

**DRAFT INTERPRETATION NOTE**

DATE:

**ACT : INCOME TAX ACT 58 OF 1962**  
**SECTION : SECTION 30B(2)(b)(ix)**  
**SUBJECT : ASSOCIATIONS: FUNDING REQUIREMENT**

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### **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;
- “**entity**” means an “entity” referred to in paragraphs (a) and (b) of the definition of “entity” in section 30B(1), namely, any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers), local publicity association, or professional body that has been approved by the Commissioner under section 30B(2) (see **3**);
- “**founding document**” means the constitution or other written instrument under which an entity is established and governed;
- “**government**” means the government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a) [see also **5.2.4 (a)**];
- “**mutual loan association**” referred to in paragraph (a) of the definition of “entity” and defined in section 30B(1) means an association that has as its sole or principal object to function as a voluntary savings association under which participants make regular contributions into a common pool managed by the members for the mutual financial benefit of those members;
- “**section**” means a section of the Act;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**the Constitution**” means the Constitution of the Republic of South Africa, 1996; and
- any other word or expression bears the meaning ascribed to it in the Act.

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

## **1. Purpose**

This Note provides guidance on the interpretation and application of the “funding” requirement in section 30B(2)(b)(ix) for an entity to be approved by the Commissioner, and to retain such approval for its receipts and accruals to qualify for exemption from normal tax under section 10(1)(d)(iii) or (iv).

The “funding” requirement is only one of a number of requirements, for purposes of section 30B, that must be included in the founding document. The other requirements are not addressed in this Note.

## 2. Background

The entities referred to in section 30B<sup>1</sup> fall outside the scope and income tax rules for public benefit organisations<sup>2</sup> and recreational clubs.<sup>3</sup> The entities contemplated in section 30B are membership based and exist for the benefit of their members.

The definition of “entity” in section 30B(1) provides for two distinct categories, comprising –<sup>4</sup>

- mutual loan associations, fidelity or indemnity funds, trade unions, chambers of commerce or industry and local publicity associations;<sup>5</sup> and
- professional bodies.<sup>6</sup>

The respective entities are diverse in nature but have in common that they usually do not have a profit motive nor do they provide any monetary gain or material advantage for their individual members. Even though these entities are established to conduct their activities with and for the benefit of their members, they are not prohibited from dealing with non-members within certain parameters.

These entities are usually funded –

- by membership fees, subscriptions, or contributions paid by members for the right to belong to the entity, to enjoy the benefits and privileges attached to such membership, as well as products and services integral and directly connected to the sole or principal object for which the particular entity is established as set out in its founding document (see 5.2.2), or
- from an appropriation by the government (see 5.2.4).

The approval under section 30B(2) is limited to those entities that can demonstrate that substantially the whole (see 5.2.1) of their activities are undertaken for the benefit of their members<sup>7</sup> and not undertaken for gain as a trade or business.

## 3. General description of certain terminology in the context of section 30B(1)

The entities referred to in the definition of “entity” in section 30B(1) are not defined in the Act with the exception of a mutual loan association. SARS has formulated descriptions based on literature reviewed that includes, amongst other things, research documents, reports and other web sources. The following entities are therefore described as follows:

- **“Chamber of commerce or industry (or an association of such chambers)”** referred to in paragraph (a) of the definition of “entity” in

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<sup>1</sup> Section 30B was inserted by section 55(1) of the Taxation Laws Amendment Act 7 of 2010 with effect from 2 November 2010, the date of promulgation of that Act.

<sup>2</sup> Section 30 provides for the approval of an organisation as a public benefit organisation. For more information see, *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

<sup>3</sup> Section 30A provides for the approval of an organisation as a recreational club. For more information see, *Tax Guide for Recreational Clubs*.

<sup>4</sup> See *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2010* in paragraph 3.4.

<sup>5</sup> Paragraph (a) of the definition of “entity” in section 30B(1).

<sup>6</sup> Paragraph (b) of the definition of “entity” in section 30B(1).

<sup>7</sup> Under section 30B(2)(b)(vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group.

section 30B(1) has as its sole or principal object the promotion, regulation and protection of the interests of the local business community and whose members comprise local business persons.

- **“Fidelity or indemnity fund”** referred to in paragraph (a) of the definition of “entity” in section 30B(1) has as its sole or principal object to indemnify or compensate any third party that suffers a loss or damages in consequence of any act or omission of a member of that fund in the rendering of a particular service by that member to that third party.
- **“Local publicity association”** referred to in paragraph (a) of the definition of “entity” in section 30B(1) has as its sole or principal object to advertise and promote a particular local city, town, district or area to attract trade, tourism, visitors or industry.
- **“Trade union”** referred to in paragraph (a) of the definition of “entity” in section 30B(1) functions as a representative body of workers in a certain sector, industry or commerce whose sole or principal object is to promote, protect and advance workers’ interests, rights and working conditions in the workplace whether individually or collectively.
- **“Any non-profit company,<sup>8</sup> society<sup>9</sup> or other association of persons<sup>10</sup> established to promote the common interests of persons, being members of such company, society or association of persons, carrying on any particular kind of business, profession or occupation”** referred to in paragraph (b) of the definition of “entity” in section 30B(1) is referred to in this Note as a professional body. Normally a professional body is a representative or regulatory body of members of a business, profession or occupation that acts as an official mouthpiece, lobbyist and sets standards and qualifications for that particular business, profession or occupation. For example, a professional body for lawyers, engineers, architects, accountants, scientists or medical practitioners.

#### 4. The law

The relevant sections of the Act are quoted in **Annexure A**.

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<sup>8</sup> The term “non-profit company” is defined in section 1 of the Companies Act 71 of 2008 and means “a company (a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and (b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1”.

<sup>9</sup> The word “society” is described in the *Free Dictionary* as “a group of people broadly distinguished from other groups by mutual interests, participation in characteristic relationships, shared institutions, and a common culture” and “an organisation or association of persons engaged in a common profession, activity or interest”. See [www.thefreedictionary.com/society](http://www.thefreedictionary.com/society) [Accessed 12 March 2020].

<sup>10</sup> An association of persons contemplated in paragraph (b)(iii) of the definition of “entity” in section 30B(1) is generally established or formed by adopting a legal founding document. See GJ Pienaar “Formation” 2 (Third Edition Volume) *LAWSA* [online] (My LexisNexis: 28 February 2015) in paragraph 155.

## 5. Application of the law

### 5.1 Introduction

Section 30B(2) stipulates that the Commissioner must approve an entity for purposes of the exemption from normal tax under section 10(1)(d)(iii) or (iv) if –

- that entity has submitted to the Commissioner a copy of its founding document;<sup>11</sup> and
- the founding document provides for all the requirements set out in section 30B(2)(b).

If the founding document of an entity does not provide for the requirements set out in section 30B(2)(b), the entity will under section 30B(4), be deemed to comply if the person who has accepted fiduciary responsibility for the funds and assets of the entity, furnishes the Commissioner with a written undertaking<sup>12</sup> that the entity will be administered in compliance with that section.

The exemption granted under section 10(1)(d)(iii) or (iv) is an absolute exemption, that is, the total amount, in cash or otherwise, received by or accrued to or in favour of an entity will be exempt from normal tax. The type of “receipts and accruals” envisaged are those included in the definition of “gross income” in section 1(1). Receipts and accruals of a capital nature that are not deemed to be included in gross income would therefore not be included in the receipts and accruals referred to in the opening words of section 10(1)(d) since they do not require exemption.

### 5.2 The “funding” requirement

#### 5.2.1 Meaning of “substantially the whole”

Section 30B(2)(b)(ix) prescribes that substantially the whole of an entity’s funding must be derived from its annual [see **5.2.3 (a)**] or other long-term members [see **5.2.3 (b)**] or from an appropriation by the government (see **5.2.4**).

The use of the disjunctive word “or” means that substantially the whole of an entity’s funding must be derived from either one or a combination of the above-specified sources.

*Substantially the whole* of the entity’s funding must be derived from its annual **or** other long-term members **or** from an appropriation by the government to ensure the entities approved by the Commissioner do not enjoy an unfair advantage over other taxable entities conducting similar income-generating activities and to permit small-scale self-sustainability [see **5.2.2 (b)**].

The expression “substantially the whole” is not defined in the Act. In Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’ ” it is stated that in the strict sense the expression “substantially the whole” is regarded by SARS to mean 90% or more. However, since the entities contemplated in section 30B operate in an uncertain environment making proper planning difficult, SARS will accept a percentage of not less than 85%.

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<sup>11</sup> Section 30B(2)(a).

<sup>12</sup> A specimen written undertaking form EI 2A is available to assist persons accepting fiduciary responsibility to administer an entity in accordance with the prescribed requirements of section 30B.

The gross income, that is, the total of all revenue received by an entity for a particular year of assessment<sup>13</sup> before the deduction of any expenses or allowable deductions must be used to calculate whether an entity complies with the “substantially the whole” funding requirement. See **Annexure B** for examples providing a step-by-step approach for calculating “substantially the whole” of an entity’s funding to determine compliance with the “funding” requirement.

Non-compliance with the “substantially the whole” funding requirement will result in an entity not being approved under section 30B(2) or may result in an entity that has been approved by the Commissioner losing its tax-exempt status and being regarded as a taxable entity subject to normal tax (see **6**).

### 5.2.2 Meaning of “funding”

The word “funding” is not defined in the Act. The method of attributing meaning to the words used in legislation involves, as a point of departure, examining the language of the provision at issue, the language and design of the statute as a whole and its statutory purpose.<sup>14</sup> In *C: SARS v Dunblane (Transkei) (Pty) Ltd*<sup>15</sup> the court held that words in a section of an Act of Parliament must not be looked at in isolation but in the context in which they are found, both in the immediate context of the sub-section in which they occur and in the general context of the Act.

The term “funding” is described in *Dictionary.com* as –<sup>16</sup>

“funds, money immediately available; pecuniary resources”.

The *Business Encyclopedia* explains the meaning of “funding” as follows:<sup>17</sup>

“The term funding refers simply to money the organization designates (budgets) for specific purposes, such as capital spending or an organization's operating budget.”

Having regard to the above, the word “funding” in section 30B(2)(b)(ix) refers to the financial resources an entity requires to finance its activities in the furtherance of its sole or principal object for which it has been established as set out in its founding document and under which it has obtained approval from the Commissioner.

Funding from members is not limited only to membership fees or subscriptions.

#### (a) Products and services

Funding can be derived from the provision to members of products and services for which members may pay an additional fee for such products and services or that may be included in their membership fee or subscription.

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<sup>13</sup> The term “year of assessment” is defined in section 1(1). 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” and Interpretation Note 19 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date Other Than the Last Day of February”.

<sup>14</sup> See *Chetty t/a Nationwide Electrical v Hart & another* 2015 (6) SA 424 (SCA).

<sup>15</sup> 2002 (1) SA 38 (SCA), 64 SATC 51 at 57.

<sup>16</sup> [www.dictionary.com/browse/funding](http://www.dictionary.com/browse/funding) [Accessed 12 March 2020].

<sup>17</sup> [www.business-case-analysis.com/funds-funding.html](http://www.business-case-analysis.com/funds-funding.html) [Accessed 12 March 2020].

It would, however, be expected that such products and services provided by an entity to its members must be integral and directly connected<sup>18</sup> to the sole or principal object for which the entity is established and meet the “substantially the whole” funding requirement.

The word “integral” is described in *Dictionary.com* as –<sup>19</sup>

- “1. of, relating to, or belonging as a part of the whole; constituent or component: integral parts.
2. necessary to the completeness of the whole.
3. consisting or composed of parts that together constitute a whole.
4. entire; complete; whole”.

The *Cambridge Dictionary* describes “directly” as –<sup>20</sup>

“without anything else being involved or in between”.

A product or service is not connected to an entity’s exempt sole or principal object if it does not directly contribute to achieving the sole or principal object of the entity. Whether an activity contributes to achieving its sole or principal object, will depend on the facts of each case. The size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function that they intend to serve to determine whether those activities contribute directly to achieving the exempt sole or principal object of an entity.

#### **Example 1 – Examples of products and services entities could provide to members**

The following are non-exhaustive examples of products and services that can be provided at a fee to members by various entities that may be integral and directly connected to the object for which such entities are established:

- A local businessperson may become a member of a local publicity association to enjoy the benefit of being listed on the local business directory available on the internet, enabling access to advertising opportunities, and to establish and maintain contacts through networking opportunities beneficial to that businessperson.
- A local businessperson may become a member of a chamber of commerce or industry to obtain business, trade, legal, labour and taxation information, advice and assistance, and network with other local business stakeholders and foreign delegates and dignitaries to enhance the person’s business performance and profile.

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<sup>18</sup> See *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 for the meaning of “directly connected”.

<sup>19</sup> [www.dictionary.com/browse/integral](http://www.dictionary.com/browse/integral) [Accessed 12 March 2020].

<sup>20</sup> <https://dictionary.cambridge.org/dictionary/english/directly> [Accessed 12 March 2020].

- A professional person may become a member of a professional body to participate in seminars, webinars, workshops and other training activities aimed at enhancing the particular skills and expertise required in that particular profession or industry thus ensuring development and enabling the person to remain up-to-date with policies and practices within that particular profession or industry.
- An employee may become a member of a trade union to gain access to legal advice and assistance should a dispute arise with that member's employer.

### **(b) Other sources of funding**

This Note does not discuss all the sources of funding which an entity may receive. It is, however, important to determine the source of the entity's funding. For example, employers often pay an employee's annual membership fee to a professional body, especially if such membership is a prerequisite of the employee's employment, such as a medical practitioner's membership of the Health Professions Council of South Africa. In such an instance, the entity's funding is derived from the member notwithstanding payment by the employer. The facts and circumstances of each case will determine whether the funding was received from annual or other long-term membership or from an appropriation by the government.

Investment income<sup>21</sup> earned on funds or capital is not directly related to an entity's annual or long-term members or from an appropriation by the government regardless of whether the funds invested were originally derived from members or from an appropriation by the government.<sup>22</sup> Investment income is regarded as funding derived from a source other than the specified sources (see **Examples 2** and **3** in **Annexure B**).

Other sources of funding, for example, may include funding derived from non-members or funding derived from activities that are not directly connected to the sole or principal object for which such an entity has been established. Such sources could include income derived from the running of a canteen, cafeteria, or rentals from the investment of surplus capital in immovable property such as holiday accommodation or residential property.

Importantly, for purposes of the "funding" requirement the sum of all the different sources of funding, other than from the specified sources, may not exceed 15% of the total funding derived by an entity. Should the 15% threshold be exceeded, it will result in an entity not being approved or may result in an entity losing its approval and tax-exempt status and being regarded as a taxable entity subject to normal tax (see **Example 3** in **Annexure B**).

### **5.2.3 Membership**

The relief under section 10(1)(d)(iii) and (iv) for entities approved under section 30B(2) is aimed at entities having membership. The members can be either annual or other long-term members.

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<sup>21</sup> An entity is restricted in the amount of funding it may invest. See section 30B(2)(b)(iv).

<sup>22</sup> See *Western Platinum Ltd v C: SARS* [2004] 4 All SA 611 (SCA), 67 SATC 1.



The Act does not define a member with the exception of defining the term “member” in section 30B(1) for purposes only of a fidelity or indemnity fund. This definition also does not define a member as such but merely states that a member includes a contributor to that fund.<sup>23</sup>

The ordinary meaning of the word “member” is described in *Oxford Dictionary, Thesaurus and Wordpower Guide* as –<sup>24</sup>

“a **person or organisation** belonging to a group or society”.

(Emphasis added.)

For purposes of the “funding” requirement, a member is not limited to only a natural person but may also include a juristic person. A juristic person is a legal entity that is separate and distinct from its members such as a company or close corporation.

LAWSA provides the following information relating to the membership of associations:<sup>25</sup>

“The rules of an association determine in the first instance which persons are eligible for membership of the association, . . . .

The rules of an association will usually set out the procedure which must be followed before prospective members are admitted. This could take the form of a written application coupled with formal notification of acceptance from the management committee, the payment of the prescribed membership fee and the placing of a new member’s name on the membership list.

The rights and duties which stem from membership depend on the provisions of the constitution. Generally speaking, members are, *inter alia*, entitled to enjoy the amenities and other privileges provided by the organisation. In turn, they must pay entrance and subscription fees or levies which may be called for under the constitution.”

Normally membership is granted if the particular qualifying criteria and requirements relating to membership of the entity are complied with. The qualifying criteria and requirements as well as the membership categories a member may qualify for will differ from entity to entity. A member may or may not be required to pay a registration, joining or entrance fee, a membership fee, or a subscription to belong to an entity. The membership fees or subscriptions applicable to a particular membership category may also vary from entity to entity. The founding document of an entity will normally set out the requirements and conditions for that entity’s membership (see **Example 3** in **Annexure B**).

Section 30B does not prescribe a minimum or maximum number of members that should belong to an entity or a minimum membership period. Section 30B, however, does require that an entity must at least have members who qualify for annual or other long-term membership.

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<sup>23</sup> Section 30B(1).

<sup>24</sup> M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus and Wordpower Guide* (2001) Oxford University Press.

<sup>25</sup> GJ Pienaar “Incidents of Membership” 2 (Third Edition Volume) LAWSA [online] (My LexisNexis: 28 February 2015) in paragraphs 162 to 164.

**(a) Annual members**

The word “annual” is described in the *Oxford Dictionary, Thesaurus and Wordpower Guide* as –<sup>26</sup>

“occurring or recurring once in each year; continuing for the period of a year”.

The word “annual” referred to in the “funding” requirement means lasting for a year, that is, a period of 12 months.

The annual period is not required to coincide with a calendar year, the financial year or year of assessment of an entity.

An entity should therefore provide for annual membership but if a member signs up for an annual membership in the middle of a year, that membership fee will be included in the “substantially the whole” calculation even though it is not in relation to a period of 12 months.

The requirement is that an entity must provide for an annual membership category and that substantially the whole of an entity’s funding must be derived from such annual or other long-term members or from an appropriation by the government (see **5.2.4**).

**(b) Other long-term members**

The word “long-term” is described in *Lexico Dictionaries* as –<sup>27</sup>

“occurring over or relating to a long period of time.”

It is a requirement that substantially the whole of an entity’s funding must be derived from its annual or other long-term members or from an appropriation by the government.

Since section 30B distinguishes between annual and long-term members, it can be inferred that long-term membership must run for a period longer than a year and that membership in general must not run for a period of less than 12 months.

**5.2.4 Appropriation by the government**

An entity will meet the “funding” requirement even though substantially the whole of its funding is not derived from annual or other long-term members, but from an appropriation by the government of the Republic in the national, provincial or local sphere. The “funding” requirement will also be met if at least 85% of an entity’s funding is derived from a combination of its annual or long-term members and from an appropriation by the government (see **Example 4** in **Annexure B**).

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<sup>26</sup> M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus and Wordpower Guide* (2001) Oxford University Press.

<sup>27</sup> [www.lexico.com/definition/long-term](http://www.lexico.com/definition/long-term) [Accessed 12 March 2020].

**(a) Meaning of “government”**

Government is understood as the governing body of a state<sup>28</sup> and is the exclusive power in which the administration of a state is vested. The government of South Africa is according to the Constitution<sup>29</sup> constituted as national,<sup>30</sup> provincial<sup>31</sup> and local<sup>32</sup> spheres of government<sup>33</sup> that are distinctive, interdependent and interrelated. The different levels of government thus all have legislative and executive authority in their own spheres. The Constitutional Court held in *Minister of Defence and Military Veterans v Thomas*<sup>34</sup> that within its constitutional sphere of competence each sphere of government reigns supreme.

The national sphere of government is the central government administration and consists of the national parliament and the different state departments as determined by the President.<sup>35</sup> The provincial sphere of government consists of the nine provincial legislatures and the respective provincial departments.<sup>36</sup> The local sphere of government consists of municipalities.<sup>37</sup>

Entities granted approval by the Commissioner under section 30B(2) are placed in a favourable position because their receipts and accruals are exempt under section 10(1)(d)(iii) or (iv). The courts have tended to reject a construction of a statutory provision that implies the extension of a class privilege and to interpret it strictly.<sup>38</sup> It is for this reason that the word “government” referred to in section 30B(2)(b)(ix) must be interpreted strictly so as not to include any other state entities, for example, entities established as agents of the government or organs of state.<sup>39</sup>

**(b) Meaning of an “appropriation” by the government**

The word “appropriation” referred to in the “funding” requirement is not defined in the Act. It is described in *Dictionary.com* as –<sup>40</sup>

- “1 the act of appropriating.
- 2 anything appropriated for a special purpose, especially money.
- 3 an act of a legislature authorizing money to be paid from the treasury for a specified use”.

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<sup>28</sup> [www.lexico.com/en/definition/government](http://www.lexico.com/en/definition/government) [Accessed 12 March 2020].

<sup>29</sup> Section 40(1) of the Constitution.

<sup>30</sup> Chapter 5 of the Constitution.

<sup>31</sup> Chapter 6 of the Constitution.

<sup>32</sup> Chapter 7 of the Constitution.

<sup>33</sup> The receipts and accruals of the government of South Africa in the national, provincial or local sphere are exempt from normal tax under section 10(1)(a).

<sup>34</sup> 2016 (1) SA 103 (CC).

<sup>35</sup> See Schedule 1 to the Public Service Act 103 of 1994 for a list of National Departments.

<sup>36</sup> See Schedule 2 to the Public Service Act 103 of 1994 for a list of Provincial Departments.

<sup>37</sup> The Local Government: Municipal Structures Act 117 of 1998 regulates the establishment of municipalities.

<sup>38</sup> This rule was laid down in *Ernst v CIR* 1954 (1) SA 318 (A), 19 SATC 1 and approved in *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at page 182 and *Western Platinum Ltd v C: SARS* [2004] 4 All SA 611 (SCA), 67 SATC 1 at page 6.

<sup>39</sup> See paragraph (b) of the definition of “organ of state” in section 239 of the Constitution.

<sup>40</sup> [www.dictionary.com/browse/appropriation](http://www.dictionary.com/browse/appropriation) [Accessed 12 March 2020].

Any funds specifically allocated to an entity by any sphere of government will be regarded as an appropriation by the government as contemplated in the “funding” requirement.

## 6. Withdrawal of approval

The Commissioner may withdraw the approval if an entity, in any year of assessment in any material respect or on a continuous or repetitive basis, fails to comply with section 30B or with its founding document as it relates to that section.<sup>41</sup> Notice must, however, first be given to the transgressing entity to take corrective steps within a specified period. If no corrective steps have been taken by the entity within this period, the approval will be withdrawn from the beginning of the year of assessment in which the non-compliance or failure by the entity occurred.<sup>42</sup>

On withdrawal of its approval, the affected entity must transfer or take reasonable steps to transfer its remaining assets within six months or a longer period allowed by the Commissioner to specified entities.<sup>43</sup> Failure to do so will result in the inclusion of an amount in its taxable income.<sup>44</sup>

A detailed discussion of the consequences of the withdrawal of an entity's approval does not form part of the scope of this Note.

## 7. Objection and appeal

Any decision in the exercise of the Commissioner's discretion under section 30B is subject to objection and appeal.<sup>45</sup> An entity may object within 30 business days<sup>46</sup> from the date of a decision by the Commissioner in accordance with Chapter 9 of the TA Act read with the “rules” as published in the *Government Gazette*.<sup>47</sup> The objection must be made on the prescribed form and specify in detail the grounds on which it is made.<sup>48</sup>

If, on disallowance of the objection, the entity 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.<sup>49</sup>

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<sup>41</sup> Section 30B(5).

<sup>42</sup> Section 30B(6).

<sup>43</sup> Section 30B(7).

<sup>44</sup> Section 30B(9).

<sup>45</sup> See section 3(4)(b).

<sup>46</sup> The term “business day” is defined in section 1 of the TA Act.

<sup>47</sup> 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.

<sup>48</sup> Rule 7(2).

<sup>49</sup> Rule 10.

## 8. Record-keeping

A person must keep the records, books of account or documents that –<sup>50</sup>

- enable the person to observe the requirements of a tax Act;
- are specifically required under a tax Act or by the Commissioner by public notice; and
- enable SARS to be satisfied that the person has observed these requirements.

The records must be kept or retained in –<sup>51</sup>

- their original form in an orderly fashion and in a safe place;
- the form, including electronic form,<sup>52</sup> as may be prescribed by the Commissioner in a public notice;<sup>53</sup> or
- a form specifically authorised by a senior SARS official.

These records should be retained for five years, and be available for inspection purposes by a SARS official to verify compliance with the requirements as explained above, or for purposes of an inspection, audit or investigation.<sup>54</sup>

Records that are relevant to an audit or investigation or an objection or appeal must be retained until the audit or investigation is concluded or until the assessment or the decision becomes final in the case of an objection or appeal (in case the five-year retention period is exceeded).<sup>55</sup>

## 9. Conclusion

In order to be approved under section 30B(2), an entity must satisfy the Commissioner that, amongst other things, substantially the whole of its funding is derived from its annual or other long-term members or from an appropriation by the government.

An entity bears the onus of proving that it complies with the requirements relative to the approval as discussed in this Note<sup>56</sup> and must retain the necessary evidence to support the view taken.<sup>57</sup> The burden may be discharged by way of supporting evidence submitted by the entity, provided such evidence is reasonable.

It is a factual enquiry whether an entity complies with the “funding” requirement and since the facts and circumstances pertaining to each entity differ, each case will be considered on its own merits.

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<sup>50</sup> Section 29(1) of the TA Act.

<sup>51</sup> Section 30(1) of the TA Act.

<sup>52</sup> See *Electronic Communications Guide* for more information.

<sup>53</sup> See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

<sup>54</sup> Section 31 of the TA Act.

<sup>55</sup> Section 32 of the TA Act.

<sup>56</sup> Section 102 of the TA Act.

<sup>57</sup> Section 29 of that Act.

## Annexure A – The law

### Section 10(1)(d)(iii) and (iv)

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

- (d) the receipts and accruals of any—
  - (i) . . . . .
  - (ii) . . . . .
  - (iii) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner in terms of section 30B; or
  - (iv) company, society or other association of persons established to—
    - (aa) . . . . .
    - (bb) promote the common interests of persons (being members of such company, society or association of persons) carrying on any particular kind of business, profession or occupation,  
approved by the Commissioner in terms of section 30B;

### Section 30B

**30B. Associations.**—(1) For the purposes of this section—

“entity” means—

- (a) any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association; or
- (b) any—
  - (i) non-profit company as defined in section 1 of the Companies Act;
  - (ii) society; or
  - (iii) other association of persons,  
established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation,

approved by the Commissioner in accordance with subsection (2);

“member” in the case of a fidelity or indemnity fund includes a contributor to that fund;

“mutual loan association” means an association of which the sole or principal object is to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of those members.

(2) Subject to subsections (3) and (4), the Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if—

- (a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;
- (b) the constitution or written instrument contemplated in paragraph (a) provides that—
  - (i) the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;

- (ii) no single person may directly or indirectly control the decision-making powers relating to that entity;
- (iii) the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
- (iv) the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
- (v) no member may directly or indirectly have any personal or private interest in that entity;
- (vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
- (vii) the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;
- (viii) the entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- (ix) substantially the whole of the entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;
- (x) the entity must as part of its dissolution transfer its assets to—
  - (aa) another entity approved by the Commissioner in terms of this section;
  - (bb) a public benefit organisation approved in terms of section 30;
  - (cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or
  - (dd) the government of the Republic in the national, provincial or local sphere;
- (xi) the persons contemplated in paragraph (b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
- (xii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
- (xiii) the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5).

(3) The requirements contained in subsection (2)(b)(iii) and (v) do not apply in respect of a mutual loan association.

(4) Where the constitution or written instrument of an entity does not comply with subsection (2)(b), the Commissioner may deem it to so comply if the person who has accepted fiduciary responsibility for the funds and assets of that entity furnishes the Commissioner with a written undertaking that the entity will be administered in compliance with that subsection.

(5) Where the Commissioner is—

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

failed to comply with this section, or the constitution or written instrument under which it was established to the extent that it relates to this section, the Commissioner must notify the entity that he or she intends to withdraw approval of the entity if corrective steps are not taken by the entity within the period stated in the notice.

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

(7) If the Commissioner has withdrawn the approval of an entity as contemplated in subsection (6) the entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).

(8) If an entity is wound up or liquidated, the entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).

(9) If an entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (8), an amount equal to the market value of those assets which have not been transferred less an amount equal to the bona fide liabilities of that entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that entity during the year of assessment in which the withdrawal of approval in terms of subsection (6) or the winding-up or liquidation contemplated in subsection (8) took place.

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



**Annexure B – Calculation of “substantially the whole” funding requirement**

The following examples provide a step-by-step approach to calculate “substantially the whole” to determine compliance with the “funding” requirement.

**Example 2 – Calculation of “substantially the whole” funding requirement***Facts:*

According to its founding document, ABC’s object is to promote the interests of its members who are engineers. This object is achieved by advocating and lobbying legislation affecting the engineering profession, providing research, publishing journals, books, pamphlets or other publications, providing learning including examinations, regular conferences and workshops and other professional development, promoting and ensuring a high standard of professional behaviour by members in order to preserve and maintain the integrity and status of the profession.

Membership of ABC is open to all individuals and bodies that have an interest in the goals of ABC. The Executive Committee of ABC considers applications for membership.

ABC has the following five membership categories:

**1. Honorary membership**

ABC’s Executive Committee may bestow such membership on a person who in its opinion has made a valuable contribution to the advancement of engineering. A member will retain such membership for life. Membership fees will be 50% of the annual ordinary membership fee.

**2. Ordinary membership**

Any individual who has an interest in the mission and goals of ABC.

**3. Affiliated membership**

Open to companies, societies or other organisations having an interest in the aims of ABC.

**4. Senior membership**

Any member who has reached the age of 65 and who was a member for 10 years before turning 65 may apply for senior membership of the entity.

**5. Student membership**

A person will qualify for student membership only if the person is a full-time registered engineering student up to and including Masters studies at a South African higher educational institution. Doctoral students will be registered as ordinary members.

Membership lasts from 1 January to 31 December. Membership is automatically renewed by payment of membership fees before 31 March of each year except for student membership, which is granted on an annual basis (proof of student registration is a requirement for annual membership).

The membership fees for the relevant membership categories are as follows:

	R
Honorary member	1 150
Ordinary member	2 300
Affiliate member	4 600
Senior member	600
Student member	200

The current membership of ABC and membership fees derived from its annual or other long-term members amounting to R1 567 200 is constituted as follows:

	R
350 Student members	<u>70 000</u>
Total membership fees derived from annual members	<u>70 000</u>
28 Honorary members	32 200
320 Ordinary members	736 000
150 Affiliate members	690 000
65 Senior members	<u>39 000</u>
Total membership fees derived from other long-term members	<u>1 497 200</u>

The total amount received or accrued for the year of assessment is R3 217 200 and comprises the following:

	R
Membership fees	1 567 200
Seminars and courses	700 000
Registration and entrance fees	200 000
Training and examination fees	<u>350 000</u>
Total funding derived from annual or other long-term members	<u>2 817 200</u>
Investment income	300 000
Seminar and course fees derived from non-members	<u>100 000</u>
Total funding derived from sources other than from members	<u>400 000</u>

ABC applied to the Commissioner for approval under section 30B(2) for its receipts and accruals to be exempt from normal tax under section 10(1)(d)(iv).

*Result:*

Total funding derived from members / Total funding × 100% must not be less than 85%.

$$R2\,817\,200 / (R2\,817\,200 + R400\,000) \times 100\% = 88\%$$

ABC derives 88% of its funding from its annual or other long-term members. ABC therefore complies with the “substantially the whole” funding requirement under section 30B(2)(b)(ix).

The Commissioner may approve ABC for purposes of section 10(1)(d)(iv) if all the requirements of section 30B(2) have been met.

**Example 3 – Calculation of “substantially the whole” funding requirement***Facts:*

XYZ is an employee organisation registered as a trade union under the Labour Relations Act 66 of 1995. The aims and objects of XYZ include, amongst other things, to promote the interests of its members, to improve wage and workplace conditions, to contest arbitrary and unfair dismissal of its members, and to provide legal assistance in matters relating to members' employment. XYZ has been approved by the Commissioner under section 30B(2), as XYZ is a trade union and qualifies as an “entity” under paragraph (a) of the definition of “entity” in section 30B(1). The receipts and accruals of XYZ are therefore exempt from income tax under section 10(1)(d)(iii).

The following receipts and accruals are reflected for a year of assessment:

	R
Annual members	20 000 000
Other long-term members	<u>100 000 000</u>
Total membership fees	120 000 000
Agency fees (see <b>Note 1</b> )	30 000 000
Commission received (see <b>Note 2</b> )	10 000 000
Rental income (see <b>Note 3</b> )	300 000
Sale of branded merchandise to members	30 000 000
Donations received from members	400 000
Investment income	400 000
Advertisements	<u>200 000</u>
Total receipts and accruals	<u>191 300 000</u>

**Notes:**

1. An agency shop agreement with the employer has been concluded. Agency fees are therefore deducted by the employer from the wages of employees who are non-members of XYZ.
2. XYZ, in addition to its core business as a trade union as set out in its founding document, also offers its members a range of services and products through various service providers at discounted rates. Services and products include, for example, insurance products, funeral schemes and services, personal loans, financing for studies and healthcare-related products. XYZ receives commission from the various service providers when members invest in or purchase such services and products.
3. Rental income is derived from letting holiday accommodation to members.

*Result:***Step 1: Identify receipts and accruals derived from members**

	R
Membership fees	120 000 000
Sale of branded merchandise to members	30 000 000
Donations received from members	<u>400 000</u>
Total receipts and accruals from members	<u>150 400 000</u>

**Step 2: Calculate whether substantially the whole of XYZ's funding is derived from its members**

Total funding derived from members / Total funding × 100% must not be less than 85%.

R150 400 000 / R191 300 000 × 100% = 79%.

XYZ derives 79% of its funding from its annual or other long-term members. XYZ therefore does not comply with the “substantially the whole” funding requirement. Although some of the funds, such as rental income from holiday accommodation, were derived directly from members, this source is not directly connected to the sole or principal object for which XYZ is established and can therefore not be included in the “total funding derived from members” element in the “substantially the whole” funding calculation. XYZ does not comply with the “funding” requirement for this particular year of assessment.

**Example 4 – Substantially the whole of an entity's funding derived from a combination of an appropriation by the local sphere of government and from its members***Facts:*

A local publicity association has been formed to promote, advertise and develop a small town in the Eastern Cape to attract trade, tourism, and commerce or industry within that particular town.

Municipality X has an interest in attracting investment to the town that is under its jurisdiction. Furthermore, Municipality X has a responsibility to support the growth of local enterprises through small business coalitions and also to develop and attract tourism to that particular town. Municipality X has made funds available to the local publicity association to achieve these objectives.

The local publicity association used the funds to develop a website, brochure and a guide listing and advertising the local businesses, artists and crafters as well as promoting the local attractions in the area such as the wildlife, birds, plants and the Karoo landscape in general as well as the local attractions and museums.

The local publicity association derives 95% of its funding from the municipality and 5% from contributions from its annual or other long-term members comprising interested individuals and businesses who have a direct interest in the town.

*Result:*

The local publicity association qualifies as an “entity” under paragraph (a) of the definition of that term in section 30B(1). It will meet the “funding” requirement under section 30B(2)(b)(ix), since substantially the whole of its funding is derived from a combination of an appropriation from the local sphere of government (95%) and from its members (5%).