
GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. R. 1236**21 November 2008**

**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 MAY APPROVE AN ENTITY
FOR PURPOSES OF THAT SECTION**

By virtue of the power vested in me by section 10(1)(d) of the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto, the conditions on which the Commissioner may approve an entity for purposes of exempting the receipts and accruals of that entity from normal tax in terms of that section.

T. A. MANUEL
MINISTER OF FINANCE

DRAFT**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
- (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)—

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- (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;
- (v) no member may directly or indirectly have any personal or private interest in that entity;
- (vi) substantially the whole of its activities must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
- (vii) it may not have a share or other interest in any business, profession or occupation which is carried on by its members;
- (viii) it must not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, 1962 (Act No. 58 of 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) substantially the whole of its funding must be from its annual or other long-term members or from an appropriation by the government, a provincial administration or a municipality;
- (x) it must upon its winding-up or liquidation or within six months from the withdrawal of its exemption (or such longer period as the Commissioner may allow), transfer its assets remaining after the satisfaction of its liabilities to—

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- (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
- (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) upon its winding-up or liquidation or within six months from the withdrawal of its exemption (or such longer period as the Commissioner may allow), it will transfer its remaining assets in accordance with the provisions of paragraph 2(b)(ix); and
 - (iv) the entity is and will not knowingly become a party to, and does not and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in *Part IIA* of Chapter III of the Income Tax Act, 1962, or a transaction, operation or scheme as contemplated in section 103(5) of that Act.

DRAFT*Exceptions*

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

Non-compliance

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.