

18 October 2016

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
0181

BY EMAIL: policycomments@sars.gov.za

RE: Section 30B Associations – Draft Binding General Ruling and General Comment

We write to comment on the draft binding general ruling that aims to provide clarity on the meaning of “annual or other long-term members”. We are also writing to note a collateral concern in terms of an emerging one-size-fits-all approach to section 30B organisations even though these organisations are varied in purpose and government regulation.

1. Ruling: Meaning of “annual or other long-term members”

a. *Impact of mid-year entry / termination on nature of membership*

In terms of the immediate SARS request for comment (i.e. relating to the draft ruling), one requirement for exempt status is that the constitution of a section 30B association must provide that “substantially the whole of the entity’s funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;” (our underlining).

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We interpret the phrase “annual or other long-term member” to refer to a member that either has annual membership or another category of membership that endures for longer than a year. In this regard, we note that associations often grant new membership at various points during the year. For example, a newly-qualified person may start for a 6-8 month period in the first year before converting to full annual status. There could also be instances where a person’s annual membership is terminated during the course of a year. This mid-year termination could be due to death, retirement from the profession or following a disciplinary procedure. Nonetheless, we believe that the nature of the relationship remains “annual or long-term”.

Where members are allowed to join or their membership is terminated during an annual membership cycle, the ruling should state that the annual nature of the overall membership remains unaffected (provided that this is in line with the founding documents of the association).

b. Drafting points

The introduction to the draft ruling states that: “The requirement for approval as an association under section 30B is that the member of the entity must be an annual or long-term member.”

This statement is not technically correct and should be amended to reflect the relevant requirement, which reads that “substantially the whole of the entity’s funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere.”

Therefore, an association may have short-term members, but the organisation’s funding is acceptable as long as the funding is substantially derived from its annual or other long-term members (it does not specifically prohibit short-term membership). We note that SAIT only has long-term membership (with mid-year entry or departure), but other associations may differ in this regard.

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As a secondary matter, the draft ruling contains interpretations of the terms “annual”; “long-term” and “member” as follows:

- “Annual” is 12 months
- “Long-term” is more than 12 months
- “Member” is any person that holds membership

Although these interpretations are relevant, we recommend that the phrase “annual or other long-term members” should also be interpreted in the ruling. We suggest that the phrase can be interpreted as “members who belong to a category of members that either has annual membership or who belong to a category of members that has membership for longer than a year.”

2. “One-size-fits-all” approach

We take note that SARS appears to view this area with some concern given that this draft ruling is the second interpretation issued regarding section 30B in less than a year. Without delving into the merits of the current ruling and the ruling in early 2016, the overall one-size-fits-all approach for the variety of organisations contained within section 30B may become problematic, especially if SARS decides to interpret the rules in a rigid fashion despite the differing nature of these organisations involved.

In this vein, we note that the category (a) and (b) organisations differ from each other and even within each category. In terms of category (a), mutual loan associations, fidelity funds and indemnity funds are dedicated collaborative funding vehicles. The unions, chambers of commerce, industry associations and local publicity associations are more akin to economic stakeholders with the unions having a very different focus (and even being subject to a very different set of regulation).

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More pertinent to SAIT and other professional bodies is the varying nature of category (b) associations. These associations come in different forms. Certain bodies, like IRBA, have a growing regulatory mandate. Other bodies, like associations for management consultants and financial officers, appear to be wholly voluntary. Bodies, like SAIT, are a hybrid. These bodies have a legislative mandate to assemble and administer a specified class of professionals at the behest of government (under Chapter 18 of the Tax Administration Act). Of specific concern is whether the requirements / interpretations of section 30B are being synchronised with Chapter 18 of the Tax Administration Act and other relevant regulatory legislation.

We welcome the opportunity to comment on the draft ruling and look forward to future engagements on the broader issues involving section 30B.

Yours sincerely

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Chief Executive