

BINDING GENERAL RULING (INCOME TAX): NO. 20

DATE: 10 December 2013

**ACT: INCOME TAX ACT NO. 58 OF 1962
TRANSFER DUTY ACT NO. 40 OF 1949**

**SECTION: SECTIONS 10(1)(cN), 10(1)(cO) AND 30B OF THE ACT;
PARAGRAPH 63A OF THE EIGHTH SCHEDULE TO THE ACT;
SECTION 9(1)(c) OF THE TRANSFER DUTY ACT**

SUBJECT: INTERPRETATION OF THE EXPRESSION “SUBSTANTIALLY THE WHOLE”

Preamble

For the purposes of this ruling –

- “PBO” means a public benefit organisation approved by the Commissioner under section 30(3);
- “section” means a section of the Act;
- “the Act” means the Income Tax Act No. 58 of 1962;
- “Transfer Duty Act” means the Transfer Duty Act No. 40 of 1949; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This binding general ruling provides clarity on the interpretation of the expression “substantially the whole” as referred to in sections 10(1)(cN), 10(1)(cO), 30B, and paragraph 63A of the Eighth Schedule to the Act and section 9(1)(c) of the Transfer Duty Act.

2. Background

Under the partial taxation system a PBO is permitted to conduct a business undertaking or trading activity within certain prescribed parameters and becomes taxable on receipts and accruals derived from those activities in excess of prescribed limits while at the same time retaining exemption for its public benefit activities. In view of their partially exempt status PBOs should not enjoy an unfair tax advantage over other taxpaying entities.

The legislature recognised that it was not possible for an organisation to carry on separate activities that were completely independent of one another. The concept of “substantially the whole” was accordingly introduced into the legislation to ensure that the sole or principal object of the PBO remains the carrying on of public benefit activities, while at the same time allowing certain parameters within which the PBO can carry on its trading operations.

The concept of “substantially the whole” was later also introduced into legislation affecting the exemption of approved recreational clubs and membership based organisations.

As the PBOs and approved recreational clubs effectively use assets to carry on trading activities to produce exempt and non-exempt income, the legislation dealing with capital gains and losses as well as transfer duty was also amended to give effect to the concept of “substantially the whole”.

3. The law

Set out below are the relevant provisions of the Act and the Transfer Duty Act which refer to the expression “substantially the whole”.

3.1 Public benefit organisations

Section 10(1)(cN)(ii)(aa)(B) provides that the receipts and accruals of a PBO approved by the Commissioner under section 30(3) derived from any business undertaking or trading activity will be exempt from normal tax to the extent that the receipts and accruals are derived from a business undertaking or trading activity which –

“is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost”.

Paragraph 63A of the Eighth Schedule provides among other things that a PBO approved by the Commissioner under section 30(3) must disregard any capital gain or capital loss determined in respect of the disposal of an asset if substantially the whole of the use of that asset by that PBO on and after valuation date was directed at –

- a purpose other than carrying on a business undertaking or trading activity; or
- carrying on a business undertaking or trading activity contemplated in section 10(1)(cN)(ii)(aa), (bb) or (cc).

3.2 Recreational clubs

Section 10(1)(cO) provides that the receipts and accruals of a recreational club approved by the Commissioner under section 30A will be exempt from normal tax to the extent that they are derived from any business undertaking or trading activity that –

“is carried out on a basis substantially the whole of which is directed towards the recovery of cost”.

3.3 Membership-based organisations

Section 10(1)(d)(iii) and (iv) provide that the receipts and accruals of the following entities are exempt from normal tax:

- A mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner in terms of section 30B [section 10(1)(d)(iii)].
- A company, society or other association of persons established to promote the common interests of persons (being members of such company, society or association of persons) carrying on any particular kind of business,

profession or occupation approved by the Commissioner under section 30B [section 10(1)(d)(iv)].

Section 30B(2)(b) provides among other things that the Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) whose constitution or written instrument provides that –

- “the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established” [section 30B(2)(b)(iv)];
- “substantially the whole of the activities of the entity 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” [section 30B(2)(b)(vi)]; and
- “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 [section 30B(2)(b)(ix)].

3.4 Transfer duty

Section 9(1)(c) of the Transfer Duty Act provides that no duty shall be payable in respect of the acquisition of property by a PBO approved by the Commissioner under section 30(3) or by any institution, board or body, which is exempt from normal tax under section 10(1)(cA)(i) which has as its sole or principal object the carrying on of any public benefit activity contemplated in section 30 –

“in respect of property acquired by such public benefit organisation, institution, board or body, the whole, or substantially the whole, of which will be used for the purposes of one or more public benefit activity carried on by such public benefit organisation, institution, board or body, as the case may be . . .”.

4. Ruling

The expression “substantially the whole” is regarded by SARS to mean 90% or more. However, in order to overcome certain practical difficulties SARS will accept a percentage of not less than 85%. The percentage must be determined using a method appropriate to the circumstances.

This ruling constitutes a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011.

5. Period for which this ruling is valid

This binding general ruling applies for an indefinite period.