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South African Revenue Service  
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BY E-MAIL: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)

Dear SARS

**COMMENTS ON THE DRAFT TAX EXEMPTION GUIDE FOR SMALL BUSINESS FUNDING ENTITIES**

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) on the Draft Tax Exemption Guide for Small Business Funding Entities (SBFE) which provides general guidance on the approval of small business funding entities under section 30C and taxation under section 10(1)(cQ).
2. We set out below our comments in this regard.

**COMMENTS**

**Section 2 – Approval requirements**

3. In the last paragraph on page 4, it is stipulated that “The approval as an SBFE is effective from the date the approval is granted by the Commissioner”.

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| 4. <u>Submission</u> : It should be stipulated whether this approval can be granted retrospectively. |
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**Section 4 – Sole or principal object**

5. On page 6 and 7, the sole or principal object of the SBFE is discussed.
6. SARS notes that it will interpret “principal” as having regard to the expression “substantially the whole” as 90% or more but will accept 85% or more as meeting the criteria.
7. As mentioned in our [previous submission](#), dated 30 April 2020, in our view the law does not allow SARS to take a position contrary to the promulgated law and SARS’ own express interpretation of it.

8. SAICA does support the 85% threshold as a better interpretation of the law but is of the view that it should be included in law to avoid uncertainty and debate, especially should a dispute arise where SARS will invariably argue that 90% is its formal position on the interpretation.
9. Submission: Though we support the 85% threshold, we believe that SARS should engage National Treasury to align the legislative position to the SARS practice.
10. Including a reference to the ABC Company v CSARS (14106) [2019] ZATC case might also be useful as the central issue in dispute was whether the sole or principal object of ABC was as required in terms of the law.

### Section 5 – Meaning of “funding”

11. As the word “funding” is not defined in the Act, the draft IN provides a dictionary definition of the word “funding”.
12. The draft IN does, however, not provide clarity on how SARS would interpret and apply the above if an entity has multiple and/or diverse objectives.

13. Submission: Clarity is required on how SARS would interpret and apply the requirement in section 30C(2)(b)(i) in the above instances.

### Section 5.1 – Example 1

14. On page 8, Example 1 provides examples of the funding that will or will not be regarded as for the benefit of, or widely accessible to SMMEs.
15. The first bullet refers to a micro business or SBC.

16. Submission: We suggest that it be clarified that these two entities are brought into the section by the definition of “small, medium or micro-sized enterprise”. Rather than dealing with these in the example, we suggest that a paragraph be inserted explaining what these entities are that can receive funding from the SBFE.

17. On page 9, it states that ‘Funding provided by an SBFE may be viewed as being widely accessible based on how easy or convenient it is for an SMME to gain access, to understand, to meet the eligibility criteria, and to apply for such funding.’

18. Submission: It is not clear what is meant by “understand” – what needs to be understood, the access to the funding, the eligibility criteria, the application for such funding or all of these?

## Section 5.2 – Manner in which funding must be provided

19. On page 9, it is stated that it will be unacceptable for an SBFE to conduct profit-making activities as its sole or principal object to fund the cost of the provision of funding for SMMEs.

20. Submission: This statement should be qualified because if the sole or principal object of an SBFE is to conduct profit making activities, it would not get approval.

21. On page 10 just before Example 2, it is stated that there must be no *quid pro quo*, reciprocal obligations and no direct or indirect personal benefit or return resulting from the funding provided by the SBFE.

22. Submission: It should be clarified whether funding by means of a low interest loan would fall foul of this requirement.

23. On page 12 Example 3 deals with an example of a Foundation that will not qualify as an SBFE.

24. Submission: It is suggested for ease of understanding that in the “*Result*”, reference should be made to “the Foundation” rather than “the entity”.

## Section 6 – Small, medium or micro-sized enterprises

25. On page 12 it states that an SBFE is responsible for determining whether a person qualifies as an SMME before providing funding to such person

26. Submission: We agree with this statement, but we are uncertain how this should be done. Will a declaration by the SMME be sufficient or will a tax opinion or confirmation from SARS (obtained by the SMME) be needed?

### Section 6.1 – Micro businesses

27. On page 12 there is a bracket in the first bullet point but there is no closing bracket.

28. It also states on this page that it is not a requirement that the SMME be a registered micro business for turnover tax with SARS.

29. Submission: Clarity is once again needed on how the SBFE will confirm whether the SMME meets the qualifying criteria to be a micro business.

### Section 6.2 – Small business corporations

30. On page 14 one of the requirements for an entity to qualify as an SBC is that the gross income of the entity for the year of assessment must not exceed R20 million.

31. Submission: It should be clarified that this will be determined when the funding is provided by the SBFE and will not be impacted by the gross income level of the SBC thereafter.

### Section 7.1 – Trust deed

32. On page 15 it states that the registration of a trust deed with the Master of the High Court does not influence the legality of the trust deed, although the Trust Property Control Act provides that no person may act as trustee without proper authorisation from the Master.

33. Submission: It unclear how the underlined part of the sentence (referring to the letter of authority) relates to the trust deed. This should be clarified.

### Section 7.3 – Memorandum of incorporation

34. On page 17, Example 7 in the facts states that Ezezimali, an association of persons, was approved by the Commissioner as an SBFE. Its constitution provided for all the prescribed requirements.

35. Submission: To provide clarity, it should be stated in the last sentence that the constitution provided for all the prescribed requirements of section 30C.

### Section 8.1 – Committee, board or body accepting fiduciary responsibility

36. On page 18, section 8.1.1 deal with the fiduciaries of a trust.

37. Submission: Clarity should be provided in the Guide as to who would be regarded as the public officer from a trust perspective.

### Section 9.2 – Consequences of withdrawal

38. On page 30, it explains that an entity that has had its approval withdrawn will be liable for income tax and other taxes and duties as a normal taxpayer and will be subject to income tax as follows:

- An NPC and an association of persons will be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies, which is currently 28%.
- A trust will be liable for tax on its taxable income at the rate applicable to trusts, which is currently 45%, subject to section 7 and section 25B.

39. In terms paragraph 4 of Schedule 1 in the Rates and Monetary Amounts and Amendment of Revenue Laws Act, the rate of tax to be levied in respect of any SBFE that has been approved by the Commissioner in terms of section 30C(1) is 28% in the case of an organisation that is a company or trust, in respect of years of assessment commencing on or after 1 March 2021.

40. Submission: The requirement in the Rates and Monetary Amounts and Amendment of Revenue Laws Act 2021 for the tax rate of a trust should replace that in the current Draft Guide. Paragraph 10.5 of the Guide makes correct reference to the Act.

### Section 10.3 – Meaning of business undertaking or trading activities in context of section 30C

41. On page 33, it states that the main criterion that is applied in determining whether a business is conducted, is that the transaction should be undertaken with the direct and primary object of making a profit and not with a mere hope of ultimately making a profit.

42. Submission: The findings of the more recent court case, *Commissioner for the South African Revenue Services v Smith (563/2001) [2002] ZASCA 126 (26 September 2002)*, should be taken into consideration in the Guide.

43. The last paragraph on page 33 states the following: “*The Act does not specify that the business undertaking or trading activity must be carried on by the SBFE. Legislation merely specifies that receipts and accruals from a business undertaking or trading activity of an SBFE may be exempt from income tax*”.

44. Submission: It should be more clearly clarified what is meant by this as would an entity not lose its right to make deductions if the trading activities are not actually carried on by it?

### Section 10.4.4 – Basic exemption

45. On page 37, it states that there is therefore a limit on the amount of receipts and accruals derived by an SBFE from the carrying on of a business undertaking or trading activity, which is exempt from income tax under the basic exemption because the SBFE receives only the benefit of either the greater of 5% or R200 000.

46. In the next paragraph it refers to the basic exemption calculation that merely determines the amount or threshold of the basic exemption to be applied to the receipts and accruals derived by the SBFE from carrying on a business undertaking or trading activity, which do not qualify for exemption.

47. Submission: It would be preferable to use “threshold” rather than “limit” in the first paragraph mentioned above.

48. Example 8 on page 37, regards donations and bequests as being amounts received or accrued by the SBFE for the purposes of calculating the basic exemption. However, these amounts are regarded as amounts of a capital nature.

49. Furthermore, in section 10.2 on page 31, it is stated that “*Receipts or accruals of a capital nature that are not specifically included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cQ) since they do not require exemption..... While a capital gain forming part of a “taxable capital gain” is*



*potentially subject to income tax, the exemptions in section 10 do not apply to it because a capital gain is not a receipt or accrual.”*

50. **Submission:** Clarity is required on the difference in treatment of the ‘receipts and accruals’ between the two different sections.

### Section 10.5 – Rate of tax

51. On page 38, Example 9 explains how to calculate the income tax payable by a SBFE that conducts taxable and exempt activities.
52. Step 6 explains how the formula is applied to the rental income earned by the SBFE.

53. **Submission:** Clarity would be appreciated on whether the allocation of dual purpose expenses could be done based on an alternative method of apportionment that would give a more reasonable result.

### Section 12.2 – Estate Duty

54. On page 45, it states that there is no exemption for estate duty is provided for bequests to SBFEs. Any property bequeathed to an SBFE will therefore not qualify to be excluded from the value of the estate.

55. **Submission:** We suggest the wording be changed to: “*No deduction for estate duty is provided for bequests to SBFEs. Any property bequeathed to an SBFE will therefore be included in the net value of the estate, as no deduction is available.*”

### Section 12.7 – Skills development levy

56. **Submission:** It should be stipulated on page 47 that an SBFE does not qualify for exemption under section 4(c) of the Skills development Levy Act.

### Section 16 – Changes in registered particulars

57. On page 51 it states that 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. Reference is made to section 234(a) of the Tax Administration Act (TA Act).

58. **Submission:** The reference should be to section 234(2)(a) of the TA Act. It is also suggested that it be mentioned that the above will only apply if the person failed to inform SARS of a change in registered particulars within 21 business days of such change as stipulated in section 23 of the TA Act.

## Section 17 – Income tax returns

59. On page 53 it states that a return must be a full and true return and be signed by the SBFES or by the SBFES duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.

60. Submission: It is suggested that it be made clear that the person being referred to here is the public officer.

### Section 17.1 – Taxpayer reference number

61. On page 53 it states that a taxpayer reference number is allocated on completion of registration for purposes of income tax.

62. Submission: It should be clarified if a trust or an association can apply for a tax reference number and exemption at the same time.

### Section 17.3 Year of assessment

63. On page 53, it states that an SBFE, which is a trust, will have a year of assessment ending on the last day of February. A trust can apply for permission to draw up its financial statements to a different closing date if it would be more convenient for it to do so

64. It also states that an SBFE which is an NPC or an association of persons established under a constitution or any other written instrument will have a year of assessment ending on the date that coincides with its financial year-end.

65. Submission: In terms of the definition of “financial year” in section 1 of the Income Tax Act, if the SBFE has a financial year other than February, then the taxpayer will need to get the Commissioner’s approval for this.

66. It is our understanding that this is done by correcting the details on the RAV from on eFiling, but this should be clarified in the Guide.

67. It is also our understanding that although a trust can change its date of reporting for financial statement purposes, it cannot change its year of assessment as a company.

Yours sincerely

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*The South African Institute of Chartered Accountants*