

INTERPRETATION NOTE: NO. 10 (Issue 2)

DATE: 18 August 2015

ACT : SKILLS DEVELOPMENT LEVIES ACT NO. 9 OF 1999
SECTION : SECTION 4(c)
SUBJECT : SKILLS DEVELOPMENT LEVY EXEMPTION: PUBLIC BENEFIT ORGANISATIONS

Preamble

In this Note unless the context indicates otherwise –

- “**PBA**” means a “public benefit activity” as defined in section 30(1);
- “**PBO**” means a “public benefit organisation” as defined in section 30(1) and approved by the Commissioner under section 30(3);
- “**qualifying PBAs**” means the PBAs listed in paragraphs 1, 2(a), (b), (c), (d) and 5 of Part I of the Ninth Schedule;
- “**Schedule**” means a Schedule to the Act;
- “**SDL**” means the skills development levy referred to in section 3 of the SDL Act, paid by an employer;
- “**SDL Act**” means the Skills Development Levies Act No. 9 of 1999;
- “**section**” means a section of the Act;
- “**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 or the SDL Act.

1. Purpose

This Note provides guidance on the interpretation and application of section 4(c) of the SDL Act,¹ which exempts any PBO² contemplated in section 10(1)(cN) from the payment of SDL, provided the PBO –

- solely carries on qualifying PBAs; or
- solely provides funds to PBOs that solely carry on qualifying PBAs.

¹ See the *Guide for Employers in respect of the Skills Development Levy*, issued to assist employers to understand the basic fundamentals of the SDL Act.

² See the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and the *Basic Guide to Income Tax for Public Benefit Organisations* which provide information relating to PBOs and the tax implications affecting them.

2. Background

The SDL Act imposes an SDL levy on the total “remuneration”³ paid or payable by the employer to the employee during any month as determined in accordance with the Fourth Schedule.

Section 4 of the SDL Act contains a number of exemptions from the SDL levy. This Note, however, concentrates on the exemption under section 4(c) of the SDL Act.

The Commissioner is responsible for the administration of the SDL Act, in so far as it relates to the collection of the levy payable by employers.

3. The law

Section 4(c) of the Skills Development Levies Act

4. Exemptions.—The levy is not payable by—

- (c) any public benefit organisation contemplated in section 10(1)(cN) of the Income Tax Act, which—
- (i) solely carries on any public benefit activity contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to that Act; or
 - (ii) solely provides funds to public benefit organisations contemplated in subparagraph (i);

4. Application of the law

4.1 Public benefit organisation carrying on public benefit activities

An organisation that claims exemption from the payment of SDL under section 4(c)(i) of the SDL Act must be a PBO which solely (see 5.5) carries on (see 5.3) any qualifying PBAs.

4.2 Public benefit organisation providing funds

An organisation that claims exemption from the payment of SDL under section 4(c)(ii) of the SDL Act must be a PBO which solely (see 5.5) provides funds (see 5.4) to other PBOs which solely carry on (see 5.3) any qualifying PBAs.

5. General meaning of certain terminology in the context of section 4(c) of the Skills Development Levies Act

5.1 Public benefit organisation

A PBO is an organisation that –

- carries on one or more approved PBAs listed in Part I of the Ninth Schedule;
- complies with the requirements of section 30; and
- is approved by the Commissioner under section 30(3).

Section 10(1)(cN) exempts an approved PBO from normal tax on certain of its receipts and accruals.

³ The term “remuneration” is defined in paragraph 1 of the Fourth Schedule.

5.2 Public benefit activities listed in Part I of the Ninth Schedule

The term “public benefit activity” is defined in section 30(1), and means –

- any activity listed in Part I of the Ninth Schedule; and
- any other activity determined by the Minister from time to time by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interest and well-being of the general public.

Part I of the Ninth Schedule comprises 11 categories, each containing a list of specific activities that qualify as PBAs.

For purposes of the exemption from the payment of SDL, the qualifying PBAs are limited to the following categories in Part I of the Ninth Schedule:

- Welfare and Humanitarian [paragraph 1]
- Health Care [paragraph 2 which is further limited to subparagraphs (a), (b), (c) and (d)]
- Religion, Belief or Philosophy [paragraph 5]

See **Annexure A** for a detailed description of the PBAs listed under each of the above qualifying categories.

5.3 Carries on

The expression “carries on” is not defined in the SDL Act. The ordinary dictionary meaning of the expression is “*engage in (an activity)*”.⁴

In this context, “carries on” means that the PBO must conduct the PBAs itself by expending its funds in carrying on the qualifying PBAs.

Example 1 – Carrying on qualifying PBAs

Facts:

ABC Haven is a non-profit company that provides accommodation and care to neglected and abandoned children. A social worker, house parents and other essential staff employed by the home are responsible for the basic needs and care of these children. ABC Haven has submitted an application for approval as a PBO.

Result:

ABC Haven complies with the requirements of section 30 and will be approved as a PBO because its sole or principal object is to carry on the PBA contemplated in paragraph 1(a) in Part I of the Ninth Schedule (see **Annexure A** under the category “Welfare and Humanitarian”).

ABC Haven will also qualify for the exemption from the payment of SDL because it is solely carrying on a qualifying PBA as contemplated in section 4(c)(i) of the SDL Act.

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

5.4 Provides funds

An organisation that provides funds to other organisations may be referred to as a “conduit” organisation. A “conduit” organisation does not itself carry on approved PBAs but merely passes its funds on to other organisations which themselves carry on PBAs.

Paragraph 10 in Part I of the Ninth Schedule provides for a PBO that is a “conduit” which provides funds, assets, services or other resources to other approved PBOs, the national, provincial or local government of the Republic, institutions, boards or bodies established by or under any law or any association of persons carrying on one or more PBAs in Part I of the Ninth Schedule.

The exemption from the payment of SDL under section 4(c)(ii) of the SDL Act applies only to a conduit PBO that solely provides funds to PBOs that carry on only the qualifying PBAs (see 4.2).

A PBO that provides funds to PBOs as well as to any other organisation as described above will not qualify for the exemption from the payment of SDL under section 4(c)(ii) of the SDL Act.

Example 2 – Providing funds to other PBOs solely carrying on qualifying PBAs

Facts:

ABC Haven Trust was established with the sole object of raising funds and accepting donations from the public and corporate entities solely for the benefit of ABC Haven, an approved PBO engaged in the care of neglected and abandoned children.

Result:

ABC Haven Trust complies with the formal requirements of section 30 and will be approved as a PBO.

ABC Haven Trust qualifies for the exemption from the payment of SDL because it solely provides funds to ABC Haven, an approved PBO that solely carries on the PBA contemplated in paragraph 1(a) in Part I of the Ninth Schedule.

5.5 Solely

The word “solely” is not defined in the SDL Act. The ordinary dictionary meaning of the word is “one and only, exclusively, entirely, wholly, alone”.⁵

In this context, “solely” means that a PBO must exclusively carry on the qualifying PBAs, or exclusively provide funds to PBOs, which exclusively carry on the qualifying PBAs, in order to qualify for the exemption from the payment of SDL.

A PBO that carries on more than one approved PBA, some of which are qualifying PBAs as well as other PBAs not listed in section 4(c)(i) of the SDL Act, will not qualify for the exemption from the payment of SDL under section 4(c)(i) of the SDL Act.

Similarly, a PBO that provides funds to PBOs that carry on one or more approved PBAs, some of which are qualifying PBAs as well as other PBAs not listed in

⁵ Oxford Dictionary, Thesaurus and Wordpower Guide above.

section 4(c)(i) of the SDL Act, will not qualify for the exemption from the payment of SDL under section 4(c)(ii) of the SDL Act.

6. Application and administration of the skills development levy exemption

The Tax Exemption Unit (TEU) is a dedicated office within SARS which deals on behalf of the Commissioner with all applications by organisations seeking approval as PBOs. The TEU is also responsible for considering whether a PBO qualifies for the exemption from the payment of SDL under section 4(c) of the SDL Act.

The TEU will, by letter, inform the organisation applying for PBO approval whether it has been approved as a PBO and whether it qualifies for the exemption from the payment of SDL under section 4(c) of the SDL Act.

If at any time subsequent to the notification issued by the TEU confirming exemption from the payment of SDL the PBO no longer solely carries on the qualifying PBAs or no longer solely provides funds to other PBOs solely carrying on the qualifying PBAs, the PBO will lose the exemption under section 4(c) of the SDL Act. See **Annexure B** for the contact details of the TEU.

7. Conclusion

A PBO may qualify for exemption from the payment of SDL under section 4(c) of the SDL Act, provided certain requirements are met.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
Date of 1st issue : 24 March 2003

Annexure A – Public benefit activities contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES
(Section 30)

PART I

WELFARE AND HUMANITARIAN

1. (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.
- (p) Community development for poor and needy persons and anti-poverty initiatives, including—
 - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
 - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
 - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.
- (q) The promotion of access to media and a free press.

HEALTH CARE

2.
 - (a) The provision of health care services to poor and needy persons.
 - (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
 - (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
 - (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.

RELIGION, BELIEF OR PHILOSOPHY

5.
 - (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.
 - (b) The promotion and/or practice of a belief.
 - (c) The promotion of, or engaging in, philosophical activities.

Annexure B – Contact details of the Tax Exemption Unit

Postal address	PO Box 11955 Hatfield 0028
Physical address	Land Bank Building 271 Veale Street Nieuw Muckleneuk Pretoria 0181
Telephone	012 483 1700
Fax	012 483 1701
E-mail	teu@sars.gov.za