

DRAFT BINDING GENERAL RULING (INCOME TAX)

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 30B(2)(b)(ix)
SUBJECT : ASSOCIATIONS: FUNDING REQUIREMENT

Preamble

For the purposes of this BGR –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 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);
- **“government”** means the government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a);
- **“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 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 interpretation and application of the funding requirement 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 and it complies with the conditions and requirements set out in section 30B(2)(b).

An entity¹ includes any –

- mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association;² or
- non-profit company,³ society or other association of persons established to promote the common interests of persons, being members of such company, society or association of persons, carrying on any particular kind of business, profession or occupation.⁴

A requirement for such entities to obtain approval as an association under section 30B(2) is that, among other things, substantially the whole of the entity's funding must be derived from its annual or other long-term members⁵ or from an appropriation by the government.⁶

3. Discussion

The word “funding” 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 used⁷ 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.

The ordinary dictionary meaning of “funding” is –

“money provided, especially by an organisation or government, for a particular purpose”⁸ and “financial resources provided to make some project possible”.⁹

The word “funding” referred to in section 30B(2)(b)(ix) therefore generally refers to the financial resources of an entity for the financing of its activities in the furtherance of its sole or principal object for which it has been established.

The requirement in section 30B(2)(b)(ix) is that substantially the whole of the entity's funding must be derived from its annual or long-term members or from an appropriation by the government. In the strict sense the term “substantially the whole” is regarded by SARS to mean 90% or more. SARS will, however, in exceptional circumstances accept a percentage of not less than 85%.¹⁰

The funding requirement does not require an entity to derive its funding solely from membership or subscription fees. An entity is also not prohibited from deriving

¹ The term “entity” is defined in section 30B(1) of the Act.

² Paragraph (a) of the definition of “entity” in section 30B(1).

³ A non-profit company as defined in section 1 of the Companies Act 71 of 2008.

⁴ Paragraph (b) of the definition of “entity” in section 30B(1).

⁵ See Draft BGR (Income Tax) “Associations: Meaning of ‘Annual or Other Long-term Members’ ”.

⁶ Section 30B(2)(b)(ix).

⁷ See EA Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths at 224. See also *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

⁸ <https://en.oxforddictionaries.com/definition/funding> [Accessed 3 February 2017].

⁹ www.audioenglish.org/dictionary/funding.htm [Accessed 3 February 2017].

¹⁰ See BGR (Income Tax) 20 “Interpretation of the term ‘Substantially the Whole’ ” as it relates to public benefit organisations.

funding from non-members, provided substantially the whole of its funding is derived from its annual or long-term members or from an appropriation by the government.

4. Ruling

It is not a requirement in section 30B(2)(b)(ix) that an entity derive funding solely from membership or subscription fees. An entity that receives funding other than in the form of a membership or subscription fee from any annual or long-term member will also qualify as funding for purposes of section 30B(2)(b)(ix).

An entity will also not fall foul of the requirements in section 30B(2)(b)(ix) if funding is derived from any non-member provided that at least 90% and in exceptional circumstances not less than 85% of the total funding is derived from its annual or long-term members or from an appropriation of government.

This ruling constitutes a binding general ruling issued under section 89 of the Tax Administration Act 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.

**Executive: Legal Advisory
Legal Counsel
SOUTH AFRICAN REVENUE SERVICE**