

INTERPRETATION NOTE 10 (Issue 3)

DATE: 13 November 2018

ACT : SKILLS DEVELOPMENT LEVIES ACT 9 OF 1999
SECTION : SECTION 4(c)
SUBJECT : SKILLS DEVELOPMENT LEVY EXEMPTION: PUBLIC BENEFIT ORGANISATIONS

Preamble

In this Note unless the context indicates otherwise –

- “**Commissioner**” means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act as defined in section 1(1);
- “**PBA**” means a “public benefit activity” as defined in section 30(1);
- “**PBO**” means a “public benefit organisation” as defined in section 30(1) and approved by the Commissioner under section 30(3);
- “**qualifying PBAs**” means the PBAs listed in paragraphs 1, 2(a), (b), (c), (d) and 5 of Part I of the Ninth Schedule;
- “**Schedule**” means a schedule to the Act;
- “**SDL**” means the skills development levy referred to in section 3 of the SDL Act, paid by an employer;
- “**SDL Act**” means the Skills Development Levies Act 9 of 1999;
- “**section**” means a section of the Act;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act or the SDL Act.

All guides and interpretation notes referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest issue of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of section 4(c) of the SDL Act,¹ which exempts any PBO² contemplated in section 10(1)(cN) from the payment of SDL, provided the PBO –

- solely carries on qualifying PBAs; or
- solely provides funds to PBOs that solely carry on qualifying PBAs.

2. Background

Section 3(1) of the SDL Act imposes an SDL on the total amount of remuneration paid or payable or deemed to be paid or payable by an employer³ to its employees⁴ during any month. The amount of such remuneration is the same as the amount of remuneration determined under the Fourth Schedule⁵ from which an employer is obligated to withhold employees' tax taking into consideration certain exclusions referred to in section 3(4) of the SDL Act.

Section 4 of the SDL Act contains a number of exemptions from the SDL. This Note, however, concentrates on the exemption under section 4(c) of the SDL Act.

The Commissioner is responsible for the administration of the SDL Act, in so far as it relates to the collection of the levy payable by employers.

3. The law

Section 4(c) of the Skills Development Levies Act

4. Exemptions.—The levy is not payable by—

- (c) any public benefit organisation contemplated in section 10(1)(cN) of the Income Tax Act, which—
- (i) solely carries on any public benefit activity contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to that Act; or
 - (ii) solely provides funds to public benefit organisations contemplated in subparagraph (i);

¹ See the *Guide for Employers in respect of the Skills Development Levy*, issued to assist employers to understand the basic fundamentals of the SDL Act.

² See the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and the *Basic Guide to Income Tax Exemption for Public Benefit Organisations*, which provide information relating to PBOs and the tax implications affecting them.

³ The term “employer” is defined in section 1(1) of the SDL Act and includes an “employer” as defined in the Fourth Schedule.

⁴ The term “employee” is defined in section 1(1) of the SDL Act and includes an “employee” as defined in the Fourth Schedule.

⁵ The term “remuneration” is defined in paragraph 1 of the Fourth Schedule.

4. Application of the law

4.1 Public benefit organisation carrying on public benefit activities

An organisation claiming exemption from the payment of SDL under section 4(c)(i) of the SDL Act must be a PBO that solely (see 5.5) carries on (see 5.3) any qualifying PBAs.

4.2 Public benefit organisation providing funds

An organisation claiming exemption from the payment of SDL under section 4(c)(ii) of the SDL Act must be a PBO that solely (see 5.5) provides funds (see 5.4) to other PBOs that solely carry on (see 5.3) any qualifying PBAs.

5. General meaning of certain terminology in the context of section 4(c) of the Skills Development Levies Act

5.1 Public benefit organisation

A PBO is an organisation that –

- carries on one or more approved PBAs listed in Part I of the Ninth Schedule;
- complies with the requirements of section 30; and
- is approved by the Commissioner under section 30(3).

Section 10(1)(cN) exempts an approved PBO from normal tax on certain of its receipts and accruals.

5.2 Public benefit activities listed in Part I of the Ninth Schedule

The term “public benefit activity” is defined in section 30(1), and means –

- any activity listed in Part I of the Ninth Schedule; and
- any other activity determined by the Minister from time to time by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public.

Part I of the Ninth Schedule comprises 11 categories, each containing a list of specific activities that qualify as PBAs.

For purposes of the exemption from the payment of SDL, the qualifying PBAs are limited to the following categories in Part I of the Ninth Schedule:

- Welfare and Humanitarian [paragraph 1]
- Health Care [paragraph 2, which is further limited to subparagraphs (a), (b), (c) and (d)]
- Religion, Belief or Philosophy [paragraph 5]

See **Annexure A** for a detailed description of the PBAs listed under each of the above qualifying categories.

5.3 Carries on

The expression “carries on” is not defined in the SDL Act. The ordinary dictionary meaning of the expression is “engage in (an activity)”.⁶

In this context, the expression “carries on” means that the PBO must itself conduct the PBAs by expending its funds in carrying on the qualifying PBAs.

Example 1 – Carrying on qualifying PBAs

Facts:

ABC Haven is a non-profit company that provides accommodation and care to neglected and abandoned children. A social worker, house parents and other essential staff employed by the home are responsible for the basic needs and care of these children. ABC Haven has submitted an application for approval as a PBO.

Result:

ABC Haven complies with the requirements of section 30 and will be approved as a PBO because its sole or principal object is to carry on the PBA contemplated in paragraph 1(a) in Part I of the Ninth Schedule (see **Annexure A** under the category “Welfare and Humanitarian”).

ABC Haven will also qualify for the exemption from the payment of SDL because it is solely carrying on a qualifying PBA as contemplated in section 4(c)(i) of the SDL Act.

5.4 Provides funds

An organisation that provides funds to other organisations may be referred to as a “conduit” organisation. A “conduit” organisation does not itself carry on approved PBAs, but merely passes its funds on to other organisations which themselves carry on PBAs.

Paragraph 10 in Part I of the Ninth Schedule deals with a PBO that is a “conduit” providing funds, assets, services or other resources to any –

- PBO;
- institution, board or body contemplated in section 10(1)(cA)(i), that conducts one or more PBAs in Part I (other than paragraph 10);
- association of persons carrying on one or more PBA contemplated in Part I (other than paragraph 10), in the Republic;⁷ or
- department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a).

The exemption from the payment of SDL under section 4(c)(ii) of the SDL Act applies only to a conduit PBO that solely provides funds to PBOs that carry on only the qualifying PBAs (see **4.2**).

⁶ M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus and Wordpower Guide* (2001) Oxford University Press.

⁷ See Interpretation Note 98 “The Provision of Funds, Assets or Other Resources to any Association of Persons” for detailed information.

A conduit PBO providing funds to PBOs as well as to any other entity described in the second to fourth bullets above will not qualify for the exemption from the payment of SDL under section 4(c)(ii) of the SDL Act.

Example 2 – Providing funds to other PBOs solely carrying on qualifying PBAs

Facts:

ABC Haven Trust was established with the sole object of raising funds and accepting donations from the public and corporate entities solely for the benefit of ABC Haven, an approved PBO engaged in the care of neglected and abandoned children.

Result:

ABC Haven Trust complies with the formal requirements of section 30 and will be approved as a PBO.

ABC Haven Trust qualifies for the exemption from the payment of SDL because it solely provides funds to ABC Haven, an approved PBO that solely carries on the PBA contemplated in paragraph 1(a) in Part I of the Ninth Schedule.

5.5 Solely

The word “solely” is not defined in the SDL Act. The ordinary dictionary meaning of the word is “one and only, exclusively, entirely, wholly, alone”.⁸

In this context, the word “solely” means that a PBO must exclusively carry on the qualifying PBAs, or exclusively provide funds to PBOs that exclusively carry on the qualifying PBAs, in order to qualify for the exemption from the payment of SDL.

A PBO that carries on more than one approved PBA, some of which are qualifying PBAs as well as other PBAs not listed in section 4(c)(i) of the SDL Act, will not qualify for the exemption from the payment of SDL under section 4(c)(i) of the SDL Act.

Similarly, a conduit PBO providing funds to PBOs carrying on one or more approved PBAs, some of which are qualifying PBAs as well as other PBAs not listed in section 4(c)(i) of the SDL Act, will not qualify for the exemption from the payment of SDL under section 4(c)(ii) of the SDL Act.

6. Application and administration of the skills development levy exemption

The Tax Exemption Unit (TEU) is a dedicated office within SARS that deals on behalf of the Commissioner with all applications by organisations seeking approval as PBOs. The TEU is also responsible for considering whether a PBO qualifies for the exemption from the payment of SDL under section 4(c) of the SDL Act. See **Annexure B** for the contact details of the TEU. The TEU will, by letter, inform the organisation applying for PBO approval whether it has been approved as a PBO and whether it qualifies for the exemption from the payment of SDL under section 4(c) of the SDL Act.

⁸ Oxford Dictionary, Thesaurus and Wordpower Guide above.

If at any time subsequent to the notification issued by the TEU confirming exemption from the payment of SDL the PBO no longer solely carries on the qualifying PBAs or no longer solely provides funds to other PBOs solely carrying on the qualifying PBAs, the PBO will lose the exemption under section 4(c) of the SDL Act.

7. Conclusion

A PBO may qualify for exemption from the payment of SDL under section 4(c) of the SDL Act, provided certain requirements are met.

Legal Counsel

SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 24 March 2003

Date of 2nd issue : 18 August 2015

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Annexure A – Public benefit activities contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES
(Section 30)

PART I

WELFARE AND HUMANITARIAN

1. (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.
- (p) Community development for poor and needy persons and anti-poverty initiatives, including—
 - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
 - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
 - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.
- (q) The promotion of access to media and a free press.

HEALTH CARE

2. (a) The provision of health care services to poor and needy persons.
- (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
- (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
- (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.

RELIGION, BELIEF OR PHILOSOPHY

5. (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.
- (b) The promotion and/or practice of a belief.
- (c) The promotion of, or engaging in, philosophical activities.

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Annexure B – Contact details of the Tax Exemption Unit

Postal address	PO Box 11955 Hatfield 0028
Physical address	Land Bank Building 271 Veale Street Nieuw Muckleneuk Pretoria 0181
Telephone	012 483 1700
E-mail	teu@sars.gov.za

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