SOUTH AFRICAN REVENUE SERVICE

Draft Tax Exemption Guide for Companies Wholly Owned by Institutions, Boards or Bodies

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

SARS At Your Service

Draft Tax Exemption Guide for Companies Wholly Owned by Institutions, Boards or Bodies

Preface

This guide provides general guidance on the exemption from income tax of qualifying wholly owned associations, corporations or companies of institutions, boards or bodies under section 10(1)(*c*A)(ii). These wholly owned associations, corporations or companies of institutions, boards or bodies enjoy preferential tax treatment only after the Commissioner has granted them approval and if they continue to comply with the relevant requirements and conditions as set out in the Act and discussed in the guide.

The guide deals with the following taxes that may affect wholly owned associations, corporations or companies of institutions, boards or bodies:

- Capital gains tax
- Dividends tax
- Donations tax
- Employees' tax
- Income tax
- Skills development levy
- Unemployment insurance contributions

This guide is not an "official publication" as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act.

It is also not a general binding ruling under section 89 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website at **www.sars.gov.za** for details of the relevant application procedure.

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

All guides, interpretation notes, forms, returns and tables referred to in this guide are the latest versions available on the SARS website unless the context indicates otherwise.

For more information you may –

- contact the SARS Tax Exemption Unit:

Postal address	**:**	PO Box 436 PRETORIA 0001
Physical address	**:**	Second floor SARS Pretoria CBD Branch Office cnr Lilian Ngoyi and Frances Baard streets PRETORIA 0002
Telephone	**:**	012 483 1700 / 02 / 03
E-mail	**:**	**teu@sars.gov.za**

- visit your nearest SARS branch office;
- contact the SARS National Contact Centre on 0800 00 7277;
- visit the SARS website; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be emailed to **policycomments@sars.gov.za**.

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE

CONTENTS

Glossary

In this guide unless the context indicates otherwise –

- **“Commission”** means the Companies and Intellectual Property Commission as defined in section 1 of the Companies Act;
- **“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;
- **“company”** means any association, corporation or company contemplated in paragraph (*a*) of the definition of “company” in section 1(1);
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“founding document”** means the written instrument such as a memorandum of incorporation under which a company is established and governed;
- **“institution, board or body”** means an institution, board or body (other than a company as defined in the Companies Act, any co-operative, close corporation, trust or water services provider) established by or under any law which has been approved by the Commissioner under section 10(1)(*c*A)(i);
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“TEU”** means the Tax Exemption Unit, a dedicated unit within SARS established to consider, amongst other things, applications by entities for approval as companies wholly owned by institutions, boards, or bodies under section 10(1)(*c*A)(ii). The TEU also monitors compliance by approved companies with legislative requirements, and investigates, verifies and, if necessary, raises assessments on such companies;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“wholly owned”** means that all the shares of the company are held by a institution, board or body; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Introduction

Section 10(1)(*c*A)(i) and (ii) respectively provide an absolute exemption from income tax of the receipts and accruals (see **11**) of any –

- institution, board or body established by or under any law;[1] and
- company all the shares of which are held by any institution, board or body provided the operations of such company are ancillary or complementary to the object of the institution, board or body.

An institution, board or body envisaged in section 10(1)(*c*A)(i) may for various reasons establish a company whose operations are ancillary or complementary to the object of the institution, board or body. If that institution, board or body holds all the shares in such company, the receipts and accruals of that company will also be exempt from income tax if the requirements of section 10(1)(*c*A)(ii) are met.

Section 10(1)(*c*A) does not contain provisions restricting or prohibiting business or trading activities. All the operations of the wholly owned company, however, must be ancillary or complementary to the object of the institution, board or body. If the company is merely a trading entity operating, say, a hotel, holiday resort, service station, cinema, or carries on business as a debt collector for the sole financial benefit of the institution, board, or body, it will not qualify for the exemption under section 10(1)(*c*A)(ii). Examples of qualifying operations may include the development and maintenance of the South African national road system, the provision of development finance to small, micro and medium enterprises to stimulate growth and development of the economy, mining, housing finance or investments.

This guide considers only section 10(1)(*c*A)(ii).

2. Qualifying requirements

The receipts and accruals of a company will be exempt from income tax only if –[2]

- such company falls within the ambit of paragraph (*a*) of the definition of "company" in section 1(1) (see **3**);
- all the shares (see **4**) are held by an institution, board or body (see **5**); and
- the operations are ancillary or complementary to the object of the institution, board or body holding shares in that company (see **6**).

The exemption, however, will apply only to the extent that such company –

- has been approved by the Commissioner subject to any conditions deemed necessary to ensure that the activities of that company are wholly or mainly directed to the furtherance of its sole or principal object (see **9**);[3] and
- complies under its founding document (see **7**) with the prescribed requirements (see **8**).[4]

1 For more information, see draft *Tax Exemption Guide for Institutions, Boards or Bodies*.
2 Section 10(1)(*c*A)(ii).
3 Paragraph (*a*) of the first proviso to section 10(1)(*c*A).
4 Paragraph (*b*) of the first proviso to section 10(1)(cA).

A company bears the onus of proving[5] that it complies with the requirements relative to the exemption and must retain the necessary supporting evidence (see **17**).[6]

3. Meaning of company

The exemption under section 10(1)(*c*A)(ii) is limited to a company contemplated in paragraph (*a*) of the definition of "company" in section 1(1), namely –

> "any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be established by or under any such law".

Paragraph (*a*) of the definition of "company" in section 1(1) apart from the reference to any association, corporation or company also includes a body corporate. Section 10(1)(*c*A)(ii) refers, however, only to associations, corporations or companies. The exemption under section 10(1)(*c*A)(ii) therefore does not apply to a body corporate contemplated in paragraph (*a*) of the definition of "company" in section 1(1).

A close corporation[7] is expressly excluded from the definition of "company" in paragraph (*a*) in section 1(1) and therefore will not qualify for the exemption under section 10(1)(*c*A)(ii).

3.1 Incorporated or deemed to be incorporated under any law

The term "company" in section 1(1) has a wider meaning than the companies to which the exemption under section 10(1)(*c*A)(ii) applies. The test to be determined under paragraph (*a*) of the definition of "company" for purposes of the exemption under section 10(1)(*c*A)(ii) is whether a company is incorporated or deemed to be incorporated under or by any law[8] in force or previously in force in South Africa.

An entity is incorporated when it is entered in a register and given juristic personality under the law of the country so that it exists as a legal entity separate from its members or owners.

Juristic personality may be acquired by virtue of –[9]

- a special Act through which bodies acquire juristic personality in a direct manner and are generally referred to as statutory bodies, for example, banks under the Banks Act 94 of 1990, mutual banks under the Mutual Banks Act 124 of 1993, co-operative societies under the Co-operatives Act 14 of 2005, friendly societies under the Friendly Societies Act 25 of 1956, and communal property associations under the Communal Property Associations Act 28 of 1996; and
- a general enabling Act, which prescribes the manner and means by which bodies can be incorporated as legal persons and therefore acquire juristic personality in an indirect manner, for example, the Companies Act.

---

5 Section 102 of the TA Act.

6 Section 29 of the TA Act.

7 The term "close corporation" is defined in section 1(1) and means a close corporation within the meaning of the Close Corporations Act 69 of 1984. A close corporation is included in the definition of "company" in section 1(1) under paragraph (*f*).

8 The term "law" is defined in the Interpretation Act 33 of 1957 as any law, proclamation, ordinance, Act of Parliament or other enactment having force of law.

9 JJ Henning and JT Pretorius *Close Corporations and Companies Service* [online] (My LexisNexis: October 2018) in Chapter 3.

Juristic personality is conferred on companies complying with the prescribed requirements set out in the applicable Act. Under the Companies Act, a company is incorporated by the completion and signature of a memorandum of incorporation,[10] the filing of a notice of incorporation,[11] the registration of the company by the Commission,[12] and the issuing and delivery to the company of a registration certificate.[13]

LAWSA states the following:[14]

> "From the 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.)

The exemption under section 10(1)(*c*A)(ii) is limited by paragraph (*a*) of the definition of "company" in section 1(1) to locally incorporated companies. A company incorporated and registered under foreign legislation will therefore not qualify for the exemption under section 10(1)(*c*A)(ii), since it does not fall within the ambit of paragraph (*a*) of the definition of "company" in section 1(1).[15] However, a foreign company that has successfully applied under section 13(5) to 13(11) of the Companies Act to transfer its registration from the foreign jurisdiction in which it is registered to South Africa is deemed to have been incorporated in South Africa. Such a company will exist as if it had originally been incorporated and registered as a company under the Companies Act. A foreign company that has transferred its registration to South Africa is called a "domesticated company"[16] and may qualify for the exemption under section 10(1)(*c*A)(ii) provided all other requirements of that section are met.

Associations, corporations or companies contemplated in paragraph (*a*) of the definition of "company" in section 1(1) are for purposes of the exemption under section 10(1)(*c*A)(ii) restricted to incorporated companies having shares (see **4**) and holders of shares (see **5**). Thus not all companies as defined in the Companies Act will qualify for the exemption under section 10(1)(*c*A)(ii). For example, a non-profit company incorporated under the Companies Act and the former associations not for gain incorporated under section 21 of the repealed Companies Act 61 of 1973 meet the "incorporated by or under any law in force or previously in force" requirement under paragraph (*a*) of the definition of "company" in section 1(1), however, an NPC or association not for gain will not qualify for the exemption under section 10(1)(*c*A)(ii) because it does not have shares or holders of shares.

---

10 Section 13(1)(*a*) of the Companies Act read with the Regulations in Government Notice 351 in *Government Gazette* 34239 of 26 April 2011.

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

12 Section 14(1) of the Companies Act.

13 Section 14(1)(*b*)(iii) of the Companies Act. See also Form CoR 14.3, Registration Certificate included in the Regulations.

14 RC Williams "Companies Part 1" Volume 4(1) Second Edition Volume *LAWSA* [online] (My LexisNexis) 30 November 2012 at paragraph 108.

15 See paragraph (*b*) of the definition of "company" in section 1(1), which provides for any association, corporation or company incorporated under the law of any country other than South Africa or any body corporate formed or established under such law.

16 The term "domesticated company" is defined in section 1 of the Companies Act.

4. Shares

Having regard to the words "all the shares" in section 10(1)(*c*A)(ii), it is clearly a requirement that a company contemplated in paragraph (*a*) of the definition of "company" in section 1(1) must have shares.

The term "share" in relation to any company is defined as –[17]

> "any unit into which the proprietary interest in that company is divided".

In *Standard Bank of South Africa Ltd & another v Ocean Commodities Inc. & others* Corbett JA (as he then was) stated the following on the meaning of a share:[18]

> "A share in a company consists of a bundle, or conglomerate, of personal rights entitling the holder thereof to a certain interest in the company, its assets and dividends."

A share is movable property[19] and comprises a bundle of rights owned by its holder. This does, however, not mean that the holder of shares in a company is the owner of its capital but rather that the holder is entitled to certain rights. Unless provided otherwise in the memorandum of incorporation, a share affords every holder of such share the right to certain dividends when declared, the return of capital on the winding-up of the company (see **8.3**) and the right to attend and vote at meetings of holders of shares.[20]

The details of shares that a company is authorised to issue are contained in its memorandum of incorporation. A company may have an authorised share capital, which is the share capital a company is authorised to issue under its memorandum of incorporation.[21] A company's memorandum of incorporation must set out the classes of shares, the number of shares of each class that the company is authorised to issue and any specific preferences, rights, limitations and other terms associated with the shares.[22] An authorised share of a company has no rights associated with it until it has been issued.[23] Before a company issues any particular shares, the board must determine the consideration[24] for which, and the terms on which, those shares will be issued.[25]

Every company under the Companies Act is required to establish and maintain a register of its issued securities[26] in the form and in accordance with the standards prescribed in the Companies Act.[27] A company must enter in the register the names and addresses of the persons to whom the securities were issued, the number of securities issued to each of them and other prescribed information.[28] The registered owner of a share may not necessarily be

17 Section 1(1). This is the same meaning afforded to the term "share" in section 1 of the Companies Act.
18 1983 (1) SA 276 (A) at page 288.
19 Section 35 of the Companies Act.
20 Section 37 of the Companies Act.
21 Section 36 of the Companies Act.
22 Section 36(1)(*a*) of the Companies Act.
23 Section 35(4) of the Companies Act.
24 The term "consideration" is defined in section 1 of the Companies Act. The payment for shares is generally not limited to cash but may be made in kind, for example, in property or services.
25 Section 40 of the Companies Act.
26 The term "securities" as defined in section 1 of the Companies Act means any shares, debentures or other instruments issued or authorised to be issued by a profit company.
27 A securities register is required under section 24(4)(*a*) read with section 50 of the Companies Act and Regulation 32 in Government Notice 351 in *Government Gazette* 34239 of 26 April 2011.
28 Section 50(2) of the Companies Act.

the beneficial owner of that share. For example, an approved nominee may be the registered owner of a share that is held for the benefit of another person.[29]

A company must issue a securities certificate, which must contain the prescribed information and be signed by two persons authorised by the Board.[30] Thus, any shares issued by a company must be either evidenced by certificates (certificated),[31] or uncertificated.[32] The securities register or an uncertificated securities register, maintained in accordance with the Companies Act, is sufficient proof of the facts recorded in it in the absence of evidence to the contrary.[33] Also, in the absence of evidence to the contrary, a securities certificate is proof that the named holder owns the securities described in the certificate.[34]

5. Holders of shares

The holder of shares in a company and the company are separate taxable entities. In addition, ownership of the company (ownership of the shares), and management of the day-to-day activities of the company are usually separate.[35] The most important right of a holder of shares is to share in the company's profitability, income, assets and exercise a degree of control and influence over the company's management selection.

The phrase "…all the shares of which are held by *any* such institution, board or body" in section 10(1)(*c*A)(ii) is interpreted to mean that all the shares of a qualifying company must be held by the institution, board or body. It makes no difference, from a tax perspective, whether one or multiple institutions, boards or bodies together hold all the shares in a company. However, the institutions, boards or bodies holding shares in that company must be formally approved by the Commissioner under section 10(1)(*c*A)(i) and the operations of the company must be ancillary or complementary (see **6**) to the object of each institution, board or body holding shares in that company. The requirement that *all* the shares must be held by any such institution, board or body means that the whole of, entire and total of shares must be held by any such institution, board or body. The requirement will therefore be met if any institution, board or body, whether a single or multiple institutions, boards or bodies hold all the shares in a company.

The word "held" in this context is taken to mean beneficially owned, since the Act is as a rule not concerned with nominal ownership.[36] Any institution, board or body must therefore be the beneficial owner of shares in a company and there may be no other minority shareholders. If the company has different classes of shares all of the different classes of shares in the company must be held by any institution, board or body. The requirement will not be met if only a certain class of the shares are held by any institution, board or body. All the general voting rights associated with the issued shares of a company must also be held or controlled alone by an institution, board or body or in combination with multiple institutions, boards or bodies.[37]

---

29 See *Comprehensive Guide to Dividends Tax* for more information.
30 Section 51(1) of the Companies Act.
31 Section 49(1) of the Companies Act.
32 See sections 52 to 55 of the Companies Act, which apply to uncertificated securities.
33 Section 50(4) of the Companies Act.
34 Section 51(1)(*c*) of the Companies Act.
35 See *Taxation in South Africa* and *Tax Guide for Share Owners* for general guidance on the taxation of share owners.
36 *SIR v Smant* 1973 (1) SA 754 (A), 35 SATC 1.
37 See section 3(1)(*b*) of the Companies Act.

A contravention of this requirement will disqualify a company from the exemption or may result in the Commissioner withdrawing the exemption granted under section 10(1)(*c*A)(ii) (see **10**).

Example 1 – Example of authorised and issued shares of a company

Facts:

Company X, at the time of submitting its application to the Commissioner for the exemption under section 10(1)(*c*A)(ii), has according to its memorandum of incorporation 1 000 authorised shares of which 499 are issued to XYZ, an institution approved by the Commissioner under section 10(1)(*c*A)(i). At the time Company X applied for the exemption, the remaining 501 shares were not issued.

Result:

The Commissioner must approve Company X, since at the time of considering its application for exemption under section 10(1)(*c*A)(ii) all its issued shares were issued to XYZ, an institution, board or body approved under section 10(1)(*c*A)(i). The exemption will be granted subject to the condition that should Company X subsequent to the approval of the exemption by the Commissioner under section 10(1)(*c*A)(ii) issue the remainder of its authorised shares (501 shares), those shares must be issued to any institution, board or body exempted by the Commissioner under section 10(1)(*c*A)(i).

If the remaining authorised shares are issued to a person other than an exempted institution, board or body, Company X will be acting contrary to section 10(1)(*c*A)(ii) and its exemption will be placed in jeopardy. The Commissioner will therefore be entitled to withdraw the exemption of Company X with effect from the commencement of the year of assessment during which the company issued the remainder of its authorised shares to a person other than an institution, board or body and thus failed to comply with section 10(1)(*c*A)(i) (see **10**).

Example 2 – Example of shares of a company not held by an institution, board or body

Facts:

NTF (Pty) Ltd is a company all the shares of which are held by the Department of Agriculture. NTF (Pty) Ltd has submitted an application to the Commissioner for the exemption under section 10(1)(*c*A)(ii).

Result:

The Department of Agriculture is not an institution, board or body contemplated in section 10(1)(*c*A)(i) but is a government department contemplated in section 10(1)(*a*). NFT (Pty) Ltd will not qualify for the exemption under section 10(1)(*c*A)(ii), since the holder of all its shares is the government and not an institution, board or body approved by the Commissioner under section 10(1)(*c*A)(i).

Example 3 – Example of non-compliance with the holding of shares requirement

Facts:

BKL (Pty) Ltd is a company with 1 000 issued shares. According to the securities register maintained by BKL (Pty) Ltd, the following are holders of its shares:

- X, an institution, board or body, holds 250 shares.
- B, an institution, board or body, holds 500 shares.
- A subsidiary company of X, holds 200 shares.
- C, a public benefit organisation approved by the Commissioner under section 30, holds 50 shares.

Result:

BKL (Pty) Ltd will not qualify for the exemption under section 10(1)(*c*A)(ii), since not all of its shares are held by institutions, boards or bodies, namely, 200 shares are held by a subsidiary company of X and 50 shares are held by a public benefit organisation.

6. Ancillary or complementary operations

The concept "ancillary or complementary operations" is fundamental to section 10(1)(*c*A)(ii). The *operations* of a company must be ancillary or complementary to the *object* of its shareholder, which must be an institution, board or body.

The words "operations", "ancillary", "complementary", and "object" referred to in section 10(1)(*c*A)(ii) are not defined in the Act.

The *Business Encyclopedia* describes "business operations" as –[38]

> "everything that happens within a company to keep it running and earning money. Business plans often include a section dedicated to operations so that company founders understand the systems, equipment, people, and processes needed to make the organization function. Business operations vary according to business type, industry, size, and so on."

The *Accounting Dictionary* describes "operations" as –[39]

> "the actions and decisions made by participants and members of a business that affect the production, distribution, service, management, etc. needed for a company to function that requires the use of resources and assets".

The following words are described in the *Lexico.com*:

- "Ancillary" as "providing necessary support to the primary activities or operations of an organization, system, etc."[40]
- "Complementary" as "combining in such a way as to enhance or emphasize the qualities of each other or another."[41]

38 **www.shopify.co.za/encyclopedia/business-operations** [Accessed 6 August 2021].
39 **www.myaccountingcourse.com/accounting-dictionary/operations** [Accessed 6 August 2021].
40 **www.lexico.com/en/definition/ancillary** [Accessed 6 August 2021].
41 **www.lexico.com/en/definition/complementary** [Accessed 6 August 2021].

- "Object" as "a goal or purpose."[42]

From the above ordinary dictionary meaning of the words "ancillary" and "complementary" it can be concluded that the operations of the company must be subservient to, helping, completing or making up a whole and indispensable to the object of the holder of shares and do not only refer to the general needs or powers of the holder of shares.

Section 10(1)(*c*A)(ii) refers to the *operations* of the company in the plural, which is indicative of a reference to each and every operation undertaken by the company. The section further refers to the *object* of the institution, board or body in the singular, which can only refer to the sole or principal object of the institution, board or body holding the shares in that company. All the operations of the company must therefore be ancillary or complementary to the only or dominate object and not merely to the general, secondary or alternative objects of the holder of the shares. The company will not be entitled to the exemption if any of its activities is not ancillary or complementary to the object of the holder of its shares.

This requirement necessitates a comparison of the operations (activities) of the company and the object of the holder of its shares, which must be an institution, board or body holding all the shares in such company. The facts of the matter must be objectively considered. It is accepted law that when interpreting taxing statutes, exemptions must be restrictively interpreted.[43] This principle is also in accordance with the principle that a concessionary statute is to be narrowly interpreted, as opposed to a statute imposing a burden. Thus to determine whether the operations are ancillary or complementary, consideration must be limited to the immediate or direct effects or impact of those operations and not the secondary or indirect effects or impact.

The "object" of an institution, board or body is not the subjective goals of its controllers but is the activities, which it is mandated by its founding document to perform, and is the aim, intention, purpose, thing sought to be accomplished and the goal to be obtained. An institution, board or body established *by* South African law will have national legislation establishing such an institution, board or body. An institution, board or body established *under* South African law may have a separate constitution containing, amongst other things, its object and other provisions prescribed in the relevant legislation or Regulations establishing such an institution, board or body. The object of the institution, board or body set out in its founding document should be determined by interpreting its founding document in accordance with the ordinary rules of construction of a document.[44]

A company established as a trading entity for the financial benefit of the holder of its shares will not meet this requirement. The provision of services by the company either to create additional income or to reduce costs in providing such services will not be regarded as operations that are ancillary or complementary to the object of an institution, board or body.

---

42 **www.lexico.com/en/definition/object** [Accessed 6 August 2021].
43 See *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296, 57 SATC 178.
44 See *Mitchell's Plain Town Centre Merchants Association v McLeod* [1996] 3 All SA 297 (SCA).

Example 4 – Examples of operations of associations, corporations or companies that are not ancillary or complementary to the object of the holder of shares

The following are non-exhaustive general examples of operations of associations, corporations or companies not regarded as ancillary or complementary to the object of the institution, board or body:

- Factoring and debt collection undertaken by a company on behalf of an institution, board or body.
- Supply of parts at lower cost to another subsidiary of an institution, board or body.
- Operating as an insurer of all classes of insurance business for an institution, board or body.
- Providing in-house insurance to cover assets of an institution, board or body in order to reduce administration costs.
- Raising of capital by issuing preference shares for use by an institution, board or body.
- The holding of immovable property by a company on which business offices are partially occupied by an institution, board or body with the remainder being let to derive rental income for the benefit of the institution, board or body.
- Investing in movable and immovable property to implement a finance structure by a company to raise funds to fund capital expansion projects by an institution, board or body.
- The letting of a commercial complex to a third party by a company to derive rental income for the benefit of an institution, board or body.
- The conducting of farming activities by a company for the benefit of an institution, board or body.

The facts and circumstances of each case will determine whether the operations of a company are ancillary or complementary to the object of the holder of its shares, being an institution, board or body. Each case will therefore be considered on its own merits. The burden will be on the company to prove that its operations are subservient, subordinate, or auxiliary to the central function of each holder of shares and that the operation completes or makes up a whole of the object of the shareholder.[45]

Example 5 – Example of operations of a company that are ancillary or complementary to the object of the holder of its shares

Facts:

The Medical Faculty of a South African university has established, as part of the provision of training to medical students, a health-service facility in a separate company all the shares of which are held by that university. The university is an institution of higher education established under the Higher Education Act 101 of 1997 to provide instruction and training to enable students to obtain a recognised qualification or degree. The university has obtained formal exemption by the Commissioner under section 10(1)(*c*A)(i). The company has applied to the Commissioner for the exemption under section 10(1)(*c*A)(ii).

45 Section 102 of the TA Act.

Result:

The operation carried on by the wholly owned company, namely, the provision of a medical facility where registered students at the university can perform their practical training, which is a prerequisite for obtaining a recognised degree, is ancillary or complementary to the object of the university, being the sole holder of the company's shares. The company will qualify for the exemption under section 10(1)(*c*A)(ii) provided all the other requirements of that section are met.

Example 6 – Examples of operations of companies that are not ancillary or complementary to the object of the holder of their shares

Facts 1:

An institution, board or body approved by the Commissioner under section 10(1)(*c*A)(i) has as its object the provision of development finance to small, micro and medium enterprises to stimulate growth and development of the North West economy, in the fields of enterprise development, mining, housing finance and assistance, public transport, investments as well as other projects.

The institution, board or body formed a wholly owned company A, to carrying on the business of a garage proprietor and service station. In carrying out these activities, the wholly owned company A provides spare parts to another wholly owned company B of the institution, board or body whose object is to carry on transport services.

The wholly owned company A has applied to the Commissioner for exemption under section 10(1)(*c*A)(ii).

Results 1:

The operation of a garage and service station to provide fuel and spares to wholly owned company B is not ancillary or complementary to the object of the institution, board or body, which is to stimulate and enhance the development of the province and its population. Consequently, the wholly owned company A does not qualify for the exemption under section 10(1)(*c*A)(ii).

Facts 2:

The Faculty of Health Sciences at a university, which has been approved by the Commissioner under section 10(1)(*c*A)(i), has formed a wholly owned company to find new income generating opportunities from sources such as tenders, research, contracts, and consulting services using intellectual property to earn income and develop new modules of health care.

The wholly owned company has applied to the Commissioner for the exemption under section 10(1)(*c*A)(ii).

Results 2:

The operations undertaken by the wholly owned company are not ancillary or complementary to the object of the holder of its shares, namely, the university, but are rather seen to be a source for generating additional funds for the particular faculty. Consequently, the wholly owned company does not qualify for the exemption under section 10(1)(*c*A)(ii).

7. Founding document

The primary constitutional document of a company having shares and holders of shares is its memorandum of incorporation [46] which sets out rights, duties and responsibilities of holders of its shares, directors and other persons in relation to a company.[47] Rules made by the board[48] are regarded as secondary to the memorandum of incorporation. Thus, if there is a conflict between the memorandum of incorporation and the rules of the company, the memorandum of incorporation will prevail.[49] The memorandum of association and articles of association of a pre-existing company are deemed its memorandum of incorporation until they are replaced with a memorandum of incorporation aligned to the Companies Act.

The holders of shares may amend the memorandum of incorporation by passing a special resolution approving the amendment.[50] After its memorandum of incorporation has been amended, a company must within the time prescribed under the Companies Act file a Notice of Amendment to the Commission.[51] 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 otherwise generally from the date set out in the Notice of Amendment.[52] The memorandum of incorporation is void to the extent that it is inconsistent with, or contravenes the Companies Act.[53]

A company is required under its memorandum of incorporation to comply with prescribed requirements (see **8**). A company must therefore submit a copy of any amendment to its memorandum of incorporation to the Commissioner as soon as it has been affected. This enables the Commissioner to ensure that any amendment is not contrary to those prescribed requirements. It will be unacceptable for a company to submit a memorandum of incorporation that complies with the Act at the time of applying for exemption and then, after obtaining such exemption, to amend the memorandum of incorporation to include non-qualifying provisions.

The memorandum of incorporation must be submitted to the Commissioner as part of the application for approval of the exemption (see **13**).

8. Prescribed requirements

A company is required by law or under its memorandum of incorporation to comply with the prescribed requirements discussed in **8.1** to **8.3**.[54]

---

46 See the definition of "memorandum of incorporation" in section 1 of the Companies Act.
47 Sections 13 and 15 of the Companies Act read with the Regulations in Government Notice 351 in *Government Gazette* 34239 of 26 April 2011.
48 The board in accordance with section 15(3) of the Companies Act may make such rules.
49 Section 15(4)(*a*) of the Companies Act.
50 Section 16(1)(*c*) of the Companies Act. See also Form CoR 15.2 included in the Regulations.
51 Section 16(7) of the Companies Act.
52 Section 16(9) of the Companies Act.
53 Section 15(1) of the Companies Act.
54 Paragraph (*b*) of the first proviso to section 10(1)(*c*A).

8.1 Prohibition on distributions

A company is prohibited from distributing any amount[55] to any person other than the holders of shares in that company, which must be an institution, board or body.[56]

The words “distribute” and “amount” are not defined in the Act.

The *Cambridge Dictionary* describes “distribute” as –[57]

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

Under the Companies Act,[58] a distribution can take the following forms:[59]

- Dividends in cash or *in specie*.
- Payment in cash instead of capitalisation shares.
- The repurchase of shares of the company.
- Debt incurred to or for the benefit of a holder of any shares.
- Debt cancellation for a holder of any shares.

A company is prohibited under the Companies Act from making a distribution only if it reasonably appears that the company will not satisfy the solvency and liquidity tests provided for in that Act immediately after completing the proposed distribution. It follows that the Companies Act allows a company to declare a dividend even if no profits are available for distribution.[60]

The term “dividend” is not defined in the Companies Act, but is defined in section 1(1). The definition includes, amongst other things, any amount transferred or applied by a company by way of a distribution.[61] Typical examples of a distribution in the form of a dividend include –

- a common law dividend;
- a return of share capital, share premium or stated capital that is not determined to be a distribution of the company’s contributed tax capital;[62]
- the difference between the market value of an asset and its selling price when the asset is sold at less than market value to the holder of a share or to another person on behalf of such holder;

55 Section 10(*a*) of the Taxation Laws Amendment Act 23 of 2020 deleted the words “of its profits or gains” and substituted it with the word “amount”. The amendment is effective from 20 January 2021. The deleted words were, according to the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2020*, consistent with the wording contained in the repealed Companies Act 61 of 1973 thus the amendment achieves alignment with the current Companies Act.

56 Paragraph (*b*)(i) of the first proviso to section 10(1)(*c*A).

57 **https://dictionary.cambridge.org/dictionary/english/distribute** [Accessed 6 August 2021].

58 See section 1 of that Act.

59 P Delport *The New Companies Act Manual* [online] (My LexisNexis: 2011 – Second Edition) in paragraph 4.1.

60 Section 46(1)(*b*) of the Companies Act.

61 Paragraph (*a*) of the definition of “dividend” in section 1(1).

62 The term “contributed tax capital” is defined in section 1(1) and broadly represents the amounts contributed to the company in exchange for the issue of its shares.

- a donation[63] of cash or assets to a holder of a share or to some other person on such holder's behalf; and
- the waiver of debt owed by a holder of a share.

A company for tax purposes can also make a distribution to its holders of shares in the form of a return of capital, to the extent that it results in the reduction of a contributed tax capital, subject to the limitations provided in the definition of "return of capital" in section 1(1).

From the above it is clear that a distribution can be made in many different forms.

The meaning of "amount"[64] was judicially considered in *WH Lategan v CIR*[65] in relation to its use in the definition of "gross income" and the following *dictum* of Watermeyer J has been cited with approval in a number of other cases:[66]

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

(Emphasis added.)

In *Cactus Investments (Pty) Ltd v CIR*[67] the court held that in order to comprise an "amount", rights of a non-capital nature must be "capable of being valued in money". Similarly, in the *People's Stores* case[68] the court held that in order to be included in gross income an amount must be of such a nature that a value can be attached to it in money. In *Stander v CIR*[69] the court held that an amount must be capable of being turned into money or money's worth. However, this view was soundly rejected in the landmark case of *C: SARS v Brummeria Renaissance (Pty) Ltd & others*.[70] In that case, it was held that it did not follow that if a receipt or accrual cannot be turned into money, it had no money value. The "turn into money" test was merely one of the tests for determining whether an accrual had a money value. The court confirmed that the test was objective, not subjective.

Any amount distributed to any person other than a holder of shares even if the distribution is minimal or an isolated or once-off event will result in the withdrawal of the exemption (see **10**).

8.2 Use of funds

A company is required to use its funds solely for investment or the object for which it has been established.[71]

---

63 The term "donation" is defined in section 55(1) and means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right.

64 See *Comprehensive Guide to Capital Gains Tax*.

65 1926 CPD 203, 2 SATC 16 at 19.

66 See also *CIR v Butcher Bros (Pty) Ltd* 1945 AD 301, 13 SATC 21 at 34 and *CIR v People's Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9 at 21.

67 1999 (1) SA 315 (SCA), 61 SATC 43.

68 *CIR v People's Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9.

69 1997 (3) SA 617 (C), 59 SATC 212 at 218/9.

70 *C: SARS v Brummeria Renaissance (Pty) Ltd & others* 2007 (6) SA 601 (SCA), 69 SATC 205.

71 Paragraph (*b*)(ii) of the first proviso to section 10(1)(*c*A).

The word "funds" is described in the *BusinessDictionary.com* as follows:[72]

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

Having regard to the above, "funds" refer to the financial resources, money available to a business for spending in the form of cash, liquid securities and credit lines.[73] A company could derive funds from share capital, donations or from carrying on the activities for which it was established.

Investopedia explains an investment as follows:[74]

> "An investment is an asset or item acquired with the goal of generating income or appreciation. In an economic sense, an investment is the purchase of goods that are not consumed today but are used in the future to create wealth. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or will later be sold at a higher price for a profit.
>
> The term 'investment' can refer to any mechanism used for generating future income. In the financial sense, this includes the purchase of bonds, stocks or real estate property. Additionally, a constructed building or other facility used to produce goods can be seen as an investment. The production of goods required to produce other goods may also be seen as investing.
>
> Taking an action in the hopes of raising future revenue can also be considered an investment. For example, when choosing to pursue additional education, the goal is often to increase knowledge and improve skills in the hopes of ultimately producing more income."

The funds of a company may be invested as desired provided the investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that fiduciaries should act with prudence, integrity and reasonable care.

The word "object" refers to the sole or principal object for which such a company has been established as set out in its founding document. The object of a wholly owned company must be to carry on operations that are ancillary or complementary to the object of the holder of shares in that company. The approval of the exemption under section 10(1)(*c*A)(ii) of a wholly owned company of an institution, board or body engaged in activities that are not ancillary or complementary to the object of the institution, board or body holding shares may be withdrawn (see **10**).

A company may not use any of its funds for any other purpose other than for investment or for the object for which it has been established.

8.3 Dissolution

On dissolution the assets of the company must be transferred to an institution, board or body having similar objects to the company and which is also exempt from income tax under section 10(1)(*c*A)(i).

---

[72] **www.businessdictionary.com/definition/funds.html** [Accessed 6 August 2021].

[73] See the meaning of "financial resources" in the *BusinessDictionary.com* available online at **www.businessdictionary.com/definition/financial-resources.html** [Accessed 6 August 2021].

[74] **www.investopedia.com/terms/i/investment.asp** [Accessed 6 August 2021].

LAWSA describes the "winding-up" process of a company as follows:[75]

> "Winding-up or liquidation (the terms are interchangeable) is the process by which, prior to the company's dissolution, the management of its affairs is taken out of the directors' hands, its assets are ascertained, realised and applied in payment of its creditors according to their order of preference, and any residue is distributed among its members according to their rights. The company's corporate existence is then put to an end by the formal process of dissolution."

(Footnotes omitted.)

The winding-up of a company may occur voluntarily or compulsorily by the court. A winding-up by the court is initiated by an application to court while a voluntary winding-up[76] is initiated by a resolution of the company.[77]

A company remains a juristic person and retains all its powers during winding-up. The company must stop carrying on its business from the beginning of the company's winding-up except to the extent required for the beneficial winding up of the company.[78] A company is dissolved as from the date that its name is removed from the companies register.[79]

During the winding-up of a company all, its assets are recovered and realised and the proceeds of such realisation are applied firstly to discharge the costs of liquidation, then to pay claims of creditors in accordance with the relevant provisions of the law relating to insolvency. Any assets, or the proceeds of realised assets, remaining after such payments have been made must be distributed between the members according to their rights and interests in the company unless the memorandum of incorporation indicates otherwise.[80] On dissolution of a company, all of its assets should therefore have been realised and transferred.

The company under section 10(1)(*c*A)(ii) may not, on dissolution, distribute any of its assets to individuals or other tax-paying entities and in so doing enable the recipients to share in the tax concession it has enjoyed. The company is required on dissolution to transfer its remaining assets to another institution, board or body having similar objects and which has also been exempted by the Commissioner from income tax under section 10(1)(*c*A)(i).[81]

The *Free Dictionary* describes "similar" as follows:[82]

> "Having a resemblance in appearance or nature; alike though not identical."

Any institution, board or body benefitting from the dissolution of a company must be formally exempt by the Commissioner under section 10(1)(*c*A)(i) and must have similar but not necessarily identical objects to the company being dissolved. It is likely that on dissolution of a company its remaining assets will be transferred to the holders of shares, which are institutions, boards or bodies. A company may choose to whom it will distribute its remaining assets on dissolution, without prior approval from the Commissioner, provided the recipient meets the dissolution requirements.

---

75 RC Williams "Companies Part 3" Volume 4(3) Second Edition Volume *LAWSA* [online] (My LexisNexis) 31 October 2014 in paragraph 53.

76 See section 80 of the Companies Act.

77 Section 80(6) of the Companies Act.

78 Section 80(8) of the Companies Act.

79 Section 83(1) of the Companies Act.

80 PM Meskin, P Delport, Q Vorster *et al* Henochsberg on the Companies Act 71 of 2008 [online] (My LexisNexis: October 2018).

81 Paragraph (*b*)(iii)(*aa*) of the first proviso to section 10(1)(*c*A).

82 **www.thefreedictionary.com/similar** [Accessed 6 August 2021].

Failure to transfer, or to take reasonable steps to transfer the remaining assets as required on dissolution will result in the accumulated net revenue not distributed being deemed to be taxable income accruing to the company during the year of assessment[83] (see **18.3**) in which dissolution took place.[84]

The concept "accumulated net revenue" is not defined in the Act. The *Dictionary.com* describes "accumulated" as –[85]

> "to gather or collect, often in gradual degrees"

The *BusinessDictionary.com* describes "net revenue" as follows:[86]

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

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

The term "taxable income" is defined as –[87]

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

Example 7 – Non-compliance with the dissolution requirement

Facts:

Devco is a wholly owned company of ABC, an institution, board or body exempted by the Commissioner under section 10(1)(*c*A)(i). A decision is taken to dissolve Devco and any remaining assets will be transferred to Shelfco, another wholly owned company of ABC. Shelfco is exempt under section 10(1)(*c*A)(ii).

The year-end of Devco is 28 February. Devco is finally wound up on 21 December 2019. The assets remaining after winding-up amounted to R300 000, representing accumulated net income of R50 000 and capital profits of R250 000 realised on sale of capital assets. The total amount of R300 000 will therefore be distributed to the other wholly owned company of the institution, board or body.

83 The term "year of assessment" is defined in section 1(1).
84 Paragraph (*b*) of the second proviso to section 10(1)(*c*A).
85 **www.dictionary.com/browse/accumulated** [Accessed 6 August 2021].
86 **www.businessdictionary.com/definition/net-revenue.html** [Accessed 6 August 2021].
87 Section 1(1).

Result:

The remaining assets of Devco were transferred on dissolution to Shelfco, which is contrary to the dissolution requirement, namely, that the remaining assets must be distributed to some other institution, board or body exempt under section 10(1)(*c*A)(i) having objects similar to those of Devco. Shelfco is not an institution, board or body exempt under section 10(1)(*c*A)(i), it is exempt under section 10(1)(*c*A)(i). Devco did not comply with the dissolution requirement and will therefore be taxed on the amount of R300 000 during the 2020 year of assessment

9. Conditions prescribed by the Commissioner

The Commissioner has discretion to approve the exemption subject to conditions deemed necessary to ensure that the activities of a company are wholly or mainly directed to the furtherance of its sole or principal object.[88] Since the facts and circumstances, pertaining to each company may differ, each case will be considered on its own merits.

Certain requirements may therefore be set out as conditions in the letter issued by the Commissioner confirming the exemption. The letter will be binding on the company and non-compliance with its terms will result in the same penalties and actions as if the conditions are contained in the founding document of that company.

The words "furtherance", "sole", "principal" and "object" are not defined in the Act. The words should therefore be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used.[89]

The *CollinsDictionary.com* describes "furtherance" of something as –[90]

> "the activity of helping it to be successful or be achieved."

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

- "Sole" as "being the only one; only".[91]
- "Principal" as "first or highest in rank, importance, value, chief".[92]
- "Objective" as "something that one's efforts or actions are intended to attain, accomplish, purpose, goal, target".[93]

In ITC 1569[94] 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."

---

88 Paragraph (*a*) of the first proviso to section 10(1)(*c*A).

89 EA Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths, South Africa Series. See also LC Steyn *Die Uitleg van Wette* 5 ed (1981) Juta and Company (Pty) Ltd at 4 to 7.

90 **www.collinsdictionary.com/dictionary/english/furtherance** [Accessed 6 August 2021].

91 **www.dictionary.com/browse/sole#** [Accessed 6 August 2021].

92 **www.dictionary.com/browse/principal#** [Accessed 6 August 2021].

93 **www.dictionary.com/browse/objective** [Accessed 6 August 2021].

94 (1993) 56 SATC 86 (C) at 90.

The "object" of a wholly owned company is not the subjective goals of its controllers but the activities, which it is mandated by its founding document (see **4**) to perform and is the aim, intention, purpose, thing sought to be accomplished and the goal to be obtained. The determination whether an activity is wholly or mainly directed to the furtherance of the company's sole or principal object will be a question of fact. It is unnecessary that the activity is wholly directed to the furtherance of the sole or principal object, as long as the activity is mainly directed for that purpose. In practice, SARS requires that more than 50% of an activity, measured, for example, based on time or area usage, be directed to the furtherance of the sole or principal object.

10. Withdrawal of the exemption

The Commissioner may withdraw the exemption of any company if satisfied that it has during any year of assessment (see **18.3**) failed to comply with section 10(1)(*c*A)(ii). The exemption will be withdrawn with effect from the commencement of the year of assessment in which non-compliance or failure by a company occurred.

The Commissioner, however, must provide adequate reasons relating to the non-compliance or failure to comply with section 10(1)(*c*A)(ii) before the exemption is withdrawn.[95] The Supreme Court of Appeal in *Minister of Environmental Affairs & Tourism & others v Phambili Fisheries (Pty) Ltd & another*[96] considered what constitutes adequate reasons. The court relied on an Australian judgment in which the following remarks were stated:

> "Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging."

The decision by the Commissioner to withdraw the exemption under section 10(1)(*c*A) is subject to objection and appeal (see **19**).

A company whose exemption has been withdrawn will be liable for income tax and other taxes and duties in the same way as any other company.

11. Receipts and accruals exempt from income tax

The receipts and accruals of any company approved by the Commissioner are exempt from income tax under section 10(1)(*c*A)(ii). The exemption granted under section 10(1)(*c*A) is an absolute exemption.

The type of receipt or accrual envisaged is one that is included in the definition of "gross income".[97] According to the definition of "gross income", it includes the total amount received by or accrued to a person that is not of a capital nature unless specifically included under paragraphs (*a*) to (*n*). Thus all receipts and accruals falling within gross income, being the total amount, in cash or otherwise, received by or accrued to or in favour of an approved company, will be exempt from income tax under section 10(1)(*c*A)(ii). An amount will be "received" by a company only if the company received it on its own behalf and for its own benefit.[98] An amount "accrues" to a company when the company is entitled to it and when the company's right to

95 Section 5 of the Promotion of Administrative Justice Act 3 of 2000.
96 2003 (6) SA 407 (SCA) in paragraph [40].
97 Section 1(1).
98 *Geldenhuys v CIR* 1974 (3) SA 256 (C), 14 SATC 419.

the amount is unconditional.[99] An amount is included in a company's gross income in the year of assessment in which it is received by or accrues to the company, whichever comes first.[100] Receipts or accruals of a capital nature that are 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)(*c*A) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a "taxable capital gain" that is included directly in paragraph (*b*) of the definition of "taxable income" under section 26A. While a capital gain forming part of a "taxable capital gain" is potentially subject to income tax, the exemptions in section 10 do not apply to it because a capital gain is not a receipt or accrual. Paragraph 63 of the Eighth Schedule contains the rules for disregarding capital gains and losses of a fully exempt person (see **12.1.4**).

12. Other taxes and duties

12.1 Exemption for other taxes and duties

Wholly owned companies in addition to being exempt from the payment of income tax on their receipts and accruals also enjoy the benefit of being exempt from specified other taxes and duties.[101]

12.1.1 Donations tax

Donations tax is payable on the value of any property disposed of by donation by any resident[102] (the donor) to another person (the donee)[103] at the rate of –

- 20% of that value if the aggregate of that value and the value of any other property disposed of under a donation until the date of that donation does not exceed R30 million; and
- 25% of that value to the extent that it exceeds R30 million.[104]

A donation comprises any gratuitous disposal of property including any gratuitous waiver or renunciation of a right, for example, the waiver of debt. The disposal of property at less than its market value will also constitute a donation to the extent that the Commissioner is not satisfied that the consideration was adequate.[105]

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.[106]

Donations made by or to a company contemplated in section 10(1)(*c*A)(ii) are exempt from the payment of donations tax.[107]

---

99 *WH Lategan v CIR* 1926 CPD 203, 2 SATC 16; *Ochberg v CIR* 1933 CPD, 6 SATC 1.
100 *SIR v Silverglen Investments (Pty) Ltd* 1969 (1) SA 365 (A), 30 SATC 199.
101 For more information on any of these taxes and duties, see *Taxation in South Africa*.
102 The term "resident" is defined in section 1(1).
103 The term "donee" is defined in section 55(1).
104 Section 64.
105 Section 58.
106 Section 59.
107 Section 56(1)(*h*).

12.1.2 Dividends tax

The provisions relating to dividends tax are contained in sections 64D to 64N and apply to any dividend paid by a company, other than a headquarter company, on or after 1 April 2012.[108] Although dividends tax is part of the Act, it is a separate tax from income tax.[109]

Dividends tax is levied at the rate of 20%[110] of the amount of a dividend paid by a company that is a resident.[111] 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.[112]

Dividends tax on a cash dividend is levied on the person entitled to the benefit of the dividend attaching to the share.[113] This person is generally known as the beneficial owner.[114]

Generally, a company that declares and pays 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. Dividends tax is not imposed on dividends paid to institutions, boards or bodies.

It is not the responsibility of the company or regulated intermediary[115] paying the dividend to determine who the beneficial owner of a dividend is and whether that person qualifies for an exemption from dividends tax. The exemptions from dividends tax for cash dividends are contained in section 64F while the exemptions for dividends *in specie* are contained in section 64FA(1). These exemptions apply to all entities included in the definition of "company".[116]

A dividend paid to an association, corporation or company that is a resident company is exempt from dividends tax.[117] This exemption applies only if the association, corporation or company 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 association, corporation or company 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.[118]

---

108 Any dividend paid before 1 April 2012 was subject to secondary tax on companies, a tax that was levied on the company paying the dividend.

109 For more information, see the *Comprehensive Guide to Dividends Tax*.

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

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

112 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. Examples include the JSE, ZAR X, 4AX, A2X and EESE.

113 Section 64EA(*a*).

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

115 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.

116 Section 1(1).

117 Sections 64F(1)(*i*) and 64FA(1)(*a*).

118 Sections 64G(2)(*a*) and 64H(2)(*a*).

The Commissioner has not issued forms to be used for purposes of a declaration or written undertaking referred to above but has prescribed the required wording and minimum information required.[119]

The obligation lies with an association, corporation or company who 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.

It is important for any company contemplated in section 10(1)(*c*A)(ii) that holds investments through a trust to determine whether it has a vested right to a dividend before it is paid by the company in order 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 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 year of assessment may be able to claim a refund of the dividends tax withheld.[120]

12.1.3 Skills development levy

The skills development levy (SDL) is a compulsory levy to fund education and training under the Skills Development Levies Act 9 of 1999. SARS administers the collection of this levy that is levied based broadly on 1% of the payroll of employers. Employers providing training to employees may receive grants from the Sector Education and Training Authority (SETA).[121]

A company is exempt from the payment of SDL if it is –

- registered as an employer and its annual payroll will not exceed R500 000 in the following 12 months;[122] and
- a national or provincial public entity[123] and if 80% or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament.[124]

12.1.4 Capital gains tax

Any capital gain or capital loss determined on an asset donated or bequeathed to an approved company contemplated in section 10(1)(*c*A)(ii) must be disregarded by the donor.[125]

A person must disregard any capital gain or capital loss on the disposal of an asset if any amount constituting gross income of whatever nature would be exempt from tax under section 10(1)(*c*A) were it to be received by or to accrue to that person.[126]

The following publications on capital gains tax are available:

- *ABC of Capital Gains Tax for Companies*
- *Comprehensive Guide to Capital Gains Tax*
- *Guide on Valuation of Assets for Capital Gains Tax Purposes*

---

119 For more information, see *Business Requirements Specifications: Administration of Dividends Tax*.

120 See *Comprehensive Guide to Dividends Tax* in 2.3.1.

121 For more information, see the *Quick Reference Guide for Skills Development Levy*.

122 Section 4(*b*) of the Skills Development Levies Act.

123 The terms "national public entity" and "provincial public entity" are defined in section 1 of the Public Finance Management Act 1 of 1999 and listed in Part A and C of Schedule 3 to that Act.

124 Section 4(*d*) of the Skills Development Levies Act.

125 Paragraph 62(*c*) of the Eighth Schedule.

126 Paragraph 63 of the Eighth Schedule.

- *Tax Guide for Share Owners*

12.2 Compliance with other taxes and duties

12.2.1 Employees' tax

Employees' tax is dealt with in the Fourth Schedule. It is often referred to as Pay-As-You-Earn or PAYE. 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, thus 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 liability[127] of an employee, calculated on an annual basis, in order to determine the employees' final income tax liability for a year of assessment.

Employees' tax must be deducted or withheld by every employer (or representative employer when the employer is not resident in South Africa) who pays or becomes liable to pay an amount of remuneration[128] to any person.

A company is not exempted from the obligation to deduct or withhold employees' tax. The company 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.

Any company that is an employer must register for employees' tax within 21 business days of becoming an employer.[129] Registration is done by completing the prescribed application form EMP 101e and submitting it to the local SARS branch office. The application form EMP 101e is available at all SARS branch offices as well as on the SARS website.

A registered employer must complete and submit the monthly return EMP 201 together with the payment of employees' tax within seven days after the end of the month during which the deduction was made.

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

12.2.2 Unemployment insurance contributions

The unemployment insurance fund (UIF) 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.[130]

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act 63 of 2001 (Unemployment Insurance Act) and the Unemployment Insurance Contributions Act 4 of 2002. These statutes, among other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

[127] Paragraph 28 of the Fourth Schedule.
[128] The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.
[129] Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.
[130] Section 2 of the Unemployment Insurance Act.

UIF contributions, that are equal to 2% of the remuneration paid or payable by an employer to 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 periods.[131]

Any company paying remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.

These contributions must be paid to the UIF office of the Department of Labour[132] or to SARS within seven days after the end of the month during which the amount was deducted. Payment can be made via eFiling, electronic funds transfer or at a branch of an approved banking institution.

12.2.3 Value-added tax

This guide does not deal with value-added tax (VAT). However, various VAT guides are available. 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**. For information on the VAT ruling process, see *VAT Ruling Process Quick Reference Guide*.

13. Applications for the exemption

Any company not formally approved by the Commissioner under section 10(1)(*c*A)(ii) is required to apply to the Commissioner for such approval by completing the prescribed application form EI 1. The completed application form EI 1 together with the required registration information and supporting documentation must be submitted to the TEU or to the nearest SARS branch office.

The exemption is generally effective from the date of the notice of approval granted by the Commissioner, that is, it is prospective, unless the Commissioner advises otherwise. Section 10(1)(*c*A) does not limit the approval by the Commissioner to the date the application was received or to years of assessment succeeding the date on which such application is received or any other specified date. A company on written request may apply for the exemption to be applied to years of assessment before the approval date. Retrospective approval will be granted only if the Commissioner is satisfied that the company complied with the requirements of section 10(1)(*c*A)(ii) during the period before it lodged its application for approval. The company will be responsible to prove to the Commissioner that it complied with the requirements relative to the approval during the period before it lodged its application.[133] To prevent any potential abuse, each request for retrospective approval will be considered on its own merits and specific facts.

The Commissioner, however, may not extend retrospective approval to a company that has complied with all its obligations under Chapter 4,[134] Chapter 10[135] and Chapter 11[136] of the TA Act to years of assessment that have prescribed.[137] An assessment may not be made three years after the date of assessment of an original assessment by SARS.[138] If a company

[131] For more information, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.
[132] Information is available on the Department of Labour's website at **www.labour.gov.za**.
[133] Section 102 of the TA Act.
[134] That chapter deals with returns and records.
[135] That chapter deals with tax liability and payment.
[136] That chapter deals with the recovery of tax.
[137] Section 99 of the TA Act.
[138] Section 99(1)(*a*) of the TA Act.

complied with the above chapters of the TA Act, it would have submitted its returns when due, and the three-year period will encompass the earliest year of assessment for which an assessment was issued during that period. For example, if the company applied for approval on 31 March 2020, the three-year period would begin on 1 April 2017. If the company has a February year-end and its first assessment after 1 April 2017 was for the 2017 year of assessment, the retrospective approval can be made for the 2017 to 2020 years of assessment.

If a company has not complied with the above chapters of the TA Act, the Commissioner may not extend retrospective approval 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. It will therefore 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 company to establish when its returns should have been submitted under the public notice issued annually by the Commissioner (see **18**). For example, the 2017 notice required that a company lodge its return for the 2017 year of assessment within 12 months of its financial year-end. Thus, a company with a February year-end would have had to submit its 2017 return of income on or before 28 February 2018, and it is the latter date that must fall within the three years preceding the date of application for retrospective approval.

The notification of the exemption under section 10(1)(*c*A)(ii) is issued by the TEU 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 company approved by the Commissioner is required to retain the letter confirming exemption as part of its records (see **17**).

A written notification will also be issued by the TEU to the company should the exemption under section 10(1)(*c*A)(ii) not be granted together with reasons why the company failed to meet the conditions and requirements of section 10(1)(*c*A)(ii). An entity not approved by the Commissioner will be liable for income tax and other taxes and duties in the same way as any other taxpayer.[139]

14. Administrative provisions – Tax Administration Act

The TA Act[140] deals with tax administration and seeks, among 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.[141]

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.[142] If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.[143]

---

139 See paragraph (*a*) of the definition of "company" in section 1(1).

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

141 For comprehensive information on taxpayers obligations and entitlements under the TA Act, see *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

142 Section 4(2) of the TA Act.

143 Section 4(3) of the TA Act.

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 a company.

15. Furnishing of information

In order to assist in enforcing the provisions of the Act, the Commissioner may submit a written request to any person to furnish information about any company and may require that person to –[144]

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

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.[145]

16. Changes in registered particulars

A company must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A company must communicate to SARS any change of postal, physical or electronic addresses, representative taxpayer and banking particulars.[146]

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.[147]

17. Record-keeping

A company is required to keep records for five years from the date of the submission of a return.[148]

A return[149] 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.

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.[150]

---

144 Section 46(1) of the TA Act.
145 Section 234(*h*)(i) and (ii) of the TA Act.
146 Section 23 of the TA Act.
147 Section 234(*a*) of the TA Act.
148 Section 29(3) of the TA Act.
149 The term "return" is defined in section 1 of the TA Act.
150 Section 32 of the TA Act.

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

- Five years from the date of the submission of a return.[151]
- 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.[152]
- If an objection or appeal 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, decision becomes final, or the applicable five-year period has elapsed, whichever is the later.[153]
- 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.[154]
- Indefinitely if a document is relevant for future years of assessments such as the prescribed application form 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.

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.

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.

In order to ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, any company is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.[155]

151 Section 29(2)(*a*) read with section 29(3)(*a*) of the TA Act.
152 Section 29(2)(*b*) of the TA Act.
153 Section 32(*b*) of the TA Act.
154 Section 32(*a*) of theta Act.
155 Section 30 of the TA Act.

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.[156] The rules require electronic records must be kept in their original form,[157] 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.[158]

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.[159]

18. Income tax returns

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.[160]

A company must submit income tax returns, even if its exemption results in no tax liability. The income tax return enables the Commissioner to assess annually whether the company is operating within the prescribed limits of its exemption.

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

- the eFiling website;
- the TEU;
- any SARS branch office; or
- the SARS National Contact Centre.

A return must be a full and true return[161] and be signed by the company or by the duly authorised representative of the company. The person signing the return will be regarded as being cognisant of the statements made in the return.[162]

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.[163]

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.[164]

---

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

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

158 For further information, see *Electronic Communications Guide*.

159 Section 234(*e*) of the TA Act.

160 Section 66(1).

161 Section 25(2) of the TA Act.

162 Section 25(3) of the TA Act.

163 Section 25(4) of the TA Act.

164 Section 234(*d*) of the TA Act.

18.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of registration for income tax purposes.[165] 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 may be submitted manually or electronically on the eFiling website.

18.3 Year of assessment

The term "year of assessment" means in the case of a company its financial year.[166] The term "financial year" in relation to any company, means –[167]

- the period commencing on the date of incorporation and ending on the last day of February immediately succeeding that date or on any other date approved by the Commissioner having regard to the circumstances of the case (relates to a newly incorporated company); or
- any period subsequent to the period referred to above, whether of 12 months or not, commencing immediately after the last day of the immediately preceding financial year of that company and ending upon the first anniversary of such last day or upon such other date as the Commissioner having regard to the circumstances of the case may approve.

The Commissioner may exercise 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.[168]

18.4 Supporting documentation

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

Any company whose income tax return is supported by a balance sheet, statement of assets and liabilities or account prepared by any other person may be requested to submit a certificate or statement recording –[169]

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

---

[165] The term "taxpayer reference number" is defined in section 1 of the TA Act and means the number referred to in section 24 of that Act.

[166] Section 1(1).

[167] Section 1(1).

[168] See 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".

[169] Section 28 of the TA Act.

A person responsible for the association, corporation or company must sign the accounts in a fiduciary capacity and by the person who prepared them on behalf of the association, corporation or company.

19. Objection and appeal

Any decision in the exercise of the Commissioner's discretion under section 10(1)(*c*A) is subject to objection and appeal.[170]

The Commissioner's discretion under section 10(1)(*c*A) will be exercised to determine –

- whether an organisation may be exempted under section 10(1)(*c*A);
- any conditions necessary to ensure that the activities of the company are wholly or mainly directed at the furtherance of its sole or principal object; and
- if satisfied that a company has failed to comply with section 10(1)(*c*A).

Any company may object to any of the above decisions or an assessment within 30 business days[171] from the date of the decision or assessment[172] in accordance with Chapter 9 of the TA Act read with the "rules" as published in the *Government Gazette*.[173]

The objection must be made on the prescribed form and specify in detail the grounds on which it is made. 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 company is dissatisfied with SARS's decision, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.[174]

---

170 Section 3(4)(*b*).

171 The term "business day" is defined in section 1 of the TA Act.

172 See Interpretation Note 15 "Exercise of Discretion in case of Late Objection or Appeal".

173 The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Notice 550 in *Government Gazette* 37819 of 11 July 2014. Rule 7 deals with objections. For more information on the resolution of tax disputes, see *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and *Alternative Dispute Resolution: Quick Guide*.

174 Rule 10.

Annexure A – Section 10(1)(*c*A)

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

(*c*A) the receipts and accruals of—

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

(*aa*) conducts scientific, technical or industrial research;

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

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

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

Provided that such institution, board, body or company—

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

(*b*) is by law or under its constitution—

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

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

(iii) required on dissolution—

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

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

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

(B) to the State:

Provided further that—

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

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

(*c*) . . . . . .