

INTERPRETATION NOTE 44 (Issue 4)

DATE: 27 August 2025

ACT : INCOME TAX ACT 58 OF 1962

SECTION: PARAGRAPH 63A OF THE EIGHTH SCHEDULE

SUBJECT: CAPITAL GAINS TAX: PUBLIC BENEFIT ORGANISATIONS

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Preamble

In this Note unless the context indicates otherwise -

 "asset" means property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum, and a right or interest of whatever nature to or in such property as defined in paragraph 1;

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- "basic exemption" means the amount determined as a threshold contemplated in section 10(1)(cN)(ii)(dd) and applied to the total receipts and accruals from business undertakings or trading activities of a PBO to the extent that such receipts and accruals are not derived from permissible business undertakings or trading activities;
- "capital gain" means the amount to be determined under paragraph 3 as defined in paragraph 1;
- "capital loss" means the amount to be determined under paragraph 4 as defined in paragraph 1;
- "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;
- "CGT" means capital gains tax, being the portion of income tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eighth Schedule;
- "disposal" means an event, act, forbearance or operation of law envisaged in paragraph 11 or an event, act, forbearance or operation in law, which is under this Act treated as the disposal of an asset as defined in paragraph 1;
- "paragraph" means a paragraph of the Eighth Schedule;
- "partial taxation" means the method of taxing with effect from years of assessment commencing on or after 1 April 2006 the receipts and accruals derived by a PBO from business undertakings or trading activities falling outside the permissible business undertakings or trading activities exceeding the basic exemption as contemplated in section 10(1)(cN)(ii)(dd);¹
- "PBA" means any public benefit activity listed in Part I of the Ninth Schedule and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public as defined in section 30(1);
- "PBO" means an organisation falling within the definition of "public benefit organisation" as defined in section 30(1) and approved by the Commissioner under section 30(3);²

For commentary, see Interpretation Note 24 "Income Tax: Public Benefit Organisations: Partial Taxation".

² For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

- "permissible business undertaking or trading activities" means limited qualifying business undertakings or trading activities a PBO may conduct, which are
 - integral and directly related to the PBOs sole or principal object, substantially the whole directed to cost recovery and not in competition with taxable entities as contemplated in section 10(1)(cN)(ii)(aa);
 - occasional and undertaken substantially with assistance on a voluntary basis without compensation as contemplated in section 10(1)(cN)(ii)(bb); or
 - ➤ approved by the Minister as contemplated in section 10(1)(cN)(ii)(cc);
- "Schedule" means a Schedule to the Act;
- "section" means a section of the Act:
- "TA Act" means the Tax Administration Act 58 of 2011;
- "the Act" means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All binding general rulings, guides, interpretation notes, and time-apportionment base cost (TAB) calculators referred to in this Note are the latest versions, unless indicated otherwise, which are available on the SARS website at **www.sars.gov.za**.

1. Purpose

This Note provides guidance on the interpretation and application of paragraph 63A dealing with the disregarding of a capital gain or capital loss on the disposal of an asset by a PBO.

2. Background

A PBO must disregard any capital gain or capital loss determined on the disposal of an asset if -3

- that PBO did not use that asset on or after valuation date (see 4.1) in carrying on any business undertaking or trading activity (see 4.3.1); or
- substantially the whole of the use of that asset by that PBO on and after valuation date was directed at –
 - ➤ a purpose other than carrying on a business undertaking or trading activity (see 4.3.2); or
 - carrying on a permissible business undertaking or trading activity (see 4.3.3).

³ Paragraph 63A.

Any capital gain or capital loss on the disposal of an asset used in a business undertaking or trading activity falling outside the ambit of the permissible business undertakings or trading activities and which is subject to the basic exemption will not be disregarded.⁴

3. The law

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

4. Application of the law

4.1 Valuation date

The valuation date of a person who ceases to be an exempt person under paragraph 63,⁵ is the date on which that person ceases to be an exempt person.⁶ Since all PBOs with effect from 1 April 2006 fall outside paragraph 63 because of partial taxation, the valuation date of PBOs in existence on 1 April 2006 will be the first day of their first year of assessment commencing on or after 1 April 2006. For example, a PBO with a financial year ending on 31 March 2006 will have a valuation date of 1 April 2006, which is the commencement of its 2007 year of assessment.

The valuation date value of a pre-valuation date asset forms part of the base cost of that asset and ensures that any pre-valuation date growth or decline in value is disregarded for CGT purposes.

4.2 Base cost

The following methods of determining base cost of an asset on valuation date are available:

- The market value of the asset on valuation date (see 4.2.1).⁷
- Twenty per cent (20%) of the proceeds from the disposal of the asset, after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after the valuation date (see **4.2.3**).8
- The time-apportionment base (TAB) cost of an asset (see 4.2.2).9

The receipts and accruals referred to in section 10(1)(cN) are those which have been included in gross income and therefore exclude amounts falling within proceeds for CGT purposes by virtue of paragraph 35(3)(a). See the definition of "income", which is defined to mean the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from income tax under Part I of Chapter II. Part I covers sections 5 to 37G and therefore incorporates the exemptions in section 10.

⁵ A person must disregard any capital gain or capital loss on the disposal of an asset where any amount constituting gross income or whatever nature would be exempt from tax under section 10 were it to be received by or to accrue to that person.

⁶ Paragraph (a) of the definition of "valuation date" in paragraph 1.

⁷ Paragraphs 26(1)(*a*), 27(3), 29 and 31.

⁸ Paragraph 26(1)(*b*).

⁹ Paragraph 30.

• The weighted-average method, ¹⁰ which is available only for the four categories ¹¹ of identical assets, ¹² are unlikely to be of much relevance to a PBO because of the disregarding of capital gains and losses on such assets under paragraph 63A(a) considered in **4.3.1**. This method is therefore not considered in this Note. ¹³

4.2.1 Market value

A PBO may not adopt or determine the market value of an asset unless it has valued the asset within two years from the valuation date. ¹⁴ The valuation dates for PBOs in existence on 1 April 2006 and the final date by which they should have completed their valuations to be able to use the market-value method is summarised under Table 1, in **Annexure B**.

The two-year valuation period does not apply to the assets set out under Table 2, in **Annexure B**. In practice, however, a capital gain or capital loss arising from the disposal of assets listed under Table 2 is likely to be disregarded under paragraph 63A(a). The failure by a PBO to value such an interest is therefore unlikely to have any adverse CGT consequences provided the PBO retains its tax-exempt status.

The valuation submission requirements for high-value assets¹⁵ do not apply if the valuation date is after 1 October 2001.¹⁶ PBOs are required to retain proof of the valuation¹⁷ for a period of five years from the date of submission of the income tax return reflecting the disposal.¹⁸ Records relevant to an audit, investigation, an objection or appeal, in case the five year retention period is exceeded, 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.¹⁹

A PBO that came into existence after 1 April 2006 does not need a valuation date because the base cost of its assets is determined at cost.²⁰

¹⁰ Paragraph 32(3A).

The categories listed in paragraph 32(3A) include listed shares, participatory interests in collective investment schemes, gold, and platinum coins whose prices are published in a newspaper.

¹² The term "identical assets" is defined in paragraph 32(2).

For commentary, see the *Comprehensive Guide to Capital Gains Tax* (Issue 9) in paragraph 8.36.2.3.

¹⁴ Paragraph 29(4)(*b*)(i).

¹⁵ Listed in paragraph 29(5).

¹⁶ Paragraph 29(8).

¹⁷ Paragraph 29(6).

¹⁸ Section 29 of the TA Act.

¹⁹ Section 32 of the TA Act.

²⁰ Paragraph 20.

Assets acquired by -

- donation are deemed to have been acquired at a cost equal to their market value on the date of donation:²¹
- bequest are treated as being acquired for an expenditure equal to the expenditure incurred by the deceased estate, which would usually be equal to the market value of the asset on the date of death plus any further expenditure incurred by the executor;²² and
- distribution *in specie* from a company are deemed to be acquired for expenditure equal to their market value on the date of distribution.²³

4.2.2 Time-apportionment base cost

The time-apportionment base (TAB) cost method involves two types of apportionment, namely -24

- time-apportionment, which is applicable in all circumstances; and
- expenditure apportionment, which is applicable when expenditure is incurred on or after valuation date.

A time-apportionment base cost (TAB) calculator,25 using an Excel spreadsheet, may be used by a PBO to determine the time-apportionment base cost of an asset.

4.2.3 "Twenty per cent of proceeds" method

This method is available when a person $-^{26}$

- has a record of pre-evaluation date expenditure and is in the historical gain situation;²⁷ or
- does not have a record of pre-evaluation date expenditure.²⁸

Example 1 - Determination of valuation date values

Facts

A PBO with a financial year ending on 31 March owns immovable property on which it carries on its PBAs. The property was acquired on 1 June 1992 at a cost of R40 000. No expenditure was incurred on improvements to the property from date of acquisition. The PBO determined that the market value of the property on 1 April 2006 was R80 000.

The PBO with effect from 1 June 2006 let 20% of its property to a commercial business at arm's length rental.

On 31 December 2024 the PBO disposed of the property for proceeds of R110 000. The PBO paid estate agent's commission of R7 000.

²¹ Paragraph 38(1)(*b*).

²² Section 25(3)(*b*).

²³ Paragraph 75(1)(*b*).

²⁴ For commentary, see the *Comprehensive Guide to Capital Gains Tax* (Issue 9) in paragraph 8.34.

The TAB Calculator for PBOs and Recreational Clubs can be used to determine the timeapportionment base cost for a PBO. The standard TAB Calculator should not be used for this purpose because it assumes a valuation date of 1 October 2001 and will give an incorrect result.

²⁶ For commentary, see the *Comprehensive Guide to Capital Gains Tax* (Issue 9) in paragraph 8.29.

²⁷ Paragraph 26(1)(*b*).

²⁸ Paragraph 26(2)(*b*).

Determine:

The capital gain or capital loss on the disposal of the property assuming the valuation was performed on –

- 31 March 2008; or
- 31 August 2008.

Result:

The valuation date of the PBO is 1 April 2006, being the first day of its first year of assessment commencing on or after 1 April 2006.

A PBO wishing to adopt the market value method for determining the valuation date value of an asset must have performed the valuation within two years of its valuation date. In this case the valuation should have been done on or before 31 March 2008.

The following is concluded:

- The valuation performed on 31 March 2008 was determined within two years of valuation date and the PBO may therefore adopt the market value of the property on 1 April 2006 as the valuation date value of the property. The PBO is also entitled to use the time-apportionment or "20% of proceeds" method if it so chooses.
- The valuation done on 31 August 2008 was done outside of the prescribed period of two years from the valuation date and the PBO must accordingly resort to the timeapportionment or the "20% of proceeds" method to determine the valuation date value of the property as at 1 April 2006.

Time-apportionment method:

Valuation date = 1 April 2006 (**Note 1**)

N = Number of years before valuation date (1 June 1992 to 31 March 2006), determined as follows:

1 June 1992 to 31 May 2005 = 13 years

1 June 2005 to 31 March 2006 = 10 months (treated as a full year)

N = 13 + 1 = 14

T = Number of years after valuation date (1 April 2006 to 31 December 2024)

1 April 2006 to 31 March 2024 = 18 years

1 April 2024 to 31 December 2024 = 9 months (treated as a full year)

T = 18 + 1 = 19

P = Amount received or accrued reduced by selling expenses (Note 2)

= R110 000 - R7 000 = R103 000

 $Y = B + [(P - B) \times N / (N + T)]$

= R40 000 + [(R103 000 - R40 000) × 19 / (19 + 19)]

= R40 000 + (R63 000 × 19 / 38)

= R40 000 + 31 500

= R71 500

Base cost = valuation date value + post-valuation date costs

- = R71 500 + R7 000
- = R78 500

Capital gain = Proceeds - base cost

- = R110 000 R78 500
- = R31 500

Note:

- The TAB Calculator for PBOs and Recreational Clubs can be used to determine the time-apportionment base cost for a PBO. The standard TAB Calculator should not be used for this purpose because it assumes a valuation date of 1 October 2001 and will give an incorrect result.
- 2. This example assumes that no improvements were made on or after the valuation date. Had such improvements been made, the proceeds formula in paragraph 30(2) would have had to be applied to determine 'P'.

20% of proceeds method:

Valuation date value = 20% × (proceeds less post-valuation date expenditure)

- $= 20\% \times (R110\ 000 R7\ 000)$
- = 20% × R103 000
- = R20 600

Base cost = valuation date value + post-valuation date expenditure

- = R20 600 + R7 000
- = R27 600

Capital gain = Proceeds - base cost

- = R110 000 R27 600
- = R82 400

Market-value method (valuation done on or before 31 March 2008):

Base cost = Market value on 1 April 2006 + post-valuation date expenditure

- = R80 000 + R7 000
- = R87 000

Capital gain = Proceeds – base cost

- = R110 000 R87 000
- = R23 000

4.3 Exclusions

A PBO must disregard a capital gain or capital loss arising on the disposal of three categories of assets considered below.

4.3.1 Category 1: Non-trade assets

This category applies to assets not used by a PBO on or after valuation date in carrying on any business undertaking or trading activity. It covers assets that are not "used" but are "held", such as investments in the nature of shares, or participatory interests in collective investment schemes. It also includes assets used exclusively for non-trade purposes, such as an asset used exclusively in carrying on a PBA.²⁹ Only the usage of the asset on or after the valuation date is taken into account, with any trade usage before that date being ignored.

Example 2 – Asset used exclusively on or after valuation date by a PBO to carry on a PBA

Facts:

A PBO providing health care services to poor and needy persons³⁰ year of assessment ends on 30 April. The PBO acquired immovable property on 30 June 2003 from which it conducts its PBA. During the period 30 June 2003 to 30 April 2006, 30% of the property was let to third parties while the remaining usage was to carry on its PBA. The property was sold on 30 September 2024 resulting in a capital gain of R100 000.

Result:

The valuation date of the property is 1 May 2006, the first day of the PBOs first year of assessment commencing on or after 1 April 2006.

The capital gain of R100 000 must be disregarded under paragraph 63A(a) since the property was used exclusively on or after the valuation date, namely, 1 May 2006, to carry on its PBA. Any trade usage before the valuation date is disregarded.

Example 3 - Asset held not used by a PBO

Facts

A PBO's sole object is to care for homeless children.³¹ Surplus funds have been invested in a collective investment scheme. The PBO disposed of its participatory interest in the collective investment scheme at a capital gain of R25 000 to purchase additional accommodation to house homeless children.

Result:

The capital gain of R25 000 must be disregarded under paragraph 63A(a) because the participatory interest was "held" by the PBO and not "used" in carrying on a business undertaking or trading activity.

²⁹ Paragraph 63A(a).

³⁰ As contemplated under paragraph 2(a) of Part I of the Ninth Schedule.

³¹ As contemplated under paragraph 1(*a*) of Part I of the Ninth Schedule.

4.3.2 Category 2: Minimal trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after the valuation date was directed at a purpose other than carrying on a business undertaking or trading activity.³² An example of such an asset is one that is used 10% of the time for trading purposes and 90% of the time to carry on PBAs.

The words "substantially the whole of the use" are of importance. The expression "substantially the whole" is used in various sections of the Act, although not defined in the Act. Strictly interpreted the expression is regarded by SARS to mean 90% or more. However, since PBOs operate in an uncertain environment making proper planning difficult, SARS in these circumstances accepts a percentage of not less than 85%.³³

The assets referred to in this category are excluded from the first category (see **4.3.1**) because they are used, albeit to a limited extent, in carrying on a business undertaking or trading activity.

The percentage of the asset used for a business undertaking or trading activity must be determined using a method appropriate to the circumstances. For example, a proportion based on time, floor area or a combination of the two, may be appropriate.³⁴

Example 4 - Substantially the whole

Facts:

A PBO operates a home for orphaned children.³⁵ The PBO has a hall, which is used for social and other functions by the PBO, in carrying on its PBA. During the year of assessment under review the hall was let occasionally by the PBO to third parties for conferences and weddings for a total of 48 days.

Result:

The 48 days during which the hall was let represents 13,2% of the total usage for the year $(48/365 \times 100)$. The balance of 86,8% represents the days when the hall was used by the PBO to carry on its PBAs. This usage means that substantially the whole of the hall (85% or more), was used to carry on PBAs.

4.3.3 Category 3: Permissible trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after the valuation date was directed at carrying on a permissible business undertaking or trading activity.³⁶ The permissible business undertakings or trading activities are considered below.

³² Paragraph 63A(b)(i).

For further commentary, see Binding General Ruling (Income Tax) 20 "Interpretation of the Expression 'Substantially the Whole'".

³⁴ See Chapter 12 of the *Comprehensive Guide to Capital Gains Tax* (Issue 9) for various examples.

³⁵ As contemplated under paragraph 1(a) of Part I of the Ninth Schedule.

³⁶ Paragraph 63A(b)(ii).

(a) Related trade

The receipts and accruals of any PBO will be exempt from income tax to the extent that the receipts and accruals are derived from any business undertaking or trading activity that - ³⁷

- is integral and directly related to the sole or principal object of the PBO;
- is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
- does not result in unfair competition with taxable entities.

Example 5 – Assets used to carry on an integral and directly related permissible business undertaking or trading activity

Facts:

A PBO cares for disabled persons.³⁸ As a therapeutic and remedial activity, the PBO acquired land on which the disabled residents were taught to grow vegetables. The produce was primarily used by the PBO for own consumption and any surplus was sold by the PBO to a local home industry. All the labour was undertaken by the disabled residents. The PBO disposed of the land on which the vegetable gardening took place resulting in a capital gain.

Result:

The vegetable gardening activity falls within the integral and directly relating permissible business undertaking or trading activity since it forms part of the PBA of caring and providing training for disabled persons. The capital gain realised on the sale of the property is disregarded for CGT purposes.

(b) Occasional trade

The receipts and accruals of any PBO will be exempt from income tax to the extent that the receipts and accruals are derived from any business undertaking or trading activity if that undertaking, or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.³⁹

Example 6 – Assets used to carry on an occasional permissible business undertaking or trading activity

Facts:

A PBO cares for poor and needy persons 60 years and older.⁴⁰ The PBO held an annual fete as a fundraising event for which it acquired a marquee. The fundraising event was undertaken with assistance from volunteers and the aged persons and the items sold to raise funds were all donated to the PBO.

Result:

The fundraising event qualifies as an occasional business undertaking or trading activity therefore any capital gain or capital loss on the sale of the marquee must be disregarded for CGT purposes.

³⁷ Section 10(1)(cN)(ii)(aa).

³⁸ As contemplated under paragraph 2(*b*) of Part I of the Ninth Schedule.

³⁹ Section 10(1)(*c*N)(ii)(*bb*).

⁴⁰ As contemplated under paragraph 1(*b*) of Part I of the Ninth Schedule.

(c) Ministerial approval

The Minister may approve a specific business undertaking or trading activity by notice in the *Government Gazette* having regard to factors such as $-^{41}$

- the scope and benevolent nature of the undertaking or activity;
- its relationship with the sole or principal object of the PBO;
- · its profitability; and
- the economic distortion that may result from the exemption.

To date the Minister has not approved any such business undertaking or trading activity.

5. Donations and bequests

Any capital gain or capital loss determined on an asset donated or bequeathed to a PBO must be disregarded by the donor or deceased person.⁴²

6. Transfer duty

Transfer duty⁴³ will become payable on a property, which qualified for an exemption from transfer duty if the whole of the property or substantially the whole of that property is used for purposes other than the carrying on of any PBA. The transfer duty becomes payable at the time the property is used for any purpose other than for the purpose of carrying on one or more PBAs.⁴⁴

7. Conclusion

This Note applies broad principles in interpreting the legislation. Since the facts and circumstances pertaining to a specific PBO may differ, each case must be considered on its own merits.

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⁴¹ Section 10(1)(cN)(ii)(cc).

⁴² Paragraph 62(*b*).

⁴³ For commentary, see Interpretation Note 22 "Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies".

⁴⁴ Section 9(1)(*c*) of the Transfer Duty Act 40 of 1949.

Annexure A - The law

Paragraph 63A of the Eighth Schedule

- **63A.** Public benefit organisations.—A public benefit organisation approved by the Commissioner in terms of section 30(3) must disregard any capital gain or capital loss determined in respect of the disposal of an asset if—
 - (a) that public benefit organisation did not use that asset on or after valuation date in carrying on any business undertaking or trading activity; or
 - (b) substantially the whole of the use of that asset by that public benefit organisation on and after valuation date was directed at—
 - (i) a purpose other than carrying on a business undertaking or trading activity; or
 - (ii) carrying on a business undertaking or trading activity contemplated in section 10(1)(cN)(ii)(aa), (bb) or (cc).

Section 10(1)(cN)

- 10. Exemptions.—(1) There shall be exempt from normal tax—
 - (cN) the receipts and accruals of any public benefit organisation approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—
 - (i) otherwise than from any business undertaking or trading activity; or
 - (ii) from any business undertaking or trading activity—
 - (aa) if the undertaking or activity—
 - (A) is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of "public benefit organisation" in section 30;
 - (B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
 - (C) does not result in unfair competition in relation to taxable entities;
 - (bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;
 - (cc) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—
 - (A) the scope and benevolent nature of the undertaking or activity;
 - (B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;
 - (C) the profitability of the undertaking or activity; and
 - (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or
 - (dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—
 - (i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
 - (ii) R200 000;

Annexure B – Tables of summary of valuation dates and assets of PBOs in existence on 1 April 2006, and assets which do not have to be valued within two years by PBOs

Table 1 – Summary of valuation dates for PBOs in existence on 1 April 2006

Year of assessment ending on the last day of	Valuation date	Final day for completion of valuation
March	1 April 2006	31 March 2008
April	1 May 2006	30 April 2008
May	1 June 2006	31 May 2008
June	1 July 2006	30 June 2008
July	1 August 2006	31 July 2008
August	1 September 2006	31 August 2008
September	30 September 2008	1 October 2006
October	1 November 2006	31 October 2008
November	1 December 2006	30 November 2008
December	1 January 2007	31 December 2008
January	1 February 2007	31 January 2009
February	1 March 2007	28 February 2009

Table 2 – Assets which do not have to be valued within two years by PBOs

Paragraph 31(1)	Description	Market value on valuation date
(a)	Financial instrument listed on a recognised exchange for which a price was quoted on that exchange.	Ruling price on last business day before valuation date.
(<i>c</i>)(i)	 A participatory interest in a local collective investment scheme in securities. A participatory interest in a local collective investment scheme in property. 	Price at which a participatory interest can be sold to the management company of the scheme on valuation date.