

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 8990

Regulasiekoerant

Vol. 521

Pretoria, 21 November 2008

No. 31614

CONTENTS**INHOUD**

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>	<i>No.</i>	<i>Bladsy No.</i>	<i>Koerant No.</i>
GOVERNMENT NOTICE			GOEWERMENTSKENNISGEWING		
South African Revenue Service			Suid-Afrikaanse Inkomstediens		
<i>Government Notice</i>			<i>Goewermentskennisgewing</i>		
R. 1236	Income Tax Act (58/1962): Regulations to be issued in terms of section 10 (1) (d) (iii) and (iv), to prescribe conditions on which the Commissioner may approve on entity for purposes of that section.....	3	31614	R. 1236	Inkomstebelastingwet (58/1962): Regulasies uitgevaardig ingevolge artikel 10 (1) (d) (iii) en (iv), wat die omstandighede voorskryf waaronder die Kommissaris 'n entiteit vir doeleindes van daardie artikel kan goedkeur
				8	31614

GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE**No. R. 1236****21 November 2008****REGULATIONS TO BE ISSUED IN TERMS OF SECTION 10(1)(d)(iii) AND (iv)
OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE
CONDITIONS ON WHICH THE COMMISSIONER MAY APPROVE AN ENTITY
FOR PURPOSES OF THAT SECTION**

By virtue of the power vested in me by section 10(1)(d) of the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto, the conditions on which the Commissioner may approve an entity for purposes of exempting the receipts and accruals of that entity from normal tax in terms of that section.

T. A. MANUEL
MINISTER OF FINANCE

DRAFT**SCHEDULE***Definitions*

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning assigned thereto and—

“entity” means any—

- (a) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association contemplated in section 10(1)(d)(iii) of that Act; and
- (b) company, society or other association of persons contemplated in section 10(1)(d)(iv) of that Act with the sole or principal object to function as a representative body for persons that carry on a particular business, profession or occupation;

“member” in the case of a fidelity or indemnity fund includes a contributor to that fund; and

“mutual loan association” means an association with the sole or principal object to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of such members.

Conditions

2. The Commissioner must approve an entity for purposes of section 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962, if—

- (a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;
- (b) in terms of the constitution or written instrument contemplated in paragraph (a)—

DRAFT

- (i) it must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other to accept the fiduciary responsibility for that entity;
- (ii) no single person may directly or indirectly control the decision making powers relating to that entity;
- (iii) it may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives, unless expressly otherwise provided for in these regulations;
- (iv) it is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
- (v) no member may directly or indirectly have any personal or private interest in that entity;
- (vi) substantially the whole of its activities must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
- (vii) it may not have a share or other interest in any business, profession or occupation which is carried on by its members;
- (viii) it must not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, 1962 (Act No. 58 of 1962) to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- (ix) substantially the whole of its funding must be from its annual or other long-term members or from an appropriation by the government, a provincial administration or a municipality;
- (x) it must upon its winding-up or liquidation or within six months from the withdrawal of its exemption (or such longer period as the Commissioner may allow), transfer its assets remaining after the satisfaction of its liabilities to—

DRAFT

- (aa) another entity with similar objects and which is approved in terms of section 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962;
 - (bb) a public benefit organisation approved in terms of section 30 of that Act;
 - (cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act which is required to use those assets solely for purposes of carrying on one or more public benefit activities; or
 - (dd) an institution, board or body approved in terms of section 10(1)(cA)(i) of that Act; and
- (c) that entity has submitted to the Commissioner a written undertaking to the effect that—
 - (i) the persons contemplated in paragraph 2(b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
 - (ii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time;
 - (iii) upon its winding-up or liquidation or within six months from the withdrawal of its exemption (or such longer period as the Commissioner may allow), it will transfer its remaining assets in accordance with the provisions of paragraph 2(b)(ix); and
 - (iv) the entity is and will not knowingly become a party to, and does not and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in *Part IIA* of Chapter III of the Income Tax Act, 1962, or a transaction, operation or scheme as contemplated in section 103(5) of that Act.

DRAFT*Exceptions*

3. The requirements contained in regulation 2(b)(iii), (v) and (x) do not apply in respect of a mutual loan association.

Non-compliance

4. Where the constitution or written instrument of an entity does not comply with paragraph 2(b) of these regulations, the Commissioner may deem it to so comply if the persons who have accepted fiduciary responsibility for the funds and assets of that entity furnish the Commissioner with a written undertaking that the entity will be administered in compliance with that paragraph.

GOEWERMENSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS

No. R. 1236

21 November 2008

**REGULASIES UITGEVAARDIG INGEVOLGE ARTIKEL 10(1)(d)(iii) EN (iv)
VAN DIE INKOMSTEBELASTINGWET, 1962 (WET NO. 58 VAN 1962), WAT
DIE OMSTANDIGHED E VOORSKRYF WAARONDER DIE KOMMISSARIS 'N
ENTITEIT VIR DOELEINDES VAN DAARDIE ARTIKEL KAN GOEDKEUR**

Kragtens die bevoegdheid aan my verleen ingevolge artikel 10(1)(d) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), bepaal ek, Trevor Andrew Manuel, Minister van Finansies, hiermee die omstandighede in die Bylae hierby, waaronder die Kommissaris 'n entiteit mag goedkeur vir doeleindes van die vrystelling van die ontvangste en toevallings van daardie entiteit van normale belasting ingevolge daardie artikel.

T. A. MANUEL**MINISTER VAN FINANSIES**

DRAFT**BYLAE***Woordomskrywings*

1. In hierdie regulasies, tensy uit die samehang anders blyk, het enige woord of uitdrukking waaraan daar in die Inkomstebelastingwet, 1962, 'n betekenis toegeskryf is, sodanige betekenis, en—

“entiteit” beteken enige—

(a) onderlinge leningsvereniging, getrouheids- of vrywaringsfonds, vakvereniging, sake- of nywerheidskamer (of 'n vereniging van sulke kamers) of plaaslike publisiteitsvereniging soos bedoel in artikel 10(1)(d)(iii) van daardie Wet; en

(b) maatskappye, genootskap of ander vereniging van persone soos bedoel in artikel 10(1)(d)(iv) van daardie Wet met die enigste of vernaamste oogmerk om as 'n verteenwoordigende liggaam van persone te dien, vir persone wat 'n spesifieke besigheid, professie of beroep beoefen;

“lid” sluit, in die geval van 'n getrouheids- of vrywaringsfonds, 'n bydraer tot daardie fonds in; en

“onderlinge leningsvereniging” beteken 'n vereniging met die enigste of vernaamste oogmerk om as 'n vrywillige spaarvereniging te dien, waar deelnemers gereelde bydraes in 'n gemeenskaplike poel, bestuur deur die lede vir die gemeenskaplike finansiële voordeel van sodanige lede, maak.

Voorwaardes

2. Die Kommissaris moet 'n entiteit vir doeleindes van artikel 10(1)(d)(iii) of (iv) van die Inkomstebelastingwet, 1962, goedkeur, indien—

(a) daardie entiteit 'n afskrif van die konstitusie of geskrewe stuk waarkragtens dit ingestel is by die Kommissaris ingedien het;

DRAFT

- (b) ingevolge die konstitusie of geskrewe stuk soos in paragraaf (a) bedoel—
- (i) dit verplig word om 'n kommittee, besturende raad of soortgelyke beheerliggaam bestaande uit ten minste drie persone, wat nie verbonde persone met betrekking tot mekaar is nie, te hê, om die fidusiêre verantwoordelikheid van bedoelde entiteit te aanvaar;
 - (ii) geen enkele persoon regstreeks of onregstreeks die besluitnemingsbevoegdheid met betrekking tot daardie entiteit beheer nie;
 - (iii) dit nie direk of indirek enige van sy fondse of bates aan enige persoon, andersins as in die loop van die bevordering van sy oogmerke, mag uitkeer nie, tensy uitdruklik andersins bepaal in hierdie regulasies.
 - (iv) dit vereis word om wesenlik die geheel van sy fondse vir die enigste of vernaamste oogmerk waarvoor dit ingestel is, aan te wend;
 - (v) geen lid direk of indirek enige persoonlike of private belang in daardie entiteit mag hê nie;
 - (vi) moet wesenlik die geheel van sy aktiwiteite gerig wees op die bevordering van sy enigste of vernaamste oogmerk en nie vir die spesifieke voordeel van 'n individuele lid of minderheidsgroep nie;
 - (vii) dit nie 'n aandeel of ander belang in enige besigheid, professie of beroep wat bedryf word deur sy lede mag hê nie;
 - (viii) dit nie enige besoldiging, soos in die Vierde Bylae van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), omskryf, aan enige werknemer, amptenaar, lid of ander persoon, wat oormatig is, inaggenome wat algemeen as redelik geag word in die sektor en met betrekking tot die diens gelewer, mag betaal nie.
 - (ix) moet wesenlik die geheel van sy befondsing van sy jaarlikse of ander langtermyn lede of van 'n toewysing deur die regering, 'n provinsiale administrasie of 'n munisipaliteit afkomstig wees;
 - (x) dit by ontbinding of likwidasie of binne ses maande nadat sy vrystelling ingetrek is (of die langer tydperk wat die Kommissaris

DRAFT

toelaat) sy oorblywende bates na die betaling van sy laste, oordra aan—

(aa) 'n ander entiteit met soortgelyke oogmerke en wat ingevolge artikel 10(1)(d)(iii) of (iv) van die Inkomstebelastingwet, 1962 goedgekeur is;

(bb) 'n openbare weldaadsorganisasie ingevolge artikel 30 van daardie Wet goedgekeur;

(cc) enige staatsdepartement of administrasie in die nasionale of provinsiale of plaaslike regeringsfeer van die Republiek, soos bedoel in artikel 10(1)(a) of (b) van daardie Wet wat verplig is om daardie bates uitsluitlik aan te wend vir doeleindes van die beoefening van een of meer openbare weldaadsaktiwiteite; of

(dd) 'n instansie, raad of liggaam ingevolge artikel 10(1)(cA)(i) van daardie Wet goedgekeur; en

(c) daardie entiteit 'n geskrewe onderneming aan die Kommissaris verstrek het dat—

(i) die persone in paragraaf 2(b)(i) bedoel, enige wysiging van die konstitusie of geskrewe stuk van die entiteit, binne 30 dae vanaf die wysiging daarvan, aan die Kommissaris sal verskaf;

(ii) die entiteit aan die vereistes met betrekking tot verslagdoening wat van tyd tot tyd deur die Kommissaris bepaal word, sal voldoen;

(iii) dit by ontbinding of likwidasie of binne ses maande nadat sy vrystelling ingetrek is (of die langer tydperk wat die Kommissaris toelaat) sy oorblywende bates in ooreenstemming met die bepalinge van paragraaf 2(b)(ix) sal oordra; en

(iv) die entiteit nie bewustelik 'n party is of sal wees, of nie bewustelik toelaat of sal toelaat dat dit gebruik word as deel van 'n ontoelaatbare vermydingsreëling soos bedoel in *Deel IIA* van Hoofstuk III van die Inkomstebelastingwet, 1962, of 'n transaksie,

DRAFT

handeling of skema soos bedoel in artikel 103(5) van daardie Wet, nie.

Uitsluitings

3. Die vereistes vervat in regulasie 2(b)(iii), (v) en (x) is nie op 'n onderlinge leningsvereniging van toepassing nie.

Nie-nakoming

4. Waar die konstitusie of geskrewe stuk van 'n entiteit nie aan paragraaf 2(b) van hierdie regulasies voldoen nie, kan die Kommissaris dit ag aldus te voldoen indien die persone wat in 'n fidusiêre hoedanigheid vir die fondse en bates van bedoelde entiteit verantwoordelik is 'n geskrewe onderneming aan die Kommissaris verstrek dat bedoelde entiteit ooreenkomstig die bepalings van daardie paragraaf geadministreer sal word.

TSHUMELO YA MBUELO DZA AFRIKA TSHIPEMBE**R. Nomboro 1236****21 Lara 2008**

NDANGULO DZINE DZA TEA U BVISWA U YA NGA KHETHEKANYO 10(1) (d)(iii) NA (iv) YA MULAYO WA MUTHELO WA MBUELO, 1962 (MULAYO WA NOMBORO 58 WA 1962), U RANDELA NYIMELE DZINE NGADZO KHOMISHINARI A NGA THEMENDELA TSHIIMISWA HU TSHI ITELWA KHETHEKANYO YENEYO

U ya nga maanda e nda hweswa kha khethekanyo 10(1)(d) ya Mulayo wa Muthelo wa Mbuelo, wa 1962 (Mulayo wa Nomboro 58 wa 1962) Nne, Trevor Andrew Manuel, Minisiṭa wa zwa Gwama, ndo dzhiela nṭha ṭhodea, muingapfuma na mutakalo wa tshitshavha nga u angaredza, ndi fhano u ta mishumo i tevhelaho, sa zwo sumbedziswaho kha Shedulu nga mulayo, nyimele dzine ngadzo Khomishinari a nga themendela tshiimiswa tshiṅwe na tshiṅwe hu tshi itelwa ndivho ya zwo ṭanganedzwaho na zwo waniwaho kha tshiimiswa tshenetsho kha muthelo wo ḍoweleaho hu tshi itelwa khethekanyo yeneyo.

T. A. MANUEL**MINISIṬA WA ZWA GWAMA**

DRAFT**SHEDULU***Thalutshedzo*

1. Kha idzi ndangulo, nga nnda ha musu zwo sumbedzwa nga inwe ndila ipfi linwe na linwe lo netshedzwaho thalutshedzo kha Mulayo wa Muthelo wa Mbuelo wa, 1962, lo hwala thalutshedzo yo netshedzwaho, na—

“ tshiimiswa “ zwi amba—

(a) tshiimiswa tsha nyadzimo ya masheleni, tshikwama tsha tsireledzo, mbumbano ya vhashumi, dzanganano la mbambadzo yapo kana mbambadzo (kana tshiimiswa tsha mbambadzo iyi) kana tshiimiswa tshapo tsha nnyi na nnyi tsho sumbedziswa kha khethekanyo 10(1)(d)(iii) ya wonoyo Mulayo; na

(b) Khamphani, sosaithi kana dzanganano la vhatu zwo sumbedziswa kha khethekanyo 10(1)(d)(iv) kha wonoyo Mulayo sa tshiimiswa tsho imelaho vhatu kha vhubindudzi phurofesheni kana mushumo wo tiwaho;

“muraḡo” zwi tshi ya kha tshikwama tsha tsireledzo hu katelwa muthu ane a bvisa kha tshikwama tshenetsho; na

“tshiimiswa tsha nyadzimo ya zwa masheleni” zwi amba tshiimiswa tshi re na tshipikwa tshihulwane u shuma sa tshiimiswa tsha u vhulunga nga u tou funa hune vhadzheneleli vha bvisa lweḡolweḡo lune lwa langulwa fhethu huthihi nga

DRAFT

miraḡo ya mbuelo ya zwa masheleni ya miraḡo yeneyo.

Nyimele

2. Khomishinari u fanela u themendela tshiimiswa hu tshi itelwa khethekanyo 10(1)(d)(iii) ya Mulayo wa Muthelo wa Mbuelo, wa 1962, arali—

- (a) tshiimiswa tshenetsho tsho ḡetshedza khophi ya ndayotewa Khomishinari kana zwithu zwo tou ḡwalwaho zwe zwa bveledziswa khatsho;
- (b) u ya nga ndayotewa kana zwithu zwo tou ḡwalwaho zwo sumbedziswa kha phara (a)—
 - (i) tshi tea u vha na komiti; bodo ya ndaulo kana khorombusi ine ya elana yo vhumbwaho nga vhathu vhaḡukusa vhararu, vhane vha si vhe mashaka u hwala vhuḡifhinduleli ha u fulufhedzea kha tshenetsho tshiimiswa;
 - (ii) a huna muthu na muthihi ane a nga langula zwo tou livhana kana zwi songo tou livhana tsheo ye ya dzhiwa i elanaho na tshiimiswa;
 - (iii) tshi nga si ḡetshedzwe zwo tou livhana kana zwi songo tou livhana zwiḡwe zwa tshikwama tshazwo kana ndaka kha muthu muḡwe na muḡwe nga nḡdani ha u ya phanḡa na zwipikwa zwatsho, nga nḡdarii ha musi zwo bulwa nga iḡwe nḡila yo ḡetshedzwaho kha idzi

DRAFT

ndaulo;

- (iv) tshi tshi khou tselwa u shumisela lwa tshifhinga tshilapfu ha tshikwana tshatsho hu tshi itelwa tshipikwa tshihulwane tsha tshambelwa zwone;
- (v) a huna murado une zwo tou livhana kana zwi songo tou livhana wa vha na dzangalelo la vhuwe kana la phuraivethe kha tshenetsho tshiimiswa;
- (vi) lwa tshifhinga tshilapfu mishumo yatsho yothe i fanela u itelwa u isa phanda tshipikwa tshayo tshihulwane hu sa itelwi u vhuvelwa ho tiwaho ha murado nga muthihi kana tshigwada tsha vha si vhanzhi;
- (vii) a vha nga vhi na mukovhe kana manwe madzangalelo kha vhubindudzi vhuwe na vhuwe, phurofesheni kana mushumo une wa itwa nga mirado;
- (viii) a vha nga badeli manwe malamba, sa zwo tlatshedzwaho kha Shedu lu ya Vhu ya Mulayo wa Muthelo wa Mbuelo, wa 1962, (Mulayo wa Nomboro 58 wa 1962) kha mutholwa muwe na muwe, muthu are na vhuimo, murado kana muwe muthu ane avha muhulwane u fhira maanda e a newa one, sa zwine zwa dzhiiswa zwone kha sekithara na musu zwi tshi elana na tshumelo ye ya tshedzwa;

DRAFT

- (ix) Iwa tshifhinga tshilapfu tshikwama tshatsho tshoꞑhe tshi fanela u bva kha miraḡo yatsho ya n̄waha nga n̄waha kana ya tshifhinga tshilapfu kana u bva kha mukovho wa muvhuso, ndaulo ya vundu kana masipala;
- (x) kha u wa kana u valwa ha tshiimiswa kana kha miṅwedzi ya rathi kha u ḡibvisa kha u ḡidzhenisa (kana tshifhinga tshilapfu arali Mukhomishinari a tshi khou zwi tendela)-u pfukisela ndaka yatsho yo salaho musi yo no badela zwikolodo zwatsho kha—
- (aa) tshiṅwe tshiimiswa tshine tsha vha na zwipikwa zwine zwa fana tsho themendelwaho u ya nga khethekanyo 10(1)(d)(iii) kana (iv) ya Mulayo wa Muthelo wa Mbuelo, wa 1962
- (bb) tshiimiswa tsha mbuelo ya nnyi na nnyi tsho themendelwaho u ya nga khethekanyo 30 ya Mulayo;
- (cc) ndaulo iṅwe na iṅwe kana muhasho wa muvhuso kha lushaka kana vundu kana vhupo hapo ha muvhuso wa Riphabuḷiki sa zwo sumbedzwaho kha khethekanyo 10(1)(a) kana (b) ya Mulayo une wa ḡoḡelwa u shumisa idzo ndaka hu tshi itelwa u bvela phanḡa na mushumo muthihi kana minzhi ya mbuelo ya tshitshavha , kana

DRAFT

- (dd) tshiimiswa; bodo kana tshigwada tsho themendelwaho u ya nga khethekanyo 10(1)(cA)(i) ya Mulayo; na
- (c) tshiimiswa tshenetsho tsho netshedza Khomishinari zwine tsha khou tōda u ita nga u tou n̄wala kha—
- (i) vhathu vho sumbedziswa kha phara 2(b)(i) vha do netshedza u khwiniswa huñwe na huñwe ha ndayotea kana zwithu zwo tou n̄walwaho zwa tshiimiswa kha Khomishinari hu sa athu u fhela maḡuvha a 30 a u khwiniswa hawo;
- (ii) tshiimiswa tshi do tevhedza na maitele anea a u vhiga sa zwine zwa do tiswa zwone nga Khomishinari u ya nga tshifhinga;
- (iii) kha u wa kana u valwa ha tshiimiswa kana kha miñwedzi ya rathi kha u ḡibvisa kha u sa ḡidzhenisa (kana tshifhinga tshilapfu arali Mukhomishinari a tshi khou zwi tendela)- u pfukisela ndaka yatsho yo salaho u ya nga u netshedzwa ha phara 2(b)(ix); na
- (iv) tshiimiswa tshi sa zwi ḡivhi tshi nga si vhe dzangana kha, na uri tshi nga si tshi sa zwi ḡivhi tsha tendela u shumiswa sa tshipiḡa tsha, nzudzanyo yo iledzwaho yo sumbedziswa kha *Tshipiḡa IIA tsha Ndim*a III ya Mulayo wa Muthelo wa Mbuelo, wa 1962, kana t̄hiransikishini, u shuma kana tshikimu sa zwo sumbedziswa kha khethekanyo 103(5) wa Mulayo.

DRAFT*Zwi songo katelwaho*

3. Thodea dzine dza vha kha ndaulo 2(b)(iii), (v) na (x) a zwi shumi kha dzangano la nyadzimo ya u kovhelana.

U sa tevhedza

4. He ndayotewa kana zwithu zwo tou nwalwaho zwa sa tevhedze phara 2(b) ya idzi ndaulo, Khomishinari a nga tea u zwi kombetshedza arali vhatu vho tlanganedza u hwala vhudifhinduleli ha u langa masheleni kha tshikwama kana ndaka ya tshiimiswa u netshedza Khomishinari zwine tsha toda u ita nga u tou nwa uri tshiimiswa tshi do langulwa hu tshi khou tevhedzwa phara yeneyo.

**SOUTH AFRICAN REVENUE SERVICE
(INKONZO YENGENISO YASEMZANTSI AFRIKA)**

R. No. 1236

21 Novemba 2008

IMIMISELO EZA KUKHUTSHWA NGOKWECANDELO 10(1)(d)(iii) NELE- (iv) LOMTHETHO WERHAFU YENGENISO, 1962 (INCOME TAX ACT, 1962) (UMTHETHO NO. 58 WOVE-1962), UKUMISELA IMIQATHANGO LEYO UKHOMISHINA ANOKUVUMA PHANTSI KWAYO INTO EKHOYO NGEENJONGO ZELO CANDELO

Ngokwamandla egunya elithweswe mna licandelo 10(1)(d) lomThetho we-Income Tax Act, 1962 (UmThetho No. 58 wove-1962), Mna, Trevor Andrew Manuel, uMphathiswa wezeMali, ngokwenjenje ndimisela kule Shedyuli, imiqathango leyo uKhomishina anokuvuma ngayo into ekhoyo ngeenjongo zokukhulula izinto ezamkelweyo nezongezelelweyo zalo nto ekhoyo kwirhafu eqhelekileyo ngokwelo candelo.

T. A. MANUEL

UMPHATHISWA WEZEMALI

DRAFT**ISHEDYULI***linkcazelo*

1. Kule mimiselo, ngaphandle kokuba umxholo ubonakalisa ngenye indlela, naliphi na igama okanye intetho enikelwe intsingiselo kumThetho we-Income Tax Act, 1962, liqulathe intsingiselo enikelwe ngaloo ndlela yaye -

“into ekhoyo” ithetha nawuphi na —

- (a) umbutho wemalimboleko edityanelweyo, ingxowamali yentembeko okanye yokhuselo, umbutho wabasebenzi, iqela elilawula ezorhwebo okanye ishishini (okanye umbutho wamaqela alawulayo anjalo) okanye umbutho wengingqi wokwazisa uwonke-wonke ocingwayo kwicandelo 10(1)(d)(iii) laloo mThetho; kunye
- (b) nenkampani, uluntu okanye omnye umbutho wabantu ocingwayo kwicandelo 10(1)(d)(iv) lomThetho ngenjongo eyodwa okanye ephambili yokusebenza njengombutho ongummeli wabantu abaqhuba ishishini, umsebenzi wobuchule okanye umsebenzi othile;

“ilungu” kwimeko yengxowamali yentembeko okanye ukhuselo liza kuquka umrhumi kuloo ngxowamali; yaye

“umbutho wemalimboleko edityanelweyo” uthetha umbutho onenjongo eyodwa okanye ephambili yokusebenza njengombutho wogcinomali ngokuzithandela apho abathathi-nxaxheba besenza imirhumo rhoqo kumgalelo ofanayo olawulwa ngamalungu ukwenzela inzuzo yezemali edityanelweyo ngamalungu anjalo.

Imiqathango

2. Kufuneka uKhomishina amkele into ekhoyo ngenjongo zecandelo 10(1)(d)(iii) okanye (iv) lomThetho we-Income Tax Act, 1962, ukuba—

DRAFT

- (a) loo nto ekhoyo ithumela kuKhomishina ikopi yomgaqo-siseko okanye uxwebhu olubhaliweyo esekwe phantsi kwawo;
- (b) ngokomgaqo-siseko okanye uxwebhu olubhaliweyo olucingwa kumhlathi
- (a)—
- (i) kufuneka ibe nekomiti, ibhodi yolawulo okanye iqela elifanayo elilawulayo elinabantu abathathu okungenani, abangengabo abantu abadibeneyo ngobudlelwano bomnye komnye ukwamkela uxanduva lobuphathiswa betrasti baloo nto ekhoyo;
- (ii) akukho mntu oyedwa onokulawula ngokugqalileyo okanye ngokungangqalanga amandla okwenza isigqibo ngokunxulumene nento ekhoyo;
- (iii) ayinakho ukwaba ngokugqalileyo okanye ngokungangqalanga naziphi na iingxowamali zayo okanye iimpahla kumntu nawuphi na omnye ngaphandle xa kuqhutywelwa phambili iinjongo zayo, ngaphandle xa kubonelelwe ngokucacileyo ngenye indlela kule mimiselo;
- (iv) kufuneka isebenzise ngokuphathekayo zonke iingxowamali zayo ngenjongo eyodwa okanye ephambili esekwe ngenxa yayo;
- (v) alikho ilungu elinokuba nomdla ongqalileyo okanye ongangqalanga wobuqu okanye wabucala kuloo nto ekhoyo;
- (vi) ngokuphathekayo zonke iintshukumo kufuneka zijoliswe ekuqhubeleni phambili injongo yayo eyodwa okanye ephambili yaye ngokungeyiyo inzuzo ekhethekileyo yelungu elilodwa okanye iqela eliligcungcwana;
- (vii) akufunekanga ibe nesabelo okanye omnye umdla kulo naliphi na ishishini, umsebenzi wobuchule okanye umsebenzi oqhutywa ngamalungu ayo;
- (viii) akufunekanga ihlawule nawuphi na umvuzo ogqithisileyo, njengoko kuchaziwe kwiShedyuli yeSine yomthetho we-Income Tax Act, 1962 (UmThetho No. 58 wowe-1962) kuye nawuphi na umqeshwa, umphathi wesikhundla okanye omnye umntu, kuthathelwa ingqalelo

DRAFT

into ecingelwa ukuba yamkelekile ngokubanzi kwicandelo nangokuhambelana nomsebenzi owenziwayo;

- (ix) ngokubalulekileyo yonke ingxowamali yayo kufuneka ivele kwinkxaso yayo yonyaka nonyaka okanye enye yexesha elide yamalungu ayo okanye ukuvela kulwabiwo lukarhulumente, kulawulo lwephondo okanye kumasipala;
- (x) kufuneka xa iqoshelisa unikezelo okanye ukutshona okanye kwithuba leenyanga ezintandathu zokurhoxiswa kokukhululwa kwayo (okanye ixesha elide elinjalo njengoko uKhomishina enokuvumela), idlulisele impahla yayo eshiyekileyo emva kokwanelisa onke amatyala ayo ukuya —
 - (aa) kwenye into ekhoyo eneenjongo ezifanayo yaye eyamkelweyo ngokwecandelo 10(1)(d)(iii) okanye (iv) lomThetho we-Income Tax Act, 1962;
 - (bb) kumbutho wenzuzo yoluntu owamkelwe ngokwecandelo 30 laloo mThetho;
 - (cc) kulo naliphi na isebe lombuso okanye okanye kulawulo lwegatya lesizwe okanye lephondo okanye lengingqi lorhulumente weRiphabliki, elicingwayo kwicandelo 10(1)(a) okanye (b) laloo mThetho ekufuneka lisebenzise ezo mpahla ngokukodwa ngeenjongo zokuqhubela phambili enye okanye ezongezelelweyo iintshukumo zenzuzo yoluntu; okanye
 - (dd) iziko, ibhodi okanye iqela labantu elamkelweyo ngokwecandelo 10(1)(cA)(i) laloo mThetho; yaye
- (c) loo nto ekhoyo ithumele kuKhomishina isithembiso esibhaliweyo sokuba—
 - (i) abantu abacingwayo kumhlathi 2(b)(i) baza kuthumela nasiphi isilungiso somgaqo-siseko okanye uxwebhu olubhaliweyo lwento ekhoyo kuKhomishina kwithuba leentsuku ezingama-30 zesilungiso sayo;

DRAFT

- (ii) into ekhoyo iza kwanelisa iimfuneko zokwenza ingxelo enjalo njengoko zinokumiselwa nguKhomishina ngamaxesha ngamaxesha;
- (iii) xa iqoshelisa unikezelo okanye ukutshona okanye kwithuba leenyanga ezintandathu zokurhoxiswa kokukhululwa kwayo (okanye ixesha elide elinjalo njengoko uKhomishina enokuvumela), iza kudlulisela iimpahla zayo ezishiyekileyo ngokwemigaqo yomhlathi 2(b)(ix); yaye
- (iv) into ekhoyo ayiyonxalenye yaye ayinakuba yinxalenye isazi, yaye ayivumeli yaye ayinakuvumela isazi ukuba isetyenziswe njengenxalenye, yesicwangciso sokuphepha okungavunyelwanga okucingwayo *kwiSahlulo IIA* seSahluko III (*Part IIA of Chapter III*) somthetho we-Income Tax Act, 1962, okanye intengiselwano, inkqubo okanye isikimu njengoko kucingwa kwicandelo 103(5) lomThetho.

Izinxaxhi

3. Iimfuneko eziqulathwe kummiselo 2(b)(iii), (v) nowe- (x) azisebenzi ngokuphathelele kumbutho wemalimboleko edityanelweyo.

Ukungathobeli

4. Apho umgaqo-siseko okanye uxwebhu olubhaliweyo lwento ekhoyo ungathobeli umhlathi 2(b) wale mimiselo, uKhomishina unokuyithatha ithobela njalo ukuba abantu abamkele uxanduva lobuphathi betrasti beengxowamali neempahla zaloo nto ekhoyo banikela uKhomishina isithembiso esibhaliweyo sokuba into ekhoyo iza kulawulwa ngokuthobela loo mhlathi.