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Tax Obligations of Homeowners' Associations

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APPLICABLE LEGISLATION

The taxation of Homeowners' Associations [HOA's] is legally founded in the Income Tax Act No. 58 of 1962 [*"the Income Tax Act"*], and the Tax Administration Act no. 28 of 2011 ["the Tax Administration Act].

The Tax Administration Act deals with the general requirements for registration as a taxpayer, the filling of taxes, and compliance with VAT related policies and procedures by all taxpayers, including HOAs, while the Income Tax Act [specifically section 10(1)(e)] governs the VAT obligations of body corporates [section 10(1)(e)(i)(aa)], share block companies *(section 10(1)(e)(i)(bb))*, and associations of persons such as HOAs *[section 10(1)(e)(i)(cc)]*.

SECTION 10(1)(e) OF THE INCOME TAX ACT

Under section 10(1)(e) of the Income Tax Act, body corporates, share block companies and associations of persons such as HOAs qualify for a partial income tax exemption which specifically applies to levy income, and an additional exemption of no more than R50 000.00 for all other receipts and accruals. For the purposes of section 10(1)(e), levy income is monies collected by these associations from their members for expenses which may arise from the management of member's collective interests (e.g. for the repairs and upkeep of the common property).

TAX OBLIGATIONS OF HOMEOWNERS' ASSOCIATIONS

Despite the partial tax exemption afforded to HOAs by virtue of section 10(1)(e), there are still tax obligations that these associations are required to follow. Further thereto, for HOAs the relevant exemption cannot be assumed and does not apply by default. An application must be made to the SARS Tax Exemption Unit, which application is to be considered by the Commissioner for the South African Revenue Services.
Lodgement of this application is a crucial step in ensuring that HOAs benefit from the section 10(1)(e) partial exemption. This section explicitly allows the exemption only by way of prior approval from the Commissioner, and failure to obtain same may result in the HOA being fully taxable on all its receipts, including levy income. Additionally, the association risks being held liable for significant historical tax debts on levies collected in previous years.

ADDITIONAL REQUIREMENTS FOR HOAs

In addition to lodgement of the application with the Commissioner, HOAs must ensure they meet the following requirements:

1. Registering as a taxpayer: Every HOA must be registered as a taxpayer to allow for the filling of annual tax returns.
2. Filling annual income tax returns: It is a mandatory requirement that HOAs file their annual income tax returns, even when granted the section 10(1)(e) exemption.
3. Employer responsibilities: if the association has employees (e.g., security personnel or maintenance workers) the HOA must comply with the tax requirements in relation to shame [e.g., PAYE obligations].
4. Registering for VAT: The association is required to register for VAT if the HOA offers taxable goods/services and meets the registration threshold.

THE RISK OF NON-COMPLIANCE

Associations that fail to lodge their application for tax exemption or are unsure of whether they have obtained approval from SARS face significant financial risks. According to SARS Interpretation Note 64 of the Income Tax Act, HOAs are "fully taxable on all their receipts and accruals in the absence of approval by the Commissioner". This means that if a HOA has not applied for tax exemption, it could be held liable for income tax on all levies collected historically.

Moreover, tax practitioners warn that if an association applies for an exemption at a later date, the approval may only take effect from the date of lodgement of the application, and shall not apply retrospectively, which could potentially result in the HOA being exposed to historical tax liabilities, which could in turn create a substantial financial burden.

CONCLUSION

It is in the best interests of HOAs and their members to make sure that their tax affairs are in order, including confirming whether the necessary tax exemptions have been accordingly obtained from SARS, that all additional tax obligations have been met, and confirming whether historical approval was granted as and when there are changes in the associations' membership.

These associations may prevent potentially severe financial penalties and guarantee smooth operations for the benefit of their communities by being proactive in staying informed with and adhering to tax requirements, and staying informed re the updates in SARS regulations and guidelines.

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