

7 March 2017

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
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BY EMAIL: policycomments@sars.gov.za

RE: Section 30B Associations: Funding Requirement – Draft Binding General Ruling

We write to comment on the draft binding general ruling (BGR) that aims to provide clarity on the interpretation and application of the funding requirement for section 30B associations contained in section 30B(2)(b)(ix).

1. Introduction

Section 30B(2)(b)(ix) requires that substantially the whole of an entity's funding must be derived from its annual or long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere. We note that SARS has previously addressed this requirement in the following binding general rulings:

- BGR 20 (issue 2) interpreted the term “substantially the whole”;
- The 2016 draft BGR dealt with the meaning of “annual or other long-term members”; and
- This 2017 draft BGR deals with the application of the funding requirement

We are of the view that these three draft/BGR do not neatly work together to in relation to the section 30B(2)(b)(ix) funding requirement.

2. Substantially the whole

The 2017 draft BGR contains a proviso that “at least 90% and in exceptional circumstances not less than 85% of the total funding is derived from...” (our underlining)

This interpretation is more onerous than the prior interpretation of BGR 20 (issue 2) dated 20 January 2016 which interpreted the term “substantially the whole”. BGR 20 (issue 2) states that:

In the strict sense the term “substantially the whole” is regarded by SARS to mean 90% or more. SARS will, however, accept a percentage of not less than 85%. The percentage must be determined using a method appropriate under the circumstances.

The ruling on the funding requirement should refer to BGR 20 (issue 2) in relation to the percentage. We also understand that SARS allowed certain associations to use the 85% when they registered and note that it would be inappropriate to set a higher benchmark at this stage. The subtle change in the percentage is also without foundation from longstanding practice in terms of section 30B and elsewhere in the Income Tax Act.

3. Payments from annual or other long-term members other than membership fees

The draft ruling correctly states that payments from annual long-term members include payments besides actual membership and subscription fees. More specifically the ruling states that:

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).

-3-

We believe that this interpretation is correct as a matter of law and is consistent with the policy of professional associations. In particular,

- Entry fees and related membership entrance examinations for entering members should be treated as fully qualifying funding given that these fees are ancillary to membership.
- Annual CPD seminars, CPD webinars, CPD educational events and the upgrade of qualifications for members should be treated as fully qualifying funding given that CPD education is a requirement of continued membership within the profession. Fees associated with these activities cannot be made part of the membership fee because members have unique educational needs and individual members do not want to cross-subsidise the fees through annual membership dues. We also note that PBOs can offer similar training in line with Government’s objectives of upskilling the economy. Non-profit professional associations are offering the same educational opportunities.

We note that many activities of a non-profit professional body are offered without a surplus (and are even undertaken a loss).

4. Appropriation by the government

The meaning of “an appropriation by the government” has not been interpreted. We note that “government” is defined to mean the government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a). We recommend that an interpretation be provided of the meaning of “an appropriation by the government” and that it should be made clear that this phrase would include grants by all organs of state including, for example, state-owned enterprises if the funds

represent appropriations by any of the three spheres of government when channelled through another entity.

5. Application of the funding requirement

This 2017 draft BGR explains how the calculation will be performed to determine whether the not less than 85% funding requirement is met. The principles enunciated in this ruling could be demonstrated by way of examples in order to make their application clear.

Example 1:

Association's revenue for the year consists of:

<i>Membership fees from annual or other long-term members</i>	R	1,000,000
<i>CPD course/Seminar fees from annual or other long-term members</i>	R	200,000
<i>Sub-total: Funding from annual or other long-term members</i>	R	1,200,000
<i>Course/Seminar fees from non-members</i>	R	150,000
Total funding	R	1,350,000

Funding from members/Total funding (R1,200,000/R1,350,000) 88,9% meets requirement

Example 2:

Association's revenue for the year consists of:

<i>Grant from State Owned Enterprise (e.g. Eskom)</i>	R	2,000,000
<i>Fees from non-members</i>	R	300,000
Total funding	R	2,300,000

Funding from government/Total funding (R2,000,000/R2,300,000) 87,0% meets requirement

-5-

Example 3:

Association's revenue for the year consists of

Grant from Municipality	R	200,000
Levies from members	R	30,000
Total funding	R	230,000

Funding from government/Total funding (R230,000/R230,000) 100,0% meets requirement

Example 4:

Association's revenue for the year consists of:

Membership fees from annual or other long-term members	R	1,000,000
CPD Course/Seminar fees from annual or other long-term members	R	200,000
Sub-total: Funding from annual or other long-term members	R	1,200,000
Course/Seminar fees from non-members	R	500,000
Total funding	R	1,700,000

Funding from members/Total funding (R1,200,000/R1,700,000) 70,6% falls foul of requirement

We reiterate our collateral concern in terms of an emerging one-size-fits-all approach to section 30B organisations even though these organisations are varied in purpose and government regulation, as set out in our submission dated 18 October 2016.

We welcome the opportunity to comment on the draft ruling and look forward to future engagements on the broader issues involving section 30B.

Yours sincerely

Keith Engel

Chief Executive