
GENERAL NOTICE

NOTICE 273 OF 2008

Draft regulations to be issued in terms of section 10(1)(d) of the Income Tax Act, 1962, are hereby released for public comment.

It would be appreciated if comments on the draft regulations could be furnished by **Monday, 24 March 2008**. Due to time constraints, it will not be possible to respond individually to comments received. All comments will however be fully considered.

Comments must be submitted to:

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SOUTH AFRICAN REVENUE SERVICE

R. NO.

2008

DRAFT OF REGULATIONS TO BE ISSUED IN TERMS OF SECTION 10(1)(d)(iii) AND (iv) OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS ON WHICH THE COMMISSIONER MUST APPROVE AN ENTITY FOR PURPOSES OF THAT SECTION

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning assigned thereto and—

“entity” means any—

- (a) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association contemplated in section 10(1)(d)(iii) of that Act; and

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(b) company, society or other association of persons contemplated in section 10(1)(d)(iv) of that Act with the sole or principal object to function as a representative body for persons that carry on a particular business, profession or occupation;

“member” in the case of a fidelity or indemnity fund includes a contributor to that fund; and

“mutual loan association” means an association with the sole or principal object to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of such members.

Conditions

2. The Commissioner must approve an entity for purposes of section 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962, if—

- (a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;
- (b) in terms of the constitution or written instrument contemplated in paragraph (a)—
 - (i) it must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other to accept the fiduciary responsibility for that entity;
 - (ii) no single person may directly or indirectly control the decision making powers relating to that entity;
 - (iii) it may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives unless expressly otherwise provided for in these regulations;
 - (iv) it is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;

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- (v) no member may directly or indirectly have any personal or private interest in that entity and no benefit may accrue individually to a member;
- (vi) substantially the whole of its activities must be directed to the furtherance of its sole or principal object and not generally for the specific benefit of an individual member or minority group;
- (vii) Substantially the whole of its funding must be from its annual members or an appropriation by the government, a provincial administration or a municipality;
- (viii) it must not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, 1962, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- (ix) it must, upon its winding-up or liquidation or the withdrawal of its exemption, give or transfer its assets remaining after the satisfaction of its liabilities to—
 - (aa) another entity with similar objects and which is approved in terms of section 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962;
 - (bb) a public benefit organisation approved in terms of section 30 of that Act;
 - (cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act which is required to use those assets solely for purposes of carrying on one or more public benefit activities; or
 - (dd) an institution, board or body approved in terms of section 10(1)(cA)(i) of that Act; and
- (x) in addition to the above, in the case of a company, society or other association contemplated in section 10(1)(d)(iv)(bb) of the Income

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Tax Act, 1962, it may not participate in the business, profession or occupation which is carried on by its members; and

- (c) that entity has submitted to the Commissioner a written undertaking to the effect that—
- (i) the persons contemplated in paragraph 2(b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
 - (ii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time;
 - (iii) should the Commissioner withdraw the approval of the entity as a result of the failure by that entity to comply with the provisions of these regulations, that entity will within six months after the date of that withdrawal (or such longer period as the Commissioner may allow) transfer or take reasonable steps to transfer its remaining assets in accordance with the provisions of paragraph 2(b)(ix); and
 - (iv) the entity is or will not knowingly become a party to, or has not or will not knowingly permit itself to be used as part of an arrangement contemplated in *Part IIA* of the Income Tax Act, 1962, or a transaction, operation or scheme as contemplated in section 103 of that Act, of which the sole or main purpose was or will be the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such arrangement, transaction, operation or scheme, would have been or would have become payable by any person under any Act administered by the Commissioner;

Exceptions

3. The requirements contained in regulation 2(b)(iii), (v) and (ix) do not apply in respect of a mutual loan association.

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4. Where the constitution or written instrument of an entity does not comply with paragraph 2(b) of these regulations, the Commissioner may deem it to so comply if the persons who have accepted fiduciary responsibility for the funds and assets of that entity furnish the Commissioner with a written undertaking that the entity will be administered in compliance with that paragraph.
