



# **Legal & Policy**

## **Income Tax**

### **Tax Guide for Recreational Clubs** **(Issue 3)**



*South African Revenue Service*

# Tax Guide for Recreational Clubs

## Preface

This guide provides general guidance on the taxation of recreational clubs in South Africa.

The guide deals with the following taxes that may affect organisations approved as recreational clubs:

- Income tax
- Donations tax
- Estate duty
- Transfer duty
- Dividends tax
- Securities transfer tax
- Skills development levy
- Capital gains tax
- Value-added tax
- Employees' tax
- Unemployment insurance fund

Information relating to taxes, duties, levies and contributions reflect the rates applicable as at the date of issue of this guide.

All guides, interpretation notes, forms, returns and tables referred to in this guide are available on the SARS website at **[www.sars.gov.za](http://www.sars.gov.za)**.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act.

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**Legal and Policy Division**

**SOUTH AFRICAN REVENUE SERVICE**

Date of 1st issue : 2 July 2010  
Date of 2nd issue : 10 December 2013  
Date of 3rd issue : 29 February 2016

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## Glossary

In this guide unless the context indicates otherwise –

- **“basic exemption”** means the amount determined as a threshold and applied to the total receipts and accruals which do not qualify for a specific exemption contemplated in section 10(1)(cO)(ii);
- **“CGT”** means capital gains tax, being the portion of normal tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eight Schedule;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“fiduciary”** means a person who holds a position of trust or responsibility including decision-making powers over the affairs of a recreational club;
- **“founding document”** means the written instrument under which a recreational club is established and governed such as the constitution or memorandum of incorporation;
- **“income tax”** means the normal tax payable by a taxpayer under the Act;
- **“Minister”** means the Minister of Finance;
- **“NPC”** means a “non-profit company” as defined in section 1 of the Companies Act;
- **“partial taxation”** means the method of taxing the receipts and accruals derived from any other source or activities which fall outside the parameters of the exemptions including the basic exemption as set out in section 10(1)(cO)(ii);
- **“PBA”** means a public benefit activity listed in Part I of the Ninth Schedule;
- **“PBO”** means “public benefit organisation” as defined in section 30(1) which has been approved by the Commissioner under section 30(3);
- **“prescribed requirements”** mean the formal conditions and requirements set out in section 30A(2)(a), which an organisation must comply with in order to qualify for approval as a recreational club;
- **“recreational club”** means a “recreational club” as defined in section 30A(1) which has been approved by the Commissioner under section 30A(2);
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“section 10(1)(cO)”** means the section that provides for the exemption from income tax of certain receipts and accruals of a recreational club and the taxation of receipts and accruals which fall outside the parameters of the exemptions provided in that section;
- **“section 30A”** means the section which sets out the conditions and requirements that an organisation must comply with in order to obtain and retain approval as a recreational club;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“TEU”** means Tax Exemption Unit;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“VAT”** means value-added tax;

- “**VAT Act**” means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the Act.

## 1. Introduction

Section 10(1)(cO) and section 30A were introduced into the Act to deal with previously exempt clubs.<sup>1</sup> The provisions of these sections are more detailed and comprehensive resulting in improved consistency and certainty.

Specific punitive measures have been introduced in the Act to deal with situations in which a recreational club misuses its approval or exemption status or does not comply with the Act.

An organisation will enjoy preferential tax treatment only after it has applied for and been granted approval as a recreational club by the Commissioner and continues to comply with the relevant requirements and conditions as set out in the Act.

## 2. Background

Clubs are formed for the mutual benefit of members who contribute to share the cost of providing a collective benefit, namely, the social or recreational facility. The common objective of recreational clubs excludes personal financial gain of individual members. Under this principle, the sharing of expenses by various members joining together based on mutuality, does not generate additional taxable income for the recreational club and it is to this extent that clubs enjoy preferential tax treatment.

Sporting organisations qualifying for preferential tax treatment may be divided into two categories, namely –

- recreational clubs; and
- amateur sporting bodies generally approved as PBOs (see **14**).

Although both categories qualify for exemption from income tax on certain of their receipts and accruals, they are approved under different sections of the Act, each section having its own requirements and conditions.

## 3. Tax Exemption Unit

The TEU is a dedicated office within SARS established to –

- consider all applications by organisations for approval as a recreational club; and
- raise assessments on recreational clubs.

The centralisation of the approval and assessment processes is intended to promote uniform treatment by SARS. The TEU also monitors compliance by approved recreational clubs with the legislative requirements in order to prevent malpractice and abuse.

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<sup>1</sup> Section 10(1)(j) and section 25(1) of the Revenue Laws Amendment Act 20 of 2006 introduced section 10(1)(cO) and section 30A, respectively. These amendments came into operation on 1 April 2007 and apply to recreational clubs as from their first year of assessment commencing on or after that date.

## 4. Approval as a recreational club

The Commissioner will approve an organisation as a recreational club only if –

- its sole or principal object is to provide social and recreational amenities or facilities for the members of that recreational club; and
- it complies with all the conditions and requirements of section 30A as detailed in this guide.

The approval as a recreational club is generally effective from the date the approval is granted by the Commissioner, unless the Commissioner advises otherwise (see **11**).

An organisation approved as a recreational club is subject to partial taxation (see **16**).

## 5. Type of organisation qualifying for approval

For an organisation to be approved as a recreational club, it must be constituted in one of the following ways:<sup>2</sup>

- An NPC incorporated in South Africa.
- An association established in South Africa as a voluntary association of persons.
- A society formed in South Africa by a group of persons who are the members of such society.

Pre-existing companies<sup>3</sup> incorporated or deemed to be incorporated under section 21 of the repealed Companies Act 61 of 1973 continue to exist under the Companies Act and will qualify for approval as a recreational club provided all the conditions and requirements of section 30A are complied with.

A trust is not an association of persons or a society and therefore does not qualify for approval as a recreational club. A trust does not have members that share collectively in a common purpose. Furthermore, the beneficiaries of a trust are not members of the trust.

### **Example 1 – Examples of recreational clubs providing social and recreational amenities or facilities**

- A golf club providing grounds and facilities for playing the game of golf.
- Social and recreational clubs providing recreational facilities such as tennis courts, a swimming pool, squash courts and social facilities such as a restaurant or a bar.
- Soccer, tennis or rugby clubs providing members with the facility to play the relevant sport.
- Vintage car clubs, motorcycle or cycling clubs.
- Angling, flying, hang gliding, hiking, mountaineering or yacht clubs.
- Hobby clubs such as stamp collecting, literary, quilting or gardening clubs.
- Bird watching, dog breeders or photography clubs.

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<sup>2</sup> Section 30A(1).

<sup>3</sup> The terms “pre-existing company” and “company” are defined in section 1 of the Companies Act.



## 6. Object of the organisation

A recreational club must have as its sole or principal object the provision of social and recreational amenities or facilities for its members.<sup>4</sup>

### 6.1 Sole or principal object

The word “principal” is used in conjunction with “sole” and this concept implies that the club must have as the predominant or foremost aim or objective the provision of social and recreational amenities or facilities for its members.

It will be unacceptable for a recreational club –

- to provide its facilities mainly to members of the public for, say, five days of the week and use the resulting income to subsidise the maintenance and upkeep of the facilities for use by its members over the weekend; and
- to engage in commercial activities in order to provide the necessary funds to maintain the social and recreational amenities or facilities for use by its members.

### 6.2 Social and recreational amenities or facilities

The amenities or facilities provided by the recreational club must be of a social and recreational nature which the members use for a pastime, hobby or to engage socially. Such amenities or facilities may, amongst other things, include –

- sporting facilities such as tennis courts, squash courts or polo fields; or
- a venue such as a clubhouse for meeting or getting together for members to socialise or partake in hobbies of mutual interest.

The provision of holiday accommodation is not regarded as the provision of a social and recreational amenity or facility for purposes of section 30A.

### 6.3 Members

The ordinary meaning of “member” is “a person belonging to a group or society”.<sup>5</sup> Membership of a recreational club must be annual or seasonal (see **8.6**).<sup>6</sup> A member is generally required to pay a membership fee for the use of the facility or for the right to belong to the club in order to share in the mutual interest, expenditure or facility provided by the recreational club.

#### Example 2 – Examples of different classes or categories of members

- Ordinary members
- Senior members
- Student members
- Life or honorary members
- Corporate members

<sup>4</sup> Section 30A(1).

<sup>5</sup> M Wait, S Hawker and C Soanes Oxford Dictionary, Thesaurus and Wordpower Guide (2001) Oxford University Press.

<sup>6</sup> Section 30A(2)(a)(v).

## 7. Founding document

An organisation that applies for approval as a recreational club must have a founding document.<sup>7</sup>

The founding document will depend on the type of organisation established:

- An NPC will have a memorandum of incorporation.
- An association and a society will have a constitution adopted by its members.

The conditions set out in 5 to 7 must be met in order to qualify for approval as a recreational club. In addition to those conditions the prescribed requirements as discussed in 8.1 to 8.7 must be complied with and included in the founding document of the organisation.

The founding document must be submitted to the Commissioner as part of the application for approval as a recreational club. The founding document as a whole will be examined to ensure that the prescribed requirements are included.

## 8. Prescribed requirements

### 8.1 Fiduciary responsibility

A recreational club is required to have at least three persons who are not connected persons<sup>8</sup> in relation to each other to accept fiduciary responsibility for the recreational club. No single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of the recreational club.<sup>9</sup>

Natural persons are considered to be connected if they are relatives<sup>10</sup> to one another. A relative includes a person's spouse and anybody related to a person or the person's spouse within the third degree of consanguinity.<sup>11</sup>

### 8.2 Manner in which activities must be carried on

The activities of the recreational club must be carried on in a non-profit manner.<sup>12</sup> Organisations operating for the financial gain of individual persons or members will not qualify for approval as a recreational club.

A recreational club may not conduct activities for purposes of making a distributable profit. It will be unacceptable for a recreational club to conduct profit-making activities in order to fund the cost of running the club. It is not always desirable from a club's perspective to run on a break-even basis since clubs may need to create reserves for future expenditure such as the cost of replacing equipment, resurfacing tennis courts and replanting grass. The activities carried on by a recreational club should not be to maximise profits but rather to recover direct and reasonable indirect costs.

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<sup>7</sup> Section 30A(2)(a).

<sup>8</sup> The term "connected person" is defined in section 1(1).

<sup>9</sup> Section 30A(2)(a)(i).

<sup>10</sup> The term "relative" is defined in section 1(1).

<sup>11</sup> See Interpretation Note 67 (Issue 2) dated 14 February 2014 "Connected Persons" for further guidance on connected persons.

<sup>12</sup> Section 30A(2)(a)(iA).

### 8.3 Prohibition on distributions

A recreational club may not distribute its funds directly or indirectly to any person, unless on dissolution (see 8.4).<sup>13</sup> It must use its funds solely for the sole or principal object for which it was established, which is to provide social and recreational amenities or facilities for the members.

It will be unacceptable if funds are distributed by a recreational club by way of –

- making a loan to a member which is later written off;
- paying excessive salaries or wages which are not commensurate with services rendered (see 8.5); or
- donating assets to members.

The sale by members of their membership rights or any entitlement to them could also be construed as the indirect distribution of profits of a recreational club (see 8.7).

### 8.4 Dissolution

A recreational club may not, on dissolution, distribute any of its assets and funds to individuals or other tax-paying entities and in so doing enable the recipients to share in the tax concession which it has enjoyed.

On dissolution a recreational club must transfer its remaining assets and funds to one or more of the following organisations –<sup>14</sup>

- another recreational club;
- a PBO;
- any institution, board or body exempt under section 10(1)(cA)(i) which has as its sole or principal object the carrying on of any PBA; or
- the government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a).

If a recreational club fails to transfer, or to take reasonable steps to transfer, its remaining assets as required, an amount equal to the market value of the assets not transferred less the amount of the *bona fide* liabilities of the recreational club, will be deemed to be taxable income which accrued to the recreational club during the year of assessment in which dissolution took place.<sup>15</sup>

### 8.5 Remuneration

Employees, office bearers, members or other persons may receive remuneration from a recreational club for services actually rendered to that club provided the remuneration –<sup>16</sup>

- is not excessive taking into account the particular service rendered and what is considered to be reasonable in the particular sector; and
- is not determined as a percentage of any amounts received or accrued to the recreational club.

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<sup>13</sup> Section 30A(2)(a)(ii).

<sup>14</sup> Section 30A(2)(a)(iii).

<sup>15</sup> Section 30A(7A).

<sup>16</sup> Section 30A(2)(a)(iv).

It will be unacceptable for office bearers to be paid a salary without any obligation to perform any services other than attending meetings. It will, however, be acceptable to reimburse them for reasonable and actual expenses incurred. An honorarium paid to the secretary or treasurer will be acceptable provided it is reasonable. A salary paid to a person in the capacity of chairperson would generally not be acceptable. It may, for example, be acceptable for a manager, under an employment contract, to qualify for an incentive bonus of R10 000 if the annual target for a recreational club exceeds R100 000. However, it would be unacceptable if the manager qualified for an incentive bonus of 10% of the excess of the annual budgeted turnover.

The ultimate test remains whether the remuneration is reasonable in the sector in relation to the service rendered and the burden is on the recreational club to motivate that the remuneration is not excessive.

## 8.6 Forms of membership

A member generally qualifies for membership under the founding document of the recreational club. It is a requirement for approval as a recreational club that its members must be entitled to annual or seasonal membership.<sup>17</sup>

It will be unacceptable for a recreational club to register members on a temporary basis or only for the duration of the use of its facilities. It will, however, be acceptable for a member who joins a recreational club half way through the year to pay only a *pro rata* amount of the annual or seasonal membership fee.

Reciprocal membership will be acceptable provided the member has either seasonal or annual membership at his or her home club.

### Example 3 – Examples of acceptable forms of membership

- A club provides recreational facilities in the form of squash courts. It requires members to pay an annual membership fee of R960 plus R20 per half hour for the use of the court. The half-hourly fee is determined on a cost-recovery basis, taking into account the use of electricity and maintenance of the squash court. The club will meet the requirement of annual membership.
- A club providing outdoor swimming facilities makes its facility available only during the summer months from October to March. It requires that the members pay a membership fee only for the duration of this period. This arrangement will be regarded as a seasonal membership.
- Club A provides its members with squash courts while Club B in the same town provides its members with swimming facilities. Club A allows its members to use its facilities at Club B and *vice versa*. Provided the member has a seasonal or annual membership at his or her “home” club, this category of membership will be acceptable.
- Members who enjoy full membership of Golf Club A, to enjoy reciprocity with Golf Club B.

<sup>17</sup> Section 30A(2)(a)(v).

## 8.7 Membership rights

Members are prohibited from selling their membership rights or any entitlement to them as this could be regarded as a distribution of profits or gains by a recreational club.<sup>18</sup>

### Example 4 – Membership rights

*Facts:*

The AP Cultural Club provides social facilities to its members who are required to pay an annual membership fee. It also provides restaurant and bar facilities to its members on a cost-recovery basis (that is, not on a market-related basis).

*Result:*

It will be unacceptable for members of the club to sell their right to membership or right to enjoy the restaurant and bar facilities to any third party.

## 9. Other requirements

### 9.1 Amendments to the founding document

A recreational club must submit a copy of any amendment to its founding document to the Commissioner as soon as it has been affected.<sup>19</sup> This requirement will enable the Commissioner to ensure that any amendment is not contrary to the prescribed requirements.

It will be unacceptable for an organisation to submit a founding document that complies with the Act at the time of applying for approval and then, after obtaining such approval, to amend the founding document to include non-qualifying provisions.

Pre-existing companies approved as recreational clubs which have amended their memoranda and articles of association or replaced the latter with a memorandum of incorporation under the Companies Act must ensure that the prescribed requirements remain included in the amended or replacement founding documents. A copy of the amended or replacement founding documents must be submitted to the Commissioner.

### Example 5 – Amendments to the founding document

*Facts:*

The EV Gardening Club has incorporated all the prescribed requirements in its constitution and has been approved as a recreational club. Two years after having obtained approval, the membership of the club has diminished and a decision is taken to close down, dispose of all the assets and distribute the proceeds among the remaining 25 members. The constitution is amended accordingly and the Commissioner is not informed.

*Result:*

The dissolution procedure is contrary to the requirements for approval as a recreational club. Consequently the tax status of the club is placed in jeopardy and the club is exposed to transgression penalties.

<sup>18</sup> Section 30A(2)(a)(vi).

<sup>19</sup> Section 30A(2)(b).

## 9.2 Participation in tax avoidance schemes

A recreational club may not be a party to or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone or avoid any tax, duty or levy<sup>20</sup> which would otherwise have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner.<sup>21</sup> This rule will apply irrespective of whether the recreational club itself or any other person benefitted from the reduction, postponement or avoidance of any applicable tax, duty or levy.

## 10. Written undertaking

The founding document of an organisation may in some instances not comply with the conditions and requirements for approval at the time of application. In these circumstances the persons who are acting in a fiduciary capacity may provide a written undertaking that the organisation will be administered in accordance with the prescribed requirements.<sup>22</sup> The written undertaking must be submitted to the Commissioner as part of the application for approval as a recreational club.

The written undertaking is an interim measure and the prescribed requirements must be formally incorporated into the founding document within a reasonable period as notified by the Commissioner after the Commissioner has approved the recreational club.

In order to assist persons accepting fiduciary responsibility to administer a recreational club in accordance with the prescribed requirements, a specimen written undertaking form EI 2C is available on the SARS website.

## 11. Retrospective approval

The Commissioner may approve a recreational club with retrospective effect for purposes of section 30A or any provision contained in the repealed section 10(1)(d)(iv)(aa),<sup>23</sup> to the extent the Commissioner is satisfied that the organisation has complied with the requirements of section 30A, during the period before it lodged its application.<sup>24</sup>

## 12. Withdrawal of approval

### 12.1 Circumstances under which approval may be withdrawn

The Commissioner may withdraw the approval of a recreational club if that club has, in any year of assessment in any material respect or on a continuous or repetitive basis, failed to comply with section 30A or with its founding document as it relates to section 30A. The Commissioner must, however, first give notice to the transgressing recreational club of the

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<sup>20</sup> These taxes, duties or levies may, amongst other things, include income tax (including CGT), VAT, or employees' tax.

<sup>21</sup> Section 30A(2)(c).

<sup>22</sup> Section 30A(3).

<sup>23</sup> Section 10(1)(d)(iv)(aa) was deleted by section 10(1)(k) of the Revenue Laws Amendment Act 20 of 2006.

<sup>24</sup> Section 30A(4). This section was amended by section 26(1)(a) of the Taxation Laws Amendment Act 8 of 2007 and is deemed to have come into operation on 1 April 2007 and applies to any year of assessment commencing on or after that date.

intention to withdraw the approval as a recreational club and also specify a period within which corrective steps must be taken.<sup>25</sup>

If no corrective steps are taken by the recreational club within the period stated in the notice, the approval will be withdrawn from the beginning of the year of assessment in which the non-compliance or failure by the recreational club occurred.<sup>26</sup>

## 12.2 Consequences of withdrawal

On withdrawal of the approval as a recreational club the affected organisation must transfer or take reasonable steps to transfer its remaining assets within six months or a longer period allowed by the Commissioner to –<sup>27</sup>

- another recreational club;
- a PBO;
- any institution, board or body exempt under section 10(1)(cA)(i) which has as its sole or principal object the carrying on of any PBA; or
- the government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a).

Failure to transfer, or to take reasonable steps to transfer the remaining assets of the organisation on withdrawal of its approval as a recreational club will result in an amount equal to the market value of the assets not transferred less the amount of the *bona fide* liabilities of the organisation, being deemed to be taxable income which accrued to the organisation during the year of assessment in which the approval was withdrawn.<sup>28</sup>

## 13. Non-compliance by responsible person

A person responsible in a fiduciary capacity for the management or control of the income and assets of a recreational club and who intentionally fails to comply with any provision of section 30A or any provision of the founding document under which the recreational club has been established to the extent that it relates to section 30A, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.<sup>29</sup>

## 14. The difference between a recreational club and a public benefit organisation

The main difference between a recreational club and a PBO<sup>30</sup> is that a PBO operates for the benefit of the general public, while a recreational club operates for the benefit of its members who come together by mutual consent to act jointly for a common purpose. A PBO predominantly relies on donations, grants or bequests in order to fund its objectives, while a club receives its income from its members who contribute by way of membership fees or subscriptions.

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<sup>25</sup> Section 30A(5).

<sup>26</sup> Section 30A(6).

<sup>27</sup> Section 30A(7).

<sup>28</sup> Section 30A(8).

<sup>29</sup> Section 30A(9).

<sup>30</sup> See the *Tax Exemption Guide for Public Benefit Organisations in South Africa (Issue 5)* for general guidance on the approval and taxation of PBOs.

The Ninth Schedule includes as a PBA 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.<sup>31</sup> An organisation that complies with section 30 and conducts this PBA may qualify for approval as a PBO. Organisations engaged in amateur sporting activities may include regional, provincial or national federations which are formed to administer, develop, co-ordinate or promote a particular sport or code, for the benefit of the general public, provided the participants partake in the sport as a pastime, on a non-professional basis and are not rewarded financially.

#### **Example 6 – Examples of organisations that may qualify as PBOs**

- A botanical society formed for the benefit of the general public with the object of conserving indigenous flora in a particular region.
- A cultural organisation operating for the benefit of the general public by advancing the culture of art, music or literature by educating and encouraging the general public.
- A cultural society that collects and exhibits art of well-known South African artists and which encourages and advances the culture of art for the general public.

#### **Example 7 – Examples of organisations that may be regarded as recreational clubs**

- A group of bird enthusiasts set up a society to observe birds in the area and to record the species of birds seen. The members meet once a month and are required to pay membership fees.
- A group of vintage car enthusiasts form a club and meet once a week to maintain vintage cars. The members pay membership fees to belong to the club.
- A group of persons who enjoy reading as a hobby form a reading club to provide a venue where members meet once a month in the local community hall to discuss authors and books of interest. Membership contributions are required.

## **15. Special tax dispensation for recreational clubs**

In principle, income derived from a business undertaking or trading activity is subject to income tax. Recreational clubs, however, often engage in other activities which border on business or trading activities, such as the provision of refreshments. If this is provided on the sharing or mutuality principle it will be acceptable.

The income earned from providing social and recreational amenities or facilities is exempt from income tax and the expenditure related to this activity is not deductible. Receipts and accruals exempt from income tax are discussed in **17**.

Many clubs often open their facilities to non-members and in addition to membership fees or subscriptions, among other things, derive –

- investment income on surplus funds invested;
- investment income on capital reserves created to fund future capital expenditure;

<sup>31</sup> See PBA 9 in Part I of the Ninth Schedule.



- rental income from the letting of –
  - facilities such as restaurants, bars or conference facilities;
  - immovable property for purposes of accommodation; or
  - immovable property on which a cell phone mast or billboard has been erected.

The receipts and accruals of a recreational club will be exempt irrespective of whether the income is derived from members or non-members, provided its activities are integral and directly related to its sole or principal object of providing social and recreational amenities or facilities (see **17.2**). This concession has been made in order to overcome complex and practical difficulties of keeping separate accounts for income and expenditure related to the use of recreational clubs' facilities by non-members. It is therefore not a requirement that a recreational club keep separate records of transactions with its members.

Investment income and income derived from certain activities that are not integral and directly related to the sole or principal object of the recreational club, are taxable.

## 16. Partial taxation

The receipts and accruals of a recreational club will be exempt from the payment of income tax to the extent that such receipts and accruals are derived from –

- membership fees and subscriptions paid by its members (see **17.1**);<sup>32</sup>
- any business undertaking or trading activity within specified parameters (see **17.2**);<sup>33</sup> and
- any fundraising activities within specified parameters (see **17.3**).<sup>34</sup>

The basic exemption<sup>35</sup> is a stand-alone exemption applied to the taxable receipts and accruals not qualifying for an exemption listed above, and is the amount determined as a threshold.

Partial taxation came into operation on 1 April 2007 and applies to recreational clubs from any year of assessment commencing on or after that date, except for clubs that enjoyed exemption under the repealed section 10(1)(d)(iv)(aa).

### 16.1 Effective date of partial taxation for clubs exempt under the repealed legislation

Clubs exempt under the repealed section 10(1)(d)(iv)(aa) were required to reapply for approval as a recreational club under section 30A by no later than 31 March 2009.<sup>36</sup> Those that applied on or before 31 March 2009 became subject to partial taxation with effect from years of assessment commencing on or after 1 April 2007.

<sup>32</sup> Section 10(1)(cO)(i).

<sup>33</sup> Section 10(1)(cO)(ii).

<sup>34</sup> Section 10(1)(cO)(iii).

<sup>35</sup> Section 10(1)(cO)(iv).

<sup>36</sup> See section 25(1) of the Revenue Laws Amendment Act 20 of 2006. The amendment came into operation on 1 April 2007 and applies to any year of assessment commencing on or after that date.

A special transitional measure was introduced<sup>37</sup> which extended the exemption enjoyed by clubs exempt under the repealed section 10(1)(d)(iv)(aa) to the earlier of –

- the last year of assessment ending on or before 30 September 2010; or
- the year of assessment during which section 10(1)(cO) applies to the receipts and accruals of that club (for clubs that applied for approval on or before 31 March 2009 this will be the year of assessment preceding the year of assessment commencing on or after 1 April 2007).

A club which enjoyed exemption under section 10(1)(d)(iv)(aa) that –<sup>38</sup>

- applied for approval as a recreational club under section 10(1)(cO) for a year of assessment ending before 30 September 2010 would not enjoy the extension of the previous exemption until 30 September 2010 but would be subject to partial taxation with effect from years of assessment commencing on or after 1 April 2007;
- did not apply for approval as a recreational club on or before 31 March 2009 would continue to be exempt from income tax on all its receipts and accruals until its last year of assessment ending on or before 30 September 2010; and
- did not apply for approval as a recreational club on or before 30 September 2010 became a taxable entity with effect from the beginning of its first year of assessment ending after 30 September 2010.

Besides determining when such a club became subject to partial taxation, the date also determines the club's valuation date for CGT purposes (see **20.3.3**).

## **17. Receipts and accruals exempt from income tax**

### **17.1 Membership fees or subscriptions**

A recreational club is fully exempt from income tax on membership fees and subscriptions paid by members.<sup>39</sup>

Membership fees and subscriptions may include –

- amounts paid by members for the right to belong to the recreational club and to use its facilities;
- entrance fees; and
- annual or seasonal membership fees or subscription fees (see **8.6**).

Separate payments by members for the use of facilities, such as squash courts, green fees or golf carts are not regarded as membership fees or subscriptions. In order for these payments to be exempt from income tax they must meet the exemption requirements discussed below.

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<sup>37</sup> Section 95(1)(b) of the Taxation Laws Amendment Act 17 of 2009 introduced a new subsection (4) to section 10 of the Revenue Laws Amendment Act 17 of 2006 which extended the exemption under the repealed section 10(1)(d)(iv)(aa) under certain circumstances. This amendment was deemed to have come into operation on 1 April 2007 and applies to any year of assessment commencing on or after that date.

<sup>38</sup> See the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2009* in paragraph 5.4.

<sup>39</sup> Section 10(1)(cO)(i).

## 17.2 Business undertaking or trading activity

The receipts and accruals from a business undertaking or trading activity will be exempt from income tax provided the undertaking or activity –

- is integral and directly related to the provision of the social or recreational amenities or facilities for the members of the club;<sup>40</sup>
- is carried out on a basis substantially the whole of which is directed towards the recovery of cost;<sup>41</sup> and
- does not result in unfair competition in relation to taxable entities.<sup>42</sup>

In order for a recreational club's receipts and accruals to be exempt from income tax, all three of the above requirements must be met.

The term "business" is not defined in the Act. Based on case law, it is generally accepted to include anything which occupies the time, attention and labours of a person for profit. There are no hard and fast rules in determining what constitutes business. However, in determining whether a business undertaking<sup>43</sup> is being carried on a number of factors may be taken into account such as the intention, motive, frequency and nature of the activity.

The term "trade" includes every profession, trade, business, employment, calling, occupation or venture, letting of property and the use of or the grant of permission to use a patent, design, trade mark or copyright.<sup>44</sup> The courts have interpreted trade to be neither exhaustive nor restrictive and will include any activity involving risking something with the object of making a profit. Each case will be considered on its own merits in order to determine whether a trading activity<sup>45</sup> is being carried on.

The Act does not specify that the business undertaking or trading activity must be carried on by the recreational club. Legislation merely specifies that receipts and accruals from a business undertaking or trading activity of a recreational club may be exempt from income tax.

A club may be an income beneficiary of a discretionary trust which carries on a business undertaking or trading activity. Any income distributed to the recreational club through the exercise of the trustees' discretion will be regarded as income from a business undertaking or trading activity. This distribution will be taken into account in the determination of the basic exemption (see **17.4**).

### 17.2.1 Integral and directly related business undertaking or trading activity

The business undertaking or trading activity must be integral and directly related to the provision of social and recreational amenities or facilities for the members of the recreational club.

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<sup>40</sup> Section 10(1)(cO)(ii)(aa).

<sup>41</sup> Section 10(1)(cO)(ii)(bb).

<sup>42</sup> Section 10(1)(cO)(ii)(cc).

<sup>43</sup> Section 10(1)(cO)(ii).

<sup>44</sup> The term "trade" is defined in section 1(1).

<sup>45</sup> Section 10(1)(cO)(ii).

### **Example 8 – Examples of related business undertakings or trading activities**

- A golf club provides cart, club and caddy hire services for a set fee.
- A country club provides squash, bowls, golf and tennis facilities as well as restaurant and bar facilities.

### **17.2.2 Substantially the whole of the business undertaking or trading activity must be on a cost-recovery basis**

It is accepted that it is not always possible to base business or trading activities on a 100% cost-recovery basis and it is for this reason that legislation requires that substantially the whole of the business undertaking or trading activity must be based on a recovery of cost.

In the strict sense the term “substantially the whole” is regarded by SARS as 90% or more. In order to overcome certain practical difficulties SARS will, however, accept a percentage of not less than 85%.<sup>46</sup> This percentage must be determined using a method appropriate to the circumstances and may be motivated by taking into account time or cost.

The concept “recovery of cost” means that the business undertaking or trading activity is not conducted at a mark-up to maximise profits, but rather with the intention of recovering direct and reasonable indirect costs relating to the business undertaking or trading activity. It is confirmed that “cost” in this context includes reasonable direct and indirect operational costs which may also include reasonable provision for future expenditure such as that incurred in repairing and replacing assets.

### **Example 9 – Examples of cost-recovery**

- The RQ Tennis Club envisages it will have to resurface its tennis courts within the next three years at an estimated cost of R30 000. A reserve fund is created and during the following three financial years an amount of R10 000 is transferred to this account. During each financial year the amount of R10 000 so transferred may be taken into account in determining the “cost”. This cost may not again be claimed or included in the determination of the “cost” when the actual cost of resurfacing the tennis court is incurred. Any deficit or surplus between the actual cost and the amount of the reserve must be taken into account.
- The ST Club provides social and cultural facilities for its members and also serves meals and refreshments on Sundays for a consideration determined by taking into account the cost of the goods supplied, salaries and wages, costs such as telephone, electricity, repairs and maintenance, stationery, cleaning materials and an amount for a reserve created for future replacement costs of capital assets such as a refrigerator, microwave oven or deepfreeze.

### **17.2.3 Unfair competition**

A recreational club should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity. A recreational club has an advantage in that it is not required to sacrifice a portion of its profit in the form of tax.

<sup>46</sup> See Binding General Ruling (Income Tax) No. 20 dated 20 January 2016 “Interpretation of the Expression ‘Substantially the Whole’ ”.

In determining whether a recreational club has an unfair advantage, each case will be considered on its own merits, and various factors could be taken into account such as –

- whether the club engages in active advertising or marketing;
- whether the activity is conducted on a competitive basis with the intention of maximising profits;
- the amount of membership fees or other income received;
- location and availability of similar facilities; or
- voluntary assistance provided by other persons.

**Example 10 – Examples of business undertakings or trading activities which comply with all three requirements**

*Facts (1):*

The AG Club provides social and cultural facilities solely for its members and also serves meals and refreshments on Saturdays and Sundays to the members for a consideration which is determined on the basis of cost plus a small mark-up. The cost in this instance takes into account the purchase price of the goods supplied, salaries and wages, costs such as telephone, electricity, repairs and maintenance, stationery, cleaning materials and an amount for a reserve created for future replacement costs of capital assets such as a refrigerator, microwave oven and deepfreeze.

*Result (1):*

It may be argued that the provision of meals and refreshments is integral and directly related to the provision of social and recreational amenities and facilities of the club to its members taking into account factors such as –

- the restaurant being available to the members of the club only on weekends; and
- the fact that the price charged is on a cost-recovery basis.

*Facts (2):*

The BG Golf Club provides its members with recreational facilities for playing golf. Green fees are payable by each player. The club charges a fee for the use of its golf carts which takes into account depreciation and the cost of repairs and maintenance.

*Result (2):*

Green fees charged by a golf club to members and non-members could qualify for the exemption, provided all three requirements of section 10(1)(cO)(ii) are met.

The rental income received from the letting of the golf carts may be regarded as being integral and directly related to the provision of the recreational facility to the members and not being in competition with other taxable entities, in that the golf carts are made available to players only at the BG Golf Club.

### **Example 11 – Examples of business undertakings or trading activities which do not comply with all three requirements**

#### *Facts (1):*

The CP Bowling Club has permitted a cell phone provider to erect a cell phone mast on its property for an annual consideration. It has also permitted a car dealer to erect a billboard on its property for which it receives rental income.

#### *Result (1):*

The rental income received for the use of the land constitutes income derived from a trading activity which is not integral and directly related to the provision of the recreational facility to the club's members. It is also regarded as being in competition with other taxable entities that are required to pay income tax on rental income received for the use of immovable property.

#### *Facts (2):*

The SA Yacht Club lets its restaurant and bar facilities to a third party company that operates the business for its own benefit. Rental income is paid to the club for the use of the accommodation.

#### *Result (2):*

The rental income received by the SA Yacht Club is regarded as income derived from the letting of immovable property which is income from a trading activity and not integral and directly related to the provision of social or recreational facilities to the club's members.

**Note:** If the club itself were to operate the restaurant and in that way provide a social facility to its members, it could qualify for the income tax exemption, provided all three requirements of section 10(1)(cO)(ii) are met.

## **17.3 Fundraising activities**

In order to qualify for exemption the fundraising activity must –

- take place on an occasional or infrequent basis; and
- be undertaken substantially with assistance on a voluntary basis without compensation, other than the *bona fide* reimbursement of reasonable and necessary out-of-pocket expenditure.

### **Example 12 – Examples of qualifying fundraising activities**

- Fêtes, cake sales, raffles and jumble sales which usually take place on an annual basis and with the assistance of helpers or volunteers who are not remunerated for their services.
- The sale of Christmas cards reconditioned by volunteers.
- Fun runs, dinner or dances held once a year with the assistance of volunteers.
- An annual golf day hosted by volunteers at which the prizes have been donated and the proceeds are paid to a local charity or for funding capital improvements to the recreational club.

## 17.4 Basic exemption

The basic exemption is calculated as an amount equal to the greater of –<sup>47</sup>

- 5% of the total membership fees and subscriptions due and payable by the recreational club's members during the relevant year of assessment; or
- R120 000.<sup>48</sup>

Interest received on investments does not qualify for a specific exemption from income tax under section 10(1)(cO) but may be taken into account in determining the basic exemption.

### Example 13 – Basic exemption

#### *Facts:*

The BB Social Club has been approved as a recreational club. The total receipts and accruals for the year of assessment ended 30 June 2015 are as follows:

	R
Membership fees and subscriptions	450 000
Interest income	<u>45 000</u>
Total receipts	<u>495 000</u>

#### *Result:*

The basic exemption is calculated as an amount equal to the greater of 5% of the total membership fees and subscriptions or R120 000.

5% of the total membership fees and subscriptions of R450 000 amounts to R22 500.

The total receipts from investment income (R45 000) will be exempt since the recreational club receives the benefit of the greater of R22 500 or R120 000.

<sup>47</sup> Section 10(1)(cO)(iv).

<sup>48</sup> The introductory words of the definition of "gross income" in section 1(1) exclude receipts or accruals of a capital nature. To the extent that such receipts and accruals are so excluded from gross income, the exemptions contained in section 10 will not apply to them. The basic exemption of R120 000 will therefore not exclude from CGT any proceeds on disposal of a capital asset.

## 18. Step-by-step calculation of taxable income

The following example is a step-by-step guide to the calculation of taxable income of a recreational club by applying the basic exemption rule.

### Example 14 – Calculation of taxable income

#### Facts:

The HW Club is a recreational club. Its financial statements for the year ended 30 June 2015 reflect the following income and expenditure:

<b>Income</b>	<b>R</b>
Membership fees and subscriptions	1 890 000
Entrance fees from members	240 000
Bar and catering revenue – net trading income	800 000
Green fees from members and non-members	434 000
Annual fundraising event	250 000
Rental income from billboards and cell phone mast	270 000
Interest on investments	<u>16 000</u>
Total receipts and accruals	<u>3 900 000</u>
<b>Expenditure</b>	
Operating expenditure relating directly to the provision of recreational facilities	1 850 000
Maintenance relating to rental from billboards & cell phone mast	5 000
General overheads (office salaries, stationery, security, telephone & bank charges)	22 000
Accounting fees	<u>13 000</u>
Total expenses	<u>1 890 000</u>

#### Note:

#### Income from trading activities or business undertaking

- *Bar and catering facilities – net trading income*

The bar and catering facilities are provided to members and non-members who make use of the recreational facilities provided by the club. The mark-up on the food and beverages provided is determined by taking into account expenditure such as salaries and wages, cost of provisions and perishables, repairs and maintenance, estimated cost of replacing breakables, an amount set aside for future renovations, opening and closing stock and replacement of capital items (such as furniture and fittings, curtains, fridges, microwave ovens and dishwashers). The club does not make a profit after taking these costs into account. Taking these factors into account SARS is satisfied that the trading activities will qualify for exemption under section 10(1)(cO)(ii).

- *Green fees from members and non-members*

Green fees are integral and directly related to the provision of golf-playing facilities to members and non-members and are provided substantially on a cost-recovery basis and are not provided in competition with other taxable entities. Taking these factors into account SARS is satisfied that the trading activities will qualify for exemption under section 10(1)(cO)(ii).



## Fundraising activities

An annual spring day is held to raise funds for the club (upgrade of ladies' change rooms). Prizes and all other goods sold, such as second-hand books, fresh vegetables, needlework and other produce are donated. All the stalls are run by volunteers.

*Result:*

The taxable income of the club is determined as follows:

### Step 1

#### **Total receipts and accruals exempt from income tax**

	R
Membership fees and subscriptions	1 890 000
Entrance fees from members	240 000
Bar and catering revenue (net) – integral and directly related	800 000
Green fees from members and non-members – integral and directly related	434 000
Annual fundraising	<u>250 000</u>
Total receipts and accruals not subject to income tax	<u>3 614 000</u>

### Step 2

#### **Total receipts and accruals subject to income tax**

Rental income from billboards and cell phone mast	270 000
Interest on investments	<u>16 000</u>
Total receipts and accruals subject to income tax	<u>286 000</u>

### Step 3

#### **Calculate basic exemption**

Greater of –

- (a) 5% of membership fees and subscriptions  
(R1 890 000 + R240 000) × 5% = R106 500;

or

- (b) R120 000

Basic exemption = Exempt portion of taxable receipts and accruals = R120 000 [The portion subject to tax is therefore R166 000 (R286 000 – R120 000.)]

### Step 4

#### **Allocation of basic exemption to taxable receipts and accruals**

The basic exemption is allocated between the various sources of taxable receipts and accruals on a *pro rata* basis, that is, (taxable receipts and accruals from a particular source / total taxable receipts and accruals) × basic exemption. This step is necessary because the basic exemption in section 10(1)(cO) applies to taxable receipts and accruals, not to such receipts and accruals less related expenses. As a consequence, a portion of the expenditure incurred in relation to the various taxable income sources will be disallowed under section 23(f), since it will be in the production of exempt income.

	<b>Rental income from billboards and cell phone mast</b>	<b>Interest</b>	<b>Total</b>
	<b>R</b>	<b>R</b>	<b>R</b>
Total receipts and accruals	270 000	16 000	286 000
Exempt ( <i>pro rata</i> )	<u>(113 287)</u>	<u>(6 713)</u>	<u>(120 000)</u>
Total taxable receipts and accruals	<u>156 713</u>	<u>9 287</u>	<u>166 000</u>

### **Step 5**

#### **Direct expenditure relating to a specific taxable source must be apportioned between “exempt” and “taxable” total receipts and accruals**

Expenditure directly incurred in the production of total taxable receipts and accruals from a specific source must be apportioned between the “exempt” and “taxable” portion using the formula below.

#### **Formula:**

$$\frac{\text{Total taxable receipts and accruals from specific trade}}{\text{Total receipts and accruals from the taxable trade}} \times \frac{\text{Expenditure}}{1}$$

#### **Application: Rental income from billboards and cell phone mast (R270 000)**

1. Expenditure directly attributable to taxable (rental) income, namely, maintenance of R5 000 must be allocated between the “taxable” and “exempt” portions of the rental income from billboards and cell phone mast:

$$\frac{\text{Total taxable receipts and accruals from rental}}{\text{Total receipts and accruals from rental}} \times \frac{\text{Expenditure}}{1}$$

$$\frac{\text{R156 713}}{\text{R270 000}} \times \frac{\text{R5 000}}{1}$$

$$= \text{R2 902}$$

2. Expenditure applicable to “taxable portion” of rental income = R2 902
3. Expenditure applicable to “exempt portion” of rental income = R2 098 (R5 000 – R2 902)

### **Step 6**

#### **Calculate taxable receipts and accruals from rentals**

$$\begin{aligned} \text{Taxable receipts} &= (\text{Total receipts and accruals} - \text{exempt portion}) - \text{allowable expenditure} \\ &= (\text{R270 000} - \text{R113 287}) - \text{R2 902} \\ &= \text{R156 713} - \text{R2 902} \\ &= \text{R153 811} \end{aligned}$$

### **Step 7**

#### **General (indirect) expenditure**

Expenditure incurred which does not specifically relate to a particular source of income but which can be attributed to various sources of gross receipts and accruals, must be apportioned on a *pro rata* basis. Examples include accounting fees, audit fees, bank charges or overhead expenses.

#### **Basis on which general expenditure may be apportioned**

The expenditure will be apportioned based on the gross receipts and accruals.

**Formula:**

$$\frac{\text{Specific income to which allocated}}{\text{Total gross income from taxable activities}} \times \frac{\text{Expenditure}}{1}$$

**Source of receipts and accruals to which general expenditure is to be apportioned**

Source	Gross receipts and accruals R
Membership fees and subscriptions	1 890 000
Entrance fees from members	240 000
Bar and catering revenue	800 000
Green fees from members and non-members	434 000
Annual fundraising	250 000
Rental income from billboards and cell phone mast	<u>270 000</u>
Total	<u>3 884 000</u>

**Note:** No portion of the general expenditure has been incurred in the production of interest on investments.

**Proportionate accounting and general overhead expenditure to be deducted based on the above formula (R22 000 + R13 000 = R35 000)**

Source	Gross receipts and accruals R	Allocation R
Membership fees and subscriptions	1 890 000	17 031
Entrance fees from members	240 000	2 163
Bar and catering revenue	800 000	7 209
Green fees from members and non-members	434 000	3 911
Annual fundraising	250 000	2 253
Rental from billboards and cell phone mast	<u>270 000</u>	<u>2 433</u>
Total	<u>3 884 000</u>	<u>35 000</u>

**Step 8****Allocation of general (indirect) expenditure between taxable and exempt portion of rental income from billboards and cell phone mast**

The allowable portion of the general (indirect) expenditure determined in Step 7 must now be allocated between the "taxable" and "exempt" income as determined in Step 4.

**Formula:**

$$\frac{\text{Taxable income to which allocated}}{\text{Total gross income from taxable activities}} \times \frac{\text{Expenditure}}{1}$$

$$= \frac{\text{R156 713}}{\text{R270 000}} \times \frac{\text{R2 433}}{1}$$

### **Step 9**

#### **Determine taxable income from rental (billboards and cell phone mast)**

	R
Total taxable receipts and accruals from rental ( <u>Step 4</u> )	156 713
Less: Direct expenditure determined in <u>Step 5</u>	<u>( 2 902)</u>
	153 811
Less: Indirect expenditure determined in <u>Step 8</u>	<u>( 1 412)</u>
Taxable income from rental	<u>152 399</u>

### **Step 10**

#### **Add all the amounts representing taxable income from the various sources together in order to calculate the taxable income for the year of assessment**

Source	Amount
	R
Taxable income from rental ( <u>Step 9</u> )	152 399
Taxable income from investment (interest) ( <u>Step 4</u> )	<u>9 287</u>
Taxable income for the year of assessment ended 30 June 2015	<u>161 686</u>

### **Step 11**

#### **Calculation of income tax payable**

The club will pay income tax at the rate of tax applicable to recreational clubs for the 12 month period ending on 31 March 2016, namely, 28%. Income tax on the taxable income of R161 686 will, therefore, be R45 272,08 (R161 686 × 28%).

## **19. Rate of tax**

A recreational club that is liable to income tax on receipts and accruals which do not qualify for exemption, will pay tax at a single rate of 28%<sup>49</sup> on its taxable income, irrespective of whether it is established as an NPC, an association of persons, or a society.<sup>50</sup>

## **20. Exemption from other taxes and duties**

In addition to being exempt from the payment of income tax on certain receipts and accruals, recreational clubs will also enjoy the benefit of being exempt from other taxes and duties.<sup>51</sup>

### **20.1 Donations tax**

Donations tax is payable by any resident<sup>52</sup> (the donor) who makes a donation to another person (the donee). Donations tax is payable at a rate of 20%<sup>53</sup> on the value of any gratuitous disposal of property including the disposal of property at less than its market value.

<sup>49</sup> See paragraph 4(a) in Appendix 1 to the Act.

<sup>50</sup> For tax rates relating to previous years of assessments see *Guide for Tax Rates / Duties / Levies* (Issue 11) in paragraph 1.9.

<sup>51</sup> For more information on any of these taxes and duties see *Taxation in South Africa 2014/2015*.

<sup>52</sup> The term "resident" is defined in section 1(1).

<sup>53</sup> Section 64.

Donations tax is payable by the donor, but if the donor fails to pay the tax within the prescribed period, the donor and donee are jointly and severally liable for the tax.<sup>54</sup>

Donations made by or to a recreational club are exempt from the payment of donations tax.<sup>55</sup>

## 20.2 Dividends tax

The provisions relating to dividends tax are contained in section 64D to section 64N and apply to any dividend paid by a company on or after 1 April 2012. Although dividends tax is part of the Act, it is a separate tax from income tax.

Any dividend paid before 1 April 2012 was subject to secondary tax on companies (STC) which was a tax levied on the company paying the dividend.

Dividends tax is levied at the rate of 15%<sup>56</sup> of the amount of a dividend paid by a company that is a resident.<sup>57</sup> Dividends tax is also payable on a foreign dividend to the extent that the foreign dividend does not constitute the distribution of an asset *in specie* and it is paid by a foreign company whose shares are listed on the Johannesburg Stock Exchange.

Dividends tax on a cash dividend is levied on the person entitled to the benefit of the dividend attaching to the share. This person is generally known as the beneficial owner.<sup>58</sup>

A company paying a dividend is liable for dividends tax when a dividend is paid that constitutes the distribution of an asset *in specie*.

Generally, a company that declares and pays a dividend must withhold an amount of dividends tax, except to the extent that the dividend consists of a distribution of an asset *in specie*, in which case, the company paying the dividend is liable for dividends tax.

It is not the responsibility of the company or regulated intermediary<sup>59</sup> paying the dividend to determine who the beneficial owner of a dividend is and whether the person qualifies for an exemption from dividends tax. The exemptions from dividends tax for cash dividends are contained in section 64F while the exemptions for dividends *in specie* are contained in section 64FA. These exemptions apply to all entities included in the definition of company in section 1(1).

A dividend paid to a recreational club that is a resident company is exempt from dividends tax.<sup>60</sup> This exemption applies only if the recreational club has submitted a declaration to the company that declared and paid the dividend or to the regulated intermediary that paid the dividend, that it is exempt from dividends tax. The recreational club is also required to submit a written undertaking to the company or regulated intermediary that it will inform such

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<sup>54</sup> Section 59.

<sup>55</sup> Section 56(1)(h).

<sup>56</sup> Section 64E(1).

<sup>57</sup> A reduced or nil rate may apply under specific circumstances.

<sup>58</sup> The term "beneficial owner" is defined in section 64D.

<sup>59</sup> The term "regulated intermediary" is defined in section 64D. A regulated intermediary is generally an entity that temporarily holds a dividend paid by a company before it is paid over to the ultimate beneficial owner.

<sup>60</sup> Section 64F(1)(a) and section 64FA(1)(a).

company or regulated intermediary in writing should it cease to be the beneficial owner of the shares or if the circumstances affecting the exemption change.<sup>61</sup>

The Commissioner has not issued actual forms to be used for purposes of a declaration or written undertaking but has prescribed the required wording and minimum information required in the forms which are to be prepared by the company, regulated intermediary or beneficial owner.<sup>62</sup>

The obligation lies with the recreational club which is the beneficial owner of the dividend to ensure that the prescribed declaration and written undertaking are filed timeously with the company or regulated intermediary paying the dividend.

A recreational club that has received a dividend that is exempt or partially exempt from dividends tax<sup>63</sup> must submit to SARS a Dividends Tax Return (DTR02),<sup>64</sup> which is available on the SARS eFiling website, by the last day of the month following the month during which the dividend is received.<sup>65</sup>

For more information see the *Comprehensive Guide to Dividends Tax*.

## 20.3 Capital gains tax

### 20.3.1 Introduction

CGT forms part of the income tax system and is levied under section 26A on capital gains which are determined under the Eighth Schedule. It is based on the following four key concepts:

- **Asset** – The term “asset” is widely defined and includes property of whatever nature. Notes and coins in current circulation are excluded (but not gold and platinum coins).
- **Disposal** – A disposal of an asset is the event that triggers the determination of a capital gain or loss, and can take many forms including the sale, donation or exchange of an asset. CGT applies only to disposals on or after the **valuation date** (for the meaning of the term “valuation date” see **20.3.3**).
- **Dividends tax**
- **Proceeds** – These comprise the amount received or accrued on disposal of an asset.
- **Base cost** – Different rules exist for determining the base cost of assets acquired before, and on or after the valuation date. The base cost of a pre-valuation date asset is equal to its valuation date value plus any further costs incurred on or after the valuation date. The valuation date value may be determined using one of three methods, namely –
  - market value on valuation date;
  - the “time-apportionment base cost” method; or

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<sup>61</sup> Section 64G(2)(a) and section 64H(2)(a).

<sup>62</sup> See *Business Requirements Specifications: Administration of Dividends Tax* in paragraph 14.

<sup>63</sup> Section 64F or section 64FA.

<sup>64</sup> Section 64K(1A) was inserted by section 5(b) of the Tax Administration Laws Amendment Act 44 of 2014 with effect from 20 January 2015.

<sup>65</sup> See *Declaration of Dividends Tax via eFiling*.

- the “20% of proceeds” method.

The base cost of an asset acquired on or after the valuation date is made up of costs incurred in acquiring, enhancing, improving or disposing of it. Assets acquired by donation or bequest are generally treated as being acquired at market value on date of death or donation as the case may be.

In order to determine the **taxable capital gain** or **assessed capital loss** for a particular year of assessment, the following steps must be followed:

- A “**capital gain**” is determined by deducting from the proceeds on disposal of an asset its base cost, which is less than the proceeds.
- A “**capital loss**” is determined by deducting from the proceeds of an asset its base cost, which exceeds the proceeds.
- An “**aggregate capital gain**” is determined by deducting from the sum of all capital gains the sum of all capital losses in a year of assessment, which results in a positive figure.
- An “**aggregate capital loss**” is determined by deducting from the sum of all capital gains the sum of all capital losses in a year of assessment, which results in a negative figure.
- A “**net capital gain**” is determined by deducting from the aggregate capital gain the assessed capital loss brought forward from the preceding year of assessment, which results in a positive figure.
- An “**assessed capital loss**” arises when the sum of the aggregate capital gain or loss and any assessed capital loss brought forward is a negative figure.
- The “**taxable capital gain**” is equal to the net capital gain multiplied by the inclusion rate (66,6% in the case of a recreational club).<sup>66</sup>

A taxable **capital gain** must be included in the club’s taxable income and will be taxed at the rate of tax applicable to clubs.

An **assessed capital loss** brought forward from the previous year of assessment will reduce an aggregate capital gain. However, an assessed capital loss may not reduce taxable income or increase an assessed loss.

An assessed capital loss must be carried forward to the next year of assessment in which it will be set off against any future aggregate capital gain or added to any future aggregate capital loss.

### 20.3.2 Capital gains tax and recreational clubs

Before the introduction of the partial taxation system under which approved clubs became taxable on certain income in excess of prescribed limits, recreational clubs enjoyed complete exemption from income tax as well as complete exclusion from CGT under paragraph 63 of the Eighth Schedule. As a result of the loss of their complete exempt status, clubs are no longer able to automatically disregard capital gains and losses on the disposal of any of their assets. Apart from falling outside paragraph 63, they will also not qualify for exclusion under

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<sup>66</sup> The inclusion rate of 66,6% applies to years of assessment commencing on or after 1 March 2012. For earlier years of assessment the inclusion rate was 50%.

paragraph 64 as that provision now specifically excludes any asset used to produce exempt receipts and accruals contemplated in section 10(1)(cO).

A recreational club which has been approved under section 30A may elect to be granted roll-over relief on disposal of its assets. The roll-over relief granted to clubs entails a deferment or delay in paying the CGT on a taxable capital gain made on the disposal of an asset, provided the proceeds are used to acquire a replacement asset. The liability for CGT will arise upon the subsequent disposal of the new asset purchased to replace the asset disposed of. Capital gains and losses on disposal of investments such as shares and participatory interests in collective investment schemes must be brought to account.

### 20.3.3 Valuation date

The valuation date of an approved club for CGT purposes is the date on which it becomes partially taxable under section 10(1)(cO), that is, when it falls outside paragraph 63. Clubs which applied for approval on or before 31 March 2009 have a valuation date equal to the first day of their first year of assessment ending on or after 1 April 2007. Thus a club that has been approved under section 30A before 31 March 2009 and which was in existence on 1 April 2007 and that has a year-end of 31 March, will have a valuation date of 1 April 2007. The valuation dates of these clubs are set out in **Table 1**.

A club approved under section 10(1)(d)(iv) that failed to apply for approval under section 30A by 31 March 2009 will have a valuation date equal to the first day of the first year of assessment ending after 30 September 2010. The valuation dates of these clubs are set out in **Table 2**.

An unapproved club in existence on 1 October 2001 will fall outside the partial taxation dispensation and will have a valuation date of 1 October 2001.

A new club that is established after 1 April 2007 does not need a valuation date, since it acquires its assets at cost, or deemed cost equal to market value if acquired by donation or bequest.

Clubs are required to value their assets within two years of their valuation date if they wish to adopt the market value method. Clubs that do not comply with the two-year valuation period have to use either –

- the “time-apportionment base cost” method provided they have the necessary records of cost and date of acquisition; or
- the “20% of proceeds” method.

The *CGT2L* valuation form must be retained for a period of five years from the date on which the return of income reflecting the disposal was submitted.

The two-year valuation period does not apply to –

- financial instruments listed on a stock exchange, and
- participatory interests in South African collective investment schemes in securities or property shares.

The market value of these financial instruments must be determined in accordance with paragraph 31(1)(a) and (c)(i) of the Eighth Schedule (see paragraph 8.33.8.2 of the *Comprehensive Guide to Capital Gains Tax* (Issue 5).



**Table 1 – Valuation dates for approved recreational clubs in existence on 1 April 2007 (other than clubs to which Table 2 applies)**

<b>Year of assessment ending on the last day of</b>	<b>Valuation date</b>	<b>Final day for completion of valuation</b>
March	1 April 2007	31 March 2009
April	1 May 2007	30 April 2009
May	1 June 2007	31 May 2009
June	1 July 2007	30 June 2009
July	1 August 2007	31 July 2009
August	1 September 2007	31 August 2009
September	1 October 2007	30 September 2009
October	1 November 2007	31 October 2009
November	1 December 2007	30 November 2009
December	1 January 2008	31 December 2010
January	1 February 2008	31 January 2010
February	1 March 2008	28 February 2010

**Table 2 – Valuation date for recreational clubs exempted under section 10(1)(d)(iv)(aa) which had not applied for approval under section 30A by 31 March 2009**

<b>Year of assessment ending on the last day of</b>	<b>Valuation date</b>	<b>Final day for completion of valuation</b>
March	1 April 2010	31 March 2012
April	1 May 2010	30 April 2012
May	1 June 2010	31 May 2012
June	1 July 2010	30 June 2012
July	1 August 2010	31 July 2012
August	1 September 2010	31 August 2012
September	1 October 2010	30 September 2012
October	1 November 2009	31 October 2011
November	1 December 2009	30 November 2011
December	1 January 2010	31 December 2011
January	1 February 2010	31 January 2012
February	1 March 2010	28 February 2012

#### **20.3.4 Base cost**

The base cost of an asset is the expenditure actually incurred in acquiring, creating or improving it together with certain expenditure directly related to the cost of acquiring or disposing of it. An amount that is or was allowable or is deemed to have been allowed as a deduction in determining the club's taxable income does not form part of the base cost of an asset. For example, the cost of an asset must be reduced by any wear-and-tear allowances claimed under section 11(e) in arriving at its base cost.

### **Example 15 – Examples of costs that may form part of the base cost**

- Cost of acquisition
- Transfer costs
- Remuneration of a surveyor, valuer, auctioneer or agent
- VAT or transfer duty incurred on the acquisition of the asset, to the extent that the amount does not qualify as “input tax”, or is not otherwise refundable under the VAT Act
- Cost of improvements which are still in existence at the time of disposal
- Interest on borrowings used to buy unlisted shares is not allowable, while interest on loans used to buy listed shares and participatory interests in collective investment schemes is limited to one-third.

The following methods of determining the base cost of an asset on valuation date are available:

- The market value of the asset on valuation date.
- Twenty percent (20%) of the proceeds from the disposal of the asset, after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after valuation date.
- The time-apportionment base cost of an asset as determined under paragraph 30 of the Eight Schedule.

#### **(a) Market value**

A recreational club wishing to adopt the market value method must value the asset within two years from the valuation date.

Clubs that do not comply with the two-year valuation period rule will have to use The Time-Apportionment Base Cost Method or the “20% of proceeds” method.

For valuation dates of recreational clubs in existence on 1 April 2007 (see **20.3.3**).

#### **(b) Twenty percent (20%) of proceeds**

This method would usually be used as one of last resort when no records have been kept and no valuation was obtained within two years of the valuation date of the club. The value is determined by taking 20% of the proceeds on disposal of the asset, after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after valuation date.

#### **(c) Time-apportionment base cost**

The time-apportionment base cost method is explained in detail in the *Comprehensive Guide to Capital Gains Tax* (Issue 5) in paragraph 8.34. A club that acquired an asset before valuation date by donation or inheritance is regarded as having acquired it for an expenditure equal to its market value at the time of acquisition for the purposes of determining “B” in the time-apportionment formula.<sup>67</sup>

<sup>67</sup> See *Comprehensive Guide to Capital Gains Tax* (Issue 5) in paragraph 8.5A.

The time-apportionment method can be used only when accurate records have been kept, reflecting the cost of acquisition and any improvements together with dates of acquisition and incurral of expenditure. A time apportionment base cost calculator (TAB Calculator) for approved PBOs and recreational clubs which can handle variable valuation dates is available on the SARS website (Types of Tax / Capital Gains Tax / Calculators).

### 20.3.5 Disposals

A recreational club that disposes of recreational club property may elect to apply roll-over relief provided that –

- the whole of the property was used mainly for providing social and recreational amenities or facilities for members, and
- the proceeds received on disposal of the property are reinvested in acquiring one or more replacement assets used for the same purpose.

#### Note:

- The reference in paragraph 65B(1) of the Eighth Schedule, to “the whole of which was used” is intended to preclude granting the roll-over relief in respect of an asset, a part of which is used exclusively for non-recreational purposes, such as the long-term letting of a portion of a clubhouse.
- The use of the word “mainly” in this provision must not be confused with the phrase “substantially the whole of” or the word “substantially” in section 10(1)(cO). The preceding words in inverted commas relate to the provisions dealing with the partial taxation of certain receipts and accruals for income tax purposes. For CGT purposes “mainly” is accepted as being more than 50% while the word “substantially” is accepted to mean 90% or more for income tax purposes, although SARS is prepared to accept not less than 85% – see Binding General Ruling 20 (Issue 2) dated 20 January 2016 “Interpretation of the Expression ‘Substantially the Whole’ ”.

#### Example 16 – Examples of “the whole of which is mainly used”

- A club lets out its building less than 50% of the time while for the remaining time it uses it for its sole or principal object comprising social and recreational purposes. The building will qualify for roll-over relief for CGT purposes.
- A social club owns a 300 m<sup>2</sup> building. The club uses only one room (21 m<sup>2</sup>) once a week for its social activities and lets the remainder of the building as office accommodation. If the club sells the building it will not be able to elect the roll-over relief as the whole of the building was not mainly used to provide social facilities for its members.

### 21.3.6 Roll-over relief

Before an approved club can make an election in respect of the roll-over relief the following conditions must be met:

- Proceeds must accrue to the club in respect of the disposal, and must exceed or be equal to the base cost of the asset (that is, a capital gain or break-even situation).
- An amount at least equal to the receipts and accruals from the disposal has been or will be expended to acquire one or more replacement assets all of which will be used mainly for such purposes. In other words, the roll-over provisions will not apply should less than the amount derived from the disposal be spent on replacement

assets. While the new assets need not necessarily fulfil the same function as the old asset, they must be used mainly for purposes of providing social and recreational facilities and amenities for club members. The use of the words “has been” means that it is possible to acquire a replacement asset before disposing of the old asset.

- The contracts for the acquisition of the replacement asset or assets must all have been or will be concluded within 12 months after the date of the disposal of the asset. The Commissioner may extend this period by up to six months but only if all reasonable steps were taken to conclude the contracts.
- The replacement asset or assets must all be brought into use within three years of the disposal of the asset. The Commissioner may extend this period by up to six months but only if all reasonable steps were taken to bring the assets into use.
- The asset must not be deemed to have been disposed of and re-acquired by the club. This situation could occur, for example, when a club asset is converted to trading stock, in which case it will trigger a disposal and re-acquisition.

A club that makes the election must disregard any capital gain when determining its aggregate capital gain or loss.

#### **(a) Replacement of assets**

The roll-over relief is subject to the condition that the proceeds must be used to acquire one or more replacement assets. When more than one replacement asset is acquired the capital gain on disposal of the old asset must be apportioned to the replacement assets in accordance with the following formula:

$$\frac{\text{Receipts expended on replacement asset}}{\text{Receipts expended on acquiring all replacement assets}} \times \frac{\text{Capital gain}}{1}$$

#### **Example 17 – Roll-over relief: one replacement asset**

##### *Facts:*

The R Recreational Club, which has a year-end of 30 June, has been approved by the Commissioner under section 30A. The club acquired its clubhouse in 1980 by donation and determined its market value on 1 July 2007 (its valuation date) at an amount of R9 million. On 31 December 2014 the club extended its restaurant at a cost of R1 million.

On 20 April 2015 the club sold its clubhouse for R12 million and elected to apply paragraph 65B of the Eighth Schedule to the disposal. The club elected to use the market value method for determining the capital gain on disposal of the old clubhouse. The whole of the clubhouse was used mainly for social and recreational purposes.

On 10 November 2015 the club entered into an agreement to acquire a new clubhouse at a cost of R15 million. The club took occupation of its new premises on 1 January 2016.

##### *Result:*

The club qualifies to use paragraph 65B for the following reasons:

- The proceeds from the disposal of the clubhouse exceed its base cost [R12 million less (R9 million plus R1 million)].
- An amount at least equal to the proceeds from disposal of the clubhouse has been expended (proceeds from disposal of clubhouse are R12 million and the cost of the new clubhouse is R15 million).

- The contract for the replacement of the clubhouse was entered into within 12 months after the disposal of the clubhouse (the date of disposal of the clubhouse was 20 April 2015 and the agreement for the acquisition of the new clubhouse was signed on 10 November 2015).
- The new clubhouse was brought into use within three years of the disposal of the clubhouse (the clubhouse was sold on 20 April 2015 and the new clubhouse was occupied on 1 January 2016).

The capital gain on the disposal of the clubhouse is determined as follows:

	R
Proceeds	12 000 000
Less: Base cost (R9 000 000 + R1 000 000)	<u>(10 000 000)</u>
Capital gain	<u>2 000 000</u>

Under paragraph 65B(2) of the Eighth Schedule, the aggregate capital gain of R2 million is disregarded and deemed to be a capital gain in respect of the new clubhouse when it is eventually disposed of.

### Example 18 – Acquisition of more than one replacement asset

*Facts:*

The LW Cricket Club, an approved recreational club under section 30A, has a year-end of 30 June. It acquired land and buildings for R1 million in March 2004 which were used to provide social and recreational facilities for its members. Improvements of R15 000 were effected to the change rooms on 1 August 2007. The land and buildings were sold to a developer on 30 April 2015 for R3 515 000. The market value of the property on valuation date, which is 1 July 2007, is R2 million. The club elected to apply paragraph 65B of the Eighth Schedule to the disposal of its land and buildings.

On 31 May 2015 the club concluded an agreement with WG Primary School for the acquisition of its playing field and cricket pitch (cricket ground) at a cost of R2 million. On 30 June 2015 the club concluded another agreement to purchase an adjacent property with a building suitable for a new clubhouse at a cost of R3 million. Both replacement assets were acquired for purposes of providing social and recreational amenities or facilities to the club's members. The club moved into the new clubhouse and began using the playing field on 30 November 2015.

*Result:*

*Capital gain on disposal of land and buildings*

	R	R
Proceeds		3 515 000
Less: Base cost		
Market value – 1 July 2007	(2 000 000)	
Improvements – 1 August 2007	<u>(15 000)</u>	<u>(2 015 000)</u>
Capital gain to be disregarded		<u>1 500 000</u>

### *Roll-over relief – paragraph 65B*

The disposal of the club's land and buildings qualifies for roll-over relief under paragraph 65B of the Eighth Schedule for the following reasons –

- the proceeds on disposal exceed the base cost of the land and buildings (the sale realised a capital gain of R1,5 million);
- an amount at least equal to the proceeds from disposal of the club's land and buildings has been expended (the proceeds from the sale of its land and buildings were R3 515 000 and the total cost of the replacement assets was R5 million);
- the contracts for the acquisition of the replacement assets were entered into within 12 months of the disposal of the club's land and buildings (the land and buildings were disposed of on 30 April 2015 and the agreements for the acquisition of the replacement assets were signed on 31 May 2015 and 30 June 2015 respectively); and
- the new clubhouse and playing field were brought into use within three years of the disposal of the club's land and buildings (the land and buildings were sold on 30 April 2015 and the new clubhouse and playing field were brought into use on 30 November 2015).

#### *Capital gain apportioned to cricket ground (replacement asset)*

$$\begin{array}{r} \text{Receipts expended on replacement asset} \\ \hline \text{Receipts expended on acquiring all replacement assets} \\ = \frac{\text{R2 000 000}}{\text{R5 000 000}} \times \text{R1 500 000} \\ = \text{R600 000 to be taken into account when the replacement asset is disposed of.} \end{array} \quad \times \quad \frac{\text{Capital gain}}{1}$$

#### *Capital gain attributable to adjacent property with a building suitable for a new clubhouse (replacement asset)*

$$\begin{array}{r} \text{Receipts expended on replacement asset} \\ \hline \text{Receipts expended on acquiring all replacement assets} \\ = \frac{\text{R3 000 000}}{\text{R5 000 000}} \times \text{R1 500 000} \\ = \text{R900 000 to be taken into account when the replacement asset is disposed of.} \end{array} \quad \times \quad \frac{\text{Capital gain}}{1}$$

### **(b) Failure to comply with roll-over provisions and consequences**

A club that fails to conclude a contract or fails to bring any replacement asset into use within the prescribed period must –

- treat the capital gain as a capital gain on the date on which the relevant period ends;
- determine interest at the prescribed rate on that capital gain from the date of that disposal to the above date; and
- treat that interest as a capital gain on the above date when determining the club's aggregate capital gain or loss.

**Note:** If the Commissioner withdraws a club's approval under section 30A(8) and the club fails to transfer its assets and liabilities to another approved recreational club or an approved

PBO which is incorporated in South Africa, the club must include an amount equal to the market value of its assets less an amount equal to its *bona fide* liabilities in its taxable income in the year of assessment in which the approval was withdrawn. There is no relationship between this inclusion in taxable income and the Eighth Schedule, since it does not give rise to a deemed disposal or acquisition of the errant club's assets. The base cost of the club's assets will therefore not be increased as a result of the deemed inclusion.

### **20.3.7 Donation or bequest of an asset to a recreational club**

A person must disregard any capital gain or capital loss determined in respect of the donation or bequest of an asset to an approved recreational club.<sup>68</sup>

## **21. Applications for approval**

An organisation not formally approved as a recreational club must complete the prescribed application form EI 1. The completed application form with the required registration information together with all requested supporting documentation must be submitted to the TEU or to the nearest SARS branch office.

In the event that the founding document does not comply with prescribed requirements, the application must include a signed written undertaking by the persons responsible in a fiduciary capacity for the funds and assets of the organisation (see **10**).

The notification of approval as a recreational club is issued by the TEU by letter. The letter contains a unique reference number generally referred to as an exemption reference number, which is a different reference number to the taxpayer reference number (see **27.1**). The recreational club is required to retain the letter confirming approval as part of its records (see **26**).

A written notification will also be issued by the TEU to the organisation should the approval not be granted together with reasons why the organisation failed to meet the conditions and requirements of section 30A.

## **22. Approval not granted or withdrawn**

An organisation not approved by the Commissioner as a recreational club or which has had its approval withdrawn will be liable for income tax and other taxes and duties as a normal taxpayer. An organisation constituted as an NPC, association or society<sup>69</sup> will be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies.<sup>70</sup>

## **23. Administrative provisions – Tax Administration Act**

The TA Act<sup>71</sup> deals with tax administration and seeks, among other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.

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<sup>68</sup> Paragraph 62(e) of the Eighth Schedule.

<sup>69</sup> See paragraph (d) of the definition of "company" in section 1(1).

<sup>70</sup> See paragraph 3(a) in Appendix I to the Act.

<sup>71</sup> The TA Act came into effect on 1 October 2012.

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act that imposes that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.<sup>72</sup> If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.<sup>73</sup>

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **26**), returns (see **27**), assessments, dispute resolution (see **29**), interest, refunds and anti-avoidance will therefore also apply to recreational clubs.

For comprehensive information relating to taxpayers obligations and entitlements under the TA Act see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

## 24. Furnishing of information

The Commissioner may, in order to assist in enforcing the provisions of the Act, submit a written request to any person to furnish information about any recreational club and may require that person to –<sup>74</sup>

- answer any questions relating to the recreational club;
- make books of account, records or other documents relating to the recreational club available for inspection; or
- meet with the Commissioner's representative and produce for examination any documents relating to the recreational club.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions requested by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.<sup>75</sup>

## 25. Changes in registered particulars

A recreational club must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A recreational club must communicate to SARS any change of postal, physical or electronic addresses, representative taxpayer and banking particulars.<sup>76</sup>

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.<sup>77</sup>

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<sup>72</sup> Section 4(2) of the TA Act.

<sup>73</sup> Section 4(3) of the TA Act.

<sup>74</sup> Section 46(1) of the TA Act.

<sup>75</sup> Section 234(h)(i) and (ii) of the TA Act.

<sup>76</sup> Section 23 of the TA Act.

<sup>77</sup> Section 234(a) of the TA Act.



## 26. Record-keeping

All recreational clubs are required to keep records for five years from the date of the submission of a return.<sup>78</sup>

A return<sup>79</sup> includes any form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS. This return includes the prescribed application form for approval or exemption from income tax and the required supplementary information and documentation and the relevant written undertaking (if applicable) on which the Commissioner based the decision to approve or not to approve an exemption from income tax.

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained, for longer periods.<sup>80</sup>

### **Example 19 – Examples of record retention periods for which records, books of account or documents are required to be kept and retained<sup>81</sup>**

- Five years from the date of the submission of a return.
- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.
- If an objection or appeal against an assessment or decision is lodged the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.
- A person that has been notified of or is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded or the applicable five-year period has elapsed, whichever is the later.

The records, books of account, or documents which must be kept and retained may include anything that contains a written, sound or pictorial record or other record of information whether in physical or electronic form.

### **Example 20 – Examples of records, books of account or documents that must be kept and retained**

- Cash books
- Debtors, creditors and sales ledgers
- Journals

<sup>78</sup> Section 29(3) of the TA Act.

<sup>79</sup> The term “return” is defined in section 1 of the TA Act.

<sup>80</sup> Section 32 of the TA Act.

<sup>81</sup> See *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)* (Issue 2) in paragraph 15.4.3.

- Fixed-asset register
- Bank statements and deposit slips
- Invoices

In order to ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a recreational club is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.<sup>82</sup>

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.<sup>83</sup> The rules require that electronic records must be kept in their original form,<sup>84</sup> and should within a reasonable time, be accessible to and readable by SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups and conversions.<sup>85</sup>

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.<sup>86</sup>

## 27. Income tax returns

The Commissioner annually gives public notice in the *Gazette* of the persons that must furnish an income tax return.<sup>87</sup>

A recreational club must submit income tax returns, even if its approval or exemption results in no tax liability. The income tax return enables the Commissioner to annually assess whether the recreational club is operating within the prescribed limits of its approval and to determine whether the partial taxation principles have been applied to receipts and accruals which do not qualify for exemption.

The prescribed Income Tax Return for Exempt Organisations (IT12EI) applicable to recreational clubs must be submitted on an annual basis. It may be obtained from –

- the eFiling website;
- the TEU;
- any SARS branch office; or
- the SARS National Contact Centre.

For assistance on how to complete the income tax return see *How to complete the Return of Income: Exempt Organisations (IT12EI return)*.

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<sup>82</sup> Section 30 of the TA Act.

<sup>83</sup> See GN 787 GG 35733 of 1 October 2012.

<sup>84</sup> See section 14 of the Electronic Communications and Transactions Act 25 of 2002. Under that section a document will be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

<sup>85</sup> For further information in this regard see *Electronic Communications Guide*.

<sup>86</sup> Section 234(e) of the TA Act.

<sup>87</sup> Section 66(1).

A return must be a full and true return<sup>88</sup> and be signed by the recreational club or by the recreational clubs duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.<sup>89</sup>

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.<sup>90</sup> A person who wilfully and without cause refuses or neglects to submit a return or document to SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.<sup>91</sup>

### **27.1 Taxpayer reference number**

A taxpayer reference number is allocated on completion of registration for income tax purposes.<sup>92</sup> The taxpayer reference number must be included when filing a return or any document with SARS.

### **27.2 Filing an income tax return**

The public notice issued annually by the Commissioner also prescribes the period within which returns must be submitted for the years of assessment specified in that notice.

Income tax returns may be submitted manually or electronically on the eFiling website.

### **27.3 Year of assessment**

A recreational club that is an NPC, an association, or a society will have a year of assessment ending on the date that coincides with its financial year-end. If the financial year-end is 30 June, its year of assessment will run from 1 July to 30 June of the following year.

### **27.4 Supporting documentation**

It is not a requirement for supporting documents to be submitted together with the income tax return. The recreational club will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

A recreational club whose income tax return is supported by any balance sheet, statement of assets and liabilities or account prepared by any other person may be requested to submit a certificate or statement recording –<sup>93</sup>

- the extent of the examination by the preparer of the books of account and of the documents from which the books of account were prepared; and
- in so far as may be ascertained by the examination, whether the entries in those books and documents disclose the true nature of any transaction, receipt, accrual or payment or debit.

The accounts must be signed by a person responsible for the recreational club in a fiduciary capacity and by the person who prepared them on behalf of the recreational club.

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<sup>88</sup> Section 25(2) of the TA Act.

<sup>89</sup> Section 25(3) of the TA Act.

<sup>90</sup> Section 25(4) of the TA Act.

<sup>91</sup> Section 234(d) of the TA Act.

<sup>92</sup> The term “taxpayer reference number” is defined in section 1 of the TA Act and means the number referred to in section 24 of the same Act.

<sup>93</sup> Section 28 of the TA Act.

## 27.5 Financial statements

A recreational club that is an NPC must comply with the requirements of the Companies Act. It is not a requirement of SARS that the financial statements of a recreational club that is an association or society must be completed by a qualified accountant.

## 28. Tax clearance certificate

A tax clearance certificate (TCC) will be issued only after a recreational club has completed the required prescribed application form. In order for a recreational club to apply for a TCC, the recreational club must first be registered for income tax purposes and allocated a taxpayer reference number.

The TCC will be issued only if in addition to being registered for income tax purposes the following requirements are met:<sup>94</sup>

- The taxpayer reference number as well as any other tax reference numbers which may be allocated for purposes of Employees' Tax or VAT must be active. In other words, the reference numbers must not be deregistered or suspended on the SARS register.
- There must be no outstanding debt for any of the taxes.
- There must be no outstanding returns except those for which an arrangement acceptable to SARS has been made for their submission.

The TCC issued to a recreational club therefore confirms that the recreational club's tax compliance status as at the date of issue of the certificate.

## 29. Objection and appeal

Any decision of SARS in the exercise of its discretion under section 30A is subject to objection and appeal.<sup>95</sup>

The Commissioner's discretion under section 30A will be exercised to determine whether –

- an organisation may be approved as a recreational club for purposes of section 30A(2);
- a recreational club is or was knowingly a party to, or knowingly allowed itself to be used as part of a tax-avoidance scheme;
- a recreational club has in any material respect, or on a continuous or repetitive basis failed to comply with section 30A; and
- approval as a recreational club can be granted with retrospective effect.

A recreational club may object to a decision or an assessment within 30 days from the date of the decision or assessment.<sup>96</sup> The objection must be made on the prescribed form and specify in detail the grounds on which it is made. SARS will consider the objection and may disallow the objection or allow the objection in whole or in part.

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<sup>94</sup> Section 256(3) of the TA Act.

<sup>95</sup> Section 3(4)(b).

<sup>96</sup> See Interpretation Note No. 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in case of Late Objection or Appeal".

If on disallowance of the objection the recreational club is dissatisfied with the decision by SARS it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.

Chapter 9 of the TA Act provides the legal framework for these disputes which must be read together with the rules for objections and appeals.<sup>97</sup> For more information on the resolution of tax disputes see *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and *Alternative Dispute Resolution: Quick Guide*.

The following prescribed forms, whichever apply, must be submitted in order for an objection or an appeal to be valid:

- A Notice of Objection (NOO) or Alternative Dispute Resolution (ADR 1),
- A Notice of Appeal (NOA) or Alternative Dispute Resolution (ADR 2).

## **30. Other tax issues**

### **30.1 Provisional tax**

Provisional tax<sup>98</sup> is dealt with in the Fourth Schedule. It is not a separate tax but merely a mechanism to assist taxpayers in meeting their tax liability by spreading it over the relevant year of assessment as opposed to paying a large amount at the end of a year of assessment. A provisional taxpayer<sup>99</sup> is required to estimate taxable income for a year of assessment and calculate provisional tax payable on that estimate.

Recreational clubs are excluded from the definition of “provisional taxpayer” in the Fourth Schedule and are not required to submit provisional tax returns.<sup>100</sup> Any liability to income tax on taxable income will become payable on assessment.

For more comprehensive information on provisional tax see *Taxation in South Africa 2014/2015* and the *Guide for Provisional Tax 2015*.

### **30.2 Estate duty**

Estate duty is levied under the Estate Duty Act 45 of 1955 at a rate of 20%<sup>101</sup> on the dutiable amount of the estate of a deceased person.

No exemption for estate duty is provided for bequests to recreational clubs. Any property bequeathed to a recreational club will therefore not qualify to be excluded from the value of the estate.

### **30.3 Transfer duty**

Transfer duty is levied under the Transfer Duty Act 40 of 1949 on a sliding scale on the value of any property<sup>102</sup> acquired by any person. The rates vary from 0% to 11% for all

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<sup>97</sup> The rules for objections and appeals are formulated under section 103 of the TA Act and published in GN 550 GG 37819 of 11 July 2014.

<sup>98</sup> The term “provisional tax” is defined in paragraph 1 of the Fourth Schedule.

<sup>99</sup> The term “provisional taxpayer” is defined in paragraph 1 of the Fourth Schedule.

<sup>100</sup> Paragraph (bb) of the exclusions to the definition of “provisional taxpayer” in paragraph 1 of the Fourth Schedule.

<sup>101</sup> Section 2(2) and at the rate set out in the First Schedule to the Estate Duty Act.

<sup>102</sup> See definition of “property” in section 1(1) of the Transfer Duty Act.

persons. The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.

Section 9 of the Transfer Duty Act provides for certain exemptions which may apply in different circumstances. There is, however, no specific exemption which applies to a recreational club. One of the main exemptions is contained in section 9(15) of that Act which provides that if a supply of property is subject to VAT, it will be exempt from transfer duty.

Subject to any exemption which may apply, a recreational club will be liable to pay transfer duty on the acquisition of any property from any person that is not a VAT vendor. Transfer duty will also be payable when property is acquired from a vendor, if that vendor did not use the property for enterprise purposes under the VAT Act. This will apply, for example, to a property that was used for private purposes, exempt supplies or other non-taxable purposes by the vendor immediately before being supplied.

For further information on transfer duty in general and the processing of transactions on eFiling see *Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

### **30.4 Securities Transfer Tax**

Securities transfer tax (STT) is levied under the Securities Transfer Tax Act 25 of 2007 at the rate of 0.25% on the taxable amount of every listed and unlisted security transferred.<sup>103</sup>

No specific exemption for STT is provided for recreational clubs.

For more information on STT and the electronic submission of STT declarations and payments on the e-STT system via eFiling see *External Reference Guide – Securities Transfer Tax*.

### **30.5 Employees' tax**

Employees' tax is dealt with in the Fourth Schedule. It is often referred to as Pay-As-You-Earn or PAYE. The purpose of the employee's tax system is to ensure that an employee's income tax liability is settled at the same time that the employee's remuneration is earned, thus avoiding burdening the employee with a large tax bill on assessment. Employees' tax deducted serves as an income tax credit that is set off against the income tax liability<sup>104</sup> of an employee, calculated on an annual basis in order to determine the employees' final income tax liability for a year of assessment.

Employees' tax must be deducted or withheld by every employer (or representative employer when the employer is not resident in South Africa) who pays or becomes liable to pay an amount of remuneration<sup>105</sup> to any person.

A recreational club cannot be automatically exempted from the obligation to deduct or withhold employees' tax, and will have to register as an employer for employees' tax purposes, unless none of its employees are liable to pay income tax. The PAYE to be deducted or withheld is calculated according to the tax deduction tables prescribed by the Commissioner.

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<sup>103</sup> The terms "listed security", "unlisted security" and "security" are defined in section 1 of the Securities Transfer Tax Act.

<sup>104</sup> Paragraph 28 of the Fourth Schedule.

<sup>105</sup> The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.

A recreational club that is an employer must register for employees' tax within 21 business days of becoming an employer.<sup>106</sup> Registration is done by completing the prescribed application form EMP 101e and submitting it to the local SARS branch office. The application form EMP 101e is available at all SARS branch offices as well as on the SARS website.

A registered employer will receive a monthly return, the EMP 201 form, which must be completed and submitted together with the payment of employees' tax within seven days after the end of the month during which the deduction was made.

An employer must issue an employee with an employees' tax certificate (IRP 5 certificate) if employees' tax was deducted from the employees' remuneration. This certificate discloses, among other things, the total remuneration earned during a year of assessment and the employees' tax and unemployment insurance fund contributions deducted by the employer.

### **30.6 Unemployment insurance fund**

The purpose of the unemployment insurance fund (UIF) is to insure employees who become unemployed or their beneficiaries against loss of earnings owing to the termination of the employee's employment, illness, maternity or adoption leave, and in so doing alleviate the harmful economic and social effects of unemployment.<sup>107</sup>

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act 63 of 2001 and the Unemployment Insurance Contributions Act 4 of 2002. These statutes, among other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

UIF contributions, which are equal to 2% of the remuneration paid or payable by employers to their employees, subject to specified exclusions, are payable by employers on a monthly basis. The employer may deduct only 1% of the contribution from the employees' remuneration.

A recreational club that pays remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.

These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch office where the recreational club is also liable for employees' tax or skills development levy within seven days after the end of the month during which the amount was deducted.

For more information see the *Guide for Employers in respect of the Unemployment Insurance Fund*. Useful information can also be obtained from the Department of Labour's website at [www.labour.gov.za](http://www.labour.gov.za).

### **30.7 Skills development levy**

Skills development levy (SDL) is a compulsory levy to fund education and training under the Skills Development Levies Act No 9 of 1999. SARS administers the collection of this levy which is levied broadly on 1% of the payroll of employers. Employers providing training to employees may receive grants from the Sector Education and Training Authorities (SETAs).

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<sup>106</sup> Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.

<sup>107</sup> See section 2 of the Unemployment Insurance Act.

Employers whose annual payroll will not exceed R500 000 in the following 12 months are exempt from paying the levy.<sup>108</sup>

For more information see the *Quick Reference Guide for Skills Development Levy* on the SARS website.

### 30.8 Value-added tax

VAT is an indirect tax levied under the VAT Act. VAT is presently levied at a standard rate of 14% on most supplies and services in South Africa and on most goods imported into the country. There is a limited range of goods and services which are subject to VAT at the zero rate when supplied in South Africa and on exports to other countries. Certain goods are also exempt when supplied in, or imported into South Africa. VAT is payable only on imported services which are acquired for non-taxable purposes.

VAT is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor. Supplies which attract VAT at either the standard or zero rate are called “taxable supplies”. Any person that makes taxable supplies above the compulsory registration threshold or has been allowed to register voluntarily for VAT is referred to as a “vendor”. A vendor includes a person that is liable to register for VAT, even if that person has not actually registered.

The term “recreational club” used for income tax purposes is not used in the VAT Act. Instead reference is made to an “association not for gain”.<sup>109</sup> A recreational club may fall within the meaning of an “association not for gain”. A recreational club may qualify as an “association not for gain” and be treated as such for VAT purposes, regardless of whether it qualifies for the exemption of certain receipts and accruals under section 10(1)(cO).

For comprehensive information on VAT see *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

#### 30.8.1 Association not for gain

An “association not for gain” is essentially a religious institution or other society, association or organisation (including an educational institution of a public character) which is not carried on for profit and is required to use any property or income solely in the furtherance of its aims and objects.<sup>110</sup>

An association not for gain such as a recreational club that has met the requirements for compulsory (see **30.8.2 (a)**) or voluntary registration (see **30.8.2 (b)**) is treated like any other business that makes taxable supplies and will be liable to register and account for VAT according to the normal VAT rules which apply to all vendors. There are, however, a few special provisions which apply to associations not for gain. These are summarised below:

- No output tax is payable on any donations (see **30.8.4**).
- The association can apply to account for VAT on the cash (payments) basis instead of on the accrual (invoice) basis. Adoption of the cash basis will assist associations that rely extensively on cash flow to fund their day-to-day operations.

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<sup>108</sup> Section 4(b) of the Skills Development Levies Act, 1999.

<sup>109</sup> See paragraph (b) of the definition of “association not for gain” in section 1(1) of the VAT Act.

<sup>110</sup> The term “association not for gain” is defined in section 1(1) of the VAT Act.



- Certain goods donated to an association not for gain are exempt from VAT on importation.<sup>111</sup>
- Different activities carried on by different organisational divisions of the same association which are sufficiently separate and distinct can be regarded as separate persons for VAT purposes. This treatment can be used to reduce the impact of VAT on the association.
- Financial assistance in the form of a subsidy or grant which is received from national or provincial government (a public authority) is zero-rated. In order to qualify for the zero-rating, the amount received must meet the definition of “grant”<sup>112</sup> and be aimed at funding the taxable activities of the association as a whole.<sup>113</sup>

### **30.8.2 Registration**

A person cannot register for VAT if only exempt supplies are made. Examples of supplies which are exempt from VAT include the rental of dwellings, certain educational services, financial services and public transport by road or rail.<sup>114</sup>

#### **(a) Compulsory registration**

Any person, including an association not for gain,<sup>115</sup> is required to register for VAT purposes if an enterprise is carried on and taxable supplies in excess of R1 million are made in any consecutive 12 month period.

This requirement means that an existing association not for gain which makes taxable supplies must register from the beginning of the month if the value of taxable supplies for the preceding 12 months has exceeded the compulsory registration threshold. Application for registration must be made within 21 days of exceeding the threshold.

An existing or newly created association not for gain that enters into a written contract to make taxable supplies exceeding R1 million within the next 12 month period must register within 21 days of entering into the contract.

#### **(b) Voluntary registration**

Any person, including an association not for gain, which carries on an enterprise which makes taxable supplies with a value of less than R1 million in any consecutive 12-month period, may choose to register voluntarily if certain conditions are met.

<sup>111</sup> See paragraph 5 of Schedule 1 to the VAT Act for further details.

<sup>112</sup> The term “grant” is defined in section 1(1) of the VAT Act.

<sup>113</sup> See Interpretation Note No. 39 (Issue 2) dated 8 February 2013 “VAT Treatment of Public Authorities, Grants and Transfer Payments” for more information on whether an amount received constitutes a “grant” as defined.

<sup>114</sup> For further information on exempt supplies see section 12 of the VAT Act.

<sup>115</sup> The term “association not for gain” includes a “welfare organisation”.

A person may apply for voluntary registration when –

- the value of taxable supplies has already exceeded the minimum voluntary registration threshold of R50 000 within the preceding 12 months, or if there is a written contractual commitment to make taxable supplies exceeding R50 000 within the next 12 month period;<sup>116</sup> or
- the R50 000 threshold has not yet been reached because the person carries on certain types of activities which will lead to taxable supplies being made only after a period of time (exceeding 12 months).

The specific conditions which must be met in order to qualify for voluntary registration under these circumstances are prescribed by regulation.<sup>117</sup>

A recreational club will therefore be liable to register for VAT if the value of taxable supplies exceeds R1 million as explained above. Alternatively, if the club does not meet the compulsory registration threshold, it may choose to register voluntarily as long as it meets the applicable minimum threshold of taxable supplies, or if it complies with certain other requirements for voluntary registration prescribed in the relevant regulation.

### **30.8.3 General VAT treatment for recreational clubs**

A recreational club that is required to register for VAT, or which has registered voluntarily, must charge VAT (output tax) on any taxable supplies of goods or services made in the course of conducting the club's enterprise. The term "taxable supplies" includes supplies which are subject to VAT at the standard rate (currently 14%), or at the zero rate.

Typical examples of income earned from taxable supplies on which output tax is payable by recreational clubs are as follows:

- Club membership fees.
- Entrance fees charged for entrance to fundraising and sports events.
- Fees charged for the use of sports facilities such as bowling greens, squash and tennis courts.
- Charges for restaurant meals, bar facilities and any other hospitality or entertainment.
- Tuck shop sales such as tea, coffee and other beverages and snacks.
- Fees for hiring out facilities for weddings and other functions.
- Charges for the provision of commercial accommodation or office space.
- Income from the sale of raffle tickets or fees for entry to competitions.
- Takings from coin-operated amusements such as pool tables or other vending machines.
- Entrance fees for theatre performances and film shows.
- Charges for hospitality boxes.

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<sup>116</sup> Persons supplying "commercial accommodation" are subject to a minimum threshold for voluntary registration of R60 000 and not R50 000. With effect from 1 April 2016 this threshold will increase to R120 000.

<sup>117</sup> See section 23(3)(b) and section 23(3)(d) of the VAT Act and the relevant regulations published in GN R 446 and GN R 447 GG 38836 of 29 May 2015.

A recreational club which is registered for VAT will, subject to a few exceptions, be able to claim credit for any VAT paid (input tax) on goods or services acquired in order to make taxable supplies, subject to the documentary requirements being met.

Since recreational clubs often make supplies of “entertainment”, the special VAT rules in this regard should be noted. The term “entertainment” means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with the enterprise carried on by that vendor. The main rule regarding the deduction of input tax in regard to supplies of entertainment, is that the supplies must be made for a charge which covers all the direct and indirect costs, or for a charge which is at least equal to the open market value of the supplies. A club that supplies entertainment may therefore deduct input tax on any goods or services acquired in order to make taxable supplies of entertainment, provided that it meets these requirements.

For more information on supplies of entertainment and the deductibility of input tax in that regard, see Chapter 8 of the *VAT 404 – Guide for Vendors* and the *VAT 411 – Guide for Entertainment, Accommodation and Catering* on the SARS website.

### **30.8.4 Donations**

The characteristics of a donation<sup>118</sup> are as follows:

- It includes a gratuitous payment of an amount of money or the gratuitous supply of goods or services to an association not for gain.
- The donation must be for the purposes of carrying on, or the carrying out, of the purposes of that association.
- There may not be any identifiable direct valuable benefit arising in the form of a supply of goods or services to the donor or a connected person in relation to the donor.
- A payment made by a public authority or municipality does not qualify as a donation.

A donation made by a donor to an association not for gain is specifically excluded from the definition of “consideration” and is not regarded as payment made for a supply of goods or services. Consequently, there will be no output tax payable by the donee if any money, goods or services are received as a donation, and the donor will not be entitled to deduct any input tax on the amounts donated.

Generally, the donor will not be entitled to deduct any input tax on any cash donations made or on any goods or services donated to a recreational club. Similarly, a recreational club that receives a cash donation will not declare any output tax on that receipt. The subsequent sale of goods or services received as a donation by a recreational club is exempt from VAT.

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<sup>118</sup> The term “donation” is defined in section 1(1) of the VAT Act.

### **Example 21 – Sale of donated goods**

*Facts:*

A VAT-registered soccer club receives cakes as a donation. It has a fundraising event at which the cakes are sold.

*Result:*

The sale of the cakes will be exempt from VAT. As a result, the club will not be able to deduct any input tax on expenses incurred in making those exempt supplies.

### **30.9 Micro businesses**

The Sixth Schedule sets out the conditions and requirements for an entity to qualify as a micro business<sup>119</sup> for turnover tax<sup>120</sup> purposes.

A micro business may be constituted as a sole proprietor, partnership, close corporation, co-operative or a company. Another requirement is that the qualifying person's qualifying turnover may not exceed R1 million for a year of assessment.

An NPC approved by the Commissioner as a recreational club will not qualify as a micro business.<sup>121</sup>

For information on the turnover tax system for micro businesses see the *Tax Guide for Micro Businesses*.

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<sup>119</sup> The term "micro business" is defined in paragraph 1 of the Sixth Schedule.

<sup>120</sup> Turnover tax is a separate and independent tax from the normal tax system which is payable under section 48A by a person who is registered as a micro business under paragraph 8 of the Sixth Schedule.

<sup>121</sup> Paragraph 3(f)(v) of the Sixth Schedule.

## Annexure – The law

### Section 10(1)(cO)

**10. Exemptions.**—(1) There shall be exempt from normal tax—

- (cO) the receipts and accruals of any recreational club approved by the Commissioner in terms of section 30A, to the extent that the receipts and accruals are derived—
  - (i) in the form of membership fees or subscriptions paid by its members;
  - (ii) from any business undertaking or trading activity that—
    - (aa) is integral and directly related to the provision of social and recreational amenities or facilities for the members of that club;
    - (bb) is carried out on a basis substantially the whole of which is directed towards the recovery of cost; and
    - (cc) does not result in unfair competition in relation to taxable entities;
  - (iii) from any fundraising activities of that club, which are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; and
  - (iv) from any other source and do not in total exceed the greater of
    - (aa) five per cent of the total membership fees and subscriptions due and payable by its members during the relevant year of assessment; or
    - (bb) R120 000;

### Section 30A

**30A. Recreational clubs.**—(1) For purposes of this Act, “**recreational club**” means any non-profit company as defined in section 1 of the Companies Act, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association.

(2) The Commissioner must approve a recreational club for the purposes of section 10(1)(cO), if—

- (a) that club has submitted to the Commissioner a copy of the constitution or other written instrument in terms of which it is established and which provides that—
  - (i) it is required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that club and no single person directly or indirectly controls the decision making powers relating to that club;
  - (iA) its activities must be carried on in a non-profit manner;
  - (ii) it is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of subparagraph (iii);
  - (iii) it is required on dissolution to transfer its assets and funds to—
    - (aa) any other recreational club which is approved by the Commissioner in terms of this section;
    - (bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of a “public benefit organisation” in section 30(1) which has been approved in terms of section 30(3);
    - (cc) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or

- (dd) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);
  - (iv) it may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to that club;
  - (v) all members must be entitled to annual or seasonal membership; and
  - (vi) members are not allowed to sell their membership rights or any entitlement in terms thereof;
- (b) the club undertakes to submit to the Commissioner a copy of any amendment to the constitution or other written instrument under which it is established; and
- (c) the Commissioner is satisfied that the club is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner.

(3) Where the constitution or other written instrument under which the club is established does not comply with the provisions of paragraph (a) of subsection (2), it shall be deemed to so comply if a person responsible in a fiduciary position for the funds and assets of such club furnishes the Commissioner with a written undertaking by such club that such club will be administered in compliance with the provisions of this section.

(4) Where a club applies for approval, the Commissioner may approve that club for purposes of this section, or for the purposes of any provision contained in section 10 prior to its amendment by section 10(1)(k) of the Revenue Laws Amendment Act, 2006 (Act No. 20 of 2006), with retrospective effect, to the extent that the Commissioner is satisfied that that club during the period prior to its application complied with the requirements of a “recreational club” as defined in subsection (1).

(5) Where the Commissioner is—

- (a) satisfied that any recreational club approved under subsection (2) has during any year of assessment in any material respect; or
- (b) during any year of assessment satisfied that any such recreational club has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution or other written instrument under which it was established to the extent that it relates to the provisions of this section, the Commissioner shall notify the recreational club that he or she intends to withdraw the approval of that recreational club if no corrective steps are taken by that club within a period stated in that notice.

(6) If no corrective steps are taken by a recreational club as contemplated in subsection (5), the Commissioner must withdraw approval of that club with effect from the commencement of the year of assessment contemplated in subsection (5).

(7) If the Commissioner has withdrawn the approval of a recreational club, that club must 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 to any recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).

(7A) As part of its dissolution the club must transfer its assets to a recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).

(8) If the recreational club fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (7A), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that recreational club must for purposes of this Act be deemed to be an amount of taxable income which accrued to that recreational club during the year of assessment in which approval was withdrawn or the dissolution took place.

(9) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved recreational club and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such recreational club is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.