneration paid or payable or deemed to be paid or payable by an employer³¹⁴ to its employees³¹⁵ during any month. The amount of such remuneration is the same as the amount of remuneration³¹⁶ determined under the Fourth Schedule from which an employer is obligated to withhold employees' tax taking into consideration certain exclusions.³¹⁷

Section 4 of the SDL Act contains a number of exemptions from the SDL. There, however, is no specific exemption from SDL for a recreational club. A recreational club that is an employer whose annual payroll will not exceed R500 000 in the following 12 months will be exempt from paying SDL.³¹⁸

An employer liable to pay SDL must apply to the Commissioner in such manner as the Commissioner may determine to be registered as an employer for the purposes of SDL.³¹⁹

12.8 Value-added tax

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

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

The term "recreational club" used for income tax purposes is not used in the VAT Act. If a recreational club falls within the definition of an "association not for gain" as defined in the VAT Act³²⁰ and complies with the requirements for compulsory or voluntary registration such a recreational club will be treated like any other business making taxable supplies and will be liable to register and account for VAT according to the normal VAT rules applying to all vendors. There, however, are a few special provisions applying to associations not for gain.³²¹ A recreational club required to register for VAT, or which has registered voluntarily, must charge VAT (output tax) on any taxable supplies of goods or services made in the course of conducting the club's enterprise.

³¹³ Section 3(1) of that Act.

³¹⁴ The term "employer" is defined in section 1(1) of the SDL Act and includes an "employer" as defined in the Fourth Schedule.

³¹⁵ The term "employee" is defined in section 1(1) of the SDL Act and includes an "employee" as defined in the Fourth Schedule.

³¹⁶ The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.

³¹⁷ See section 3(4) of the SDL Act for the exclusions.

³¹⁸ Section 4(b) of the SDL Act.

³¹⁹ Section 5(1) of the SDL Act. For commentary, see the *External Guide – Guide for Employers in Respect of Skills Development Levy* SDL-GEN-01-G01.

³²⁰ See paragraph (b) of the definition of "association not for gain" in section 1(1) of the VAT Act.

³²¹ For further commentary on VAT and "associations not for gain", see the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

Typical examples of income earned from taxable supplies on which output tax is payable by recreational clubs are as follows:

- Club membership fees.
- Entrance fees charged for entrance to fundraising and sports events.
- Fees charged for the use of sports facilities such as bowling greens, squash, and tennis courts.
- Charges for restaurant meals, bar facilities and any other hospitality or entertainment.
- Tuck shop sales such as tea, coffee and other beverages and snacks.
- Fees for hiring out facilities for weddings and other functions.
- Charges for the provision of commercial accommodation or office space
- Income from the sale of raffle tickets or fees for entry to competitions.
- Takings from coin-operated amusements such as pool tables or other vending machines.
- Entrance fees for theatre performances and film shows.
- Charges for hospitality boxes.

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

Since recreational clubs often make supplies of “entertainment”, the special VAT rules in this regard should be noted.³²² The term “entertainment” means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with the enterprise carried on by that vendor.³²³ The main rule regarding the deduction of input tax concerning supplies of entertainment is that the supplies must be made for a charge covering all the direct and indirect costs, or for a charge that is at least equal to the open market value of the supplies. A club that supplies entertainment may therefore deduct input tax on any goods or services acquired to make taxable supplies of entertainment, provided it meets these requirements.

Should a ruling request be required on a specific VAT issue, a ruling application may be submitted by e-mail to **VATRulings@sars.gov.za**.³²⁴

³²² For further commentary on supplies of entertainment and the deductibility of input tax, see the *VAT 404 – Guide for Vendors* and the *VAT 411 – Guide for Entertainment, Accommodation and Catering*.

³²³ Section 1(1) of the VAT Act.

³²⁴ For commentary on the VAT ruling process, see the *VAT Ruling Process Quick Reference Guide*.

12.9 Micro businesses

The Sixth Schedule sets out the conditions and requirements for an entity to qualify as a micro business³²⁵ for turnover tax³²⁶ purposes. A micro business may be constituted as a sole proprietor, partnership, close corporation, co-operative or a company.³²⁷ Another requirement is that the qualifying person's qualifying turnover may not exceed R1 million for a year of assessment.

An NPC approved by the Commissioner as a recreational club will not qualify as a micro business.³²⁸

13 Administrative provisions – Tax Administration Act

The TA Act³²⁹ deals with tax administration and seeks, amongst other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.³³⁰

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act imposing that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.³³¹ If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.³³²

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **17**), returns (see **18**), assessments, dispute resolution (see **19**), interest, refunds and anti-avoidance will therefore apply to recreational clubs.

³²⁵ The term "micro business" is defined in paragraph 1 of the Sixth Schedule.

³²⁶ Turnover tax is a separate and independent tax from the income tax system that is payable under section 48A by a person who is registered as a micro business under paragraph 8 of the Sixth Schedule.

³²⁷ For commentary on the turnover tax system for micro businesses, see the *Tax Guide for Micro Businesses*.

³²⁸ Paragraph 3(f)(v) of the Sixth Schedule.

³²⁹ The TA Act came into effect on 1 October 2012.

³³⁰ For commentary relating to taxpayer's obligations and entitlements under the TA Act, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

³³¹ Section 4(2) of the TA Act.

³³² Section 4(3) of the TA Act.

SARS is responsible for the administration of the TA Act under the control and direction of the Commissioner.³³³ The Commissioner may, to administer a tax Act, obtain full information relating to anything that may affect the tax liability of a person for any tax period,³³⁴ taxable event,³³⁵ or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.³³⁶ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.³³⁷

14 Furnishing of information

SARS may for purposes of the administration of a tax Act request a taxpayer to submit relevant material (whether orally or in writing) that SARS requires.³³⁸ A request for relevant material from a person other than the taxpayer is limited to material maintained or kept that should reasonably be maintained or kept by the person relating to the taxpayer.³³⁹

Relevant material is defined as any information, document or thing that in the opinion of SARS is foreseeably relevant to the administration of a tax Act.³⁴⁰

The Commissioner may, under the Act, request any person whom the Commissioner may deem able to furnish information about any recreational club and may require that person to –

- answer any questions relating to the recreational club;
- make books of account, records or other documents relating to the recreational club available for inspection; or
- meet with the Commissioner’s representative and produce for examination any documents relating to the recreational club.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions posed by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.³⁴¹

15 Changes in registered particulars

A recreational club must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A recreational club must communicate to SARS any change of postal, physical, or electronic addresses, representative taxpayer (see **16**) and banking particulars.³⁴²

³³³ Section 3(1) of the TA Act.

³³⁴ Section 3(2)(a)(i) of the TA Act.

³³⁵ Section 3(2)(a)(ii) of the TA Act. The term “tax event” as defined in section 1 of the TA Act means an occurrence which affects or may affect the liability of a person to tax.

³³⁶ Section 3(2)(a)(iii) of the TA Act.

³³⁷ Section 3(2)(h) of the TA Act.

³³⁸ Section 46(1) of the TA Act.

³³⁹ Section 46(3) of the TA Act.

³⁴⁰ Section 1 of the TA Act.

³⁴¹ Sections 234(1)(c)(i), (2)(f) and (2)(h) of the TA Act.

³⁴² Section 23 of the TA Act.

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.³⁴³

16 Representative taxpayer

Persons other than natural persons, such as an NPC (see 2.1.1), a society (see 2.1.2), or an association (see 2.1.3) act through its representatives. The representatives, amongst other things, are responsible for the tax compliance and liabilities of a recreational club. The Act defines a representative taxpayer.³⁴⁴ For purposes of a recreational club the representative taxpayer is a natural person residing in South Africa and includes the –

- person in a fiduciary capacity of the income of a society or an association under his or her management, disposition, or control (see 7.1.2);
- public officer of the income of an NPC; and
- business rescue practitioner of 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 agent and, amongst other things, includes a person who is a representative taxpayer under the Act.³⁴⁵ 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 be, in such form as the Commissioner may prescribe.³⁴⁶

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.³⁴⁷

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.³⁴⁸ An assessment on a representative taxpayer for any tax is regarded as made on the representative taxpayer only in that capacity.³⁴⁹

A taxpayer³⁵⁰ 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.³⁵¹

The representative taxpayer for any society (see 2.1.2) or association (see 2.1.3) may generally be the treasurer, or other person appointed to administer or manage the financial assets and liabilities of the society or association.

³⁴³ Section 234(2)(a) of the TA Act.

³⁴⁴ See complete definition of "representative taxpayer" in section 1(1).

³⁴⁵ The term "representative taxpayer" is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act.

³⁴⁶ Section 153(2) of the TA Act.

³⁴⁷ Section 234(2)(b) of the TA Act.

³⁴⁸ Section 155 of the TA Act.

³⁴⁹ Section 154(2) of the TA Act.

³⁵⁰ The term "taxpayer" is defined in section 1(1).

³⁵¹ Section 153(3) of the TA Act.

Every company carrying on business or having an office in South Africa at all times be represented by an individual residing in South Africa,³⁵² who must be –³⁵³

- 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;³⁵⁴
- appointed by the company or by an agent or legal practitioner³⁵⁵ who has authority to appoint such a representative for the purposes of a tax Act; 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.³⁵⁶

A person may not be appointed as a public officer if that person is disqualified (see 7.2) from being –³⁵⁷

- authorised as a trustee under section 6 of the Trust Property Control Act;
- an officer bearer of a registered NPO under section 6 of the NPO Act;
- a director of an NPC under section 69 of the Companies Act.

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.³⁵⁸

If a public officer is not appointed as required, the public officer is regarded to be –³⁵⁹

- 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;³⁶⁰

³⁵² Section 246(1) of the TA Act.

³⁵³ Section 246(2) of the TA Act.

³⁵⁴ Section 246(2)(a) of the TA Act.

³⁵⁵ The term “legal practitioner” as defined in section 1 of the TA Act, which was inserted by section 14 of the Tax Administration Laws Amendment Act 43 of 2024 and came into operation on 24 December 2024, the promulgation of that Act, means a legal practitioner as defined in section 1 of the Legal Practice Act 28 of 2014. The term “legal practitioner” as defined in the Legal Practice Act means an advocate or attorney admitted and enrolled under sections 24 and 30 of that Act, respectively.

³⁵⁶ Section 246(5) of the TA Act.

³⁵⁷ Section 246(8) of the TA Act. Section 246(8) was inserted by section 30 of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023, the date of promulgation of that Act.

³⁵⁸ Section 246(7) of the TA Act

³⁵⁹ Section 246(3) of the TA Act, which was amended by section 31(b) of the Tax Administration Laws Amendment Act 43 of 2024 and came into operation on 24 December 2024, the date of promulgation of that Act.

³⁶⁰ The duties of a company secretary are set out in section 88 of the Companies Act, which, amongst other things, include providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers, making the directors aware of any law

- director³⁶¹ or prescribed officer³⁶² 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.³⁶³ 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.³⁶⁴

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.³⁶⁵ 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.³⁶⁶

17 Record-keeping

All recreational clubs are required to keep records for five years from the date of the submission of a return.³⁶⁷

A return³⁶⁸ includes any form, declaration, document, or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS.

relevant to or affecting the company, reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or the Companies Act, ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with the Companies Act, and certifying in the company's annual financial statements whether the company has filed required returns and notices, and whether all such returns and notices appear to be true, correct and up to date.

³⁶¹ 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.

³⁶² 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.

³⁶³ Paragraph (a) of the definition of "representative taxpayer" in section 1(1) and section 248(2) of the TA Act.

³⁶⁴ Section 248(1) of the TA Act.

³⁶⁵ Section 249(2)(a) of the TA Act.

³⁶⁶ Section 249(2)(b) of the TA Act.

³⁶⁷ Section 29(3) of the TA Act.

³⁶⁸ The term "return" is defined in section 1 of the TA Act.

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained for longer periods.³⁶⁹

The required retention periods for records, books of account or documents are as follows:³⁷⁰

- Five years from the date of the submission of a return.³⁷¹
- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.³⁷²
- If an objection or appeal (see **19**) against an assessment or decision is lodged, the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.³⁷³
- A person that has been notified of or is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded, or the applicable five-year period has elapsed, whichever is the later.³⁷⁴
- Indefinitely if a document is relevant for future years of assessment such as the prescribed application form for approval of exemption 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 (see **3**).

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

Example 14 – Records, books of account or documents that must be kept and retained

The following are non-exhaustive examples of records, books of account or documents that must be kept and retained:

- Cash books.
- Debtors, creditors, and sales ledgers.
- Journals.
- Fixed-asset register.
- Bank statements and deposit slips.
- Invoices.

³⁶⁹ Section 32 of the TA Act.

³⁷⁰ For further commentary, see the SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011).

³⁷¹ Section 29(2)(a) read with section 29(3)(a) of the TA Act.

³⁷² Section 29(2)(b) of the TA Act.

³⁷³ Section 32(b) of the TA Act.

³⁷⁴ Section 32(a) of the TA Act.

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a recreational club is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.³⁷⁵

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.³⁷⁶ The rules require that electronic records must be kept in their original form,³⁷⁷ and should within a reasonable time, be accessible to and readable by SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups, and conversions.³⁷⁸

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.³⁷⁹

18 Income tax returns

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.

A recreational club must submit income tax returns, even if its approval or exemption results in no tax liability. No nil returns may be submitted unless it can be supported by the necessary documents, for example bank statements, to show that there has been no activity. The income tax return enables the Commissioner to annually assess whether the recreational club is operating within the prescribed limits of its approval and to determine whether the partial taxation principles have been applied to receipts and accruals that do not qualify for exemption.

The prescribed Income Tax Return for Exempt Organisations (IT12EI) applicable to recreational clubs must be submitted on an annual basis. It may be obtained from –

- **eFiling;**
- any SARS Service Centre; or
- the SARS National Service Centre.

A return must be a full and true return³⁸⁰ and be signed by the recreational club or by the recreational clubs duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.³⁸¹

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.³⁸²

³⁷⁵ Section 30 of the TA Act.

³⁷⁶ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

³⁷⁷ A document under section 14 of the Electronic Communications and Transactions Act 25 of 2002 is regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

³⁷⁸ For commentary, see the *Electronic Communications Guide*.

³⁷⁹ Section 234(2)(e) of the TA Act.

³⁸⁰ Section 25(2) of the TA Act.

³⁸¹ Section 25(3) of the TA Act.

³⁸² Section 25(4) of the TA Act.

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.³⁸³

18.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of registration for income tax purposes.³⁸⁴ This reference number is in addition to the unique reference number allocated to the application for approval as a recreational club (see 3). The taxpayer reference number must be included when filing a return or any document with SARS.

18.2 Filing an income tax return

The public notice issued annually by the Commissioner also prescribes the period within which returns must be submitted for the years of assessment specified in that notice. Income tax returns must be submitted within 12 months from the date on which its financial year ends.³⁸⁵

An appropriate penalty³⁸⁶ will be imposed by SARS if satisfied that the recreational club failed to comply with the obligation to submit an income tax return under the Act and public notice issued by the Commissioner.³⁸⁷ The appropriate penalty for non-compliance will be imposed according to a fixed amount penalty table.³⁸⁸

Income tax returns must in the case of a company be submitted electronically by using **eFiling**. SARS, however, may agree that a person, who is required to submit a return, may submit the return in an alternative manner by making an appointment to visit the SARS Service Centre for assistance.

18.3 Year of assessment

A recreational club that is an NPC, an association, or a society will have a year of assessment ending on the date that coincides with its financial year-end. For purposes of income tax, an association and a society are regarded as a “company”.³⁸⁹ If the financial year-end is 30 June, its year of assessment will run from 1 July to 30 June of the following year. The Commissioner has discretion to accept financial accounts of a company for a period ending on a day differing from the last day of the company’s financial year.³⁹⁰

³⁸³ Section 234(2)(d) of the TA Act.

³⁸⁴ The term “taxpayer reference number” is defined in section 1 of the TA Act and means the number referred to in section 24 of the same Act.

³⁸⁵ See Government Notice 4918 in *Government Gazette* 50741 of 31 May 2023. The public notice was issued in accordance with section 25 of the TA Act read with section 66(1) and relates to the submission of income tax returns for the 2024 tax year.

³⁸⁶ The terms “administrative non-compliance penalty” and “penalty” are defined in section 208 of the TA Act and means a penalty imposed by SARS in accordance with Chapter 15 of the TA Act or a tax Act other than this Act and excludes an understatement penalty referred to in Chapter 16 of the TA Act.

³⁸⁷ Section 210 of the TA Act. For commentary, see the *Guide to Understatement Penalties*.

³⁸⁸ Section 211 of the TA Act.

³⁸⁹ See paragraph (d) of the definition of “company” in section 1(1), which includes any association formed in South Africa to serve a specified purpose, beneficial to the public or a section of the public.

³⁹⁰ For further commentary, see the Interpretation Note 90 “Year of Assessment of a Company: Accounts Accepted to a Date Other Than the Last Day of a Company’s Financial Year”.

18.4 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return. The recreational club will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

A recreational club 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 –³⁹¹

- 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
- as 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.

The accounts must be signed by a person responsible for the recreational club in a fiduciary capacity and by the person who prepared them on behalf of the recreational club.

18.5 Financial statements

A recreational club that is an NPC may be required to be audited or independently reviewed under the Companies Act³⁹² considering, for example, the category of the company and its public interest score.

It, however, is not a requirement of SARS that a qualified accountant must complete the financial statements of a recreational club that is an association or society.

19 Objection and appeal

Any decision of SARS in the exercise of its discretion under section 30A is subject to objection and appeal.³⁹³

The Commissioner's discretion under section 30A will be exercised to determine whether –

- a club may be approved as a recreational club for purposes of section 30A(2);
- a recreational club is or was knowingly a party to, or knowingly allowed itself to be used as part of a tax-avoidance scheme;
- a recreational club has in any material respect, or on a continuous or repetitive basis failed to comply with section 30A; and
- approval as a recreational club can be granted with retrospective effect.

³⁹¹ Section 28 of the TA Act.

³⁹² Section 30(2) of the Companies Act read with regulations 27, 28 and 29 of the Companies Regulations, 2011.

³⁹³ Section 3(4)(b).

A decision made by a SARS official³⁹⁴ or a notice to a specific person issued by SARS under a tax Act,³⁹⁵ excluding a decision given effect to in an assessment or a notice of assessment that is subject to objection and appeal, may in the discretion of a SARS official mentioned below or at the request of the relevant person, be withdrawn or amended by –³⁹⁶

- the SARS official;³⁹⁷
- a SARS official to whom the SARS official reports;³⁹⁸ or
- a senior SARS³⁹⁹ official.⁴⁰⁰

If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to above may not be withdrawn or amended with retrospective effect, after three years from the later of the date of –⁴⁰¹

- the written notice of that decision;⁴⁰² or
- assessment of the notice of assessment giving effect to the decision (if applicable).⁴⁰³

A decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act is regarded as made by a SARS official authorised to do so or duly issued by SARS, until proven to the contrary.⁴⁰⁴

Any decision of SARS in the exercise of its discretion under section 30A is subject to objection and appeal.⁴⁰⁵ Such a decision may be objected to and appealed against in the same manner as an assessment.⁴⁰⁶

A recreational club aggrieved by an assessment may before lodging an objection, request SARS to provide reasons for the assessment to enable the recreational club to formulate an objection.⁴⁰⁷ The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days⁴⁰⁸ from the date of the assessment.

³⁹⁴ The term “SARS official” as defined in section 1 of the TA Act means (a) the Commissioner, (b) an employee of SARS, or (c) a person contracted or engaged by SARS, other than an external legal representative, for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction, or supervision of the Commissioner.

³⁹⁵ The term “tax Act” as defined in section 1 of the TA Act means the TA Act, or an Act, or portion of Act referred to in section 4 of the South African Revenue Service Act 34 of 1997.

³⁹⁶ Section 9(1) of the TA Act.

³⁹⁷ Section 9(1)(a) of the TA Act.

³⁹⁸ Section 9(1)(b) of the TA Act.

³⁹⁹ The term “senior SARS official” as defined in section 1 and read with section 6(3) of the TA Act refers to persons exercising the powers and duties required under the TA Act to be exercised by (a) the Commissioner, (b) a SARS official who has specific written authority from the Commissioner, or (c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.

⁴⁰⁰ Section 9(1)(c) of the TA Act.

⁴⁰¹ Section 9(2) of the TA Act.

⁴⁰² Section 9(2)(a) of the TA Act.

⁴⁰³ Section 9(2)(b) of the TA Act.

⁴⁰⁴ Section 9(3) of the TA Act.

⁴⁰⁵ Section 3(4)(b). Section 9(1) of the TA Act applies only to decisions or notices made by SARS, which are not subject to objection and appeal under section 3(4).

⁴⁰⁶ Section 104(2)(c) of the TA Act.

⁴⁰⁷ Rule 6 deals with reasons for an assessment.

⁴⁰⁸ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

Any recreational club may object to an assessment⁴⁰⁹ in accordance with Chapter 9 of the TA Act read with the “rules”⁴¹⁰ as published in the *Government Gazette* within 80⁴¹¹-business days⁴¹² after the –⁴¹³

- delivery of the notice providing reasons requested for an assessment, if applicable;⁴¹⁴
- notice issued by SARS notifying the recreational club that the reasons requested to enable it to formulate an objection have been provided;⁴¹⁵ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –⁴¹⁶

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment⁴¹⁷ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the recreational club 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 recreational club is dissatisfied with the decision by SARS it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.⁴¹⁸

20 Non-profit organisations

The term “non-profit organisation” as defined in the NPO Act means –⁴¹⁹

“a trust, company or other association of persons –

- (a) established for a public purpose; and
- (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered”.

A recreational club constituted as either an NPC (see **2.1.1**), a society (see **2.1.2**) or an association (see **2.1.3**) may fall within the above definition of an NPO under the NPO Act.

Registration as an NPO under the NPO Act is not a condition or requirement for approval by the Commissioner as a recreational club (see **5**).

⁴⁰⁹ For further commentary, see Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

⁴¹⁰ The rules for objections and appeals are formulated under section 103 of the TA Act.

⁴¹¹ Rule 7(1) was amended from 30 to 80 days. The amendment is effective from 10 March 2023.

⁴¹² The term “business day” is defined in section 1 of the TA Act.

⁴¹³ Rule 7 deals with objections.

⁴¹⁴ Rule 7(1)(a) read with Rule 6.

⁴¹⁵ Rule 7(1)(a) read with Rule 6(4).

⁴¹⁶ Rule 7(2).

⁴¹⁷ 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).

⁴¹⁸ Rule 10.

⁴¹⁹ Section 1(1) of the NPO Act.

The NPO Act provides for a compulsory and a voluntary registration as an NPO.⁴²⁰

An NPO is required to be registered under the NPO Act if it –⁴²¹

- makes donations to individuals or organisations outside South Africa; or
- provides humanitarian, charitable, religious, educational, or cultural services outside South Africa.

An approved recreational club may therefore voluntarily register as an NPO.

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

⁴²⁰ Section 12(1)(a) of the NPO Act.

⁴²¹ Section 12(1)(b) of the NPO Act.

Annexure A – Section 10(1)(cO)

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

- (cO) the receipts and accruals of any recreational club approved by the Commissioner in terms of section 30A, to the extent that the receipts and accruals are derived—
 - (i) in the form of membership fees or subscriptions paid by its members;
 - (ii) from any business undertaking or trading activity that—
 - (aa) is integral and directly related to the provision of social and recreational amenities or facilities for the members of that club;
 - (bb) is carried out on a basis substantially the whole of which is directed towards the recovery of cost; and
 - (cc) does not result in unfair competition in relation to taxable entities;
 - (iii) from any fundraising activities of that club, which are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; and
 - (iv) from any other source and do not in total exceed the greater of
 - (aa) five per cent of the total membership fees and subscriptions due and payable by its members during the relevant year of assessment; or
 - (bb) R120 000;

Annexure B – Section 30A

30A. Recreational clubs.—(1) For purposes of this Act, “recreational club” means any non-profit company as defined in section 1 of the Companies Act, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association.

(2) The Commissioner must approve a recreational club for the purposes of section 10(1)(cO), if—

- (a) that club has submitted to the Commissioner a copy of the constitution or other written instrument in terms of which it is established and which provides that—
 - (i) it is required to have at least three natural persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that club and no single person directly or indirectly controls the decision making powers relating to that club;
 - (iA) its activities must be carried on in a non-profit manner;
 - (ii) it is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of subparagraph (iii);
 - (iii) it is required on dissolution to transfer its assets and funds to—
 - (aa) any other recreational club which is approved by the Commissioner in terms of this section;
 - (bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of a “public benefit organisation” in section 30(1) which has been approved in terms of section 30(3);
 - (cc) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or
 - (dd) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);
 - (iv) it may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to that club;
 - (v) all members must be entitled to annual or seasonal membership; and
 - (vi) members are not allowed to sell their membership rights or any entitlement in terms thereof;
- (b) the club undertakes to submit to the Commissioner a copy of any amendment to the constitution or other written instrument under which it is established; and
- (c) the Commissioner is satisfied that the club 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 have become payable by any person under this Act or any other Act administered by the Commissioner.
- (d) the Commissioner is satisfied that the club does not have a person acting in a fiduciary capacity, who 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.

(3) Where the constitution or other written instrument under which the club is established does not comply with the provisions of paragraph (a) of subsection (2), it shall be deemed to so comply if a person responsible in a fiduciary position for the funds and assets of such club furnishes the Commissioner with a written undertaking by such club that such club will be administered in compliance with the provisions of this section.

(4) (a) Subject to paragraph (b), where a club applies for approval, the Commissioner may approve that club for purposes of this section with retrospective effect, if the Commissioner is satisfied that that club during the period prior to its application complied with the requirements of a “recreational club” as defined in subsection (1).

(b) For the purposes of paragraph (a), where the club—

- (i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of section 99(1) of that Act not be made; or
- (ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of section 99(1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with section 25(1) of that Act.

(5) Where the Commissioner is—

- (a) satisfied that any recreational club approved under subsection (2) has during any year of assessment in any material respect; or
- (b) during any year of assessment satisfied that any such recreational club has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution or other written instrument under which it was established to the extent that it relates to the provisions of this section, the Commissioner shall notify the recreational club that he or she intends to withdraw the approval of that recreational club if no corrective steps are taken by that club within a period stated in that notice.

(6) If no corrective steps are taken by a recreational club as contemplated in subsection (5), the Commissioner must withdraw approval of that club with effect from the commencement of the year of assessment contemplated in subsection (5).

(7) If the Commissioner has withdrawn the approval of a recreational club, that club must within six months after the date of that withdrawal (or such longer period as the Commissioner may allow) transfer or take reasonable steps to transfer its remaining assets to any recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).

(7A) As part of its dissolution the club must transfer its assets to a recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).

(8) If the recreational club fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (7A), an amount equal to the market value of those assets which have not been transferred less an amount equal to the bona fide liabilities of that recreational club must for purposes of this Act be deemed to be an amount of taxable income which accrued to that recreational club during the year of assessment in which approval was withdrawn or the dissolution took place.

(9) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved recreational club and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such recreational club is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

(10) A person may not act in a fiduciary capacity 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.

(11) A person who fails to comply with the provisions of subsection (9A) shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.

Annexure C – Step-by-step guide to calculating the taxable income of a recreational club by applying the basic exemption

Facts:

The HW Club is a recreational club with a year of assessment ending on 30 June. Its financial statements for the year ended 30 June 2024 reflect the following income and expenditure:

Income	R
Membership fees and subscriptions	1 890 000
Entrance fees from members	240 000
Bar and catering revenue – net trading income	800 000
Green fees from members and non-members	434 000
Annual fundraising event	250 000
Rental income from billboards and cell phone mast	270 000
Interest on investments	<u>16 000</u>
Total receipts and accruals	<u>3 900 000</u>
Expenditure	
Operating expenditure relating directly to the provision of recreational facilities	1 850 000
Maintenance: Billboards & cell phone mast rental	5 000
General overheads: Office salaries, stationery, security, telephone & bank charges	22 000
Accounting fees	<u>13 000</u>
Total expenses	<u>1 890 000</u>

Note:

Income from trading activities or business undertaking

- *Bar and catering facilities – net trading income*

The bar and catering facilities are provided to members and non-members who make use of the recreational facilities provided by the club. The mark-up on the food and beverages provided is determined by considering expenditure such as salaries and wages, cost of provisions and perishables, repairs, and maintenance, estimated cost of replacing breakables, an amount set aside for future renovations, opening, and closing stock and replacement of capital items (such as furniture and fittings, curtains, fridges, microwave ovens and dishwashers). The club does not make a profit after taking these costs into account. Taking these factors into account SARS is satisfied that the trading activities will qualify for exemption under section 10(1)(cO)(ii).

- *Green fees from members and non-members*

Green fees are integral and directly related to the provision of golf-playing facilities to members and non-members and are provided substantially on a cost-recovery basis and are not provided in competition with other taxable entities. Taking these factors into account SARS is satisfied that the trading activities will qualify for exemption under section 10(1)(cO)(ii).

Fundraising activities

An annual spring day is held to raise funds for the club (upgrade of ladies' change rooms). Prizes and all other goods sold, such as second-hand books, fresh vegetables, needlework, and other produce are donated. Volunteers run all the stalls.

Result:

The taxable income of the club is determined as follows:

Step 1

Total receipts and accruals exempt from income tax

	R
Membership fees and subscriptions	1 890 000
Entrance fees from members	240 000
Bar and catering revenue (net) – integral and directly related	800 000
Green fees from members and non-members – integral and directly related	434 000
Annual fundraising	<u>250 000</u>
Total receipts and accruals not subject to income tax	<u>3 614 000</u>

Step 2

Total receipts and accruals subject to income tax

Rental income from billboards and cell phone mast	270 000
Interest on investments	<u>16 000</u>
Total receipts and accruals subject to income tax	<u>286 000</u>

Step 3

Calculate basic exemption

Greater of –

- (a) 5% of membership fees and subscriptions
 $(R1\,890\,000 + R240\,000) \times 5\% = R106\,500$;
- or
- (b) R120 000

Basic exemption = Exempt portion of taxable receipts and accruals = R120 000 [The portion subject to tax is therefore R166 000 (R286 000 – R120 000.)]

Step 4

Allocation of basic exemption to taxable receipts and accruals

The basic exemption is allocated between the various sources of taxable receipts and accruals on a *pro rata* basis, that is, (taxable receipts and accruals from a particular source / total taxable receipts and accruals) × basic exemption. This step is necessary because the basic exemption in section 10(1)(cO) applies to taxable receipts and accruals, not to such receipts and accruals less related expenses. Consequently, a portion of the expenditure incurred in relation to the various taxable income sources will be disallowed under section 23(f), since it will be in the production of exempt income.

	Rental income from billboards and cell phone mast	Interest	Total
	R	R	R
Total receipts and accruals	270 000	16 000	286 000
Exempt (<i>pro rata</i>)	<u>(113 287)</u>	<u>(6 713)</u>	<u>(120 000)</u>
Total taxable receipts and accruals	<u>156 713</u>	<u>9 287</u>	<u>166 000</u>

Step 5

Direct expenditure relating to a specific taxable source must be apportioned between “exempt” and “taxable” total receipts and accruals

Expenditure directly incurred in the production of total taxable receipts and accruals from a specific source must be apportioned between the “exempt” and “taxable” portion using the formula below.

Formula:

$$\frac{\text{Total taxable receipts and accruals from specific trade}}{\text{Total receipts and accruals from the taxable trade}} \times \frac{\text{Expenditure}}{1}$$

Application: Rental income from billboards and cell phone mast (R270 000)

1. Expenditure directly attributable to taxable (rental) income, namely, maintenance of R5 000 must be allocated between the “taxable” and “exempt” portions of the rental income from billboards and cell phone mast:

$$\begin{array}{rcl} \frac{\text{Total taxable receipts and accruals from rental}}{\text{Total receipts and accruals from rental}} & \times & \frac{\text{Expenditure}}{1} \\ \frac{\text{R156 713}}{\text{R270 000}} & \times & \frac{\text{R5 000}}{1} \\ = & & \text{R2 902} \end{array}$$

2. Expenditure applicable to “taxable portion” of rental income = R2 902
3. Expenditure applicable to “exempt portion” of rental income = R2 098 (R5 000 – R2 902)

Step 6

Calculate taxable receipts and accruals from rentals

$$\begin{aligned} \text{Taxable receipts} &= (\text{Total receipts and accruals} - \text{exempt portion}) - \text{allowable expenditure} \\ &= (\text{R270 000} - \text{R113 287}) - \text{R2 902} \\ &= \text{R156 713} - \text{R2 902} \\ &= \text{R153 811} \end{aligned}$$

Step 7

General (indirect) expenditure

Expenditure incurred that does not specifically relate to a particular source of income but that can be attributed to various sources of gross receipts and accruals, must be apportioned on a *pro rata* basis. Examples include accounting fees, audit fees, bank charges or overhead expenses.

Basis on which general expenditure may be apportioned

The expenditure will be apportioned based on the gross receipts and accruals.

Formula:

$$\frac{\text{Specific receipt and accrual}}{\text{Total gross receipts and accruals from taxable activities}} \times \frac{\text{General expenditure}}{1}$$

Source of receipts and accruals to which general expenditure is to be apportioned

Source	Gross receipts and accruals R
Membership fees and subscriptions	1 890 000
Entrance fees from members	240 000
Bar and catering revenue	800 000
Green fees from members and non-members	434 000
Annual fundraising	250 000
Rental income from billboards and cell phone mast	<u>270 000</u>
Total	<u>3 884 000</u>

Note: No portion of the general expenditure has been incurred in the production of interest on investments.

Proportionate accounting and general overhead expenditure to be deducted based on the above formula (R22 000 + R13 000 = R35 000)

Source	Gross receipts and accruals R	Allocation R
Membership fees and subscriptions	1 890 000	17 031
Entrance fees from members	240 000	2 163
Bar and catering revenue	800 000	7 209
Green fees from members and non-members	434 000	3 911
Annual fundraising	250 000	2 253
Rental from billboards and cell phone mast	<u>270 000</u>	<u>2 433</u>
Total	<u>3 884 000</u>	<u>35 000</u>

Step 8**Allocation of general (indirect) expenditure between taxable and exempt portion of rental income from billboards and cell phone mast**

The allowable portion of the general (indirect) expenditure determined in Step 7 must now be allocated between the "taxable" and "exempt" income as determined in Step 4.

Formula:

Taxable rental income from billboards/cell phone mast × Expenditure allocated
Total rental income from billboards/cell phone mast 1

$$= \frac{R156\,713}{R270\,000} \times \frac{R2\,433}{1} = R1\,412$$

Step 9**Determine taxable income from rental (billboards and cell phone mast)**

	R
Total taxable receipts and accruals from rental (<u>Step 4</u>)	156 713
Less: Direct expenditure determined in <u>Step 5</u>	(2 902)
	153 811
Less: Indirect expenditure determined in <u>Step 8</u>	(1 412)
Taxable income from rental	<u>152 399</u>

Step 10

Add all the amounts representing taxable income from the various sources together to calculate the taxable income for the year of assessment

Source	Amount R
Taxable income from rental (<u>Step 9</u>)	152 399
Taxable income from investment (interest) (<u>Step 4</u>)	<u>9 287</u>
Taxable income for the year of assessment ended 30 June 2021	<u>161 686</u>

Step 11**Calculation of income tax payable**

The club will pay income tax at the rate of tax applicable to recreational clubs for the 12-month period ending on 30 June 2024, namely, 27%. Income tax on the taxable income of R161 686 will, therefore, be R43 655,22 ($R161\,686 \times 27\%$).