

Residential estate income: What's tax exempt and what isn't?



By [Graeme Palmer](#)

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The levy income of a body corporate, share block or an association of persons, such as a home owners association (residential estate), is exempt from income tax by virtue of section 10(1)(e) of the Income Tax Act. However, not all income received by a residential estate is exempt from tax, only levy income. Sars recently published a new Interpretation Note 64 on the levy exemption.



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There is no definition in the Act as to what constitutes a levy. In its Note, Sars describes a levy as the amount collected by the residential estate from their members to pay certain expenditure, which arises from the management of the collective interests of members. When determining whether an amount is a levy, regard must be had to the true nature of the transaction. The following levies usually qualify for the exemption:

- General levies that cover the day-to-day running costs of a residential estate;
- Special levies raised for capital improvements to the residential estate;
- Building penalty levies for a member failing to commence or complete building within a specified time period;
- Stabilisation fund levies that provide for a reserve for future capital improvements or unforeseen expenditure on the common immovable property.

Fines levied on members of a residential estate for a breach of the conduct rules do not qualify as levy income as these are not collected with the intention of funding expenditure relating to the common immovable property. Late payment penalties or interest on levies also do not qualify as exempt levy income. Other receipts and accruals that are not exempt may include fees charged for the use of facilities, investment income, rental income (e.g. for parking bays) or income for services.

Residential estates will, however, qualify for a basic exemption of R50,000 on the total receipts and accruals on non-levy income.

Expenditure incurred by a residential estate in the management of the collective interests of members that is funded by the levies of the members is not an allowable deduction when determining taxable income as it is incurred in the production of exempt income. However, the expenditure that relates directly to non-levy income will be deductible. General expenditure, such as bank charges and audit fees, will be allowed as a deduction if they meet the requirements of the Act. The taxable income of the residential estate is therefore equal to the receipts and accruals of non-levy income (less the basic exemption), less allowable expenditure.

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