

Ref #763286

Submission File

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South African Revenue Service
Private Bag X923
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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 21 February 2020.
2. We once again thank SARS for the ongoing opportunity to provide constructive comments in this regard. 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

Older persons and housing schemes

3. The following statement in section 2 of the draft IN is made:

“Although section 30 or the Ninth Schedule does not define or refer to ‘older persons’, PBAs aimed specifically at older persons are included in the Ninth Schedule ...”

4. The definition of ‘older person’ as defined in section 1 of the Older Persons Act 13 of 2006. means “a person who, in the case of a male is 65 years of age or older, in the case of a female, is 60 years of age or older”.
5. Paragraphs 4.1 and 4.2.2 refer to housing schemes for retired persons as contained in the Housing Development Scheme for Retired Persons Act 65 of 1988. This act defines a retired person as “a person who is 50 years of age or older”.
6. The purpose of the draft IN is to deal with retired persons, who are, although not defined in the Act, required (subject to a certain percentage) in terms of paragraph 3(c)(i) of the



Public Benefit Activities list contained in Part I of the Ninth Schedule, to be over the age of 60. The draft IN therefore doesn't make a distinction between a male and a female and only requires that the person must be retired and over 60, or a retired person who is poor and needy (paragraph 3(c)(ii)).

7. Submission: Although it is acknowledged that the background to the relief provided by various governmental and other organisations to older persons who stay in various housing schemes provides context to the government's policy in this regard, it does create some confusion in relation to the provisions of 'residential care for retired persons' as relates to age limits.
8. Perhaps it would be more appropriate for SARS to explain the purpose and rationale for paragraph 3(c) of Part I of the Ninth Schedule to the Act and specifically with regard to the deletion of section 10(1)(cF) rather than refer to other Acts that have different age limit provisions – see further comments below.

Meaning of 'residential care'

9. It is interesting to note that the draft IN interprets the words in the terms 'residential care' independently. The draft IN concludes that 'residential care' must "be interpreted as the provision of a building for retired persons to live in." It states further that this interpretation is in line with the wording of the repealed section 10(1)(cF) that referred to a building, housing complex or village.
10. Important to note is that section 10(1)(cF) referred to "*the provision of residential accommodation*". In contrast, paragraph 3, of the Ninth Schedule, refers to the *provision of residential care*.
11. The meaning of the words accommodation and care, when considered individually, are not the same. It follows that the two terms, residential care and residential accommodation, are therefore different.
12. The fact that the draft IN states that "*organisation ... is not therefore expected to provide meals*" confirms that the two provisions do not have the same intention.

13. Submission: The Explanatory Memoranda, in 2000 and 2002, didn't provide any explanation for the fact that the wording was changed, particularly with respect to the replacement of the word 'accommodation' with the word 'care'. Although we welcome the change, it is suggested that the policy rationale of Government with respect to the change from 'residential accommodation' to the term 'residential care' be expanded upon.

Meaning of 'retired person'

14. Paragraph 4.2.2 states that 'retired persons' refers to persons having concluded their career, occupation, business or profession owing to having attained retirement age relevant to that particular career, occupation, business or profession, or persons retired owing to ill-health or infirmity, or retrenchment, or any other reason. Persons can retire for reasons other than age.



15. It would appear that a spouse of a 'retired person' who may never have been in employment will, based on the explanation of 'retired person' in the draft IN, not be a retired person for the purposes of these provisions.

16. Submission: Confirmation of the exclusion of spouses referred to above from the 'retired person' provisions contained in the draft IN would be appreciated.

17. Paragraph 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. It further states that in order to meet the requirements of PBA3(c) all of the persons to whom the organisation provides residential care must be retired as discussed above.

18. 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—
		(i) 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; and
		(ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.

19. Paragraph 4.2.3 further emphasises that a retired person and that person's spouse will both be regarded as a person for this section to apply. The spouse of a retired person, who may never have been in employment, will however, based on the definition of 'retired person' appear not be a retired person but would be a person when calculating the 90%.

20. The draft IN thus requires that 90% of the retired persons to whom residential care is provided be over 60 years of age. However, the Ninth Schedule only refer to 90% of the persons to whom the residential care is provided must be over the age of 60.

21. There is therefore a difference of interpretation between the draft Interpretation Note and the Act.

22. Submission: Clarity on the correct interpretation of the provisions should be provided and/or the Act / draft IN should be amended accordingly.



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

Yours sincerely

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The South African Institute of Chartered Accountants