

DRAFT INTERPRETATION NOTE X

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 1(1) AND 10(1)(i)(ix)
SUBJECT : INCOME TAX EXEMPTION: WATER SERVICES PROVIDER

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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;
- “**Companies Act**” means the Companies Act 71 of 2008;
- “**Minister**” means the Minister of Water and Sanitation;¹
- “**PFMA**” means the Public Finance Management Act 1 of 1999;
- “**section**” means a section of the Act;
- “**STT**” means securities transfer tax;
- “**STT Act**” means the Securities Transfer Tax Act 25 of 2007;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**the Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Transfer Duty Act**” means the Transfer Duty Act 40 of 1949;
- “**water services provider**” has the meaning as defined in section 1(1);
- “**Water Act**” means the repealed Water Act 54 of 1956;²
- “**Water Services Act**” means the Water Services Act 108 of 1997; and
- any other word or expression bears the meaning ascribed to it in the Act.

All amendment laws, declarations, explanatory memoranda, *Government Gazettes* relating to income tax, guides, and public notices referred to in this Note are the latest versions, unless otherwise indicated, which are available on the SARS website at www.sars.gov.za or on request via eFiling at www.sarsefiling, whichever is applicable.

¹ The definition of the term “Minister” in section 1 of the Water Services Act refers to the former Minister of Water Affairs and Forestry.

² Section 84(1) of the Water Services Act repealed sections 26A to 26H and sections 107 and 138 of the Water Act, as listed in Schedule 2 to that Act, with effect from 19 December 1997. The remainder of the Water Act, with exception of the sections listed in Schedule 7 to the Water Services Act, were repealed by section 163(1) of the National Water Act 36 of 1998 with effect from 1 October 1998.

1. Purpose

This Note provides guidance on the interpretation and application of the definition of “water services provider” in section 1(1) for purposes of the exemption of the receipts and accruals of a qualifying water services provider from normal tax under section 10(1)(t)(ix).

2. Background

The Bill of Rights³ in the Constitution guarantees everyone the right to access to sufficient water.⁴ It is the responsibility of the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.⁵ To give effect to this constitutional responsibility the Water Services Act was promulgated.

Every water services authority⁶ under the Water Services Act has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services.⁷ The Water Services Act, amongst other things, provides for the monitoring of water services⁸ and intervention by the Minister or by the relevant Province⁹ to ensure that every water service institution complies with –

- all applicable national standards prescribed under that Act;
- all norms and standards for tariffs prescribed under that Act; and
- every applicable development plan, policy statement or business plan adopted under that Act.

To assist a water services provider to fulfil its obligations under the Constitution and the Water Services Act, section 10(1)(t)(ix) of the Income Tax Act exempts the receipts and accruals of any water services provider from normal tax provided certain requirements are met. This Note considers the requirements of the definition of “water services provider” to qualify for this exemption. The reporting obligations of a qualifying water services provider under the Act and the TA Act are also considered.

³ Chapter 2 of the Constitution.

⁴ Section 27(1)(b) of the Constitution. Also see, section 3 of the Water Services Act.

⁵ Section 27(2) of the Constitution.

⁶ A “water services authority” is defined in section 1 of the Water Services Act as any person that provides water services to consumers or to another water services institution but does not include a water services intermediary.

⁷ Section 11(1) of the Water Services Act.

⁸ The term “water services” as defined in section 1 of the Water Services Act means “water supply services and sanitation services”.

⁹ Sections 62 and 63 of the Water Services Act.

3. The law

Section 1(1) – Definition of “water services provider”

1. Interpretation.—(1) In this Act, unless the context otherwise indicates—

“water services provider” means a person who provides water supply services and sanitation services and who is—

- (a) a public entity regulated under the Public Finance Management Act;
- (b) a wholly owned subsidiary or entity of a public entity contemplated in paragraph (a) if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity;
- (c) a company as contemplated in paragraph (a) of the definition of “company”, which is wholly owned by one or more municipalities; or
- (d) a board or institution which has powers similar to a water board established in terms of the Water Services Act, 1997 (Act No. 108 of 1997), and would have fallen within the ambit of the definition of “local authority” prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006;

Section 10(1)(t)(ix)

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

- (t) the receipts and accruals—
 - (ix) of any water services provider;

Provided that any entity contemplated in this paragraph must comply with such reporting requirements as the Commissioner may determine;

4. Application of the law

The receipts and accruals of a person meeting the requirements of the definition of “water services provider” in section 1(1) (see **4.1**) are fully exempt from the payment of normal tax under section 10(1)(t)(ix) (see **5**). The exemption does not contain an approval requirement and is therefore not subject to the Commissioner’s discretion or approval. The exemption, however, is subject to the condition that a qualifying water services provider complies with reporting requirements determined by the Commissioner (see **7**).

4.1 Definition of “water services provider”

A “water services provider” means a person that provides water supply and sanitation services and that is constituted in one of the following ways:

- A public entity regulated under the PFMA (see **4.3.1**).¹⁰
- A wholly owned subsidiary or entity of a public entity mentioned in the bullet above if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity (see **4.3.2**).¹¹
- A company contemplated in paragraph (a) of the definition of “company” in section 1(1) that is wholly owned by one or more municipalities (see **4.3.3**).¹²

¹⁰ Paragraph (a) of the definition of “water services provider” in section 1(1).

¹¹ Paragraph (b) of the definition of “water services provider” in section 1(1).

¹² Paragraph (c) of the definition of “water services provider” in section 1(1).

- A board or institution having powers similar to a water board established under the Water Services Act and would have fallen within the definition of “local authority” in section 1(1) before its deletion by section 3(1)(h) of the Revenue Laws Amendment Act 20 of 2006 (see **4.3.4**).¹³

A person that has been constituted as stated above will only qualify as a water services provider for purposes of the Act and will be eligible for its receipts and accruals to be exempt from income tax under section 10(1)(t)(ix).

4.2 Provision of water supply services and sanitation services

The Act does not define “provides water supply services and sanitation services” referred to in the opening sentence of the definition of “water services provider”. The words should therefore be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.¹⁴

The *Cambridge English Dictionary* describes “provide” as –¹⁵

“to give someone something that they need”.

The *CollinsDictionary.com* describes “provide” as follows:¹⁶

“If you provide something that someone needs or wants, or if you provide them with it, you give it to them or make it available to them.”

Although the terms “water supply services” and “sanitation services” are not defined in the Act, they are defined in the Water Services Act. In *Minister of Defence and Military Veterans v Thomas*¹⁷ the Constitutional Court held that as a general rule it is not permissible to use the meanings attributed to words in other statutes as determinative in the interpretation of a different statute. Parliament defining a word used in a statute, is considered an indication that Parliament contemplated a special meaning assigned to the word and not an ordinary meaning. If, however, the other statutes traverse the same terrain, they might be relevant, but whether that is the case depends on their respective subject matter.

The purpose of the Water Services Act includes, amongst other things, to provide for the rights of access to basic water supply and basic sanitation, the setting of national standards and of norms and standards for tariffs, and a regulatory framework for water services institutions and water services intermediaries. Since the purpose of the Water Services Act and the definition of “water services provider” in the Income Tax Act traverse the same terrain, the definitions of “water supply services” and “sanitation services” in the Water Services Act are relevant and applicable as guidance of what is envisaged.

¹³ Paragraph (d) of the definition of “water services provider” in section 1(1).

¹⁴ Kellaway, E. A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills* at 224. Butterworth’s.

¹⁵ <https://dictionary.cambridge.org/dictionary/english/provide> [Accessed 3 May 2024].

¹⁶ www.collinsdictionary.com/dictionary/english/provide [Accessed 3 May 2024].

¹⁷ 2016 (1) SA 103 (CC).

The Water Services Act defines “water supply services”¹⁸ as –¹⁹

“the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use but not water for industrial use”.

“Sanitation services” is defined as –²⁰

“the collection, removal, disposal or purification of human excreta, domestic wastewater, sewage and effluent resulting from the use of water for commercial purposes”.

The managing of water supply and sanitation services is a complex process involving different institutions working together in a co-ordinated way. Any institution not functioning optimally will adversely affect the chain of service delivery, and constitutional rights of South Africans in the process.

Sanitation services are described by the Department of Water and Sanitation as follows:²¹

“[A] basic necessity contributing to human dignity and quality of life and is an essential pre-requisite for success in the fight against poverty, hunger, child deaths, gender inequality and empowerment. Sanitation services are reliant on water resources to address basic hygiene needs such as washing hands, in food preparation, cleaning of households, and the cleaning of sanitation systems. Water resources also play a vital role in the sustainable operation of many of the sanitation systems which are used in the country.”

To qualify as a “water services provider” and for its receipts and accruals to be exempt from normal tax under section 10(1)(t)(ix), the person must provide water supply and sanitation services as described above. The latter will be a factual determination of the person’s operations.

4.3 Person qualifying as a “water services provider”

The person qualifying under the definition “water services provider” for exemption under section 10(1)(t)(ix) must be constituted in one of the ways prescribed in the definition. These persons are generally considered to be quasi-government²² organisations. A municipality²³ providing water and sanitation services itself will not be exempt under section 10(1)(t)(ix) since the receipts and accruals of the government in the national, provincial or local sphere are exempt from normal tax under section 10(1)(a).

¹⁸ Section 1 of that Act.

¹⁹ The term “industrial use” as defined in section 1 of the Water Services Act means “the use of water for mining, manufacturing, generating electricity, land based [sic] transport, construction or any related purpose”.

²⁰ Section 1 of that Act.

²¹ National Sanitation Policy 2016 available at www.dws.gov.za/Documents/default.aspx?type=policy [Accessed 3 May 2024].

²² The *Merriam-Webster Dictionary* describes “quasi-governmental” as “supported by government but managed privately”. See www.merriam-webster.com/dictionary/quasi-governmental [Accessed 3 May 2024].

²³ The term “municipality” is defined in section 1(1), see commentary in 4.3.3.

4.3.1 A public entity regulated under the Public Finance Management Act

A person must be a public entity regulated under the PFMA and provide water supply and sanitation services to qualify as a “water services provider”.²⁴ The Minister may, by notice in the *Government Gazette*, classify public entities listed in Schedule 3 to the PFMA.²⁵

The objects of the PFMA are to ensure that revenue, expenditure, assets, and liabilities are managed efficiently and effectively.²⁶ The PFMA defines a “public entity” as a –²⁷ “national or provincial public entity”.

A national public entity²⁸ includes a –²⁹

- national government business enterprise,³⁰ which is a juristic person under the ownership control of the national executive³¹ that has been assigned financial and operational authority to carry on a business activity of providing goods or services in accordance with ordinary business principles, and is financed fully or substantially from sources except from the National Revenue Fund³² or by way of tax, levy or other statutory money;³³ or
- board, commission, company, corporation, fund or other entity established under national legislation³⁴ which is fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed under national legislation, and is accountable to Parliament.³⁵

A provincial public entity³⁶ includes a –³⁷

- provincial government business enterprise,³⁸ which is a juristic person under the ownership control of a provincial executive³⁹ that has been assigned financial and operational authority to carry on a business activity of providing goods or services in accordance with ordinary business principles and is

²⁴ Paragraph (a) of the definition of “water services provider” in section 1(1).

²⁵ See www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 3 May 2024].

²⁶ Section 2 of the PFMA.

²⁷ Section 1 of the PFMA.

²⁸ Listed in Part A of Schedule 3 to the PFMA.

²⁹ Section 1 of the PFMA.

³⁰ Listed in Part B of Schedule 3 to the PFMA.

³¹ Paragraph (c) of the definition of “executive authority” in section 1 of the PFMA. The executive authority in relation to a national public entity is the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls.

³² The term “Revenue Fund” in section 1 of the PFMA includes the National Revenue Fund mentioned in section 213 of the Constitution into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.

³³ See term “national government business enterprise” defined in section 1 of the PFMA.

³⁴ The term “national legislation” is defined in section 239 of the Constitution and generally means legislation made under an Act of Parliament.

³⁵ See the definition of “Parliament” in section 2 of the Interpretation Act. For further commentary on Parliament, see Chapter 4 of the Constitution.

³⁶ Listed in Part C of Schedule 3 to the PFMA.

³⁷ Section 1 of the PFMA.

³⁸ Listed in Part D of Schedule 3 to the PFMA.

³⁹ Paragraph (d) of the definition of “executive authority” in section 1 of the PFMA. The executive authority in relation to a provincial public entity is the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or in whose portfolio it falls.

financed fully or substantially from sources except from a Provincial Revenue Fund⁴⁰ or by way of a tax, levy or other statutory money;⁴¹ or

- board, commission, company, corporation, fund or other entity, which is established under legislation or a provincial constitution,⁴² is fully or substantially funded either from a Provincial Revenue Fund or by way of a tax, levy or other money imposed under legislation, and is accountable to a provincial legislature.⁴³

Public entities are classified into different Schedules to the PFMA based on their nature and level of autonomy. The public entities in the different Schedules to the PFMA are described by National Treasury⁴⁴ as follows:⁴⁵

“Schedule 2 entities are referred to as the major public entities and are intended to generate profits and declare dividends. These entities have the most autonomy of all the public entities, as they operate in a competitive marketplace and are run in accordance with general business principles.

Schedule 3B and 3D entities are referred to as government business enterprises. These entities generate income, but may be either substantially self-funded or substantially government funded. As a result they have less autonomy than the Schedule 2 public entities even though they are still run in accordance with general business principles.

The remaining public entities are classified as Schedule 3A and 3C entities. These entities are normally extensions of a public entity with the mandate to fulfil a specific economic or social responsibility of government. They rely on government funding and public money, either by means of a transfer from the Revenue Fund or through statutory money. As such, these entities have the least autonomy.”

The Schedules to the PFMA change, as new public entities are added, classified, re-classified, amalgamated or delisted.⁴⁶ The PFMA⁴⁷ applies, amongst other things, to public entities listed in Schedule 2 or 3 to that Act.

⁴⁰ The term “Revenue Fund” defined in section 1 of the PFMA includes a Provincial Revenue Fund mentioned in section 226 of the Constitution. Each province must establish a Provincial Revenue Fund into which all money received by the provincial government must be paid, except money reasonably excluded by an Act of Parliament.

⁴¹ See term “provincial government business enterprise” defined in section 1 of the PFMA.

⁴² The term “provincial legislation” is defined in section 239 of the Constitution and generally means legislation made under a provincial Act.

⁴³ For further commentary on the provincial legislature, see section 104(1) of the Constitution.

⁴⁴ A national treasury must be established by national legislation in accordance with section 216(1) of the Constitution. The national legislation must prescribe measures to ensure transparency and expenditure control in each sphere of government. The national legislation establishing National Treasury is the PFMA. The National Treasury is established under section 5 of the PFMA and is responsible for financial and fiscal matters as contemplated in section 6 of that Act.

⁴⁵ Annual Report Guide for Schedule 3A and 3C Public Entities available at www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 3 May 2024].

⁴⁶ See Chapter 6 of the PFMA.

⁴⁷ Section 3 of the PFMA.

The following associated public entities⁴⁸ of the Department of Water and Sanitation are currently listed in the Schedules to the PFMA:⁴⁹

- Trans-Caledon Tunnel Authority (Schedule 2: Major public entities).
- Breede-Gouritz Catchment Management Agency, Inkomati-Usuthu Catchment Management Agency and Water Research Commission (Schedule 3A: National public entities).
- Amatola Water Board, Bloem Water, Lepelle Northern Water, Magalies Water, Mhlathuze Water, Overberg Water, Rand Water and Umgeni Water (Schedule 3B: National government business enterprises).

Even though a public entity is regulated under the PFMA, it must in order to qualify as a “water services provider” provide water supply services and sanitation services (see 4.2) to be eligible for the exemption under section 10(1)(t)(ix). An entity regulated under the PFMA, which does not provide water supply services and sanitation services may, however, qualify for exemption under another section of the Act, if the requirements of that section are met. For example, an institution, board or body established by or under any law to conduct research and is regulated under the PFMA, which does not provide water and sanitation services, will not qualify for exemption under section 10(1)(t)(ix), but it may qualify for exemption under section 10(1)(cA)(i) if the requirements of that section are met.⁵⁰

4.3.2 Wholly owned subsidiary or entity of a qualifying public entity whose operations are ancillary or complementary to the operations of that public entity

A person that provides water supply and sanitation services that is a wholly owned subsidiary or entity of a public entity contemplated in paragraph (a) of the definition “water services provider” (see 4.3.1) and whose operations are ancillary or complementary to the operations of that public entity qualifies as a “water services provider”.⁵¹

The words “wholly owned subsidiary”, “entity”, “operations”, “ancillary” and “complementary” are not defined in the Act. The meaning of these words in the context of paragraph (b) of the definition of “water services provider” in section 1(1) are considered below.

(a) Wholly owned subsidiary or entity

A company under section 3(a) of the Companies Act is a subsidiary of another juristic person if that juristic person is or are directly or indirectly able to exercise, or control the exercise of, a majority of the general voting rights associated with issued securities of that company or has or have the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board. Section 3(b) of the Companies Act provides that a company is a wholly

⁴⁸ See Parent Departments and their Associated Public Entities PFMA Schedule 2, 3A and 3B as at 24 May 2019 available online at www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 3 May 2024].

⁴⁹ See Public Institutions listed in PFMA Schedules 1, 2, 3A, 3B, 3C and 3D as at 1 April 2023 available online at www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 3 May 2024].

⁵⁰ For further commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies*.

⁵¹ Paragraph (b) of the definition of “water services provider” in section 1(1).

owned subsidiary of another juristic person if all the general voting rights associated with issued securities of the company are held or controlled, alone or in any combination, by persons contemplated in section 3(a) of the Companies Act.

The subsidiary or entity must be a separate juristic person and will normally be incorporated and have shares. The words “wholly owned” mean that the whole of, entire and total ownership must be held by a qualifying public entity. The public entity must therefore be the only owner of a subsidiary or entity and there may be no other minority owners. If the subsidiary or entity, for example, has different classes of shares all of the different classes of shares in the subsidiary or entity must be held by a public entity. If only a certain class of the shares are held by a public entity, the requirement will not be met. All the general voting rights associated with the issued shares of a subsidiary or entity must be held or controlled only by a public entity.

A contravention of this requirement of ownership of the subsidiary or entity will disqualify a person providing water supply and sanitation services from meeting the requirement of paragraph (b) of the definition of “water services provider” in section 1(1) and the exemption of its receipts and accruals under section 10(1)(t)(ix) will therefore not apply.

(b) Ancillary or complementary operations

The operations of the subsidiary or entity must be ancillary or complementary to the operations of the public entity that wholly owns that subsidiary or entity.

The *Oxford Learner’s Dictionaries* describes the following words:

- “Operations” is “the activity or work done in a company, or in an area of business or industry.”⁵²
- “Ancillary” is “(to something) providing necessary support to the main work or activities of an organization.”⁵³
- “Complementary” is “(to something) two people or things that are complementary are different but together form a useful or attractive combination of skills, qualities or physical features.”⁵⁴

It is concluded from the above dictionary meaning of the words “ancillary” and “complementary” that the operations of the subsidiary or entity must be subservient to, helping, completing or making up an indispensable part to the operations of the public entity, the holder of shares. The concept “ancillary or complementary operations” is therefore interpreted to mean that the operations of the subsidiary or entity must be a function that supports and helps to complete the operations of the public entity, or the operations of the subsidiary or entity must complement the activities of the public entity so as to assist in the provision of water supply and sanitation services (see **4.2**).

The use of the disjunctive word “or” means that the subsidiary or entity’s operations must either be ancillary or complementary to the operations of the public entity. The facts and circumstances of each case will determine whether the operations of a subsidiary or entity are ancillary or complementary to the operations of a public entity. The following are non-exhaustive examples of operations of a subsidiary or entity that

⁵² www.oxfordlearnersdictionaries.com/definition/english/operation [Accessed 3 May 2024].

⁵³ www.oxfordlearnersdictionaries.com/us/definition/english/ancillary [Accessed 3 May 2024].

⁵⁴ www.oxfordlearnersdictionaries.com/us/definition/english/complementary?q=complementary [Accessed 3 May 2024].

may be regarded as being ancillary or complementary to the provision of water supply and sanitation services:

- The provision of any professional service covering the entire value chain of water supply or sanitation services, which may include, amongst other things, the abstraction, conveyance, purification and distribution of potable water.
- Pipeline repairs and maintenance.
- Wastewater treatment.
- The acquisition or provision of equipment and instrumentation to identify leaks, wire breaks, pitting or corrosion.
- The provision of infrastructure management services to oversee the life of an asset to achieve optimum lifecycle cost with maximum availability, performance, efficiency and the highest quality.
- The acquisition of technology to ensure access to leading edge, value-adding technologies in water supply and sanitation services.
- The provision of technology management such as scanning technology, carbon fibre repair and thermal remote sensing.
- Research and development.
- Project management relating to water supply and sanitation services.
- The provision of water solutions to complement the operations of the public entity.
- The provision of specialist construction solutions.
- Water quality monitoring.

The burden will be on the subsidiary or entity to prove that its operations are subservient, subordinate, or auxiliary to the operations of a public entity and that the operations complete or make up a whole of the operations of the public entity. A subsidiary or entity bears the onus of proving⁵⁵ that it complies with the requirements and must retain the necessary evidence to support the view taken.⁵⁶ The burden may be discharged by way of acceptable supporting evidence submitted by the subsidiary or entity.

The subsidiary or entity will not be entitled to the exemption if its operations are not ancillary or complementary to the operations of the public entity, the sole owner.

4.3.3 A company wholly owned by one or more municipalities

A person providing water supply and sanitation services that is a company contemplated in paragraph (a) of the definition of “company” in section 1(1) and is wholly owned by one or more municipalities qualifies as a “water services provider”.⁵⁷

Paragraph (a) of the definition of “company” in section 1(1) includes –⁵⁸

“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

⁵⁵ Section 102 of the TA Act.

⁵⁶ Section 29 of the TA Act.

⁵⁷ Paragraph (c) of the definition of “water services provider”.

⁵⁸ Section 1(1).

Republic or in any part thereof, or any body corporate formed or established or deemed to be established by or under any such law”.

The test to be determined under paragraph (a) of the definition of “company” in section 1(1) for purposes of the definition of “water services provider” is whether the company is incorporated or deemed to be incorporated under or by any law⁵⁹ in force or previously in force in South Africa. A close corporation⁶⁰ is specifically excluded.

Companies complying with the prescribed requirements set out in the applicable Act, acquire juristic personality. A company is under the Companies Act incorporated by the completion and signature of a memorandum of incorporation,⁶¹ the filing of a notice of incorporation,⁶² the registration of the company by the Companies and Intellectual Property Commission,⁶³ and the issuing and delivery to the company of a registration certificate.⁶⁴

LAWSA provides the following on the incorporation of a company:⁶⁵

“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.)

Associations, corporations or companies contemplated in paragraph (a) of the definition of “company” in section 1(1) are for purposes of the definition of “water services provider” restricted to incorporated companies having shares and holders of shares. It is a requirement that one or more municipality must hold the shares of an incorporated company contemplated in paragraph (a) of the definition of “company” in section 1(1). Thus, not all companies as defined in the Companies Act, will meet this requirement of the definition of “water services provider”. 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 of paragraph (a) of the definition of “company” in section 1(1). However, a non-profit company or association not for gain will not meet the requirement of paragraph (c) of

⁵⁹ 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.

⁶⁰ The term “close corporation” as defined in section 1(1) means “a close corporation within the meaning of the Close Corporations Act 69 of 1984”. A close corporation formed in accordance with section 22(1) of the Close Corporations Act, 1984, is a juristic person and continues under section 2(2) of that Act, to exist until it is deregistered or dissolved.

⁶¹ Section 13(1)(a) of the Companies Act, read with the Regulations in Government Notice 351 in *Government Gazette* 34239 of 26 April 2011.

⁶² 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. Also see Form CoR 14.1, Notice of Incorporation, included in the Regulations.

⁶³ Section 14(1) of the Companies Act.

⁶⁴ Section 14(1)(b)(iii) of the Companies Act. Also see Form CoR 14.3, Registration Certificate included in the Regulations.

⁶⁵ HH Stoop “Companies Part 1” 6(1) (Third Edition Volume) *LAWSA* [online] (My LexisNexis: 3 May 2022) in 29.

the definition of “water services provider” because it neither has shares nor holder of shares.

The requirement that a company must be “wholly owned by one or more municipalities” means that one or more municipalities must hold the whole of, entire and total shares. As a rule, the Act is not concerned with nominal ownership and therefore the word “held” in this context means beneficially owned.⁶⁶ The municipality or municipalities must therefore be the beneficial owner of shares in a company and there may be no other minority holder of shares. If the company has different classes of shares, all of the different classes of shares in the company must be held by one or more municipalities. If one or more municipalities holds only a certain class of shares, the requirement is not met. One or more municipalities must hold all the general voting rights associated with the issued shares of a company.⁶⁷

The local sphere of government comprises municipalities.⁶⁸ The term “municipality” as defined in the Act means –⁶⁹

“a municipality which is within a category listed in section 155(1) of the Constitution of the Republic of South Africa, 1996, and which is an organ of state⁷⁰ within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act 1998 (Act 27 of 1998)”.

Municipalities generally operate local water resource infrastructure, supply water and sanitation to consumers including households, businesses and industries, and operate wastewater collection and treatment systems. Most water services infrastructure is located in, and under the management of municipalities except for the bulk services provided by water boards (see **4.3.4**).⁷¹

Municipalities may themselves provide water services, contract these services out to water services providers or enter into a joint venture with another water services institution⁷² to provide the services.⁷³ The Minister published regulations setting out compulsory contractual provisions to be included when a municipality contracts with a water services provider, including the scope of the water services to be provided, performance targets and indicators, and the obligations placed on municipalities necessary to achieve the targets.⁷⁴

⁶⁶ For further commentary on the meaning of beneficial owner, see the *Comprehensive Guide to Dividends Tax*.

⁶⁷ Section 3(1)(b) of the Companies Act.

⁶⁸ Section 151(1) of the Constitution.

⁶⁹ Section 1(1).

⁷⁰ Paragraph (a) of the definition of “organ of state” in section 239 of the Constitution.

⁷¹ V Masindi and L Duncker “State of Water and Sanitation in South Africa” (March 2016) *Council for Scientific and Industrial Research* available online at www.researchgate.net/publication/311451788_State_of_Water_and_Sanitation_in_South_Africa [Accessed 3 May 2024].

⁷² The term “water services institution” as defined in section 1 of the Water Services Act means a water services authority (any municipality, including a district or rural council), a water services provider (any person that provides water services to consumers or to another water services institution excluding a water services intermediary, a water board and a water services committee).

⁷³ Section 19 of the Water Services Act.

⁷⁴ Government Notice Regulation 980 in *Government Gazette* 23636 of 19 July 2002.

To qualify as a “water services provider” contemplated in paragraph (c) of the definition of “water services provider” a municipality or municipalities are required to contract or enter into a venture with a company wholly owned by that municipality or municipalities.

4.3.4 A board or institution having powers similar to a water board established under the Water Services Act

To qualify as a water services provider under paragraph (d) of the definition of “water services provider”, a person that provides water supply and sanitation services must –

- be a board or institution with powers similar to a water board established under the Water Services Act;⁷⁵ and
- have fallen within the definition of “local authority” in section 1(1) before its deletion.

The words “board” and “institution” are not defined in the Act. Their ordinary dictionary meanings in the *Oxford Learner’s Dictionaries* are as follows:

- “Board” is described as “a group of people who have power to make decisions and control a company or other organization.”⁷⁶
- “Institution” is described as “a large important organization that has a particular purpose, for example a university or bank”.⁷⁷

It is a requirement that a board or institution must have powers similar to a water board established under the Water Services Act, to qualify as a “water services provider”.

The *Free Dictionary* describes “similar” as follows:⁷⁸

“Having a resemblance in appearance or nature; alike though not identical.”

Thus, any board or institution, which has similar, although not necessarily identical, objects to a water board established under the Water Services Act, may qualify as a “water services provider” if that board or institution would also have fallen within the ambit of the definition of “local authority” in section 1(1) before its deletion.

⁷⁵ Water boards were previously established under section 108(2) the Water Act, which was repealed by section 163(1) of the National Water Act 36 of 1998 with effect from 1 October 1998. Water boards are after the repeal of the Water Act constituted under section 28 of the Water Services Act.

⁷⁶ www.oxfordlearnersdictionaries.com/definition/english/board_1?q=board [Accessed 3 May 2024].

⁷⁷ www.oxfordlearnersdictionaries.com/definition/english/institution?q=institution [Accessed 3 May 2024].

⁷⁸ www.thefreedictionary.com/similar [Accessed 3 May 2024].

(a) A water board established under the Water Services Act

The term “water board” as defined in the Water Services Act means –⁷⁹

“an organ of state⁸⁰ established or regarded as having been established in terms of this Act to perform, as its primary activity, a public function”.

The Minister may by notice in the *Government Gazette* establish a water board, give it a name, determine its service area or disestablish it.⁸¹ The primary activity of a water board is to provide water to other water services institutions within its service area.⁸²

A water board may carry out other activities that, amongst other things, may include –⁸³

- providing management services;
- training;
- other support services to water services institutions;
- supplying untreated or non-potable water to end users who do not use the water for household purposes;
- providing catchment management services to or on behalf of the responsible authorities;
- supplying water directly for industrial use and accepting industrial effluent;
- acting as a water services provider to consumers; or
- performing water conservation functions.

Any other activities performed by a water board may not interfere with its primary function, and may not financially prejudice itself, any water services institution, existing consumers and any other user serviced by it within its service area.⁸⁴ A water board may perform other activities only if it is in accordance with the board’s policy statement and provided for in a business plan.⁸⁵

A water board has the following powers:⁸⁶

- To perform its primary activity and other activities.
- Setting and enforcing general conditions, including tariffs, for the provision of water services.
- Determining procedures for convening and conducting board meetings.

⁷⁹ Section 1 of the Water Services Act.

⁸⁰ The term “organ of state” is defined in section 239 of the Constitution and means any department of state or administration in the national, provincial or local sphere of government, any other functionary or institution exercising a power or performing a function under the Constitution or a provincial constitution, or any other functionary or institution exercising a public power or performing a public function under any legislation, but does not include a court or a judicial officer.

⁸¹ Section 28(1) of the Water Services Act.

⁸² Section 29 of the Water Services Act.

⁸³ Section 30 of the Water Services Act.

⁸⁴ Sections 31(1)(a) and (b) of the Water Services Act.

⁸⁵ Sections 31(1)(c) and (d) of the Water Services Act.

⁸⁶ Section 31(2) of the Water Services Act.

- Doing all things necessary for, or in connection with, or incidental to the performance of its activities in a manner consistent with the Water Services Act.
- Entering into contracts with any person who undertakes and is authorised to exercise any of the powers or to perform any of the duties of the water board, except the power to set general conditions, including tariffs, for the provision of water services.

The following water boards are currently listed in Schedule 2 to the PFMA, namely, Amatola Water Board, Bloem Water, Lepelle Northern Water, Magalies Water, Mhlathuze Water, Overberg Water, Rand Water and Umgeni Water.

(b) Definition of “local authority”

Paragraph (b) of the definition of “local authority”, before its deletion from section 1(1) by section 3(1)(h) of the Revenue Laws Amendment Act 20 of 2006, included –

“the Rand Water Board, the Far West Rand Dolomitic Water Association formed on 6 July 1964, any water board constituted in terms of section 108(2) of the Water Act, 1956 (Act No. 54 of 1956), or regional water services corporation,⁸⁷ or any other institution which has powers similar to those of any such water board or water services corporation”.

The reason for the deletion of the definition of “local authority” was explained in the *Explanatory Memorandum on the Revenue Laws Amendment Bill, 2006* as follows:⁸⁸

“Some water boards are exempt by virtue of paragraph (b) of the “local authority” definition, some are exempt by virtue of section 10(1)(cA)⁸⁹ while a small group of others may be fully subject to tax. The new regime simply creates a new exemption for all water service providers [sic] (listed under either the PFMA or MFMA)⁹⁰ regardless of their legal form.”

Section 108(2) of the Water Act, which established water boards, was repealed by the Water Services Act.⁹¹ The Interpretation Act, provides that if legislation is repealed and replaced, any reference to the old Act, is deemed to be the replaced Act.⁹² The reference to the repealed Water Act, in the now repealed paragraph (b) of the definition

⁸⁷ The Act did not define a “regional water services corporation”. Paragraph (b) of the definition of “local authority” in section 1 of the Water Act, however, did refer to such corporations. A regional water services corporation meant a corporation constituted under the Water Services Ordinance 27 of 1963 of Natal, or any other institution, which had powers similar to such a corporation in respect of the supply of water to other local authorities, the government (including the South African Transport Services and any provincial administration), or other persons within its area of jurisdiction.

⁸⁸ At 41.

⁸⁹ It was previously possible for an institution, board or body, such as a water board, to qualify for exemption under section 10(1)(cA)(i), and to establish a wholly owned subsidiary company with ancillary and complementary objects to that water board. The subsidiary company could have qualified for exemption under section 10(1)(cA)(ii) provided all the requirements of that section were met. After the introduction of the definition of “water services provider” section 10(1)(cA)(i) was amended to specifically exclude a water services provider.

⁹⁰ The reference to “MFMA” is to the Local Government: Municipal Finance Management Act 56 of 2003.

⁹¹ Section 84(1) of the Water Services Act repealed section 108 as set out in Schedule 2 to that Act, with effect from 19 December 1997, the date of promulgation of the Water Services Act.

⁹² Section 12 of that Act.

of “local authority” should therefore have been replaced by the appropriate reference to the Water Services Act.

The following organisations, however, continued to exist and deemed to be water boards established under the Water Services Act, notwithstanding the repeal of the Water Act:⁹³

- Any water board established under the Water Act.
- Rand Water Board.
- North-West Water Supply Authority established by the North-West Water Supply Authority Act 39 of 1988 (Bophuthatswana).⁹⁴

5. Exemption from income tax

Section 10(1)(t)(ix) exempts from income tax the “receipts and accruals”⁹⁵ of any water services provider. The exemption is an absolute exemption of all receipts and accruals of a water services provider.

An amount will only be “received” by a person as envisaged in the Act, if the person receives it on his or her own behalf and for his or her own benefit.⁹⁶ An amount “accrues” to a person when the person is entitled to it and when the person’s right to the amount is unconditional.⁹⁷ An amount is included in a person’s gross income in the year of assessment in which that person receives it or the year of assessment in which it accrues to that person, whichever comes first.⁹⁸

6. Exemption from other taxes

Persons meeting the requirements of the definition of “water services provider”, in addition to being fully exempt from the payment of income tax on its receipts and accruals, will also enjoy the benefit of being exempt from certain other taxes, which is considered below.

⁹³ Section 84(2) of the Water Services Act.

⁹⁴ The name of the North-West Water Supply Authority Board changed to Botshelo Water and disestablished on 1 April 2014. See Government Notice 239 in *Government Gazette* 37503 of 1 April 2014. The operation of Botshelo Water was incorporated into Magalies Water and Sedibeng Water, respectively. Sedibeng Water its staff, assets and liabilities were transferred to Magalies Water and Bloem Water, see Government Notice 2310 in *Government Gazette* 47094 of 26 July 2022. Sedibeng Water has therefore been removed as a National Government Business Enterprise with effect from 1 April 2023, see Public Institutions listed in PFMA Schedules 1, 2, 3A, 3B, 3C and 3D as at 1 April 2023 available online at www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 3 May 2024].

⁹⁵ The type of receipt or accrual envisaged is one that is included in the definition of “gross income” in section 1(1).

⁹⁶ *Geldenhuys v CIR* 1974 (3) SA 256 (C), 14 SATC 419.

⁹⁷ *Lategan v CIR* 1926 CPD 203, 2 SATC 16; *Ochberg v CIR* 1933 CPD, 6 SATC 1.

⁹⁸ *SIR v Silverglen Investments (Pty) Ltd* 1969 (1) SA 365 (A), 30 SATC 199.

6.1 Transfer duty

A water services provider is exempt from the payment of transfer duty on any property⁹⁹ acquired.¹⁰⁰

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction. Each transaction is therefore considered on its own merits. A declaration¹⁰¹ must be submitted for each acquisition of property for which exemption is required.¹⁰²

6.2 Dividends tax

A dividend is exempt from dividends tax if the beneficial owner¹⁰³ is any person contemplated in section 10(1)(t), which includes any water services provider.¹⁰⁴

This exemption applies only if the water services provider has, before the dividend is paid, submitted to the company that declared and paid the dividend or to the regulated intermediary¹⁰⁵ that paid the dividend, a declaration that the dividend is exempt from dividends tax. The water services provider 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 or if the circumstances affecting the exemption change.¹⁰⁶ 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.¹⁰⁷

The obligation lies with the water services provider that 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.¹⁰⁸

⁹⁹ See definition of “property” in section 1(1) of the Transfer Duty Act. For further commentary, see the *Transfer Duty Guide*.

¹⁰⁰ Section 9(1)(bB) of the Transfer Duty Act.

¹⁰¹ The declaration is required under section 14 of the Transfer Duty Act and is regarded as a “return” and subject to the provisions of section 25 of the TA Act.

¹⁰² For further commentary on the processing of transactions on eFiling, see the *External Guide – Guide for Transfer Duty via eFiling*.

¹⁰³ The term “beneficial owner” as defined in section 64D means the person entitled to the benefit of a dividend attaching to a share.

¹⁰⁴ Sections 64F(1)(g) and 64FA(1)(a).

¹⁰⁵ 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.

¹⁰⁶ Sections 64G(2)(a) and 64H(2)(a).

¹⁰⁷ For further commentary, see the *Business Requirements Specifications: Administration of Dividends Tax*.

¹⁰⁸ For further commentary, see the *Comprehensive Guide to Dividends Tax*.

6.3 Securities transfer tax

Securities transfer tax¹⁰⁹ is not payable if the security¹¹⁰ is transferred¹¹¹ to any water services provider.¹¹²

The exemption, however, is subject to a declaration¹¹³ being submitted by any person to a participant,¹¹⁴ who holds and administers that security.¹¹⁵

6.4 Skills development levy

A water services provider is exempt from the payment of skills development levy¹¹⁶ if it is –

- registered as an employer and its annual payroll will not exceed R500 000 in the following 12 months;¹¹⁷ or
- a national or provincial public entity, where 80% or more of its expenditure is paid directly or indirectly from funds voted by Parliament.¹¹⁸

6.5 Capital gains tax

Paragraph 63 of the Eighth Schedule to the Act, stipulates the following:

“A person must disregard any capital gain or capital loss in respect of the disposal of an asset where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to that person.”

The exclusion under paragraph 63 of the Eighth Schedule to the Act is aimed at persons enjoying complete exemption from income tax. To determine whether a person falls within paragraph 63, it is necessary to enquire hypothetically whether the person would be exempt regardless of the type of gross income that the person may receive in the future. This enquiry goes further than a mere projection based on the assets or activities of the body at the end of the relevant year of assessment. In evaluating whether a person's future gross income from any source would be exempt

¹⁰⁹ For further commentary on STT and the electronic submission of STT declarations and payments on the e-STT system via eFiling, see the *Taxation in South Africa and External Reference Guide – Securities Transfer Tax*.

¹¹⁰ The term “security” as defined in section 1 of the STT Act means any share or depository receipt in a company, or any member's interest in a close corporation.

¹¹¹ The term “transfer” is defined in section 1 of the STT Act, and save for certain exclusions, includes the transfer, sale, assignment or cession or disposal in any other manner of a security or the cancellation or redemption of that security.

¹¹² Section 8(1)(f) of the STT Act.

¹¹³ Section 8(2) of the STT Act.

¹¹⁴ The term “participant” as defined in section 1 of the STT Act means a person that holds in custody and administers a listed security or an interest in a listed security and that has been authorised in accordance with section 31 of the Financial Markets Act 19 of 2012 by a central securities depository as a participant in that central securities depository.

¹¹⁵ Section 8(3) of the STT Act.

¹¹⁶ For further commentary, see the *External Guide – Guide for Employers in respect of Skills Development Levy*.

¹¹⁷ Section 4(b) of the Skills Development Levies Act 9 of 1999.

¹¹⁸ Section 4(d) of the Skills Development Levies Act, 1999.

from tax under section 10, it is necessary to assume that it will continue to comply with the requirements governing its current exempt status.¹¹⁹

7. Reporting requirements

The exemption from income tax under section 10(1)(t)(ix) is subject to a water services provider complying with reporting requirements the Commissioner may determine.¹²⁰ Aside from the general reporting requirements of the Act and TA Act (see **8**) no specific reporting requirements applicable to water services providers have been determined by the Commissioner.¹²¹

A water services provider must apply to SARS for registration for income tax purposes within 21 business days of becoming obliged to register.¹²²

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.¹²³ This notice requires, amongst other things, every company to furnish an income tax return.

A “company” is defined¹²⁴ and, amongst other things, includes –

- any association, corporation or company incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part of the Republic, or any body corporate formed or established or deemed to be formed or established by or under any such law;¹²⁵ or
- any association formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public.¹²⁶

A water services provider meets the definition of a “company” and is therefore liable to submit a return even if its exemption results in no tax liability.

A return must be a full and true return¹²⁷ and be signed by the water services provider or by the water services provider’s duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.¹²⁸

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 to the SARS branch office where the water services provider is on register for reporting purposes or electronically on the eFiling website. It is not a requirement for supporting documents to be submitted together with the income tax return. The water services provider will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

¹¹⁹ For further commentary, see the *Comprehensive Guide to Capital Gains Tax*.

¹²⁰ Proviso to section 10(1)(t).

¹²¹ Section 67(1).

¹²² Section 22 of the TA Act.

¹²³ Section 66(1).

¹²⁴ Section 1(1).

¹²⁵ Paragraph (a) of the definition of “company” in section 1(1).

¹²⁶ Paragraph (d) of the definition of “company” in section 1(1).

¹²⁷ Section 25(2) of the TA Act.

¹²⁸ Section 25(3) of the TA Act.

A water services provider is required to inform SARS of the name of the public officer and an address for service or delivery of notices or documents¹²⁹ and also of every change of public officer or the place of such service or delivery of notices within 21 business days of the change taking effect.¹³⁰

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.¹³¹ 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.¹³²

8. Administrative provisions

8.1 Furnishing of information

The Commissioner may, in order to assist in enforcing the Act, submit a written request to any person to furnish information either orally or in writing about any water services provider and may require that person to –¹³³

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

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 requested by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.¹³⁴

8.2 Changes in registered particulars

A water services provider must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A water services provider must communicate to SARS any change of postal, physical or electronic addresses, representative taxpayer,¹³⁵ and banking particulars.¹³⁶

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.¹³⁷

¹²⁹ Section 249(1) of the TA Act.

¹³⁰ Section 249(2)(b) of the TA Act.

¹³¹ Section 25(4) of the TA Act.

¹³² Section 234(2)(d) of the TA Act.

¹³³ Section 46(1) of the TA Act.

¹³⁴ Section 234(2)(h) of the TA Act.

¹³⁵ The term “representative taxpayer” is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act. The term generally means a person who is responsible for paying the tax liability of another person as an agent.

¹³⁶ Section 23 of the TA Act.

¹³⁷ Section 234(2)(a) of the TA Act.

8.3 Record-keeping

All water services providers are required to keep records for five years¹³⁸ from the date of the submission of a return under the TA Act.

A return¹³⁹ includes any form, declaration, document or other manner of submitting information to SARS, which 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.¹⁴⁰

The required retention periods for records, books of account or documents are as follows:¹⁴¹

- Five years from the date of the submission of a return.¹⁴²
- If no return is submitted for a year of assessment 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.¹⁴³
- 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 or decision becomes final or the applicable five-year period has elapsed, whichever is the later.¹⁴⁴
- A person 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.¹⁴⁵

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.

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a water services provider is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.¹⁴⁶

¹³⁸ Section 29(3) of the TA Act.

¹³⁹ The term “return” is defined in section 1 of the TA Act.

¹⁴⁰ Section 32 of the TA Act.

¹⁴¹ For further commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

¹⁴² Section 29(2)(a) read with section 29(3)(a) of the TA Act.

¹⁴³ Section 29(2)(b) of the TA Act.

¹⁴⁴ Section 32(b) of the TA Act.

¹⁴⁵ Section 32(a) of the TA Act.

¹⁴⁶ Section 30 of the TA Act.

The electronic form of record-keeping¹⁴⁷ is regulated by the Electronic Record-Keeping Rules.¹⁴⁸ The rules require that electronic records must be kept in their original form,¹⁴⁹ 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.¹⁵⁰

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.¹⁵¹

9. Conclusion

This Note provides general guidelines and considers the broad principles of the legislation. In conclusion –

- any person meeting the requirements of the definition of “water services provider” in section 1(1) will be exempt from the payment of income tax under section 10(1)(t)(ix);
- the receipts and accruals of a water services provider is fully exempt from the payment of income tax under section 10(1)(t)(ix);
- the exemption is not subject to the discretion or approval of the Commissioner;
- a water services provider bears the onus of proving¹⁵² that it complies with the requirements of the definition of “water services provider” and must retain the necessary supporting evidence;
- a water services provider must comply with reporting requirements the Commissioner may determine; and
- a water services provider is potentially exempt from other taxes such as transfer duty, dividends tax, securities transfer tax, skills development levies and capital gains tax.

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¹⁴⁷ Section 255 of the TA Act.

¹⁴⁸ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

¹⁴⁹ Under section 14 of the Electronic Communications and Transactions Act 25 of 2002 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.

¹⁵⁰ For further commentary, see the *Electronic Communications Guide*.

¹⁵¹ Section 234(2)(e) of the TA Act.

¹⁵² Section 102 of the TA Act.