

Submission File

13 May 2022

South African Revenue Service
Private Bag X923
Pretoria
0001

BY E-MAIL: policycomments@sars.gov.za

Dear SARS

COMMENTS ON THE DRAFT INTERPRETATION NOTE: PUBLIC BENEFIT ORGANISATIONS: PROVISION OF RESIDENTIAL CARE FOR RETIRED PERSONS

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee on the draft Interpretation Note (IN) – Public Benefit Organisations: Provision of residential care for retired persons published by SARS on 22 February 2022.
2. We once again thank SARS for taking certain of our comments into account in our [submission](#) on the previous version of the draft IN released in 2020. We do appreciate the ongoing opportunity to provide further constructive comments. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges, especially in these very difficult economic times.

COMMENTS

Section 4.2.3 – Percentage and age requirement of persons to whom residential care is provided by an organisation

3. Section 4.2.3 stipulates that an organisation must provide residential care for retired persons of whom more than 90% are over the age of 60. However, the public benefit activity 3(c) in Part 1 of the Ninth Schedule reads as follows:

Public benefit activity 3(c) in Part I of the Ninth Schedule

NINTH SCHEDULE		
PUBLIC BENEFIT ACTIVITIES		
(Section 30)		
PART I		
3.	(c)	The provision of residential care for retired persons, where— <ol style="list-style-type: none">more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; andresidential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.



4. Public benefit activity 3(c) therefore provides that the 90% limit applies to all persons to whom the residential care is provided not just retired persons.
5. The second sentence in paragraph 4.2.3 of the draft IN does, however, emphasise that a retired person and that person's spouse (as well as retired persons who are poor and needy) will both be regarded as a person for this section to apply, which contradicts the first sentence in this paragraph.
6. The draft IN further states that the 90% requirement allows an organisation to provide residential care to retired persons and their spouses who are under the age of 60 limited to less than 10% of the total number of persons to whom residential care is provided by that organisation.
7. The above seems to imply that only retired persons and their spouses (who are under the age of 60) are subject to the 10% limit. However, the Ninth Schedule refers to 90% of the persons to whom the residential care is provided, must be over the age of 60. So the calculation should be based on all the persons, not just retired person and their spouses, to whom that the organisation provides residential care.
8. Example (Example 1) in the draft IN also does not assist in explaining this difference as the organisation in the example only provides residential care to retired persons (which would thus exclude spouses that have not previously worked).

- | |
|--|
| <ol style="list-style-type: none">9. <u>Submission</u>: The first sentence in paragraph 4.2.3 should be amended to provide for the correct interpretation of the provisions of public benefit activity 3(c).10. An example of an organisation providing accommodation to persons other than retired persons (such as retired persons' spouses that have not worked before and retired persons that are poor and needy) should be included to clarify the 90% calculation. |
|--|

Section 4.2.5(a) – Poor and needy retired persons

11. On page 11, in the first paragraph of part (a), it is stated that SARS interprets “poor and needy” to mean “*impoverished, having little means and few possessions and therefore in need of basic necessities and assistance*”. *Basic necessities may include adequate housing, health care, sufficient food and water, social security including social assistance, and education.*”
12. The next paragraph on this page includes the following: “*An organisation carrying on PBA 3(c) should have some form of means testing to evaluate the income, assets and general well-being of retired persons to determine whether they may be regarded as “poor and needy” and in need of basic necessities and assistance, which in this instance, is the need for residential care and nursing services.*”

- | |
|---|
| <ol style="list-style-type: none">13. <u>Submission</u>: Clarity should be provided that the means test referred to by SARS in the second paragraph under 4.2.5(a) should be based on what SARS interpreted as “poor and needy” in the first paragraph in this section. |
|---|



Section 4.2.5(c) – Meaning of recovery of cost

14. Public benefit activity 3(c)(ii) stipulates that the residential care for retired persons who are poor and needy must be provided without fully recovery of the cost.
15. The draft IN, on page 12, states that this requirement will be met if the provision of residential care is carried out without recovering all direct and reasonable indirect costs.

16. Submission: We appreciate that both direct and reasonable indirect costs are considered in the draft IN. However, more clarity is needed on what would be considered as reasonable indirect costs.
17. We are not sure how a PBO will be able to survive if it doesn't recover all the costs it incurs in respect of the residential care for poor and needy retired persons, other than of course by subsidising these costs from the income derived from the provision of residential care to retired persons who can afford market-related rates or granting of life rights, as explained in the draft IN.
18. An Annexure C submission would need to be made to address the above concern for those PBOs that only assist the poor and needy and do not have other income that can subsidise the difference between the full cost versus what is actually recovered from the retired persons who are poor and needy.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Piet Nel
Project Director: Tax Education

Dr Sharon Smulders
Project Director: Tax Advocacy

The South African Institute of Chartered Accountants