



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 10

DATE: 24 March 2003

**ACT : SKILLS DEVELOPMENT LEVIES ACT, NO 9 OF 1999 (THE
SDL ACT)**
SECTION : SECTION 4(c)
SUBJECT : EXEMPTION: PUBLIC BENEFIT ORGANISATIONS

1. Background

- 1.1. When the Skills Development Levies Act, 1999 (the SDL Act) was first promulgated, religious and charitable institutions were exempt from the payment of the skills development levy in terms of section 4(c) of the SDL Act, provided that they were exempt from income tax under section 10(1)(f) or section 10(1)(fA) of the Income Tax Act, 1962 (the Income Tax Act).
- 1.2. Sections 10(1)(f) and 10(1)(fA) of the Income Tax Act were repealed with effect from 15 July 2001 and new legislation was introduced to regulate the tax exempt status of public benefit organisations. This had the effect that section 4(c) of the SDL Act had to be changed accordingly.
- 1.3. The purpose of this interpretation note is to consider the provisions of section 4(c) of the SDL Act as amended by the Taxation Laws Amendment Act, No 30 of 2000 and the Taxation Laws Amendment Act, No 30 of 2002, and to address some of the uncertainties that may have arisen due to these changes.

2. The Law

2.1. Section 4(c) of the SDL Act currently reads as follows:

“4. Exemptions.—The levy is not payable by—
(a) ...
(b) ...
(c) any public benefit organisation contemplated in section 10 (1) (cN) of the Income Tax Act, which 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 any public benefit organisation which provides funds solely to such public benefit organisation which so carries on any such public benefit activity; or
(d) ...
(e) ...”

2.2. The public benefit activities mentioned in section 4(c) of the SDL Act are listed in **Annexure A**.

3. Application of the law

3.1. In order to meet the current requirements for the exemption from the payment of the skills development levy in terms of section 4(c) of the SDL Act, an organisation must -

- be exempt from the payment of income tax in terms of section 10(1)(cN) of the Income Tax Act and it must solely carry on any approved public benefit activity as contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to the Income Tax Act; **or**
- be exempt from the payment of income tax in terms of section 10(1)(cN) of the Income Tax Act and it must provide funds solely to a public benefit organisation carrying on the aforementioned public benefit activities.

3.2. In order to qualify for exemption from income tax in terms of section 10(1)(cN) of the Income Tax Act, a public benefit organisation must comply with the provisions of section 30 of the Income Tax Act and be approved by the South African Revenue Service (SARS).

3.3. SARS will consider approving an organisation on receipt of the organisation's application for exemption from income tax.

- 3.4. The reply from SARS to the applicant will also indicate whether the organisation qualifies for the exemption from the payment of the skills development levy.
- 3.5. The current requirements for a public benefit organisation to qualify for the exemption from the skills development levy is illustrated in the flow diagram in **Annexure B**.
- 3.6. Due to the change in the legislation for public benefit organisations, an organisation that was previously exempt from income tax must re-apply to SARS for exemption from income tax. Due to practical constraints, all of these re-applications cannot be processed immediately by SARS, and transitional measures have been introduced as provided for under the legislation.
4. **Transitional measures for the exemption of public benefit organisations from income tax**
- 4.1. Section 63(1) of the Taxation Laws Amendment Act, No 30 of 2002 states that any organisation whose receipts and accruals were previously exempt from income tax in terms of **paragraphs (cB), (cC), (cD), (cF), (d), (cJ), (f) and (fA) of section 10(1) of the Income Tax Act**, shall continue to enjoy exemption from the payment of income tax provided that the organisation re-applies for the exemption in terms of section 30 of the Income Tax Act, or provides a written undertaking in terms of the same section, **before 31 December 2003**.
- 4.2. This transitional exemption will apply until written notification by SARS in terms of section 30 of the Income Tax Act.

5. **Transitional measures for the exemption from payment of the skills development levy**

5.1. An organisation that qualifies for the transitional exemption from income tax (as explained in paragraph 4 above) will retain its exempt status for skills development levy purposes provided that -

- the organisation was previously exempt from income tax in terms of section 10(1)(f) or section 10(1)(fA); and
- the organisation either -
 - ◆ solely carries on public benefit activities as contemplated in paragraphs 1, 2(a), (b), (c) or (d) or 5 of Part I of the Ninth Schedule to the Income Tax Act (listed in **Annexure A**); or
 - ◆ provides funds solely to such an organisation; and
- the organisation has re-applied for exemption from income tax in terms of section 30 of the Income Tax Act or provided a written undertaking in terms of the same section **before 31 December 2003**.

5.2. The requirements for the transitional exemption from the skills development levy are illustrated in **Annexure C**.

5.3. Where an employer is satisfied that the transitional exemption from the skills development levy applies, it is not necessary for the employer to re-apply for the transitional exemption from the skills development levy.

5.4. An employer that is still not sure whether the transitional exemption from the skills development levy applies may confirm the transitional exemption with a SARS branch office. The request must be in writing and should be accompanied by a copy of the SARS letter that confirmed the organisation's exemption from income tax in terms of the repealed sections 10(1)(f) or 10(1)(fA) of the Income Tax Act.

5.5. Where the transitional exemption applies, there will be no obligation on the employer to complete the skills development levy portion of the combined monthly return for employees' tax, the skills development levy and unemployment insurance fund contributions (EMP 201).

5.6. The transitional exemption will apply until SARS has informed the public benefit organisation of its decision regarding the re-application for the exemption from income tax.

6. The Tax Exemption Unit

6.1. For further information, the Tax Exemption Unit can be contacted as follows:

Post:	The Tax Exemption Unit P O Box 11955 HATFIELD 0028
Telephone:	012-422 8800
Fax:	012-422 8830
E-mail:	teu@sars.gov.za

6.2. Application for exemption forms, as well as additional information is available on the SARS website (www.sars.gov.za).

ANNEXURE A

List of activities to qualify for exemption from SDL

1. Welfare and Humanitarian

- (a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counselling of poor and needy persons where more than 90 per cent of those persons to whom the care or counselling are provided are over the age of 60.
- (c) The care or counselling 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 counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counselling 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 antipoverty;
 - (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.

2. Health Care

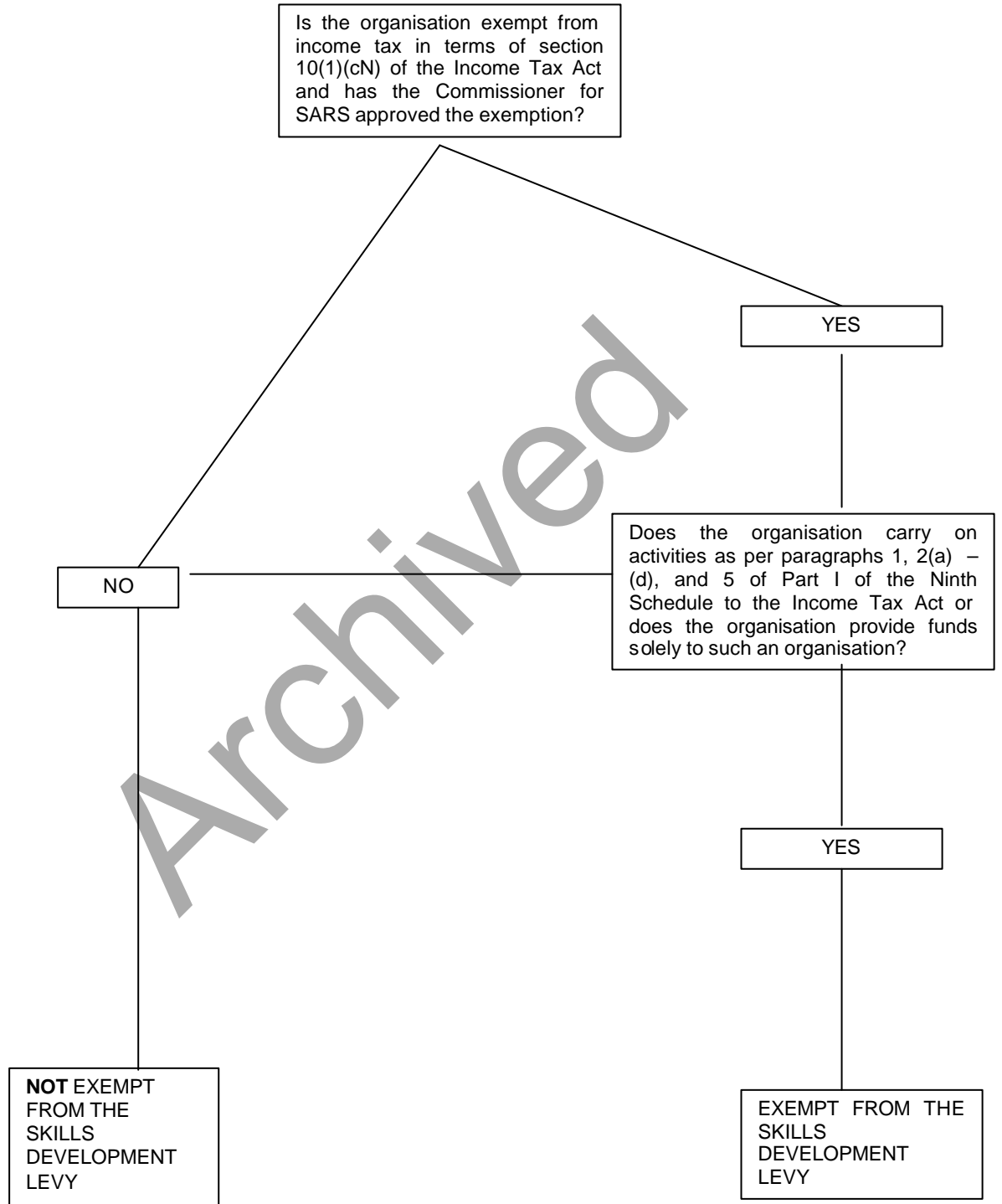
- (a) The provision of health care services to poor and needy persons.
- (b) The care or counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling of their families in this regard.
- (c) The prevention of HIV infection, the provision of preventative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

5. Religion, Belief or Philosophy

- (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

Current Requirements for Exemption from SDL



ANNEXURE C

Requirements for interim exemption from SDL

