

INTERPRETATION NOTE: NO. 46 (Issue 4)

DATE: 6 November 2012

- ACT** : **INCOME TAX ACT NO. 58 OF 1962 (the Act)**
REVENUE LAWS AMENDMENT ACT NO. 35 OF 2007 (RLAA 2007)
TAXATION LAWS AMENDMENT ACT NO. 3 OF 2008 (TLAA 2008)
REVENUE LAWS AMENDMENT ACT NO. 60 OF 2008 (RLAA 2008)
TAXATION LAWS AMENDMENT ACT NO. 17 OF 2009 (TLAA 2009)
TAXATION LAWS AMENDMENT ACT NO. 7 OF 2010 (TLAA 2010)
- SECTION** : **SECTIONS 1(1) (PARAGRAPH (IA) OF THE DEFINITION OF THE TERM “GROSS INCOME”), 10(1)(cN), 11, 11E AND 30 OF THE ACT SECTION 125 OF THE RLAA 2007 (AS SUBSTITUTED BY SECTION 76(1) OF THE TLAA 2008 AND AMENDED BY SECTION 132 OF THE RLAA 2008 AND SECTION 129 OF THE TLAA 2010)**
- SUBJECT** : **INCOME TAX: AMALGAMATION OF AMATEUR AND PROFESSIONAL SPORTING BODIES**

Preamble

In this Note unless the context indicates otherwise –

- **“Companies Act, 1973”** means the Companies Act No. 61 of 1973;
- **“Companies Act, 2008”** means the Companies Act No. 71 of 2008;
- **“PBA”** means a “public benefit activity” approved by the Minister as set out in the Ninth Schedule to the Act;
- **“PBO”** means a public benefit organisation approved by the Commissioner under section 30;
- **“section”** (other than section 125) means a section of the Act;
- **“section 125”** means section 125 of the RLAA 2007 as substituted by section 76(1) of the TLAA 2008; and
- any word or expression in this Note bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides information and guidance on the amalgamation of amateur and professional sporting bodies carried out under section 125.

2. Background

Before its deletion, section 10(1)(cD) provided an exemption from income tax for –
 “the receipts and accruals of any amateur sporting association”.

The above provision was deleted with effect from 15 July 2001 with the introduction of a new tax dispensation for exempt organisations. Under the new dispensation, a concept of a PBO conducting an approved PBA was introduced. Both these terms are defined in section 30. The PBAs approved by the Minister of Finance are set out in Part I of the Ninth Schedule to the Act. A PBA under the heading “Sport” is described in paragraph 9 as follows:

“The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.”

Provided an amateur sporting organisation complied with the requirements and conditions of section 30 and conducted the approved PBA, the organisation could be approved as a PBO and was fully exempt from income tax on its receipts and accruals. One of the requirements contained in section 30 was that an approved PBO was not permitted to engage in any trading or business activities.

As a result of the professional sport conducted by some national or provincial sporting organisations, they no longer qualified as amateur sporting associations and thus failed to comply with the requirements for approval as PBOs. This was because they did not conduct the approved PBA described above and consequently their income was regarded as being derived from trading activities or a business undertaking. Certain sporting bodies therefore separated their professional and amateur activities in order for the amateur body to qualify as a PBO.

The professional arm of any sporting body is always seen as the “income provider” or “promoter” of the amateur sporting activities.

The total income of the professional arm derived from sponsorships, media rights and the like is fully taxable, while money expended by the professional arm in supporting amateur sport is not deductible under section 11(a) as it is not in the production of income.

In 2006 the provisions of the Act relating to PBOs were amended to provide a partial-taxation system for approved PBOs conducting trading or business activities. This meant that PBOs were permitted to retain their trading activities while being taxed on their trading income without losing their tax-exempt status.

The separation of a sporting body into two separate entities proved to be to the disadvantage of certain sporting bodies and consequently the 2007 Budget Review proposed measures to be introduced to assist in the re-integration of the separate sporting entities, so that expenditure incurred by the professional body to develop amateur sport could be deducted by the unified body, a taxable entity.

3. The law

Section 11E

Section 11E was inserted into the principal Act by section 20 of the RLAA 2007 and amended by section 17 of the TLAA 2009 and substituted by section 21(1) of the TLAA 2010.

11E. Deduction of certain expenditure incurred by sporting bodies.—For the purpose of determining the taxable income derived by—

- (a) any company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a non-profit company as defined in the Companies Act, 2008 (Act No. 71 of 2008); or
- (b) an association of persons that has been incorporated, formed or established in the Republic,

from carrying on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998), there shall be allowed as a deduction from the income of that company or association—

- (i) expenditure, not of a capital nature, incurred by that company or association on the development and promotion, directly by that company or association; or
- (ii) any payment made to any other company or association contemplated in this section for expenditure to be incurred on the development and promotion,

of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport.

Paragraph (IA) of the definition of “gross income” in section 1(1)

Specifically included in gross income, whether or not of a capital nature is –

- (IA) any amount received by or accrued to a company or association as contemplated in subparagraph (ii) of section 11E;

Section 125 of the RLAA 2007 (as substituted by section 76(1) of the TLAA 2008)

Under section 76(2) of the TLAA 2008, section 125 is deemed to have come into operation on 1 January 2008.

Special rules relating to the amalgamation of professional and amateur sporting bodies

125. (1) For the purposes of this section, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, must, unless the context otherwise indicates, bear the meaning so assigned, and—

“amalgamation transaction” means any transaction—

- (a) between a transferor and a transferee, either of which was before the conclusion of that transaction—
 - (i) approved by the Commissioner in terms of section 30 of the Income Tax Act; and
 - (ii) engaged in the activities contemplated in paragraph 9 of Part I of the Ninth Schedule to the Income Tax Act;
- (b) in terms of which that transferor disposes of all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its activities) to that transferee; and
- (c) as a result of which that transferor’s existence will be terminated.

“Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“transferor” means any person who carries on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998); and

“transferee” means any person who—

- (a) carries on sporting activities falling under the same code of sport as the sporting activities carried on by the transferor, and
- (b) will carry on sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport after the date of the conclusion of the transaction contemplated in subsection (2).

(2) This section applies, notwithstanding any provision to the contrary in the Income Tax Act, other than section 103 and Part IIA of Chapter III, in respect of an amalgamation transaction, as approved by the Commissioner and subject to such conditions as he or she may impose.

(3) Where a transferor disposes of—

- (a) a capital asset to a transferee in terms of an amalgamation transaction and that transferee acquires that asset as a capital asset—
 - (i) that transferor must be deemed to have disposed of that asset for an amount equal to base cost of that asset on the date of the disposal thereof; and
 - (ii) that transferor and that transferee must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee, be deemed to be one and the same person with respect to—
 - (aa) the date of acquisition of that asset by that transferor and the amount and date of incurral by that transferor of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule to the Income Tax Act; and
 - (bb) any valuation of that asset effected by that transferor as contemplated in paragraph 29(4) of the Eighth Schedule to the Income Tax Act; or
- (b) an asset held by it as trading stock to a transferee in terms of an amalgamation transaction and that transferee acquires that asset as trading stock—
 - (i) that transferor must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that transferor in respect of that asset in terms of section 11(a) or 22(1) or (2) of the Income Tax Act; and
 - (ii) that transferor and that transferee must, for purposes of determining any taxable income derived by that transferee from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor and the amount and date of incurral by that transferor of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2) of the Income Tax Act.

(4) Where a transferor disposes of an asset that constitutes an allowance asset in that transferor’s hands to a transferee in terms of an amalgamation transaction and that transferee acquires that asset as an allowance asset—

- (a) no allowance allowed to that transferor in respect of that asset must be recovered or recouped by that transferor or included in that transferor’s income for the year of that transfer; and
- (b) that transferor and that transferee must be deemed to be one and the same person for purposes of determining the amount of any allowance—
 - (i) to which that transferee may be entitled in respect of that asset; or
 - (ii) that is to be recovered or recouped by or included in the income of that transferee in respect of that asset.

(5) Where the transferee disposes of any share in the transferor as a result of the liquidation, winding up or deregistration of that transferor, that transferee must disregard that

disposal for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.

(5A) The provisions of paragraph 12(5) of the Eighth Schedule to the Income Tax Act will not apply where a debt owing—

- (a) by a transferor to a transferee; or
- (b) by a transferee to a transferor,

is reduced or discharged as part of a transaction contemplated in subsection (2).

(6) The provisions of section 10(1)(cN) of the Income Tax Act will not apply in respect of the receipts and accruals derived by the transferor or transferee during the year of assessment in which the transaction contemplated in subsection (2) was concluded.

(7) The provisions of section 30 of the Income Tax Act will not apply in respect of the transferor or transferee as from the date the transaction contemplated in subsection (2) was concluded.

(8) The transferee and the Commissioner may agree, subject to such adjustments as may be necessary and subject to such conditions as the Commissioner may impose, that the transferee be deemed to have received all receipts and accruals and be deemed to have incurred all expenditure and losses received or incurred by the transferor during the year of assessment in which the transaction contemplated in subsection (2) was concluded.

(9) No transfer duty is payable in terms of the Transfer Duty Act, 1949, in respect of the acquisition of an asset by the transferee in terms of a transaction as contemplated in subsection (2) if the public officer of the company has made a sworn affidavit or solemn declaration that the transaction complies with the provisions of this section.

(10) Subsections (1) to (9) come into operation on 1 January 2008 and shall apply to any transaction concluded on or before 31 December 2012.

Paragraph 9 of Part I of the Ninth Schedule to the Act

SPORT

9. The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.

Note: The special rules in section 125 on the amalgamation of the professional and amateur bodies have not been incorporated into the Act, since these provisions only apply to a limited number of organisations and to any transaction concluded on or after 1 January 2008 but not later than 31 December 2012.

4. Application of the law

4.1 Definitions [section 125(1)]

Amalgamation transaction: This is defined as a transaction between a transferor and a transferee (see below) either of which was before the conclusion of the transaction, approved as a PBO under section 30, and engaged in the approved PBA described in paragraph 9 of Part I of the Ninth Schedule. Under the transaction the transferor must dispose of all its assets, other than those with which it elects to settle its debts incurred in the ordinary course of its activities. As a result of the transaction the existence of the transferor must be terminated.

Transferor: The transferring body may be either the professional or the amateur organisation provided it carries on a sport which is administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation

Act, 1988. This means that the national federation is the national governing body of a code of sport in the Republic, recognised by the international controlling body as the only authority for the administration and control of that relevant code of sport.

Transferee: The transferee body into which the property is conveyed may be either the professional or amateur organisation, provided it –

- carries on the same sporting activities falling under the same code of sport as the sporting activities carried on by the transferor, and
- after the conclusion of the amalgamation transaction, it will carry on sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule under the same code of sport.

Note: In order to qualify for the deduction under section 11E, a transferee must be

- a company incorporated under section 21 of the Companies Act, 1973;
- a non-profit company as defined in the Companies Act, 2008; or
- an association of persons that has been formed, incorporated or established in the Republic (see 7).

4.2 Requirements, conditions and terms for the amalgamation transaction

4.2.1 Impact on the Act and approval by the Commissioner [section 125(2)]

Section 125 overrides the Act except for section 103 (transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income) and Part IIA of Chapter III of the Act (sections 80A to 80L dealing with impermissible tax avoidance arrangements).

The Commissioner must approve the amalgamation transaction and may impose such conditions as deemed necessary. These conditions may vary and will depend on the specific circumstances of a transaction.

4.2.2 Disposal of assets [section 125(3)]

The transferor must dispose of all its assets to the transferee but may elect to use assets to settle any debts incurred by it in the ordinary course of its trade. In other words, once the transaction has been concluded and all debts have been paid, the transferor may not be in possession of any assets.

4.2.3 Termination of transferor

Once the transferor has transferred all its assets to the transferee, its existence must be terminated. It is accepted that this will be achieved if the entity is liquidated, wound up or deregistered.

4.2.4 Disposal of capital asset [section 125(3)(a)]

Any capital asset which forms part of the amalgamation transaction will be deemed to be disposed of by the transferor for an amount equal to the base cost of the asset on the date of disposal. This means that there is no capital gain or capital loss as a result of the amalgamation transaction. For purposes of determining any capital gain or capital loss of the transferee after the amalgamation transaction, the transferor and the transferee are deemed to be one and the same person. This includes –

- the date of acquisition of the asset by the transferor;

- the amount and date of the expenditure incurred on the asset; and
- any valuation of the asset on the valuation date.

This provision ensures that the transfer of the capital assets takes place on a tax-neutral basis and there is no capital gain or capital loss as a result of the amalgamation transaction.

Example 1 – Disposal of capital asset

Facts:

An amateur cricket association having a year of assessment ending on 31 March wishes to amalgamate with a professional cricket association. Under the amalgamation transaction, the effective date of which was 31 May 2008, the amateur association will transfer its property (building and cricket ground) to the professional association after which it will cease to exist. On 31 August 2008 the property was duly transferred under the amalgamation transaction. The amateur association had purchased the property on 1 July 1986 at a cost of R2 000 000 and valued it in accordance with paragraph 29(4) of the Eighth Schedule to the Act as at 1 April 2006 at R9 000 000. On 30 June 2015 the professional body disposed of the property for proceeds of R20 000 000. No other costs were incurred in respect of the acquisition or disposal of the property.

Result:

Under section 125(3)(a) the amateur association is deemed to have disposed of its property for an amount equal to its base cost on the date of disposal (31 May 2008) as follows:

	R
Proceeds	9 000 000
Less: Base cost	<u>(9 000 000)</u>
Capital gain or loss	<u>Nil</u>

It will therefore have no capital gain or loss.

The professional body is deemed to have acquired the property on 1 July 1986 at a cost of R2 000 000. It is also deemed to have valued the asset as at 1 April 2006. The professional body has the option of determining the capital gain or loss on disposal using one of the following methods:

Market value method

	R
Proceeds	20 000 000
Less: Base cost	<u>(9 000 000)</u>
Capital gain	<u>11 000 000</u>

Time-apportionment base cost method

N = 1 July 1986 to 31 March 2006 = 20

T = 1 April 2006 to 30 June 2015 = 10

$$\begin{aligned}
 Y &= B + [(P - B) \times N / (N + T)] \\
 &= R2\,000\,000 + [(R20\,000\,000 - R2\,000\,000) \times 20 / 30] \\
 &= R2\,000\,000 + R12\,000\,000 \\
 &= R14\,000\,000
 \end{aligned}$$

	R
Proceeds	20 000 000
Less: Base cost	<u>(14 000 000)</u>
Capital gain	<u>6 000 000</u>
20%-of-proceeds method	
	R
Proceeds	20 000 000
Less: Base cost (20% x R20 000 000)	<u>(4 000 000)</u>
Capital gain	<u>16 000 000</u>
<p>The professional body would therefore adopt time-apportionment in order to obtain the lowest capital gain.</p>	
Note:	
<p>1. The valuation date of all PBOs in existence on 1 April 2006 is the first day of their first year of assessment commencing on or after 1 April 2006. In this example the year of assessment of the amateur body, a PBO, ends on 31 March, and it therefore has a valuation date of 1 April 2006 and must value all its assets by 31 March 2008 under paragraph 29(4) of the Eighth Schedule. For more information on the valuation date of PBOs, see Interpretation Note No. 44 "Public Benefit Organisations (PBOs): Capital Gains Tax" issued on 31 August 2007. The professional body, which would normally have a valuation date of 1 October 2001, will have a valuation date of 1 April 2006 in respect of the property. In other words, it takes over the valuation together with the applicable valuation date from the amateur body.</p> <p>2. This example is simplistic in that it does not deal with issues affecting time apportionment such as the incurral of expenditure in more than one year of assessment before valuation date (which will limit N to 20), incurral of expenditure on improvements on or after valuation date (which will trigger the proceeds formula in paragraph 30(2)) and the incurral of selling expenses (which reduce proceeds for the purposes of the time-apportionment formulae).</p> <p>3. A special time-apportionment calculator ("TAB Calculator") for use by PBOs and recreational clubs is available on the SARS website. Unlike the standard TAB calculator which only applies to a valuation date of 1 October 2001, the special calculator makes provision for varying valuation dates and could be used in a case such as this in which the valuation date is 1 April 2006.</p> <p>4. For more information on the determination of the time-apportionment base cost of an asset, see the <i>Comprehensive Guide to Capital Gains Tax</i> on the SARS website.</p>	

4.2.5 Disposal of an asset held as trading stock [section 125(3)(b)]

For purposes of the amalgamation transaction, the transferor is deemed to have disposed of trading stock for an amount equal to the amount taken into account under section 11(a) or 22(1) or (2). Section 11(a) essentially refers to the expenditure actually incurred in acquiring the trading stock during a year of assessment. Section 22(1) specifies the amount to be taken into account as closing stock, namely –

- the cost of the trading stock,
- less a provision for obsolescence or decline in value.

Section 22(2) specifies the amount to be taken into account as opening stock, namely –

- the amount treated as closing stock, or
- if not so accounted for, the cost price.

This has the effect that the transferor does not have any income or loss as a result of the transfer of trading stock.

For purposes of determining any taxable income derived by the transferee from a trade carried on by it, the transferee and transferor are deemed to be one and the same person for the acquisition of the asset and the cost or expenditure incurred on it.

This ensures that the transfer of the trading stock takes place on a tax-neutral basis and that there is no profit or loss on the transfer value.

Example 2 – Disposal of an asset held as trading stock

Facts:

A soccer association has separated its amateur and professional bodies. Both entities are companies incorporated under section 21 of the Companies Act, 1973. The amateur association is an approved PBO. A decision is taken to merge the two entities and the amalgamation transaction is concluded on 30 June 2008. The amateur association will transfer its assets to the professional body. The amateur association carries a stock of soccer kits which are sold to the amateur teams, the age groups of which range from 9 to 16 years. The cost price of the stock held as at 30 June 2008 is R820 000. The market value of the stock is R900 000.

Result:

The professional organisation is deemed to have taken over the trading stock at a value of R820 000.

4.2.6 Disposal of an allowance asset [section 125(4)]

The transferor must disregard any recovery or recoupment or inclusion in income of capital allowances previously claimed when an allowance asset is transferred under an amalgamation transaction.

The transferor and the transferee are treated as one and the same person for purposes of determining any allowance on the asset to which the transferee may be entitled or that is to be recovered or recouped by or included in the income of the transferee in the years of assessment after the amalgamation.

The provision thus provides a tax-neutral transfer to the transferor, while the transferee merely continues claiming any remaining capital allowances that could have been claimed by the transferor.

Example 3 – Disposal of allowance asset*Facts:*

A provincial rugby association has decided to amalgamate its professional rugby entity with its amateur entity which is an approved PBO. The merger of the two associations took place on 30 April 2008.

The professional association purchased a scrumming machine at a cost of R100 000 on 1 May 2004. Between 1 May 2004 and 30 April 2008 the association has claimed wear and tear allowances under section 11(e) of R20 000 x 4 = R80 000. The market value of the machine on the date of merger is R90 000.

Result:

The professional association is deemed not to have recouped any of the allowances it claimed on the machine. The amateur association is deemed to have acquired the machine on 1 May 2004 and to have claimed wear and tear allowances of R80 000. The amateur association will continue to claim the remaining wear and tear allowance of R20 000 on the machine. Should it dispose of the fully-depreciated machine for, say, R90 000, it will have a recoupment of R90 000 under section 8(4)(a).

4.2.7 Disposal of shares held by the transferee in the transferor [section 125(5)]

Section 125(5) applies when a transferee owns shares in a transferor company which are disposed of as a result of the liquidation, winding up or deregistration of the transferor company. In these circumstances the transferee must disregard the disposal of its shares for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.

4.2.8 Debt owing between transferor and transferee [section 125(5A)]

Under paragraph 12(5) of the Eighth Schedule to the Act, the person who benefits from the discharge of a debt is treated as –

- having acquired a claim to so much of the face value of the debt as was reduced or discharged for no consideration for a base cost of nil; and
- disposing of the claim for proceeds equal to the amount discharged.

In order to allow an amalgamation under section 125 to occur on a tax-neutral basis, section 125(5A) provides that paragraph 12(5) of the Eighth Schedule will not apply if any debt owing by the transferor to a transferee or by a transferee to a transferor is reduced or discharged as part of the amalgamation transaction under section 125(2).

4.2.9 Suspension of section 10(1)(cN) during the year of assessment in which the amalgamation transaction is concluded [section 125(6)]

Section 10(1)(cN) provides for the exemption of certain receipts and accruals of PBOs approved by the Commissioner under section 30.

During the year of assessment in which the amalgamation transaction takes place, the exemption provisions of section 10(1)(cN) are not applicable to either the transferor or the transferee.

4.2.10 Approval as a PBO under section 30 [section 125(7)]

The approval as a PBO of a transferor or transferee under section 30(3) will cease to apply as from the date on which the amalgamation transaction is concluded.

An approved PBO –

- may not distribute its funds to any person other than in the course of undertaking a PBA [section 30(3)(b)(ii)], and
- on dissolution may only distribute its funds to another tax-exempt body [section 30(3)(b)(iii)].

The above provision has been introduced to ensure that the PBO does not contravene section 30 as a result of amalgamation with a taxable entity.

4.2.11 Deemed receipts and accruals and deemed expenditure incurred [section 125(8)]

The transferee and the Commissioner may agree that the transferee is deemed to have received all receipts and accruals and to have incurred all expenditure and losses incurred by the transferor, during the year of assessment in which the amalgamation transaction was concluded. The Commissioner may impose such adjustments and conditions as may be necessary.

Any balance of assessed loss incurred by a transferor in any preceding year of assessment that has been carried forward by that transferor is not incurred in the year of assessment in which the amalgamation transaction is concluded between the transferor and transferee. The transferee can, therefore, claim no part of that balance of assessed loss.

Example 4 – Deemed receipts and accruals and deemed expenditure incurred

Facts:

The financial years of two separate sporting entities (professional and amateur) engaged in the same sporting code, end on 31 December. An amalgamation transaction is entered into which is concluded on 31 July 2008. In respect of the period 1 January 2008 to 31 July 2008 the professional entity reflected gross receipts of R1 800 000 from trading activities and expenditure incurred in earning this income of R200 000.

In addition to this income, an amount of R80 000 was derived from the letting of accommodation. The expenditure incurred in the production of the rental income amounted to R100 000 resulting in a net loss of R20 000.

Result:

For the financial year ended 31 December 2008 the Commissioner and the professional body agreed that the unified entity will take into account –

- the income and expenditure of the professional entity for the period 1 January 2008 to 31 July 2008, including the loss of R20 000 incurred on letting of property;
- its own income and expenditure for the period 1 January 2008 to 31 July 2008; and

- the consolidated income and expenditure for the period 1 August 2008 to 31 December 2008 of the unified entity.

5. **Transfer duty [section 125(9)]**

No transfer duty will be payable on the acquisition of an asset by the transferee company provided its public officer makes a sworn affidavit or solemn declaration that the transaction complies with section 125.

This will apply when immovable property is transferred by the transferor to the transferee.

6. **Effective date and period [section 125(10)]**

The legislation pertaining to the amalgamation of sporting bodies came into operation on 1 January 2008 and applies to any transaction concluded on or before 31 December 2012.

An amalgamation transaction is concluded when a legally binding and enforceable agreement without any suspensive conditions has been entered into by the parties to the agreement.

Note: The deduction under section 11E of the Act is only applicable to an association of persons, a company contemplated in section 21 of the Companies Act, 1973 or a non-profit company as defined in the Companies Act, 2008. If the transferee must be converted to a section 21 company in order to qualify for a deduction under section 11E, the conversion must take place in the same year of assessment during which the amalgamation transaction takes place. The reason for this is to give effect to section 125(6) and (8).

Under section 125(6) the exemption in section 10(1)(cN) is not applicable to the receipts and accruals of the transferee or transferor during the year of assessment in which the amalgamation transaction is concluded.

Section 125(8) provides that the transferee and the Commissioner may agree that the transferee is deemed to have received all receipts and accruals and incurred all the expenditure and losses received or incurred by the transferor during the year of assessment in which the amalgamation transaction was concluded, to enable the transferee to claim a deduction under section 11E against the combined income of the two bodies. If the transferee is not converted to a section 21 company in the year of assessment during which the amalgamation agreement is concluded, no deduction for expenditure incurred will be allowed under section 11E for that year of assessment.

7. **Deduction under section 11E**

This provision allows for the deduction of any expenditure incurred by the taxpayer in the development and promotion of amateur sport falling under the same code of sport as the professional sport it carries on, subject to the following requirements being met:

- The taxpayer must be a company contemplated in section 21 of the Companies Act, 1973, a non-profit company as defined in the Companies Act,

2008 or an association of persons established, formed or incorporated in the Republic.

- Both the amateur and professional sporting activities conducted by the taxpayer must fall under the same sporting code.
- The sporting activities must fall under a code of sport which is administered and controlled by a national governing body in the Republic and which is recognised by the international controlling body as the only authority for the administration and control of that relevant code of sport.
- The company or association referred to above is entitled to a deduction for –
 - expenditure, not of a capital nature, incurred by it directly on the development and promotion of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport; or
 - any payment made to any other such company or association for expenditure to be incurred in the same manner.

Note: Section 11E(1)(i) used to only apply to a company that was “formed and incorporated” under section 21 of the Companies Act, 1973. This meant that companies that began their existence as “for profit” companies and later converted to section 21 companies did not qualify for the deduction under section 11E. This requirement has been amended retrospectively to 1 January 2008, and it is now only required that the company be incorporated under section 21 of the Companies Act, 1973.¹

Previously section 11E provided only for the deduction of the expenditure incurred directly by the taxpayer. This section has now been amended to provide for the deduction of any payment to another similar entity likewise engaged in the development and promotion of sporting activities contemplated in Paragraph 9 of Part I of the Ninth Schedule.² Any such payment must be included in the gross income of the recipient body under paragraph (IA) of the definition of the term “gross income” in section 1(1).

The Companies Act, 1973 was repealed by section 224(1) of the Companies Act, 2008 with effect from 1 May 2011 when the latter Act came into effect. Section 11E has accordingly been amended to include a non-profit company as defined in the Companies Act, 2008.³

8. General

8.1 Donations tax

It is accepted that an amalgamation transaction under section 125 will not result in the payment of donations tax, provided that the assets are transferred to a company contemplated under section 21 of the Companies Act, 1973, a non-profit company as defined in the Companies Act, 2008 or an association of persons, as envisaged in section 11E.

¹ Section 11E(1)(i) was amended by section 17 of the Taxation Laws Amendment Act, No. 17 of 2009.

² Section 11E was substituted by section 21(1) of the Taxation Laws Amendment Act No. 7 of 2010

³ Above, as per Act No. 7 of 2010

8.2 Stamp duty

There was no specific exemption under the now repealed⁴ Stamp Duties Act No. 77 of 1968 for any stamp duty which may have become payable as a result of an amalgamation transaction.

8.3 Securities Transfer Tax (STT)

Paragraph (c) of the definition of the term “transfer” in the STT Act No. 25 of 2007 excludes the cancellation or redemption of a security if the company which issued the security is being wound up, liquidated or deregistered or its corporate existence is being finally terminated. A transferee that disposes of the shares it holds in the transferor as a result of the liquidation, winding up or deregistration of the transferor will accordingly not be subject to STT.

8.4 Value-added tax

No specific exemption has been included for the value-added tax consequences of an amalgamation transaction. However, if the enterprise is disposed of as a going concern, the supply may qualify for zero-rating under section 11(1)(e) of the Value-Added Tax Act No. 89 of 1991.

9. Summary of the legislation

The new legislation provides relief in the event of the amalgamation of the professional and amateur arms of a sport. Provided certain requirements are met, the one body may dispose of its assets to the other body on a tax-neutral basis and the transferor will cease to exist. The unified entity will be a taxable entity. The PBO will lose its approval under section 30 and consequently will no longer qualify for exemption of certain of its receipts and accruals under section 10(1)(cN).

Section 11E provides for a special deduction in the unified entity, provided certain requirements are met. This means it may deduct from its income any expenditure (not of a capital nature) directly incurred or paid to another entity contemplated in the section in the development and promotion of qualifying amateur sport falling under the same code of sport as the professional sport it carries on.

Note: The relief measures relating to the amalgamation only apply for a five-year window period starting on 1 January 2008 and ending on 31 December 2012.

10. Queries

The information in this Note merely serves as a general guideline based on legislation. Any queries or submissions for approval may be addressed to:

The Group Executive
 Interpretation and Rulings
 South African Revenue Service
 PO Box 402
 PRETORIA
 0001

Fax: 012 422 4952

E-mail: policycomments@sars.gov.za

⁴ The Stamp Duties Act was repealed with effect from 1 April 2009.

11. Conclusion

This Note discusses only the broad principles in interpreting the current legislation. As the facts and circumstances pertaining to each sporting association may differ, each case must be considered on its own merits.

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