

3 March 2017

South African Revenue Service  
Private Bag X923  
Pretoria  
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BY E-MAIL: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)

Dear Sir/Madam

**SUBMISSION: DRAFT BINDING GENERAL RULING ON ASSOCIATIONS: FUNDING REQUIREMENT – SECTION 30B(2)(b)(ix) INCOME TAX ACT**

**Introduction**

1. Thank you for affording the South African Institute of Chartered Accountants the opportunity to provide our comments on the above matter.
2. We have tried to deal only with the principles in our submission and would gladly expand thereon should you so require.

**Comments**

**Substantially the whole and exceptional circumstance exclusion**

3. The requirement in section 30B(2)(b)(ix) is that substantially the whole of the entity's funding must be derived from its annual or long-term members or from an appropriation by the government at national, provincial or local sphere.
4. The ruling at clause 4 notes that only in exceptional circumstances will SARS accept 85% as constituting "substantially the whole" and that the standard rule is 90%.

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| <ol style="list-style-type: none"><li>5. <u>Submission</u>: It is unclear why an exception is created rather than applying the 85% to everyone as was previously done by SARS.</li><li>6. <u>Submission</u>: It is submitted that the previous SARS reduced threshold of 85% should be retained.</li><li>7. <u>Submission</u>: Furthermore, by having such discretion of exceptional circumstance <i>extra legem</i>, this creates an arbitrary system that is not expressly allowed by the relevant law i.e. SARS does not have the legal authority to adopt, by interpretation through a ruling, different legal interpretations of the same law for different taxpayers.</li></ol> |
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### **Meaning of “funding”?**

8. The BGR notes that “funding” in its normal grammatical meaning is (our emphasis):

*The ordinary dictionary meaning of “funding” is –*

*“money provided, especially by an organisation or government, for a particular purpose” and “financial resources provided to make some project possible”*

9. In this regard it is unclear whether all entitlements are actually money provided for example where a partnership or profit sharing exists and one partner receives all the cash but both only share in profits i.e. money provided.

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| <p>10. <u>Submission</u>: It is requested that SARS clarify whether funding includes all amounts of cash received or only that portion you are beneficially entitled to?</p> <p>11. <u>Submission</u>: Furthermore we request SARS to clarify in which instances a gross inclusion should be done and when a net inclusion should be done?</p> |
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### **Appropriations from government**

12. Appropriations by government are technically those as appropriated in the relevant budget of such sphere of government in terms of the Public Finance Management Act or the Municipal Finance Management Act.

13. It is therefore unclear if all amounts received from government are included or just those expressly appropriated to the relevant entity?

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| <p>14. <u>Submission</u>: It is requested that SARS clarify when an amount will constitute an “appropriation by government”.</p> |
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### **Government at national, provincial or local sphere**

15. Though the ruling and the law refers to the three tiers of government, it is unclear what these associations should do with money received from the Legislature, Judiciary, organs of state and municipal entities which all form part of government, but may not necessarily be part of the three spheres of government as envisaged?

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| <p>16. <u>Submission</u>: It is requested that SARS clarify which, if any, these other governmental entities form part of the three spheres of government for the purposes of section 30B(2)(b)(ix). It is in our view proper that a broader more practical interpretation be followed as this would not circumvent the purpose, namely monies received from government in the broader sense and not the narrow sense.</p> <p>17. This in our view, should be considered with the judgement in <i>Natal Joint Municipal Pension Fund v Endumeni Municipality</i> 2012(4) SA 593 (SCA) as stated below, though</p> |
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we are cognisant also of the limitations of judicial interpretation expounded in this case: *“A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.” “In resolving the problem the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical, unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration.”.*

#### **Returns on reinvested member funding**

18. Funding received from members are in many instances reinvested for specific projects or to secure financial sustainability.
19. However, it remains unclear whether the causal link between funding and members are broken once such funds are invested and received as interest, dividends and capital profits (i.e. realisation of assets).
20. In our view, money received from reinvestment of member funding remains funding from members.

21. Submission: It is requested that SARS clarify whether returns on reinvested member funds constitute funding from members and whether there are different instances in which this would or would not apply.

#### **Other exempt amounts received**

22. Guidance and clarity is required from SARS to classify amounts received that would ordinarily be exempt from tax.
23. These include donations from estates of members (i.e. not member at date of payment), donations and grants received by institutions such as the UN, World Bank, IMF or OECD for the furtherance of the common objectives of the association.
24. For example where money be received from the World Bank to develop improved reporting standards for the accountancy profession or to support additional academic support interventions for black chartered accountant students and trainees.
25. These amounts would ordinarily either be capital in nature or exempt under section 10 and it seems unclear why these amounts should affect the tax exemption status of an association.

26. Submission: It is requested that SARS clarify how these amounts should be classified in terms of funding for associations as we believe they should properly fall within allowed funding i.e. the 90%.



Should you require further engagement to discuss our submission please do not hesitate to contact us.

Yours sincerely

**Pieter Faber**

**Senior Executive: Tax**

*The South African Institute of Chartered Accountants*