

## DRAFT BINDING GENERAL RULING (INCOME TAX)

DATE:

**ACT** : INCOME TAX ACT NO. 58 OF 1962  
**SECTION** : SECTION 30B(2)(b)(ix)  
**SUBJECT** : ASSOCIATIONS: MEANING OF “ANNUAL OR OTHER LONG-TERM MEMBERS”

### *Preamble*

For the purposes of this BGR –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- “**entity**” means any “entity” defined in section 30B(1) which has been approved as an association by the Commissioner under section 30B(2);
- “**section**” means a section of the Act;
- “**section 30B**” means the section which sets out the conditions and requirements that an entity must comply with in order to obtain and retain approval as an association so as to enjoy exemption from normal tax under section 10(1)(d)(iii) or section 10(1)(d)(iv)(bb);
- “**the Act**” means the Income Tax Act No. 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

### **1. Purpose**

This BGR provides clarity on the meaning of “annual or other long-term member” referred to in section 30B(2)(b)(ix).

### **2. Background**

The Commissioner must approve an entity for purposes of section 10(1)(d)(iii) or section 10(1)(d)(iv)(bb) if that entity has submitted a copy of its constitution or written instrument under which it has been established that provides for the conditions and requirements set out in section 30B(2)(b).

A requirement for obtaining such approval is that substantially the whole<sup>1</sup> of the entity’s funding must be derived from, amongst other things, its annual or other long-term members.<sup>2</sup>

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<sup>1</sup> See Binding General Ruling (Income Tax): No. 20 (Issue 2) dated 20 January 2016 “Interpretation of the Term ‘Substantially the Whole’ ”.

<sup>2</sup> Section 30B(2)(b)(ix).

### **3. Application of the law**

#### **3.1 Membership requirement**

The term “annual or other long-term members” is not defined in the Act and should therefore be interpreted according to its ordinary meaning as applied to the subject matter relating to which it is used<sup>3</sup> unless the ordinary meaning creates an absurdity or ambiguity. It is important when giving words and expressions their ordinary meaning, to consider the context in which such words or expressions are used.

#### **3.2 Member**

A “member” is defined in section 30B(1) only for purposes of a fidelity or indemnity fund to include a contributor to that fund.

The ordinary meaning of “member” is “a person or organisation belonging to a group or society”.<sup>4</sup>

A member includes any natural person or any other person<sup>5</sup> such as companies or other incorporated entities, statutory bodies or associations of persons.

A member generally qualifies for membership under the constitution or written instrument under which the entity is established and governed if certain qualifying criteria and requirements are met. The qualifying criteria and requirements will depend on the type of entity as well as the nature of the activities the particular entity carries on.

A member may or may not be required to pay a registration fee and an annual membership or subscription fee to belong to an entity. Membership and subscription fees may vary from entity to entity and may also vary depending on the category of membership the member holds within an entity.

#### **3.3 Annual member**

The ordinary meaning of “annual” is “occurring or recurring once in each year; continuing for the period of a year”.<sup>6</sup>

An annual member is therefore a member that belongs to an entity for 12 months.

#### **3.4 Long-term member**

The ordinary meaning of “long-term” is “occurring over or involving a relatively long period of time”.<sup>7</sup>

A long-term member is therefore a member that belongs to an entity for longer than 12 months.

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<sup>3</sup> See EA Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths Durban at 224. See also *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

<sup>4</sup> M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus and Wordpower Guide* (2001) Oxford University Press.

<sup>5</sup> Companies or other incorporated entities, associations of persons or statutory bodies are not excluded from the definition of “person” in section 1(1).

<sup>6</sup> Above.

<sup>7</sup> Above.

#### **4. Ruling**

The requirement for approval as an association under section 30B is that the member of the entity must be an annual or long-term member.

“Annual”, “long-term” and “member” referred to in section 30B(2)(b)(ix) are interpreted as follows:

- “Annual” is 12 months.
- “Long-term” is more than 12 months.
- “Member” is any person<sup>8</sup> that holds membership.

It is not a requirement for approval as an association under section 30B that the members of an entity must pay a membership or subscription fee to belong to, or to benefit from, the activities of the entity.

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

#### **5. Period for which this ruling is valid**

This BGR will apply from date of issue of the final BGR and will apply until it is withdrawn, amended or the relevant legislation is amended.

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<sup>8</sup> See definition of “person” in section 1(1).