



Legal & Policy

Income Tax

**Tax Exemption Guide for Public Benefit
Organisations in South Africa
(Issue 4)**



South African Revenue Service

TAX EXEMPTION GUIDE FOR PUBLIC BENEFIT ORGANISATIONS IN SOUTH AFRICA

Preface

This guide provides general guidance on the taxation of public benefit organisations in South Africa.

Although fairly comprehensive, it does not deal with all the legal detail associated with the subject matter and should therefore not be used as a legal reference. It is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a general binding ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the application procedure.

The guide is based on the legislation as at date of issue.

For more information you may –

- contact the SARS Tax Exemption Unit (see **Annexure I** for contact details);
- visit the SARS website at www.sars.gov.za; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be sent to policycomments@sars.gov.za.

Prepared by:

**Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE**

Date of 1st issue : 30 November 2002
Date of 2nd issue : 15 March 2004
Date of 3rd issue : 10 October 2007
Date of 4th issue : 12 December 2014

CONTENTS

| | |
|--|-----------|
| Preface..... | ii |
| Glossary | 1 |
| 1. Introduction | 2 |
| 2. Background | 2 |
| 3. Tax Exemption Unit..... | 3 |
| 4. Approval as a PBO | 4 |
| 5. Type of organisation qualifying for approval as a PBO..... | 4 |
| 6. Object of the organisation | 4 |
| 7. Public benefit activities..... | 4 |
| 8. Manner in which PBAs must be carried on | 5 |
| 9. No self-interest | 5 |
| 10. Benefit of the general public | 5 |
| 11. Founding document..... | 6 |
| 12. Formal requirements to be incorporated in the founding document..... | 6 |
| 12.1 Fiduciary responsibility..... | 6 |
| 12.2 Prohibition on distributions | 7 |
| 12.3 Dissolution..... | 7 |
| 12.4 Non-revocable donations | 7 |
| 12.5 Amendments to the founding document | 8 |
| 13. Other requirements | 8 |
| 13.1 Participation in tax avoidance schemes..... | 8 |
| 13.2 Remuneration..... | 8 |
| 13.3 Reporting..... | 8 |
| 13.4 Funds provided to an association of persons | 8 |
| 13.5 Payments to political parties | 9 |
| 14. NPO Act..... | 9 |
| 15. Investment of funds | 9 |
| 16. Written undertaking..... | 9 |
| 17. Partial taxation of trading receipts..... | 10 |
| 17.1 Background | 10 |
| 17.2 Trading provisions | 11 |
| 17.3 General meaning of certain terminology in the context of section 10(1)(cN)..... | 11 |
| 17.3.1 Basic exemption..... | 11 |
| 17.3.2 Business undertaking..... | 11 |
| 17.3.3 Integral and directly related..... | 11 |
| 17.3.4 Occasional nature | 12 |
| 17.3.5 Recovery of cost | 12 |
| 17.3.6 Sole or principal object..... | 13 |
| 17.3.7 Substantially the whole | 13 |
| 17.3.8 Substantially with assistance on a voluntary basis | 13 |
| 17.3.9 Total receipts and accruals | 14 |
| 17.3.10 Trading activity | 14 |
| 17.3.11 Unfair competition | 14 |
| 17.4 Categories of business undertakings or trading activities..... | 15 |
| 17.4.1 Integral and directly related trade | 15 |
| 17.4.2 Occasional trade | 16 |

| | | |
|------------|---|-----------|
| 17.4.3 | Ministerial approval | 16 |
| 17.4.4 | Basic exemption | 16 |
| 17.5 | Practical application of the basic exemption | 17 |
| 18. | Issues specific to PBOs | 17 |
| 18.1 | Retrospective PBO approval..... | 17 |
| 18.2 | Rate of tax..... | 17 |
| 18.3 | Provisional tax..... | 17 |
| 18.4 | Branches of foreign exempt organisations..... | 18 |
| 18.5 | Sporting associations..... | 18 |
| 18.5.1 | Amateur sporting bodies | 18 |
| 18.5.2 | National sporting bodies..... | 18 |
| 18.6 | Granting of loans..... | 19 |
| 18.7 | Approval not granted..... | 19 |
| 19. | Reporting requirements | 19 |
| 19.1 | Record-keeping..... | 19 |
| 19.2 | Income tax returns | 19 |
| 19.3 | Period for which accounts are to be submitted | 19 |
| 19.4 | Supporting documentation | 20 |
| 19.5 | Financial statements | 20 |
| 19.6 | Furnishing of information to SARS..... | 20 |
| 20. | Transitional provisions for organisations exempt under the repealed legislation | 20 |
| 21. | Group registration..... | 21 |
| 22. | Non-compliance and penalties | 21 |
| 22.1 | Circumstances under which PBO approval may be withdrawn | 21 |
| 22.2 | Consequences of withdrawal | 22 |
| 22.3 | Reapplication after withdrawal | 22 |
| 22.4 | Dissolution or termination of activities of a PBO or branch of a foreign exempt organisation..... | 22 |
| 22.5 | Person responsible in a fiduciary capacity for the funds and assets | 22 |
| 23. | Tax deductible donations | 22 |
| 23.1 | General..... | 22 |
| 23.2 | Approval to issue section 18A receipts | 23 |
| 23.3 | Effective date to issue section 18A receipts | 23 |
| 23.4 | PBAs | 23 |
| 23.5 | Organisations qualifying for section 18A approval..... | 24 |
| 23.5.1 | Approved PBOs | 24 |
| 23.5.2 | Institutions, boards or bodies established by or under law | 24 |
| 23.5.3 | The Government of South Africa in the national, provincial or local sphere | 25 |
| 23.5.4 | Specialised agencies | 25 |
| 23.6 | Specific conditions for organisations qualifying for section 18A approval | 25 |
| 23.6.1 | Conduit PBOs | 25 |
| 23.6.2 | Specialised agencies | 26 |
| 23.7 | Organisations not qualifying to issue section 18A receipts..... | 26 |
| 23.7.1 | Branches of foreign exempt organisations..... | 26 |
| 23.7.2 | Non-approved organisations | 26 |
| 23.8 | Group registration | 26 |
| 23.8.1 | Group of institutions, boards or bodies sharing a common purpose | 26 |
| 23.8.2 | Abuse of approval by group | 27 |
| 23.9 | Section 18A receipt to be issued | 27 |
| 23.10 | Deduction of donations from taxable income..... | 27 |
| 23.11 | Bona fide donation | 28 |

| | | |
|------------|--|-----------|
| 23.11.1 | Donation made directly to the section 18A approved organisation | 28 |
| 23.11.2 | Payroll-giving..... | 28 |
| 23.12 | Types of donations..... | 29 |
| 23.12.1 | Cash donation | 29 |
| 23.12.2 | Donation of property in kind | 29 |
| 23.13 | Value of a donation of property in kind | 30 |
| 23.14 | Donation of services rendered | 30 |
| 23.15 | Payments or transfers not qualifying for a tax deduction..... | 30 |
| 23.16 | Control measures | 31 |
| 23.17 | Audit certificate..... | 31 |
| 23.18 | Abuse of approval by a section 18A approved organisation..... | 31 |
| 23.18.1 | PBO, institution, board or body and specialised agency | 31 |
| 23.18.1 | The Government of South Africa in the national, provincial or local sphere..... | 31 |
| 23.19 | Non-compliance by responsible person | 32 |
| 23.19.1 | PBO or institution, board or body..... | 32 |
| 23.19.2 | Accounting officer or accounting authority..... | 32 |
| 24. | Issues specific to PBOs and section 18A approved organisations..... | 32 |
| 24.1 | Educational institutions (schools)..... | 32 |
| 24.1.1 | Public schools | 32 |
| 24.1.2 | Independent schools | 33 |
| 24.2 | Scholarships..... | 33 |
| 24.3 | Transfrontier conservation areas | 34 |
| 24.4 | New applications | 34 |
| 25. | Objections and appeals | 34 |
| 26. | Exemption from other taxes and duties..... | 35 |
| 26.1 | Donations tax | 35 |
| 26.2 | Estate duty | 35 |
| 26.3 | Transfer duty | 35 |
| 26.4 | Dividends tax..... | 36 |
| 26.5 | Securities transfer tax (STT) | 36 |
| 26.6 | Skills development levy..... | 37 |
| 26.7 | CGT | 37 |
| 26.7.1 | General..... | 37 |
| 26.7.2 | Capital gain or capital loss to be disregarded | 37 |
| (a) | Non-trading assets | 37 |
| (b) | Minimal-trading assets | 38 |
| (c) | Permissible trading assets | 39 |
| 26.7.3 | Valuation date | 40 |
| 26.7.4 | Base cost | 40 |
| (a) | Market value..... | 40 |
| (b) | “Twenty per cent of proceeds” method | 42 |
| (c) | Time-apportionment base cost | 42 |
| 26.7.5 | Donations and bequests to a PBO..... | 42 |
| 27. | VAT implications | 42 |
| 27.1 | Background | 42 |
| 27.2 | Registration | 42 |
| 27.2.1 | Compulsory registration | 42 |
| 27.2.2 | Voluntary registration | 42 |
| 27.3 | Associations not for gain | 43 |
| 27.4 | Welfare organisations | 44 |
| 27.5 | The relationship between an association not for gain, public benefit organisation and a welfare organisation | 44 |
| 27.6 | Donations | 45 |
| 28. | Employees' tax | 46 |

| | |
|--|-----------|
| 29. Unemployment Insurance Fund (UIF) contributions..... | 46 |
| 30. Customs and excise..... | 46 |
| Annexure A – Other approvals or exemptions under the Income Tax Act, 1962, dealt with by the TEU..... | 50 |
| Annexure B – Section 10(1)(cN) of the Income Tax Act, 1962..... | 51 |
| Annexure C – Section 18A of the Income Tax Act, 1962 | 52 |
| Annexure D – Section 30 of the Income Tax Act, 1962 | 57 |
| Annexure E – Part I of the Ninth Schedule to the Income Tax Act, 1962 | 61 |
| Annexure F – Part II of the Ninth Schedule to the Income Tax Act, 1962 | 66 |
| Annexure G – Example of section 18A receipt | 69 |
| Annexure H – Regulations | 70 |
| Annexure I – Contact details of the TEU..... | 72 |

Glossary

In this guide unless the context indicates otherwise –

- “**CGT**” means capital gains tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eighth Schedule;
- “**Companies Act, 2008**” means the Companies Act 71 of 2008;
- “**co-ordinating body**” means the regulating or controlling body of a group of related organisations sharing the same objectives and governance provisions;
- “**fiduciary**” means a person who holds a position of trust or responsibility including decision-making powers over the affairs of an organisation;
- “**founding document**” means the written instrument under which an organisation is established and governed such as the constitution, memorandum of incorporation, trust deed or will;
- “**Minister**” means the Minister of Finance;
- “**non-profit company**” means a “non-profit company” as defined in section 1 of the Companies Act, 2008;
- “**Part I**” means Part I of the Ninth Schedule;
- “**Part II**” means Part II of the Ninth Schedule;
- “**partial taxation**” means the method of taxing the receipts and accruals derived from business or trading activities which fall outside the parameters of the exempt categories including the basic exemption threshold;
- “**PBA**” means a public benefit activity listed in Part I of the Ninth Schedule;
- “**PBO**” means a “public benefit organisation” as defined in section 30(1);
- “**poor and needy**” means impoverished, having little means and few possessions and therefore in need of basic necessities and assistance;
- “**prescribed requirements**” means the formal conditions and requirements which must be complied with to qualify for approval as a PBO;
- “**Schedule**” means a Schedule to the Act;
- “**section**” means a section of the Act;
- “**section 10(1)(cN)**” means the section that provides for the exemption from normal tax of certain receipts and accruals of PBOs approved by the TEU under section 30(3) and the taxation of receipts and accruals which fall outside the parameters of the exemptions provided in that section;
- “**section 18A**” means the section that provides for the tax deductibility of donations made to certain approved organisations carrying on PBAs approved in Part II;
- “**section 18A receipts**” means special prescribed receipts issued under section 18A entitling the donor to a tax deduction for donations made;
- “**section 30**” means the section setting out the conditions and requirements which must be complied with by an organisation in order to obtain and retain approval as a PBO by the TEU so as to enjoy partial taxation on certain of its receipts and accruals;
- “**TEU**” means the Tax Exemption Unit described in 3;
- “**the Act**” means the Income Tax Act 58 of 1962;

- “VAT” means value-added tax payable under the VAT Act;
- “VAT Act” means the Value-Added Tax Act 89 of 1991;
- “written instrument” means the written founding document establishing and governing an organisation described in 16; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Introduction

This guide is intended to assist non-profit organisations (NPOs) in South Africa that qualify for approval as PBOs in understanding the implications of the following taxes that may affect them:

- Income tax
- Donations tax (see 26.1)
- Estate duty (see 26.2)
- Transfer duty (see 26.3)
- Dividends tax (see 26.4)
- Securities transfer tax (see 26.5)
- Skills development levy (see 26.6)
- CGT (see 26.7)
- VAT (see 27)
- Employees’ tax (see 28)

NPOs play a significant role in society by undertaking shared responsibility for the social and development needs of the country thus relieving the financial burden that would otherwise fall on the state. Tax benefits are designed to assist NPOs by augmenting their financial resources and providing them with an enabling environment in which to achieve their objectives.

The mere fact that an organisation has a non-profit motive or is established or registered as an NPO under the Nonprofit Organisations Act 71 of 1997 (NPO Act), or is established as a non-profit company under the Companies Act, does not mean that it automatically qualifies for preferential tax treatment or approval as a PBO. An organisation will only enjoy preferential tax treatment after it has applied for and been granted approval as a PBO by the TEU (see 3) and continues to comply with the relevant requirements and conditions as set out in the Act.

2. Background

Internationally, NPOs are granted some degree of preferential tax treatment including donor incentives, although the eligibility criteria and available benefits vary from country to country.

In South Africa, religious, charitable and educational institutions of a public character used to be fully exempt from income and other taxes. In the absence of comprehensive case law and statutory definitions, the Commissioner was burdened with the interpretation and implementation of the exemption provisions and often unable to accommodate worthy organisations because their activities did not fall within the letter of the Act.

Following recommendations by the Katz Commission,¹ the Minister, in his 2000 Budget Speech, announced wide-ranging changes to the legislation regulating the income tax exemption of NPOs. The objective of the legislation was to group certain types of entities together, treat them uniformly and provide more certainty for both taxpayers and the Commissioner on the qualifying requirements for an exemption from income tax.

Section 10(1)(cN) and section 30 were introduced into the Act to deal with previously exempt entities.² These sections introduced the concept of a “*public benefit organisation*” conducting an approved “*public benefit activity*” determined by the Minister and set out in the Ninth Schedule. These provisions are more detailed and comprehensive resulting in improved consistency and certainty. Specific sanction measures have also been introduced to deal with situations where a PBO misuses its approval status or does not comply with the provisions of the Act.

Since the introduction of the revised tax system for PBOs in 2001, Government has continued to adjust the tax system and has amended the legislation to address needs and problems as they are identified. For example, the initial legislation contained strict provisions prohibiting PBOs from conducting trading or business activities outside certain narrowly defined permissible trading rules (see 17). A PBO that did not comply with these trading rules could have had its tax exempt status terminated altogether. In 2006 legislation was introduced to allow for a system of partial taxation of PBOs under which the receipts and accruals from business undertakings or trading activities in excess of permissible tax-free limits became subject to normal tax without the PBO losing the exemption for its underlying PBAs.

The type of organisations permitted to issue section 18A receipts entitling donors to a tax deduction has also been considerably extended to include a much broader spectrum of PBAs. Under the repealed legislation this benefit was substantially limited to donations made to secondary and tertiary educational institutions. Over the years this list has been progressively broadened and currently a wide range of activities qualify for the purpose of making deductible donations. The maximum amount of such deductible donations during a year of assessment has also been increased from 5% to 10% for both individuals and companies. Recently legislation has been amended to allow the carry-forward of donations exceeding the 10% limit.

3. Tax Exemption Unit

The TEU is a dedicated office within SARS established to deal with all applications by organisations seeking approval as PBOs and which need approval to issue section 18A receipts for donations. The TEU is also responsible for raising assessments on approved PBOs. The centralisation of the approval process is intended to promote uniform treatment while at the same time monitoring compliance by organisations with the approval requirements in order to prevent malpractice and abuse.

Contact details of the TEU are set out in **Annexure I**.

¹ Ninth Interim Report (1999) – *Fiscal Issues Affecting Non-Profit Organisations*.

² Sections 21(1)(c) and 35(1) of the Taxation Laws Amendment Act 30 of 2000, which came into operation on 15 July 2001.

4. Approval as a PBO

The TEU, on behalf of the Commissioner, considers all applications for approval as a PBO, and will only approve a PBO if its sole or principal object is to carry on one or more of the approved PBAs and it complies with all conditions and requirements of section 30 as detailed in this guide. Certain receipts and accruals of a PBO are exempt from income tax under section 10(1)(cN). The approval as PBO is generally effective from the date the approval is granted by the TEU, unless the TEU advises otherwise (see **18.1**).

5. Type of organisation qualifying for approval as a PBO

For an organisation to be approved as a PBO, it must be constituted in one of the following ways:

- A non-profit company incorporated in South Africa.
- A trust established in South Africa.
- An association of persons formed or established in South Africa.
- A branch established in South Africa by a foreign organisation that is incorporated, formed or established in a country outside South Africa and which is itself exempt from income tax in that other country.

A company contemplated in section 21 of the repealed Companies Act 61 of 1973 which has been approved as a PBO will continue to exist under the Companies Act, 2008 and qualify for approval under section 30. There are a number of circumstances which may have resulted in pre-existing companies amending their memoranda and articles of association or in replacing the latter with a memorandum of incorporation under the Companies Act, 2008. In these circumstances the prescribed requirements must remain included in the amended or replacement documents. The TEU must be informed of any changes and a copy of the amended or replacement documents must be submitted to the TEU.

6. Object of the organisation

The sole or principal object of the organisation must be to carry on one or more PBAs. The funds of the PBO must be used solely for carrying on this object. Excess funds may also be accumulated or invested for future use in carrying on this object (see **15**).

It will not be acceptable for a PBO to have a sole or principal object of conducting a commercial business activity in order to use the profits derived from the business to fund a PBA.

The PBO may itself conduct the PBAs or it may provide funds to enable other PBOs or organisations to carry on these activities.

7. Public benefit activities

The PBAs determined by the Minister are listed in Part I. The Minister may determine additional PBAs from time to time by notice in the *Gazette*, provided such activities are considered to be of a benevolent nature taking into account the needs, interests and well-being of the general public. Any such additional PBAs must be approved by Parliament and formally incorporated into the Ninth Schedule within 12 months.

The PBAs listed in Part I are categorised as follows:

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment and Animal Welfare
- Research and Consumer Rights
- Sport
- Providing of Funds, Assets and Other Resources
- General

Refer to **Annexure E** for a complete list of approved PBAs falling within each of the above categories.

8. Manner in which PBAs must be carried on

The PBAs must be carried on in a non-profit manner and with an altruistic or philanthropic intent. An organisation which carries on a PBA as part of a profit-making venture will not qualify for approval as a PBO. However, an organisation which carries on a business undertaking or trading activity as part of a PBA may qualify as a PBO provided it meets all the requirements discussed in this guide.

9. No self-interest

A PBA may not directly or indirectly promote the economic self-interest of any fiduciary or employee. This requirement does not prohibit the payment of reasonable remuneration to a fiduciary or employee for services rendered (see **13.2**).

10. Benefit of the general public

The PBAs must be carried on for the benefit of, or be widely accessible to, the general public at large. This may include a specific sector of the general public but may not be for the benefit of a small and exclusive group.

Example 1 – Benefit of the general public

An organisation that engages in an activity for the benefit of –

- a select group, such as providing residential accommodation for retired employees of a specific company, will not qualify;
- a certain sector of the general public, such as a school established for persons of the Hindu, Muslim or Christian faith, will qualify; and
- a broad spectrum of the community, such as providing home-based care to HIV/AIDS sufferers in a particular community, will qualify.

11. Founding document

An organisation that applies for approval as a PBO must have a founding document. The nature of the founding document will depend on the type of organisation. Examples of founding documents include the following:

- A non-profit company will have a memorandum of incorporation.
- A trust will have a trust deed or if established as a testamentary trust, its founding document will be the will.
- An association of persons will have a constitution adopted by its members.
- A branch of a foreign-exempt organisation may or may not have a separate founding document to the founding document of the foreign organisation (see **18.4**).

A PBO is required to be governed in a particular manner and its founding document must include particular requirements, which are detailed in **12**.

The founding document must be submitted to the TEU as part of the application for approval as a PBO.

12. Formal requirements to be incorporated in the founding document

The conditions set out in **5** to **10** above must be met in order to qualify for approval as a PBO. In addition to those conditions the prescribed requirements as discussed in **12.1** to **12.5** must be included in the founding document. The founding document as a whole will be examined to ensure that these requirements are complied with.

The founding document must clearly and in detail set out the aim and object of the organisation. It is not acceptable to make a general statement that the object of the PBO is to carry on one or more approved PBA, or to simply list the PBAs as they appear in Part I. Specific activities including projects and programmes must be identified. The founding document must also clearly state that the activities and resources of the organisation must be used solely for the sole or principal object for which it was established, namely, the approved PBAs.

The founding document may not always comply with the prescribed requirements at the time the application is submitted to the TEU. In such event a signed written undertaking may be submitted (see **16**).

12.1 Fiduciary responsibility

A PBO, other than a trust established under a will, is required to have at least three persons who are not connected persons³ in relation to one another to accept fiduciary responsibility for the organisation. No single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of the organisation.

Natural persons are considered to be connected if they are close relatives to one another. A close relative includes a person's spouse and anybody related to a person or that person's

³ The term "connected person" is defined in section 1(1).

spouse within the third degree of consanguinity. An adopted child is deemed to be related to that child's adoptive parents within the first degree of consanguinity.⁴

12.2 Prohibition on distributions

A PBO may not distribute its funds directly or indirectly to any person, unless this occurs in the course of undertaking a PBA and it must use its funds solely for the object for which it was established. The payment of reasonable remuneration to employees or office bearers conducting the affairs of a PBO to enable it to achieve its object is permitted (see **13.2**).

12.3 Dissolution

A PBO which has enjoyed certain tax concessions may not, on dissolution, distribute any of its funds to individuals or other tax-paying entities thereby enabling the recipients to share in the concession which the PBO has enjoyed.

On dissolution a PBO must transfer its remaining assets to one or more of the following organisations which in turn are required to use those assets solely for purposes of carrying on one or more PBAs:

- An organisation approved by the TEU as a PBO under section 30(3).
- Any institution, board or body established by or under law which is exempt from tax under section 10(1)(cA)(i), whose sole or principal object is the carrying on of any approved PBA.
- The Government of South Africa in the national, provincial or local sphere.

The above condition will apply to a local branch of a foreign established company, association or trust which is approved as a PBO only if more than 15% of the receipts and accruals of the branch are derived from a source within South Africa during the period of three years preceding the termination of the local branch's activities in South Africa (see **22** for the consequences of failing to transfer the assets as set out above).

12.4 Non-revocable donations

A PBO may not accept any donation that may be revoked by the donor for reasons other than the PBO failing to abide by the designated purposes and conditions of the donation. A donation may also be revoked if the PBO misrepresents the tax deductibility of the donation under section 18A and such tax deduction was a condition of the donation.

In addition, a donor may also not impose conditions that will entitle the donor or a connected person in relation to the donor to obtain some direct or indirect benefit from the application of the donation. This prohibition on the derivation of a benefit does not, however, apply when the donor is another PBO or an entity established by or under law which is exempt under section 10(1)(cA)(i) that has as its sole or principal object the carrying on of a PBA.

Example 2 – Revocable and non-revocable donations

- A PBO may not accept a donation which is made subject to the condition that it may be revoked should the donor require funds to pay for future medical care.
- A donation to a PBO given on condition that the funds are to be used for purposes of building an extra classroom may be revoked by the donor, if the PBO is not able to fulfil the purpose of building the additional classroom.

⁴ Definition of "relative" in section 1(1). For more information on the definition of "connected person" see Interpretation Note No. 67 (Issue 2) dated 14 February 2014 "Connected Persons".

- A donation that has been given to a PBO on the pretext that a receipt under section 18A will be issued for the donation and it subsequently transpires that the PBO does not have the necessary approval from the TEU to issue such receipts, may be revoked by the donor.
- A PBO may not accept a donation which has been made on condition the donation is to be used to cover the cost of additional tuition fees for the donor's son.

12.5 Amendments to the founding document

A PBO must submit a copy of any amendment to its founding document to the TEU as soon as it has been affected. This will enable the TEU to ensure that any amendment is not contrary to the conditions and requirements for the continued approval of the organisation as a PBO (see **22** for non-compliance and penalties).

It will not be acceptable to submit a founding document that complies with the Act at the time of applying for approval and then, after obtaining such approval, to amend the founding document to include non-qualifying provisions.

13. Other requirements

13.1 Participation in tax avoidance schemes

A PBO may not be party to or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone, or avoid any tax, duty or levy which would otherwise have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner. These taxes, duties or levies include, for example, income tax (including CGT), VAT, transfer duty, skills development levies or employees' tax.

13.2 Remuneration

Employees, office bearers, members or other persons may receive remuneration from a PBO for services actually rendered to that PBO provided the remuneration –

- is not excessive taking into account the particular service rendered and what is considered to be reasonable in the particular sector; and
- does not economically benefit any person in a manner inconsistent with the object of the PBO.

13.3 Reporting

A PBO must comply with any reporting requirements determined by the TEU (see **19**).

13.4 Funds provided to an association of persons

A PBO that carries on the PBA of providing funds to an association of persons⁵ carrying on one or more PBAs (other than this PBA) must take reasonable steps to ensure that the association of persons has used the funds for the purpose for which they were provided.

The association of persons referred to is an informal group of persons who collectively carry on an approved PBA in South Africa for the benefit of the community or general public. It may happen that this informal association of persons will not have a founding document which incorporates, or can be amended to incorporate, the requirements required for

⁵ Paragraph 10(iii) of Part I.

approval as a PBO. In addition, such associations are often unable to comply with reporting requirements. These factors can make it difficult to monitor compliance and to ensure that the funds received by the association of persons from other PBOs are used for purposes of carrying on PBAs. The responsibility has therefore been placed on the PBO that provides the funds to such an association of persons to satisfy the TEU that reasonable steps have been taken to ensure that the funds, assets, services or other resources are used for the purpose for which they have been given and are not used to economically benefit any individual person.

Example 3 – Association of persons

The following are examples of voluntary informal associations of persons:

- Members of a local community who have formed a group to provide voluntary home-based care to terminally ill residents within their community.
- Members of a community who have come together to form a working group to provide disaster relief by handing out meals or providing shelter, or to establish a school-feeding project for poor and needy children, or to distribute food parcels and blankets to homeless persons.

13.5 Payments to political parties

A PBO may not use its resources directly or indirectly to support, advance or oppose any political party.

14. NPO Act

Registration as an NPO under the NPO Act is a voluntary commitment and is not a condition for approval as a PBO. The TEU may, however, on request by the Director of NPOs, withdraw PBO approval if the PBO is convicted of an offence under the NPO Act.

15. Investment of funds

The Act no longer prescribes how surplus funds of a PBO should be invested. The former investment restrictions have been deleted and a PBO is now permitted to invest surplus funds as desired, provided this does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that fiduciaries should act with prudence, integrity and reasonable care.

16. Written undertaking

In certain circumstances the founding document of an organisation applying for approval as a PBO may not comply, or cannot be amended to comply, with the prescribed requirements, as discussed in **12**, at the time when the application is submitted to the TEU.

Provision has accordingly been made for the founding document to be deemed to comply with the prescribed requirements if the person responsible in a fiduciary capacity for the administration of the funds and assets of the organisation submits a written undertaking that the organisation will be administered in compliance with those requirements. The submission of a written undertaking is not required if the founding document complies with the prescribed requirements.

In those circumstances in which it is possible to amend the founding document, the written undertaking is an interim measure and the prescribed requirements must subsequently be

formally incorporated into the PBOs founding document within a reasonable time frame. A reasonable time frame will be regarded as 12 months from the date of the letter of approval issued by the TEU or whenever any other amendment is effected to the founding document, whichever date occurs first.

The following are examples of exceptions in which the founding document cannot be amended to comply with the prescribed requirements:

- A testamentary trust is created under the provisions of a will and only comes into existence after the death of a testator. Since the will cannot be amended at the time when the trust comes into existence to comply with the prescribed requirements relative to the approval as a PBO, the person responsible in a fiduciary capacity for the funds and assets of the trust may submit a written undertaking that the trust will be administered in compliance with those requirements.
- A foreign organisation which complies with the conditions relevant to its approval as a PBO which establishes a branch in South Africa in order to carry on approved PBAs may apply for approval as a PBO. It may happen that the branch does not have a founding document separate from that of the foreign organisation and that the latter cannot be amended to comply with the prescribed requirements. Under these circumstances the person responsible in a fiduciary capacity for the funds and assets of the branch may submit a written undertaking that the branch will be administered in compliance with those requirements.

A written undertaking will remain a permanent measure when a founding document is not legally capable of being amended.

A written undertaking is binding on the organisation and non-compliance with its terms will result in the same penalties and actions as if the prescribed requirements had been contained in the founding document (see **22**).

A person who is in a fiduciary capacity responsible for the management or control of the income and assets of a PBO and who intentionally fails to comply with any provision of section 30 will be guilty of an offence (see **22.5**).

A written undertaking is available on the SARS website www.sars.gov.za to assist an organisation whose founding document does not comply with the prescribed requirements.

17. Partial taxation of trading receipts⁶

17.1 Background

The legislation pertaining to PBOs introduced in 2001 contained strict provisions prohibiting PBOs from carrying on business undertakings or trading activities outside certain restricted parameters. A PBO that did not comply with these provisions lost its exempt status and became a taxable entity. Alternatively, in order to retain its exemption, the organisation was required to transfer non-compliant trading activities to a separate taxable entity. This “all or nothing approach” resulted in harsh consequences for PBOs.

Legislation was amended in 2006 to allow for a system of partial taxation under which the business activities in excess of the prescribed limits would become fully taxable without undermining the exemption enjoyed by the PBO for its underlying PBAs. Partial taxation

⁶ See Interpretation Note No. 24 (Issue 3) dated 4 February 2014 “Income Tax: Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts”.

came into operation on 1 April 2006 and applies to a PBO from its first year of assessment commencing on or after that date.

The trading provisions previously included in section 30, now form part of section 10(1)(cN) in order to create the platform for the partial taxation of trading receipts. A basic exemption threshold was introduced under which all receipts and accruals derived from business or trading activities not qualifying for a specific exemption are exempt to the extent that they do not exceed the threshold.

17.2 Trading provisions

A PBO is permitted to carry on business or trading activities provided its sole or principal object remains the carrying on of PBAs. A PBO may not engage in commercial trading activities with the intention of earning a profit and claim that since a portion of the profits are used to carry on approved PBAs, it should qualify for approval as a PBO. The requirements and conditions of section 30 must continue to be complied with.

Receipts and accruals that arise from a business undertaking or trading activity will only be exempt from normal tax if they fall within one of the four categories of exemption included in section 10(1)(cN). These four categories are dealt with in **17.4**.

The receipts and accruals derived from the four categories of business undertakings or trading activities in **17.4.1**, **17.4.2**, **17.4.3** and **17.4.4** are exempt from normal tax. Each category of exemption has its own conditions and requirements and is applied separately.

There is no limit on the amount of receipts and accruals which are exempt from normal tax under the exemptions in **17.4.1**, **17.4.2** and **17.4.3**. There is, however, a limitation on the amount of the basic exemption discussed in **17.4.4**.

17.3 General meaning of certain terminology in the context of section 10(1)(cN)

17.3.1 Basic exemption



The amount which is determined as a threshold is applied to the total receipts and accruals derived from a business undertaking or trading activity not qualifying for a specific exemption (see **17.4.1**, **17.4.2** and **17.4.3**). The basic exemption is calculated as an amount equal to the greater of 5% of the total receipts and accruals of the PBO during the relevant year of assessment or R200 000.

17.3.2 Business undertaking

The term “business” is not defined in the Act. Based on case law, it is generally accepted to include anything which occupies the time, attention and labours of a person for profit. There are no hard and fast rules in determining what constitutes business. However, in determining whether a business undertaking is being carried on a number of factors may be taken into account such as the intention, motive, frequency and nature of the activity.

The passive investment of surplus funds in shares or an investment in a financial institution is not normally regarded as a business undertaking or trading activity. However, if it is undertaken in an active manner, such as the advancing of interest-bearing loans at market-related rates it could be regarded as a business undertaking.

17.3.3 Integral and directly related

The business undertaking or trading activity must be integral and directly related to the approved PBA carried on by the PBO.

Example 4 – Integral and directly related

Facts:

A PBO conducts a PBA of providing healthcare services at no charge to poor and needy persons. In addition to providing a medical consultation service, the PBO also provides medication at cost.

Result:

The provision of medication at cost is regarded as integral and directly related to the activity of providing healthcare services to poor and needy persons.

17.3.4 Occasional nature

An undertaking or activity of an occasional nature is one conducted on an irregular, infrequent basis or as a special event.

Example 5 – Examples of business undertakings or trading activities of an occasional nature

Activities of an occasional nature may include –

- annual jumble sales at which donated second-hand clothing is sold;
- annual fundraising events such as fêtes, cake sales or the sale of raffle tickets involving prizes that have been donated;
- charity golf days involving donated or sponsored prizes;
- a gala dinner held to raise funds; or
- the sale of Christmas cards reconditioned by volunteers.

17.3.5 Recovery of cost

A business undertaking or trading activity will be regarded as having been carried out on a basis substantially the whole (see **17.3.7**) of which is directed towards the recovery of cost when goods are not sold to maximise profits but rather with the intention of recovering direct and reasonable indirect costs. It is not always possible to base trading activities on a 100% cost-recovery basis and it is for this reason that legislation requires that substantially the whole of the trading activity must be based on recovery of cost.

Example 6 – Recovery of cost

Facts:

A PBO carries on a PBA under the heading “Education and Development” and operates a tuck shop which serves and sells refreshments to learners for a consideration which is determined by taking into account the cost of the goods. Assistance in the tuck shop is provided by volunteers. The cost of the goods sold includes the purchase price, costs such as telephone, electricity, repairs and maintenance, stationery, cleaning materials and an amount for a reserve created for future replacement costs of capital assets such as a refrigerator, microwave, and deepfreeze. As a result of the voluntary assistance, no salaries or wages are incurred and a small profit may result which is used by the PBO to fund its PBAs.

Result:

The running of the tuck shop is regarded as being carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost.

17.3.6 Sole or principal object

The word “principal” is used in conjunction with the word “sole” and the concept means that the sole or predominant object must be the carrying on of one or more PBAs. A PBO cannot have more than one sole or principal object.

Example 7 – Sole or principal object

Facts:

An organisation carries on a commercial business activity of a supermarket and is open seven days a week. Some of the stock-in-trade is used to provide free meals to homeless people on a regular basis.

Result:

The organisation’s sole or principal object is not to provide meals to homeless people but to conduct a commercial trading activity.

17.3.7 Substantially the whole

In the strict sense the concept of “substantially the whole”⁷ is regarded by SARS as 90% or more. In order to overcome certain practical difficulties SARS will, however, accept a percentage of not less than 85%. This percentage may be motivated by taking into account time or cost.

Example 8 – Substantially the whole of the activity is undertaken on a cost-recovery basis

Facts:

A PBO provides literacy and numeracy education to adults. In order to fund the provision of these approved PBAs, the PBO charges tuition fees. The fees are based on the estimated cost to the PBO in providing the tuition which includes the cost of hiring a hall, tuition material and text books. The tuition is provided on a voluntary basis by teachers after hours. The tuition fee is the principal source of income for the PBO.

Result:

Since the tuition fees are determined on a cost-recovery basis and no charge is made for the donated services of the teachers, substantially the whole of the PBAs are regarded as being directed towards the recovery of cost.

17.3.8 Substantially with assistance on a voluntary basis

Any assistance must be predominantly undertaken on a voluntary basis, without compensation.

⁷ See Binding General Ruling (Income Tax) No. 20 dated 10 December 2013 “Interpretation of the Expression ‘Substantially the Whole’”.

Example 9 – Substantially with assistance on a voluntary basis

Facts:

At a school fête each of the 20 classes are assigned to run a stall selling donated goods in order to raise funds. All the stalls are manned by volunteers who include teachers, parents and learners.

Result:

All the assistance given to the school at the fundraising event is provided on a voluntary basis.

17.3.9 Total receipts and accruals

The expression “total receipts and accruals” includes the total sum of all receipts and accruals from any source within or outside South Africa, irrespective of whether on capital or revenue account.

Example 10 – Examples of “total receipts and accruals”

The total receipts and accruals of a PBO will include the total or gross amount received or accrued from all sources, whether of a capital nature or not, such as donations, subsidies, school fees, rent, accommodation charges, fundraising activities, investment income, the sale of movable and immovable assets and bequests.

17.3.10 Trading activity

The term “trade” is defined in section 1(1) and includes every profession, trade, business, employment, calling, occupation or venture, letting of property and the use of or the grant of permission to use a patent, design, trade mark or copyright. The courts have interpreted trade to be neither exhaustive nor restrictive and will include any activity involving risking something with the object of making a profit. Each case will, however, be determined on its own merits.

Example 11 – Examples of trading activities

Trading activities include the letting of immovable property, conducting farming activities, providing professional services and the grant of permission to use a copyright or patent.

17.3.11 Unfair competition

A PBO should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity. A PBO has an advantage in that it is not required to sacrifice a portion of its profit in the form of tax. In determining whether a PBO has an unfair advantage, each case will be considered on its own merits.

Example 12 – Unfair competition

Facts:

An orphanage caring for abandoned children also operates a service station with the intention of earning a profit to augment its income.

Result:

The operation of the service station is a commercial trading activity which will result in unfair competition with other tax-paying entities.

17.4 Categories of business undertakings or trading activities

17.4.1 Integral and directly related trade

In order to qualify for this exemption –

- the business undertaking or trading activity must be integral and directly related (see 17.3.3) to the sole or principal object (see 17.3.6) which is the approved PBA carried on by the PBO;
- substantially the whole (see 17.3.7) of the business undertaking or trading activity must be conducted on a cost-recovery basis (see 17.3.5); and
- the business undertaking or trading activity should not result in unfair competition with other taxable entities (see 17.3.11).

Example 13 – Trade integral and directly related to sole or principal object

Facts:

A PBO engages in PBAs of caring for persons having a disability. As a therapeutic and remedial activity the PBO has acquired land on which the residents are taught to grow vegetables and care for a small herd of cattle.

The mechanical labour as well as veterinary services are provided at no cost by a nearby agricultural college. All the manual labour is undertaken by the residents. The produce is primarily used for own consumption and any surplus is sold to a local farmers' market to defray costs. Some of the residents have been taught to knead and bake bread which is supplied to a nearby supermarket. No commercial ovens or baking processes are used. Both the farming and baking activities are regarded as being of therapeutic benefit for the residents.

Result:

The trading activities are integral and directly related to the sole object of the PBO which is to care for disabled persons. The primary purpose of the activities is to provide for the consumption of the residents and only the excess produce is sold in order to recover costs. Secondly, the activities are regarded as being of therapeutic benefit to the residents who are unable to find employment in the open labour market.

Substantially the whole of the trading activities are conducted on a cost-recovery basis. If it were not for the donated services or if external labour had been hired, a profit would not have been realised.

The activities do not result in unfair competition with other tax-paying entities.

The use of assets to generate income, for example, the letting of parking facilities, tennis courts or a hall, to members of the public, will not be regarded as a related trading activity but as income from a taxable trading activity.

17.4.2 Occasional trade

In order to qualify for exemption as an occasional trade the business undertaking or trading activity must –

- take place on an occasional or infrequent basis (see 17.3.4); and
- be undertaken substantially with assistance on a voluntary basis without compensation, other than the *bona fide* reimbursement of reasonable and necessary out-of-pocket expenditure (see 17.3.8).

Example 14 – Examples of occasional trade with voluntary assistance

Fundraising activities such as fêtes, cake sales, raffles and jumble sales which take place on an annual basis with the assistance of helpers or volunteers who are not compensated for their services.

17.4.3 Ministerial approval

A business undertaking or trading activity may be approved by the Minister by notice in the *Gazette* by taking into account the –

- scope and benevolent nature of the undertaking or activity;
- direct connection and interrelationship of the undertaking or activity with the sole or principal object of the PBO;
- profitability of the undertaking or activity; and
- level of economic distortion that will be caused by the tax-exempt status of the PBO carrying on the undertaking or activity.

Any submission in this regard must clearly demonstrate and motivate the benefits of the business undertaking or trading activity for the general public, together with reasons why it will not result in unfair competition with other taxable entities, or erode the tax base. To date, no such activities have been approved by the Minister.

The submission together with the fully motivated representation must be addressed to:

The Group Executive: Interpretation and Rulings
Legal and Policy Division
South African Revenue Service
Private Bag X923
PRETORIA
0001

17.4.4 Basic exemption

A PBO carrying on business undertakings or trading activities which do not fall within the ambit of the permissible exemptions set out in 17.4.1, 17.4.2 and 17.4.3 will, subject to the basic exemption, be taxed on the receipts and accruals derived from all such other business or trading activities. The greater of 5% of the total receipts and accruals of the PBO or R200 000 will be deducted from those receipts and accruals.

Example 15 – Basic exemption

Facts:

A PBO conducts PBAs from a property it owns. In order to augment its income, it lets a portion of the property that is not used for carrying on its PBAs.

The PBO's total receipts and accruals for the year ended 28 February 2014 are as follows:

| | R |
|-----------------------------|----------------|
| Donations | 450 000 |
| Rental income | 90 000 |
| Interest income | <u>50 000</u> |
| Total receipts and accruals | <u>590 000</u> |

Result:

The basic exemption is calculated as an amount equal to the greater of 5% of the total receipts and accruals or R200 000.

5% of the total receipts and accruals of R590 000 amounts to R29 500.

The total receipts from letting the property (R90 000) will be exempt since the PBO receives the benefit of the greater of R29 500 or R200 000.

17.5 Practical application of the basic exemption

The total receipts and accruals derived from all trading activities that do not qualify for exemption (see **17.4.1**, **17.4.2** and **17.4.3**) must be added together before the deduction of the basic exemption. This means that the value of the basic exemption threshold must be applied collectively to the total receipts and accruals from all commercial business or trading activities and not individually to each such business or trading activity.

In the case of an approved co-ordinating body of a group of PBOs, the total receipts and accruals of all the individual PBOs within the group as reflected in the consolidated financial statements will be taken into account in calculating the threshold of 5% of the total receipts and accruals. The amount of R200 000 is not increased by the number of individual organisations within the group, since this amount is applicable to a PBO, which in this case is the co-ordinating body (see **21**).

18. Issues specific to PBOs

18.1 Retrospective PBO approval

The TEU may approve a PBO with retrospective effect to the extent the TEU is satisfied that the organisation has complied with the requirements of section 30 during the period before it lodged its application.

18.2 Rate of tax

A PBO that is liable to tax on receipts and accruals which do not qualify for exemption, will pay tax at a single rate of 28% on its taxable income, irrespective of whether it is established as a trust, a non-profit company or as an association of persons.

18.3 Provisional tax

A PBO is exempt from making provisional tax payments.⁸ Any liability to income tax on taxable income will become payable on assessment.

⁸ Paragraph (aa) of the exclusions to the definition of "provisional taxpayer" in paragraph 1 of the Fourth Schedule.

18.4 Branches of foreign exempt organisations

An organisation that has been established outside South Africa, may establish a branch in South Africa for purposes of conducting approved PBAs. The branch may be approved as a PBO provided the foreign organisation is exempt from income tax in its country of origin. The branch will be required to submit confirmation of exemption from foreign income tax of the foreign organisation together with a copy of its founding document when the application is submitted to the TEU. A branch that does not have its own founding document under which it operates in South Africa and is governed by the constitution of the foreign exempt organisation must submit a written undertaking, as discussed in **16**, to confirm compliance with section 30, insofar as the governance, funding and activities of the branch are concerned.

18.5 Sporting associations

Sporting associations qualifying for preferential tax treatment may be divided into two categories, namely, recreational clubs⁹ and amateur sporting bodies. Although both categories qualify for exemption from normal tax on certain of their receipts and accruals, they are approved under different sections of the Act, each section having its own requirements and conditions. Amateur sporting bodies may qualify to be approved as a PBO under section 30 and recreational clubs are approved under section 30A. Professional sporting bodies do not qualify for preferential tax treatment under either of the two categories.

18.5.1 Amateur sporting bodies

The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime is a PBA. An organisation that complies with section 30 and conducts this PBA may qualify for approval as a PBO. Organisations engaged in amateur sporting activities may include regional, provincial or national federations which are formed to administer, develop, co-ordinate or promote a particular sport or code, for the benefit of the general public provided the participants partake in the sport as a pastime, on a non-professional basis and are not rewarded financially.

18.5.2 National sporting bodies

National sporting bodies may have a professional and an amateur arm. Many of these sporting bodies separated their professional and amateur arm into two entities in order for the amateur arm to qualify for PBO approval, since the trading activities of the professional division disqualified the sporting body from qualifying for approval as a PBO. The separation into two entities proved to be to the disadvantage of the professional entity, which was regarded as the income provider or sponsor of amateur sporting activities and the money expended on promoting amateur sport was prohibited as a deduction from its taxable income under section 11(a). A special concession was introduced in 2007 under which a sporting body which had separated its professional and amateur arms, was permitted to amalgamate subject to certain conditions. This concession came into operation on 1 January 2008 and was applicable to an amalgamation transaction concluded by 31 December 2012. The unified body does not qualify for exemption from income tax or approval as a PBO but it may qualify for special deductions, provided certain requirements are met.¹⁰

⁹ See the *Tax Guide for Recreational Clubs* (Issue 2) for general guidance on the taxation of recreational clubs in South Africa.

¹⁰ See Interpretation Note No. 46 (Issue 4) dated 6 November 2012 “Income Tax: Amalgamation of Amateur and Professional Sporting Bodies”.

18.6 Granting of loans

Regulations relating to the granting of loans by a PBO carrying on the approved PBAs listed in paragraphs 1(p)(iii), 3(f) and 4(o) of Part I have, as yet, not been published.

18.7 Approval not granted

An organisation which has not been approved as a PBO will be liable for income and other taxes and duties as a normal taxpayer. For example:

- A non-profit company will be liable for tax at the company rate of tax on all its taxable income, namely, gross income less exempt income and allowable deductions.
- A trust will be subject to tax on taxable income at the rate applicable to trusts, subject to the provisions of section 25B.
- Any other association of persons which is deemed to be a “company”¹¹ will be subject to tax at the company rate of tax.

19. Reporting requirements

19.1 Record-keeping

Any books of account, records or other documents, including financial statements, of a PBO must be retained and preserved for a period of at least four years after the last date of an entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transaction, act or operation to which they relate. It is the responsibility of the person in control of the PBO to ensure that the necessary records are kept.

19.2 Income tax returns

A PBO must submit annual income tax returns, notwithstanding that its approval as such may result in no tax liability. The return enables the TEU to assess whether the PBO is operating within the prescribed limits of its approval. The prescribed *Income Tax Return for Exempt Organisations* may be submitted electronically through SARS eFiling www.sarsefiling.co.za or manually.

Non-receipt of a return does not affect the obligation to submit a return. A person who wilfully fails or neglects to submit a return as required is guilty of an offence.

19.3 Period for which accounts are to be submitted

A PBO that is registered as a trust will have a year of assessment ending on the last day of February. A trust can apply for permission to draw up its financial statements to a different closing date if it would be more convenient for it to do so.¹²

A PBO that is a non-profit company as well as an association of persons established under a constitution or any other written instrument will have a year of assessment ending on the date that coincides with its financial year-end. If the financial year-end is 30 June, its year of assessment will run from 1 July to 30 June of the following year.

¹¹ See paragraph (d) of the definition of “company” in section 1(1).

¹² See Interpretation Note No. 19 (Issue 3) dated 9 October 2013 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February”.

19.4 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return. The TEU will notify the PBO if supporting documentation is required to substantiate any aspect of the income tax return. Supporting documents must be retained for a period of four years (see 19.1). Supporting documents include financial statements (for example, a statement of comprehensive income and a balance sheet) and any other documents necessary to support the information contained in the income tax return.

19.5 Financial statements

A PBO that is a non-profit company must comply with the requirements of the Companies Act, 2008. In the case of a trust or an association of persons, it is not a requirement of SARS that the financial statements must be completed by a qualified accountant. The circumstances of the specific PBO will determine the level of sophistication of the financial statements. A well-established and financially sound PBO will be expected to submit proper financial statements prepared by a qualified accountant. A lesser requirement may be accepted in the case of a small and under-funded PBO. The accounts must be signed by the person responsible for the PBO in a fiduciary capacity and by the person who prepared them on behalf of the PBO.

19.6 Furnishing of information to SARS

To assist in enforcing the provisions of the Act, the TEU may submit a written request to any person to furnish information about any PBO and may require that person to –

- answer any questions relating to the PBO;
- make books of account, records or other documents relating to the PBO available for inspection; or
- meet with the Commissioner's representative and produce for examination any documents relating to the PBO.

20. Transitional provisions for organisations exempt under the repealed legislation

An organisation that was exempt from income tax under the previous legislation will continue to enjoy the exemption provided it –

- applied for approval as a PBO before 31 December 2004 or submitted a written undertaking as provided for in section 30 before that date; and
- submitted a copy of its founding document which complies with the prescribed requirements either within a period of five years from 15 July 2001 or, at such time as any amendment is effected to the founding document, whichever date, is sooner.

An organisation which has complied with both the above requirements will continue to enjoy the previous exemption until such time as notified by the TEU of the outcome of its application for approval as a PBO.

An organisation that has not complied with both conditions and has not amended its founding document by 15 July 2006 will have lost its previous exemption.

Organisations that also qualified for section 18A approval under the previous legislation were required to reapply before 31 December 2003. Failure to reapply meant that no section 18A receipts were allowed to be issued from 1 January 2004, until similar approval is

granted by the TEU under the re-enacted provisions of section 18A. The exemption from income tax under the repealed legislation would have been retained provided the organisation re-applied before 31 December 2004 and met the two conditions set out above.

21. Group registration

A group of organisations sharing a common purpose and carrying on a PBA under the direction and supervision of a co-ordinating body may be approved as a PBO provided the following requirements are met:

- All the organisations within the group must share a common purpose and conduct the same approved PBAs.
- The founding document of the co-ordinating body and the organisations within the group must be common or similar and, must be amended to comply with the prescribed requirements.
- The TEU must be informed of all amendments effected to the founding document of the co-ordinating body and of the organisations within the group.
- The co-ordinating body must take responsibility to ensure that all the organisations within the group comply with the provisions of section 30.
- The co-ordinating body must report any organisation within the group which acts contrary to the provisions of section 30.
- The group of organisations must all fall directly under the direction and supervision of the co-ordinating body.
- The consolidated annual financial statements of the group of organisations must contain a certified report that all the organisations within the group complied with the provisions of section 30.

See 22 for the consequences of failing to comply with the requirements as set out above.

A group registration could apply to provincial or regional branches functioning under the auspices of a national co-ordinating body. The co-ordinating body must submit a list of the names and addresses of all the organisations within the group when submitting the application for approval. On approval as a PBO, only one income tax reference number will be allocated to the group as a whole.

22. Non-compliance and penalties

22.1 Circumstances under which PBO approval may be withdrawn

The TEU may, after giving due notice to a transgressing PBO, withdraw the approval of the PBO if that PBO has, in any year of assessment in any material respect or on a continuous or repetitive basis, failed to comply with section 30 or with its founding document (as it relates to section 30). The approval will be withdrawn with effect from the beginning of the relevant year of assessment during which the non-compliance took place unless the PBO has taken corrective steps within a period specified by the TEU in the notice to the PBO.

A co-ordinating body that intentionally or negligently fails to exercise the required control over any PBO in the group, or fails to notify the TEU of any material failure of any PBO within the group to comply with any provision of section 30, may, after due notice from the TEU, result in the withdrawal of the approval of the group, unless the necessary corrective steps are taken to the satisfaction of the TEU or unless the defaulting PBO disassociates

itself from the group and the co-ordinating body ceases to acknowledge and assume responsibility for its future compliance. The withdrawal will be effective from the beginning of the year of assessment in which the non-compliance or failure occurred, unless the required corrective steps are taken within the period allowed by the TEU. Before withdrawal of the approval, the TEU must first give notice of intention to withdraw and it must be clear that no corrective steps have been taken by the co-ordinating body within the period stated in the notice.

22.2 Consequences of withdrawal

Once the approval is withdrawn, the PBO must, within six months, unless the TEU allows a longer period, transfer or take reasonable steps to transfer its remaining assets to –

- another approved PBO;
- an institution, board or body exempt from tax under section 10(1)(cA)(i) which has as its sole or principal object the carrying on of any PBA; or
- the Government of South Africa.

Any of the above entities that benefit on distribution of the remaining assets are required to use those assets solely for carrying on one or more PBAs.

22.3 Reapplication after withdrawal

An organisation may reapply for approval in the year of assessment following the year of assessment in which the approval was withdrawn. The TEU may grant the approval in that subsequent year if satisfied that the non-compliance giving rise to the withdrawal of approval has been rectified.

22.4 Dissolution or termination of activities of a PBO or branch of a foreign exempt organisation

Failure by a PBO or branch of a foreign exempt organisation to transfer, or to take reasonable steps to transfer, its remaining assets as required in **12.3**, will result in an amount equal to the market value of the assets not transferred in accordance with **12.3** less the amount of the *bona fide* liabilities of the PBO, being deemed to be taxable income which accrued to the PBO or branch during the year of assessment in which dissolution or termination of its activities took place.

22.5 Person responsible in a fiduciary capacity for the funds and assets

A person who is in a fiduciary capacity responsible for the management or control of the income and assets of a PBO and who intentionally fails to comply with any provision of section 30 or any provision of the founding document under which the PBO has been established (to the extent that it relates to section 30), will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

23. Tax deductible donations

23.1 General

The South African Government has recognised that certain organisations are dependent on the generosity of the public and to encourage that generosity has provided a tax deduction for certain donations made by taxpayers.

A taxpayer making a *bona fide* donation in cash or of property in kind to a section 18A-approved organisation, is entitled to a deduction from taxable income if the donation is

supported by the necessary section 18A receipt issued by the organisation or, in certain circumstances, by an employees' tax certificate reflecting the donations made by the employee (see **23.11.2**).

The eligibility to issue section 18A receipts is restricted to specific approved organisations which use the donations to fund specific approved PBAs (see **23.4**).

23.2 Approval to issue section 18A receipts

PBOs or organisations must formally apply for approval to issue section 18A receipts for donations received. Applications for approval must be submitted to the TEU (see **24.4**). Organisations must meet certain requirements set out in this guide before approval to issue section 18A receipts will be granted.

23.3 Effective date to issue section 18A receipts

A PBO or organisation may only issue section 18A receipts for donations received from the date the TEU has confirmed that the PBO or organisation qualifies for section 18A approval and has issued it a reference number. Legislation does not allow for approval to be effective retroactively.

23.4 PBAs

The PBAs which are approved by the Minister for section 18A purposes are those PBAs listed in Part II, which must be carried on in South Africa.

The PBAs listed in Part II are categorised as follows:

- Welfare and Humanitarian
- Health Care
- Education and Development
- Conservation, Environment and Animal Welfare (only certain PBAs are included in this category)
- Land and Housing (only certain PBAs are included in this category)

Refer to **Annexure F** for a complete list of approved PBAs falling under each of the above categories.

In certain instances the Minister may by notice in the *Gazette*, determine that additional activities qualify. The Minister may also, by regulation, prescribe additional requirements that these additional activities will need to comply with.

The PBAs listed under paragraph 10 of Part I, namely "Providing funds, assets or other resources", are not listed in Part II. A specific provision is included in section 18A(1)(b) for an approved PBO that carries on some of the activities listed under this category. More specifically, the PBAs qualifying for section 18A approval are specifically limited to the provision of funds and assets and do not include the provision of services or other resources as set out in paragraph 10 of Part I. Refer to **23.6.1** for specific requirements which must be complied with by PBOs falling under this category.

23.5 Organisations qualifying for section 18A approval

23.5.1 Approved PBOs

The PBO must be a non-profit company, a trust or an association of persons that has been incorporated, formed or established in South Africa and must be approved as a PBO under section 30(3).

There are two categories of PBOs that qualify for approval:

- A PBO which actively carries on in South Africa any PBA listed in Part II.
- A PBO that does not itself carry on the PBAs listed in Part II but provides funds or assets to another approved PBO referred to in the preceding bullet, or to an institution, board or body contemplated in section 10(1)(cA)(i) (see **23.5.2**) which carries on in South Africa any PBA listed in Part II. This category of PBOs is generally referred to as “conduit” PBOs and has additional specific requirements that must be complied with in order to qualify for section 18A approval (see **23.6.1**).

A PBO will only be granted approval to issue a receipt to the extent that the donation of cash or property in kind will be used solely in carrying on activities listed in Part II in South Africa. In the case of a conduit PBO, section 18A receipts may only be issued to the extent that the funds or assets are to be provided to other PBOs, institutions, boards or bodies which use the funds in carrying on PBAs listed in Part II in South Africa.

A PBO that carries on a combination of PBAs, some of which are only listed in Part I and some of which are listed in Part I and Part II, may be granted approval to issue section 18A receipts for donations received for the PBAs listed in Part II provided those activities are ring-fenced. This means that the donation is received subject to the stipulation that it will be used on a PBA listed in Part II and that the donations received will be controlled in such a manner that their usage will be restricted to those activities only. The record-keeping of the PBO must be such that it clearly identifies the donations received for the Part II PBAs and the use to which those donations were applied. PBOs falling into this category must obtain a certificate issued by an auditor confirming that all donations received or accrued during the year for which the PBO issued section 18A receipts were used solely in carrying on PBAs approved for section 18A purposes. The PBO is required to retain the audit certificate as part of its records (see **23.17**).

23.5.2 Institutions, boards or bodies established by or under law

An institution, board or body established by or under law approved by the TEU under section 10(1)(cA)(i) and which carries on any PBA listed in Part II in South Africa, may qualify for section 18A approval.

An institution, board or body that carries on a combination of PBAs, some of which are listed in Part I and some of which are listed in Part I and II, must annually obtain and retain an audit certificate confirming that all donations for which section 18A receipts were issued, were used solely for a section 18A approved PBA (that is, PBAs listed in Part II). The ring-fencing requirement discussed above will also apply.

Public schools are also included in this category (see **24.1.1**).

23.5.3 The Government of South Africa in the national, provincial or local sphere

A department of Government in the national, provincial or local sphere which carries on any PBA listed in Part II may qualify for section 18A approval.

The Accounting Authority contemplated in the Public Finance Management Act 1 of 1999 for the relevant department must, on an annual basis, submit an audit certificate to the TEU certifying that all donations for which receipts were issued, were used for a PBA listed in Part II.

Example 16 – Possible PBAs conducted by one of the spheres of Government

- A separate unit established within the South African Police Service to provide support and care for physically abused children.
- A feeding scheme established by a municipality for homeless persons living in the inner city.

23.5.4 Specialised agencies

Any agency contemplated in the definition of “specialised agencies” in section 1 of the Convention on the Privileges and Immunities of the Specialised Agencies, 1947 which are set out in Schedule 4 to the Diplomatic Immunities and Privileges Act 37 of 2001 may qualify for section 18A approval provided certain requirements are met (see **23.6.2**). The agencies referred to in this provision relate to the United Nations Specialised Agencies.

23.6 Specific conditions for organisations qualifying for section 18A approval

23.6.1 Conduit PBOs

A conduit PBO will only qualify to issue section 18A receipts for donations received for purposes of providing funds and assets to other approved PBOs (see first category in **23.5.1**) and qualifying institutions, boards or bodies (see **23.5.2**) that carry on in South Africa PBAs listed in Part II.

A conduit PBO that provides funds or assets to other PBOs, institutions, boards and bodies that carry on Part I and Part II PBAs, must also comply with the ring-fencing requirement and obtain and retain a certificate issued by an auditor confirming that all donations received or accrued during the year for which the conduit PBO issued section 18A receipts were used solely by those recipient organisations in carrying on PBAs approved for section 18A purposes (PBAs listed in Part II) (see **23.17**).

A further requirement is that a conduit PBO is obliged to distribute or incur the obligation to distribute at least 75% of those funds received by it for which it issued a section 18A receipt within 12 months of the end of the year of assessment in which the donation was received.

The TEU may, having regard to the public interest and purpose for which the conduit PBO wishes to accumulate the funds and subject to such conditions as the TEU may determine, defer, reduce or waive the obligation to distribute 75% of the funds as set out above. The exercise of discretion in this regard may arise when the conduit PBO is, for example, accumulating funds for a specific capital project which is a section 18A approved PBA. A conduit PBO may wish to accumulate capital to build a school hall or pavilion for its beneficiary (an approved PBO carrying on a PBA listed in Part II). The TEU will not permit a conduit PBO to accumulate funds indefinitely and in exercising its discretion will consider the capital project's details including its timeframe. Failure to use the funds for a section 18A approved PBA may have harsh consequences for the conduit PBO. The requirement to

distribute 75% of the funds will not be relaxed for purposes of merely providing a general endowment or accumulating a general capital fund.

An application to have this requirement relaxed must be submitted to the TEU together with full details of the project or purpose for which the funds are to be accumulated, the projected time frame, the estimated costs involved and motivated reasons why the requirement should be relaxed.

Example 17 – Relaxation of 75% distribution requirement

ABC Orphanage Funding Trust has been established to provide funds for ABC Orphanage (a PBO in its own right approved under section 30) to enable it to carry out the objects and activities of caring for abandoned and orphaned children. The trust wishes to collect sufficient funds to enable the orphanage to build a home for abandoned babies. It will take the trust three years to raise sufficient funds for this project taking into account the annual income budget.

The TEU may be approached for a relaxation of the 75% distribution requirement.

23.6.2 Specialised agencies

The specialised agency referred to in **23.5.4** may qualify for section 18A approval provided the following requirements are met:

- The agency must conduct in South Africa a PBA approved for section 18A purposes.
- A written undertaking must be submitted to the TEU that the agency will comply with section 18A.
- Confirmation must be submitted that it will waive diplomatic immunity if found to have failed to comply with the relevant provisions as required by section 18A. By waiving diplomatic immunity the agency will be liable to the non-compliance penalties if found to have contravened section 18A.

23.7 Organisations not qualifying to issue section 18A receipts

23.7.1 Branches of foreign exempt organisations

A branch established in South Africa by a foreign exempt organisation does not qualify for section 18A approval and will not be allowed to issue receipts under this section even though it may carry on section 18A approved PBAs.

23.7.2 Non-approved organisations

An organisation that has not been formally approved by the TEU under section 18A may not issue section 18A receipts for donations received.

23.8 Group registration

23.8.1 Group of institutions, boards or bodies sharing a common purpose

The TEU may approve a group of institutions, boards or bodies contemplated in section 10(1)(cA)(i), that share a common purpose and carry on any PBA under the direction or supervision of a co-ordinating body, for purposes of section 18A. The approval is subject to the condition that the co-ordinating body takes the steps prescribed by SARS to exercise control over these entities to ensure they comply with section 18A. For example, group registration may apply to public schools (see **24.1.1**), provided the relevant provincial

education authority has applied for group registration for section 18A purposes for all public schools in its jurisdiction.

The TEU may also grant approval to a co-ordinating body in respect of a group of PBOs (see 21) and, similarly, may stipulate prescribed steps which the co-ordinating body must take to ensure compliance with section 30 and section 18A.

23.8.2 Abuse of approval by group

A co-ordinating body of a group of PBOs, institutions, boards or bodies approved as a group for purposes of section 18A must ensure compliance with section 18A. Non-compliance by the co-ordinating body in taking the steps prescribed by SARS or failing to notify the TEU when it becomes aware of any material failure to comply with the provisions of section 18A, may, after due notice, result in the withdrawal of approval to issue section 18A receipts. The notice issued by the TEU will notify the co-ordinating body that if corrective steps are not taken within the period specified in the notice that any receipt issued by PBOs, institutions, boards or bodies within the group on or after the date specified in the notice, will not qualify for a tax deduction in the hands of the donor.

23.9 Section 18A receipt to be issued

A taxpayer will only be allowed to claim a deduction for a donation to an organisation that has been approved by the TEU under section 18A and if it is supported by a section 18A receipt issued by that organisation which includes the following details:

- The reference number of the organisation issued to it by the TEU for purposes of section 18A.
- The date the donation is received.
- The name and address of the organisation issuing the receipt to which enquiries may be directed.
- The name and address of the donor.
- The amount of the donation or the nature of the donation if not in cash.
- Certification that the receipt is issued for the purpose of section 18A and that the donation will be used exclusively for the activities approved for section 18A purposes.

The section 18A receipt must be issued in the year when the donation is received by the organisation approved for purposes of section 18A.

See **Annexure G** for an example of a section 18A receipt.

23.10 Deduction of donations from taxable income

A taxpayer (individual, trust or company) making a *bona fide* donation in cash or of property in kind to a section 18A approved organisation, is entitled to a deduction from the taxpayer's taxable income if the donation is supported by the necessary section 18A receipt issued by the organisation (see 23.9) or by an employees' tax certificate reflecting the donations made by the employee for which the employer has received a section 18A receipt from the donee organisation (see 23.11.2). The donation must have been actually paid or transferred in order to qualify for a deduction.

The deduction from the taxable income of a taxpayer for all qualifying donations paid or transferred during the tax year may not exceed 10% of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and

severance benefits) of the taxpayer as calculated before allowing any deduction under section 18A.

Any excess amount of a donation made which is disallowed solely for the reason that it exceeds the amount of the deduction allowable for a year of assessment may be carried forward for purposes of section 18A. The excess amount carried forward will be deemed to be a donation actually paid or transferred in the next succeeding year of assessment subject to the 10% rule. If any excess remains it can be further rolled over.

Example 18 – Roll over treatment

| | Year 1: R | Year 2: R |
|-----------------------------------|---------------------|------------------------------|
| Taxable income | 1 000 000 | 1 500 000 |
| Allowable donation as a deduction | 100 000 | 150 000 |
| Actual donation made | 150 000 | 0 |
| Deduction claimed | 100 000 | 50 000 (including roll over) |
| Amount rolled over | 50 000 | 0 |

A specific formula in section 18A(1)(A) is used to determine the allowable deduction if the donor is a portfolio of a collective investment scheme.

23.11 *Bona fide* donation

A donation¹³ is a gratuitous disposal by the donor out of liberality or generosity, under which the donee is enriched and the donor impoverished. It is a voluntary gift which is freely given to the donee. There must be no *quid pro quo*, no reciprocal obligations and no personal benefit for the donor. If the donee gives any consideration at all it is not a donation.

A PBO may not accept donations which are subject to conditions that could enable the donor or any connected person in relation to the donor to derive some direct or indirect benefit from the application of the donation. The donation may also, subject to limited exceptions, not be revocable by the donor (see **12.4**).

A taxpayer may make the donation directly to the organisation approved by the TEU to issue section 18A receipts or by way of payroll-giving.

23.11.1 Donation made directly to the section 18A approved organisation

A taxpayer that makes a donation directly to the section 18A approved organisation will be issued a section 18A receipt to enable the taxpayer to claim the donation as a deduction in the taxpayer's annual income tax return.

23.11.2 Payroll-giving

A payroll-giving programme operated by an employer enables employees to donate from their salaries on a monthly basis to organisations that have been approved to issue section 18A receipts. The donation is taken into account by the employer when calculating the monthly employees' tax to be deducted. The deduction is limited for employees' tax purposes to 5% of remuneration after deducting certain amounts as specified in paragraph 2 of the Fourth Schedule.

¹³ Defined in section 55.

The donations made by payroll-giving must be reflected on the IRP 5 issued to the employee provided the employer has received a section 18A receipt. The employer must retain the receipt for record purposes.

23.12 Types of donations

23.12.1 Cash donation

The donation may be made in cash (money). This includes payments by electronic fund transfer, credit card, postal order or debit card. As noted above, the donation must actually be paid or transferred during the year of assessment to the organisation approved under section 18A. Promissory notes, pledges, payments to be made in future instalments or post-dated cheques do not qualify.

23.12.2 Donation of property in kind

A donation of property in kind must be used by the PBO in carrying on in South Africa a PBA in Part II.

Donations of property made in kind may include the following:

- A financial instrument provided it is a share in a listed company or is issued by a "financial institution" as defined in section 1 of the Financial Services Board Act 97 of 1990.
- Trading stock which forms part of the business undertaking or trading activity conducted by the donor. Such trading stock may include livestock or produce donated by a farmer or goods such as computers, foodstuffs, medical supplies, furniture and motor vehicles.
- An asset used by the donor in conducting the donor's trade but not trading stock. Such assets may include computers, furniture, office equipment, delivery vehicles, cash registers, garden equipment, crockery or kitchen utensils.
- An asset which is not trading stock and is also not used in the business of the donor. Such assets may include personal assets or assets bought by the donor such as vehicles, computers, furniture or sport equipment.

Property which is purchased, manufactured, erected, installed or constructed by or on behalf of the donor. Such property may include carpets or cupboards installed, security fencing and buildings such as classrooms erected by or on behalf of the donor for purposes of conducting the approved PBA.

The value of a donation of property in kind listed above must be determined as set out in **23.13**.

If any deduction is claimed by any taxpayer under section 18A for any donation of immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of the deduction must be determined using a specific formula in section 18A(3A).

A deduction will not be allowed for the donation of any property in kind which constitutes or is subject to any fiduciary right, usufruct or other similar right or which consists of an intangible asset or financial instrument (unless the financial instrument meets the requirements set out above).

23.13 Value of a donation of property in kind

A taxpayer may claim a deduction for a donation of property made in kind to an organisation approved for section 18A purposes. The amount of the deduction for donations of property in kind, with the exception of immovable property of a capital nature when the lower of market value or municipal value exceeds cost, as discussed above, must be determined as follows:

- Property that constitutes a financial instrument which is trading stock, the lower of fair market value on the date of the donation or the amount taken into account in respect of the value of the trading stock under section 22(8)(C).¹⁴
- Property that forms part of trading stock of the taxpayer, including livestock or produce of farmers, the amount taken into account of the trading stock under section 22(8)(C) or paragraph 11 of the First Schedule as appropriate.
- Property that is an asset used in the taxpayer's trade, the lower of the fair market value on the date of donation or the cost to the taxpayer less any allowance (other than an investment allowance) deducted from the income of that taxpayer for that asset.
- Property that is not trading stock and not a business asset, the lower of the fair market value on the date of the donation or the cost to the taxpayer less depreciation using the 20% reducing balance method in the case of deterioration of movable property.
- Property that is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer to form the subject of the donation, the lower of the fair market value on the date of the donation or the cost to the taxpayer.

23.14 Donation of services rendered

The donation of a service such as time, skill or effort to an approved organisation will not qualify as a deduction for purposes of section 18A since a service is not a donation of "property made in kind" (see **23.12.2**). For example, a professional person such as an auditor, artist (including a singer, musician or entertainer), medical doctor, lawyer, accountant, plumber or electrician who renders a service free of charge to an approved organisation will not be entitled to a tax deduction for the value of the service.

23.15 Payments or transfers not qualifying for a tax deduction

The following do not qualify for a deduction under section 18A:

- An amount paid for attending a fundraising dinner and dance.
- Memorabilia and other assets donated to be auctioned to raise funds.
- The amount paid for the successful bid of goods auctioned to raise funds.
- Amounts paid for raffle or lottery tickets.
- Amounts paid for school fees, school entrance fees or compulsory school levies.
- The value of free rent, water and electricity provided by a lessor to the lessee which is a PBO.

¹⁴ For guidance on the application and interpretation of section 22(8), see Interpretation Note No. 65 (Issue 2) dated 5 February 2014 "Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade".

- The payment of debt owed by an organisation approved under section 18A. An example would be the cost of repairs to a PBO's vehicle paid to the service station on behalf of the PBO and not paid directly to the PBO.
- Prizes and sponsorships donated for a fundraising event such as a charity golf day.
- Tithes and offerings to churches or other faith-based organisations for religious activities.
- Membership fees.

23.16 Control measures

Qualifying organisations are required to maintain proper control over the application and spending of donations received which qualify for a tax deduction. A section 18A receipt for a tax deductible donation may only be issued for a donation which is used solely and exclusively for section 18A approved PBAs.

23.17 Audit certificate

A PBO carrying on both section 18A-approved and non-section 18A-approved PBAs, namely, PBAs listed in Parts I and II, is required to have an audit certificate confirming that donations received for which section 18A receipts were issued, were used solely in carrying on PBAs approved for section 18A.

23.18 Abuse of approval by a section 18A approved organisation

23.18.1 PBO, institution, board or body and specialised agency

The TEU may, when it has reasonable grounds for believing that the person who is in a fiduciary capacity responsible for the management or control of the income or assets of a section 18A approved PBO, institution, board or body, or a specialised agency has –

- materially failed to ensure that the objects for which that organisation was established have been carried out;
- expended that organisation's monies for purposes not covered by its objects;
- issued or allowed a receipt to be issued for fees or other emoluments payable to the organisation;
- issued or allowed a receipt to be issued in contravention of section 18A; or
- used a donation for which a section 18A receipt was issued for any purpose other than for section 18A approved PBAs,

by written notice, direct that the amount of the donations for which section 18A receipts were issued will be deemed to be taxable income in the hands of the approved PBO, institution, board or body or specialised agency.

In addition, the TEU may direct that unless corrective steps are taken by that organisation within the period specified in the notice, any receipt issued by that organisation will not qualify as a valid section 18A receipt from the date specified in the notice. This means that such donations will not constitute tax-deductible donations in the hands of the donor.

23.18.1 The Government of South Africa in the national, provincial or local sphere

SARS must notify the National Treasury and the Provincial Treasury (if applicable) when an accounting officer or accounting authority contemplated in the Public Finance Management Act 1 of 1999 or the accounting officer contemplated in the Local Government Municipal Finance Management Act 56 of 2003 of the three spheres of Government has issued or

allowed a receipt to be issued in contravention of the requirements of the Act or used a donation for which a section 18A receipt was issued for purposes other than the PBAs contemplated in Part II. The TEU may also inform the accounting officer or accounting authority by written notice that unless corrective steps are taken within the period specified in the notice, receipts issued by that sphere of Government will, from a date specified in the notice, not qualify as a valid section 18A receipt. This means that such donations will not constitute tax-deductible donations in the hands of the donor.

23.19 Non-compliance by responsible person

23.19.1 PBO or institution, board or body

A person who is responsible in a fiduciary capacity for the management or control of the income and assets of an approved PBO, or institution, board or body who intentionally fails to comply with any provision of section 18A or a provision of the founding document under which such organisation is established to the extent that it relates to section 18A, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

23.19.2 Accounting officer or accounting authority

An accounting officer or an accounting authority contemplated in the relevant Acts mentioned in **24.18.2** who intentionally fails to comply with any provision of section 18A will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

24. Issues specific to PBOs and section 18A approved organisations

24.1 Educational institutions (schools)

A “school” is defined in the South African Schools Act 84 of 1996 as a “public” or an “independent” school which enrols learners in one or more grades from grade R (Reception) to grade 12.

24.1.1 Public schools

A public school is a juristic person but is not established, formed or incorporated as a company, trust or association of persons and it is also not brought into existence under a founding document such as a constitution, memorandum of incorporation or trust deed. A public school whose functions are governed by the provisions of the South African Schools Act, 1996 cannot be approved as a PBO but is regarded for income tax purposes as an institution that provides necessary and useful services to the State and members of the general public and qualifies for exemption under section 10(1)(cA)(i).

Section 18A specifically provides for an institution, board or body approved by the TEU under section 10(1)(cA)(i) which carries on a PBA approved for section 18A purposes to be entitled to the same beneficial tax treatment as a PBO. The section 18A status must be formally approved by the TEU. A public school applying for approval to issue section 18A receipts to donors must clearly indicate that it is a public school when submitting the application to the TEU. A group registration may apply to public schools (see **23.8.1**).

An organisation established to provide funding and assets to a public school may be eligible for approval as a PBO and may also qualify for section 18A approval (see **23.6.1**).

24.1.2 Independent schools

An independent school must be registered as such by the Head of the Education Department responsible for education in a province. A registered independent school can be established as an association of persons, or a trust or a non-profit company. The independent school will either have a constitution, trust deed or memorandum of incorporation as a founding document. Provided the activities and the founding document comply with the provisions of section 30, the TEU may approve an independent school as a PBO. It may also apply for approval under section 18A to issue tax deductible receipts. An independent school which has been approved as a PBO will be subject to the same trading provisions provided for in section 10(1)(cN) (see **17**).

24.2 Scholarships

The provision of scholarships, bursaries, awards and loans (see **18.6**) for study, research, and teaching is a PBA under paragraph 4(o) of Part I. PBOs conducting this approved PBA qualify under paragraph 3(o) of Part II for approval to issue section 18A receipts for donations received subject to certain conditions being met. The relevant conditions have been prescribed by the Minister in *Regulation Gazette* 24941 of 28 February 2003. The conditions detailed below must be included in the founding document of the PBO carrying on this PBA:

- The scholarship, bursary or award must be *bona fide* and be granted to an individual on grounds of objective merit or need.
- The scholarship, bursary or award may not be –
 - revocable other than for reasons of failure to conform with the intended purpose and condition;
 - subject to conditions enabling the donor of the funds or any connected person in relation to the donor to derive a direct benefit; and
 - granted to any person who is or will become an employee of the donor or organisation or associated institution¹⁵ or any relative, unless it can be indicated that even if that person had not been an employee the bursary, scholarship or award would have been granted.
- All decisions regarding the granting of the scholarship, bursary or award must be made by a duly constituted committee consisting of three unconnected persons to the donor or the person to whom it will be granted.
- When the scholarship, bursary or award is for overseas study, research or teaching, the recipient must submit a written undertaking to –
 - apply the knowledge obtained immediately after completion in South Africa for a period at least equal to the period funded by the donor; or
 - refund the full amount of the scholarship, bursary or award should the recipient decide not to remain in South Africa.

See **Annexure H** for the regulations published by the Minister.

Copies of all documents and information relating to the scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award was granted must be made available to the TEU on request.

¹⁵ Defined in paragraph 1 of the Seventh Schedule.

24.3 Transfrontier conservation areas

The establishing and managing of transfrontier conservation areas or peace parks involving two or more countries is a PBA under paragraph 7(d) of Part I. PBOs conducting this approved PBA qualify under paragraph 4(d) of Part II for approval to issue section 18A receipts for donations received provided specific requirements set out in section 18A(1C) which are detailed below are included in the PBOs founding document:

- A section 18A receipt will not be issued for any donation made by any person unless –
 - that donation is made by the person on or after 1 August 2002; and
 - the donor (in the case of a company, together with any other company in the same group of companies as that company) has during the donor's year of assessment donated an amount of at least R1million to that PBO.
- Every donation for which a section 18A receipt has been issued will be matched by a donation of the same amount made by a person who is not a resident and which is made from funds generated and held outside South Africa.
- The PBO will use the amount of –
 - all donations received for which a valid section 18A receipt is issued, and all income derived from those donations, in South Africa in carrying on that PBA; and
 - all donations received from donors who are not residents and which are made from funds generated and held outside South Africa, either in South Africa in carrying on that PBA or in respect of a transfrontier conservation area of which South Africa forms part.

24.4 New applications

Organisations not formally approved by the TEU must submit a completed application form together with the required supporting documentation, as well as a signed written undertaking (see 16) if the founding document does not comply with the prescribed requirements.

25. Objections and appeals

Any decision of SARS in the exercise of its discretion under section 30 is subject to objection and appeal.¹⁶ The TEU will exercise its discretion to determine whether –

- an organisation may be approved as a PBO for purposes of section 30(3);
- a PBO is or was knowingly a party to, or knowingly allowed itself to be used as part of a tax-avoidance scheme;
- a PBO has in any material respect, or on a continuous or repetitive basis failed to comply with section 30; and
- the non-compliance resulting in the withdrawal of the approval as a PBO has been rectified before considering a reapplication for approval.

A PBO may object to a decision or an assessment within 30 days from the date of the decision or assessment.¹⁷ The objection must be in writing and specify in detail the grounds

¹⁶ Section 3(4)(b).

¹⁷ Interpretation Note No. 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in case of Late Objection or Appeal".

on which it is made. SARS will consider the objection and may disallow the objection or allow the objection in whole or in part. On disallowance of the objection, the PBO if dissatisfied with the decision by SARS may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period. Chapter 9 of the Tax Administration Act, 2011 provides the legal framework for these disputes which must be read together with the Rules for objections and appeals.¹⁸

The prescribed forms must be submitted in order for an objection to be valid, namely, either a Notice of Objection (NOO) or Alternative Dispute Resolution (ADR 1), whichever is applicable. Similarly the prescribed forms must be submitted in order for an appeal to be valid, namely, either a Notice of Appeal (NOA) or ADR 2, whichever is applicable.

26. Exemption from other taxes and duties

In addition to being exempt from the payment of income tax on certain receipts and accruals, PBOs will also enjoy the benefit of being exempt from other taxes and duties.

26.1 Donations tax

Donations tax is payable at a rate of 20% on the value of any gratuitous disposal of property by one person to another, including the disposal of property at less than its market value. Donations tax is payable by the donor, but if the donor fails to pay the tax within the prescribed period, the donor and donee shall be jointly and severally liable for the tax.

Donations made by or to a PBO are exempt from the payment of donations tax under section 56(1)(h).

26.2 Estate duty

Estate duty is levied at a rate of 20% on the net estate of a deceased person. Any property bequeathed to a PBO is excluded from the value of the estate and not subject to estate duty under section 4(h) of the Estate Duty Act 45 of 1955.

26.3 Transfer duty

Transfer duty is levied on a sliding scale on the value of fixed property acquired by any person. The rates vary from 0% to 8% for all persons. A PBO approved by the TEU as well as an institution, board or body exempt from income tax under section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any PBA, is exempt from the payment of transfer duty on property acquired under section 9(1)(c) of the Transfer Duty Act 40 of 1949. The exemption is granted on the understanding that the whole or substantially the whole¹⁹ of the property will be used for the purpose of carrying on one or more approved PBA.²⁰ A provision was also included in section 9(1A) of the Transfer Duty Act, 1949 to assist a PBO, whose tax exempt status was jeopardised as a result of a trading activity, to transfer the property to a separate entity which is wholly controlled by that PBO without the payment of transfer duty.

All payments of transfer duty, requests for exemption and TDC01 returns which may be required for the processing of transactions must be submitted to SARS via eFiling since the manual submission of forms or payments is no longer accepted. The relevant documentation

¹⁸ Formulated under section 103 of the Tax Administration Act, 2011 and published in Government Notice No. 550 in *Government Gazette* No. 37819 of 11 July 2014.

¹⁹ Binding General Ruling No. 20 dated 10 December 2013.

²⁰ See Interpretation Note No. 22 (Issue 2) dated 9 December 2008 “Exemption: Public Benefit Organisations and Statutory Bodies”.

including the letter issued by the TEU granting approval to the PBO, together with details of the activities to be carried out on the property and confirmation that the whole or substantially the whole of the property will be used to conduct approved PBAs must be submitted to SARS on eFiling on request. If at any time subsequent to the acquisition, the property is used for the purposes other than the carrying on of approved PBAs, transfer duty will become payable on the date of that change in use of the property.

For further information on transfer duty in general and the processing of transactions on SARS eFiling, refer to the *Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide* which are available on the SARS website.

26.4 Dividends tax

Dividends tax is a 15% withholding tax imposed on dividends received by shareholders, who comprise individuals, trusts and non-residents. Dividends tax is withheld and paid to SARS by the company paying the dividend or by the regulated intermediary. A resident company is exempt from dividends tax if it informs the company declaring and paying the dividend or the regulated intermediary paying the dividend that it is exempt from dividends tax under section 64F(1)(a).

A PBO that is the beneficial owner of a dividend is exempt from dividends tax under section 64F(1)(c). This exemption applies only if the PBO has informed the company that declared and paid the dividend or the regulated intermediary that paid the dividend, that it is exempt from dividends tax under section 64F(1)(c). The PBO should also submit an undertaking to the company or regulated intermediary that it will inform such company or regulated intermediary should it cease to be the beneficial owner of the shares.

Dividends tax, which came into operation on 1 April 2012, will not affect the approval of a PBO and neither will it affect assessments issued since the dividends tax is deducted at source by the company or regulated intermediary paying the dividend. Dividends tax only applies to dividends received and not to interest earned on investments by PBOs.

26.5 Securities transfer tax (STT)

STT is a tax which is payable under the Securities Transfer Tax Act 25 of 2007 on the transfer of listed and unlisted securities and applies with effect from 1 July 2008.

A “security”, which is defined in section 1 of that Act, means *any share or depository receipt in a company, or member’s interest in a close corporation*.

The tax rate is 0.25% of the taxable amount in respect of any transfer of a security. The taxable amount is usually equal to the consideration payable for the security. In certain cases it may be the market value of the security.

Under section 8 of that Act certain entities are exempt from STT if the security is transferred, for example, to:

- Any sphere of the Government of South Africa or the Government of any other country.
- a PBO exempt under section 10(1)(cN); or
- an institution, board or body exempt under section 10(1)(cA)(i) which has as its sole or principal object the carrying on of any PBA.

26.6 Skills development levy

A compulsory levy to fund education and training is levied based broadly on 1% of the payroll of employers. A PBO approved by the TEU and which solely carries on an approved PBA as contemplated in paragraphs 1, 2(a), (b), (c), (d) and 5 of Part I is exempt from the payment of the skills development levy. A PBO that solely provides funds to an approved PBO that solely carries on these PBAs is also exempt from the payment of SDL.²¹

PBOs registered as employers (see **28**) whose annual payroll will not exceed R500 000 in the following 12 months are exempt from paying the levy.

For more information see the *Quick Reference Guide for Skills Development Levy* on the SARS website.

26.7 CGT

26.7.1 General

Any taxable capital gain made on the disposal of an asset by a person is included in the taxable income of that person. Up until years of assessment commencing on or after 1 April 2006, PBOs enjoyed complete exemption from income tax and CGT. Following the introduction of a partial taxation system under which PBOs became taxable on trading activities in excess of prescribed limits, PBOs no longer qualify for full exemption from CGT. As from the first day of their first year of assessment commencing on or after 1 April 2006 any capital gain or capital loss made by a PBO on the disposal of an asset which has been used for a business undertaking or trading activity or substantially the whole of which has been used in such an undertaking will not be disregarded.

26.7.2 Capital gain or capital loss to be disregarded

Any capital gain or capital loss made by a PBO on the disposal of an asset falling into one of the three categories discussed below must be disregarded:

(a) Non-trading assets

This category applies to assets which have not been used by the PBO on or after the valuation date in carrying on any business undertaking or trading activity and includes assets which have been used exclusively for conducting PBAs. Only the usage of the asset on or after the valuation date is taken into account. Any trade usage before that date is ignored.

Example 19 – Asset used exclusively on or after valuation date in carrying on a PBA

Facts:

The financial year of a PBO which provides health care services to poor and needy persons ends on 30 April. The PBO acquired immovable property on 30 June 2003 from which it conducts its PBA of providing health care services. During the period 30 June 2003 to 30 April 2006, 30% of the property was let to third parties while the remaining usage was in respect of PBAs. As from the valuation date the property was used exclusively in carrying on PBAs. The property was sold on 30 September 2013 resulting in a capital gain of R100 000.

²¹ See Interpretation Note No. 10 dated 24 March 2003 “Exemption: Public Benefit Organisations”.

Result:

Under paragraph 63A(a) the capital gain of R100 000 must be disregarded since the asset was used exclusively on or after the valuation date (1 May 2006) to carry on PBAs. Any trade usage before valuation date is disregarded.

Also included in this non-trade category are assets which are not “used” but “held”. This includes investments in the nature of shares and participatory interests in collective investment schemes.

Example 20 – Asset “held” not “used”

Facts:

An approved PBO conducts the sole activity of caring for homeless children. It has invested surplus funds in a collective investment scheme. The PBO disposes of its participatory interest in the collective investment scheme at a capital gain to fund the purchase of additional accommodation.

Result:

The capital gain must be disregarded under paragraph 63A(a) since the participatory interests were “held” by the PBO and are not “used” in carrying on a business undertaking or trading activity.

(b) Minimal-trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after valuation date was directed at a purpose other than carrying on a business undertaking or trading activity. An example of such an asset is one that is used 10% of the time for trading purposes and 90% of the time to conduct PBAs. Of critical importance are the words “substantially the whole of the use”. As explained in **17.3.7** the expression “substantially the whole of” is interpreted by SARS to mean 90% or more. However, SARS is prepared to accept a usage of not less than 85%. The assets referred to in this category are excluded from the first category since they are used, albeit to a limited extent, in carrying on a business undertaking or trading activity. The percentage of the asset used for trade or business purposes must be determined using a method appropriate to the circumstances, for example, one based on time or floor area.

Example 21 – Determination of “substantially the whole of the use” on a time basis

Facts:

The financial year of a religious institution ends on 30 April. The institution has been approved as a PBO by the TEU under section 30.

It acquired a manse in 1995 for occupation by its resident minister. The minister’s term of office ended on 30 June 2006 and the manse was let to a third party from 1 July 2006 to 30 June 2007. The newly appointed minister took occupation on 1 July 2007 and continued to occupy the manse until it was sold on 30 April 2013.

Result:

The PBOs valuation date is 1 May 2006, being the first day of its first year of assessment commencing on or after 1 April 2006. The asset was held for 84 months from valuation date to the date of sale (1 May 2006 to 30 April 2013). During this period the manse was used to carry on PBAs for 72 months and let for 12 months. This represents a usage of 85,71% ($72 / 84 \times 100$) for carrying on PBAs from the valuation date. It follows that the PBO has used substantially the whole of the manse from valuation date in carrying on its PBAs. Paragraph 63A(b)(i) applies and the PBO must accordingly disregard any capital gain or capital loss on the disposal of the manse.

(c) Permissible trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after valuation date was directed at carrying on a business undertaking or trading activity which qualifies for exemption under section 10(1)(cN)(ii)(aa) to (cc).

Any capital gain or capital loss made on the disposal of an asset used in a trading activity or business undertaking as contemplated in the basic exemption rule described in section 10(1)(cN)(ii)(dd), will not be disregarded.

The permissible business undertakings or trading activities are as follows:

- **Related trade**

Under this exclusion rule the receipts and accruals derived from a trading activity or business undertaking of a PBO will not be subject to income tax if the trading or business activity –

- is integral and directly related to the sole or principal object of the PBO,
- is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost, and
- does not result in unfair competition with other taxable entities.

Example 22 – Asset used to carry on a permissible trading activity contemplated in section 10(1)(cN)(ii)(aa)

Facts:

A PBO conducts PBAs of providing facilities for the care of disabled persons. As a therapeutic and remedial activity, the PBO has acquired land on which the residents are taught to grow vegetables. The produce is primarily used for own consumption and any surplus is sold to a local home industry. All the labour is undertaken by the residents. The PBO disposes of the land on which the vegetable gardening takes place resulting in a capital gain.

Result:

The vegetable gardening activity falls within the permissible trading rules of section 10(1)(cN)(ii)(aa) because it forms part of the PBA of caring for and providing training for the residents. The capital gain realised on the sale of the property is disregarded for CGT purposes.

- **Occasional trade**

In order to qualify under this category the trading activity must –

- take place on an occasional or infrequent basis; and
- be undertaken substantially with assistance on a voluntary basis without compensation.

Example 23 – Asset used to carry on a permissible trading activity contemplated in section 10(1)(cN)(ii)(bb)

Facts:

A PBO conducts PBAs of caring for poor and needy persons 60 years and older. The PBO holds an annual fête as a fundraising event for which it has acquired a marquee. The fundraising event is undertaken with assistance from volunteers and the items which are sold were all donated.

Result:

This event qualifies as an occasional trading activity which falls within the ambit of section 10(1)(cN)(ii)(bb). If the marquee is sold, any resulting capital gain or loss must be disregarded for CGT purposes.

- **Ministerial approval**

Under this category the Minister of Finance may approve a specific business undertaking or trading activity by notice in the *Gazette*, having regard to certain factors. To date, no such activities have been approved by the Minister. Any capital gain or loss made on the disposal of assets used in carrying on the specific trade or business as approved by the Minister must be disregarded.

26.7.3 Valuation date

PBOs are required to determine the “valuation date value” of their assets on the “valuation date”. The valuation date for a PBO in existence on 1 April 2006 is the first day of its first year of assessment commencing on or after 1 April 2006. A PBO with a June year-end will have a valuation date of 1 July 2006, which is the commencement of its 2007 year of assessment.

26.7.4 Base cost

The following methods of determining the base cost of an asset on valuation date are available:

- The market value of the asset on valuation date.
- 20% of the proceeds from the disposal of the asset after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after valuation date.
- The time-apportionment base cost of an asset as determined under paragraph 30 of the Eighth Schedule.

(a) Market value

A PBO that wishes to adopt the market-value method for an asset must have valued it within two years from the valuation date.

A PBO that comes into existence after 1 April 2006 does not need a valuation date as it will have acquired its assets at cost.

The table below summarises the valuation dates for PBOs in existence on 1 April 2006 and the final date by which they must complete their valuations.

Summary of valuation dates for PBOs in existence on 1 April 2006

| Tax year ending on the last day of | Valuation date | Final day for completion of valuation |
|------------------------------------|------------------|---------------------------------------|
| March | 1 April 2006 | 31 March 2008 |
| April | 1 May 2006 | 30 April 2008 |
| May | 1 June 2006 | 31 May 2008 |
| June | 1 July 2006 | 30 June 2008 |
| July | 1 August 2006 | 31 July 2008 |
| August | 1 September 2006 | 31 August 2008 |
| September | 1 October 2006 | 30 September 2008 |
| October | 1 November 2006 | 31 October 2008 |
| November | 1 December 2006 | 30 November 2008 |
| December | 1 January 2007 | 31 December 2008 |
| January | 1 February 2007 | 31 January 2009 |
| February | 1 March 2007 | 28 February 2009 |

The two-year valuation period does not apply to the assets set out in the table below:

| Paragraph 31(1) of the Eighth Schedule to the Act | Description | Market value on valuation date |
|---|--|---|
| (a) | Financial instrument listed on a recognised exchange for which a price was quoted on that exchange | Ruling price on last business day before valuation date |
| (c)(i) | <ul style="list-style-type: none"> A participatory interest in a local collective investment scheme in securities A participatory interest in a local collective investment scheme in property | Price at which a participatory interest can be sold to the management company of the scheme on valuation date |

Participatory interests in listed foreign collective investment schemes that are listed, fall under paragraph 31(1)(a) in the above table. However, when unlisted their market value must be established by the PBO within two years of its valuation date.

(b) “Twenty per cent of proceeds” method

This method, which is likely to be a method of last resort, is explained in detail in the *Comprehensive Guide to CGT*.

(c) Time-apportionment base cost

The detailed workings of the time-apportionment method are explained in the *Comprehensive Guide to CGT*. SARS has published a time-apportionment calculator “TAB Calculator” on its website for PBOs and Recreational Clubs which uses an Excel spreadsheet for use by PBOs. An asset acquired by a PBO before the valuation date for no consideration (for example, by donation or inheritance) will have an acquisition cost equal to the market value of the asset at the time of its acquisition for the purposes of determining “B” in the time-apportionment formula.²²

Market value can only be used if the asset has been valued within the prescribed two-year period.

26.7.5 Donations and bequests to a PBO

Any capital gain or loss determined for an asset which has been donated or bequeathed to a PBO, must be disregarded by the donor.²³

27. VAT implications

27.1 Background

The terms “PBO” and “PBA” used for income tax purposes are not used in the VAT Act. Instead the VAT legislation refers to an “association not for gain” and a “welfare organisation”. Both types of entities are included in the VAT system and both qualify for special VAT treatment, provided they qualify to be registered for VAT. However, the benefits which are available will differ, depending on whether the entity meets the criteria set out in **27.3** or **27.4** below.

27.2 Registration

27.2.1 Compulsory registration

For VAT purposes, any person (including an association not for gain) is required to register for VAT if an enterprise is carried on and taxable supplies in excess of R1 million are made in any consecutive 12-month period. It follows that an existing association not for gain that has already exceeded the threshold of R1 million in taxable supplies within the preceding 12 months is required to register from the beginning of the month after the threshold has been exceeded. The person has 21 days to apply for registration after the threshold has been exceeded. Similarly, an existing or newly created association not for gain must register within 21 days of entering into a written contractual commitment to make taxable supplies exceeding R1 million within the next 12 month period.

27.2.2 Voluntary registration

A person making taxable supplies with a value of less than R1 million may choose to register voluntarily if certain conditions are met. Voluntary registration applies when the value of taxable supplies has already exceeded the minimum voluntary threshold of R50 000 within the preceding 12 months, or if there is a written contractual commitment to make taxable

²² See *Comprehensive Guide to CGT* in 8.5A.

²³ For further information on PBOs and CGT see Interpretation Note No. 44 (Issue 2) dated 4 February 2014 “Public Benefit Organisations: Capital Gains Tax”.

supplies exceeding R50 000 within the next 12 month period.²⁴ A person may also qualify to register voluntarily if the R50 000 threshold has not yet been reached, or if that person carries on certain types of activities which will only lead to taxable supplies being made after a period of time (exceeding 12 months). However, registration in respect of these special cases will only be permitted under certain conditions prescribed by regulation.²⁵

A person cannot register if only exempt supplies (such as education) are made. Once the entity has been registered for VAT (or if it is liable to register) it is referred to as a “vendor”.

In addition to the normal rules relating to compulsory and voluntary registration as set out above, there is a special rule that a “welfare organisation” as defined in section 1(1) of the VAT Act may register voluntarily for VAT in respect of certain “welfare activities” carried on, and in that case, the R50 000 threshold does not apply. Refer to **27.4** for more details.

The main benefit of being included in the VAT system is that associations not for gain and welfare organisations can register for VAT voluntarily if they do not meet the compulsory VAT registration threshold. This will allow them to deduct any VAT that they incur as input tax and only levy output tax when there is a charge for the supply of any goods or services.

27.3 Associations not for gain

An “association not for gain”, as defined in section 1(1) of the VAT Act, is essentially a religious institution or other society, association or organisation (including an educational institution of a public character) which is not carried on for profit and is required to use any property or income solely in the furtherance of its aims and objects.

Once an association not for gain has met the requirements for compulsory or voluntary registration as mentioned in **27.2**, it is treated much like any other business that makes taxable supplies, but the following special provisions will apply:

- No output tax is payable on any donations. For example, if a person donates money to an amateur football association to cover costs of new kit and footballs to be used by the players, the association will not declare any output tax on the money received as a donation.
- The association can apply to account for VAT on the cash (payments) basis instead of on the accrual (invoice) basis. Adoption of the cash basis will assist associations that rely extensively on cash flow to fund their day-to-day operations.
- Certain goods which are donated to an association not for gain are exempt from VAT on importation.
- Different activities of associations not for gain can be regarded as separate persons for VAT purposes. This treatment can be used to reduce the impact of VAT.
- Financial assistance in the form of a subsidy or grant which is received from National or Provincial Government (a public authority) is zero-rated. In order to qualify for the zero-rating, the amount received must meet the definition of “grant” in section 1(1) of the VAT Act and be aimed at funding the taxable activities of the organisation as a whole. The receipt must not constitute payment of the consideration charged for a specific taxable supply of goods or services made to the public authority making the payment, or to a third person at the instruction of that public authority.

²⁴ Persons supplying “commercial accommodation” are subject to a minimum threshold for voluntary registration of R60 000 and not R50 000.

²⁵ See sections 23(3)(b) and 23(3)(d) of the VAT Act. At the time of updating this guide, the regulations concerned had not yet been issued.

27.4 Welfare organisations

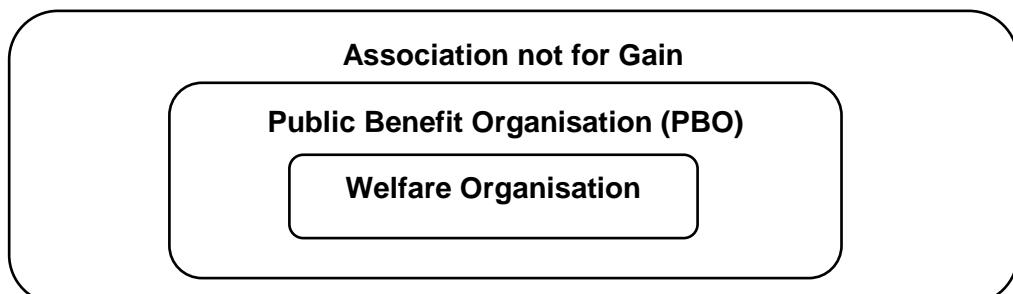
In order to qualify as a welfare organisation for VAT purposes, the organisation must be a PBO contemplated in paragraph (a) of the definition of “public benefit organisation” in section 30(1) that has been approved by the Commissioner under section 30(3) and which carries on a welfare activity. The Ninth Schedule provides for 11 main categories of approved PBAs. However, the VAT list is limited to only five of these categories and is further limited by excluding items which are exempt from VAT. These welfare activities are categorised under the headings: Welfare and Humanitarian; Health Care; Land and Housing; Education and Development; Conservation and Environment and Animal Welfare (but excludes activities which would qualify for exemption under section 12 of the VAT Act). Government Notice No. 112 dated 11 February 2005 as published in *Gazette* No. 27235 determines the welfare activities for purposes of welfare organisations (refer to Annexure A of the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*).

In addition to the special concessions set out in **27.3**, welfare organisations also enjoy the following advantages:

- A welfare organisation is not required to meet the minimum threshold of taxable supplies mentioned in **27.2** to qualify for voluntary VAT registration, as is the case with an association not for gain.
- Even where no charge is made for supplies, the organisation may still register for VAT and obtain input tax relief on its purchases relating to the carrying on of welfare activities. For example, if a welfare organisation has a street collection to raise money to buy clothes for street children, the VAT paid on the purchase of the clothing may be claimed as input tax, but since the clothes are supplied free of charge, there will be no output tax.
- A welfare organisation is a “designated entity” as defined in section 1(1) of the VAT Act. Normally when financial assistance in the form of a “grant” is paid to a designated entity by a public authority, the amount is subject to VAT at the standard rate. However, there is an exception to this rule if the grant recipient is a welfare organisation. If the grant funds are used for carrying on welfare activities, the grant will be subject to VAT at the zero rate.

27.5 The relationship between an association not for gain, public benefit organisation and a welfare organisation

The general relationship between an association not for gain, a PBO and a welfare organisation can be illustrated as follows:



From the aforementioned diagram the following general guidelines can be established:

- An **association not for gain** includes a PBO and a welfare organisation. However, the range of different entities that qualify as an association not for gain is much wider than those that would qualify as a PBO or a welfare organisation. For example, a sporting or social club does not necessarily qualify as a PBO and consequently, it will not be a welfare organisation. The sporting or social club may, however, be an association not for gain and provided that it can register for VAT under the normal rules, the organisation can benefit from the special VAT provisions.
- A **PBO** qualifies as an association not for gain. It will therefore be able to benefit from the special VAT provisions and must also meet the general requirements to qualify for VAT registration as is the case for any other association not for gain. A PBO does not automatically qualify as a welfare organisation for VAT purposes, as this will depend on the type of activities which it conducts.
- A **welfare organisation** must in the first instance be a PBO, which by definition, means that it will also qualify as an association not for gain and will be able to access any benefits under the VAT Act which are available to any other association not for gain. Welfare organisations are not required to meet normal VAT registration requirements by supplying goods or services for a consideration as is the case for any other association not for gain. By design, a welfare organisation conducts an enterprise for VAT purposes merely by carrying on certain “welfare activities” listed in Government Notice No. 112 dated 11 February 2005. A welfare organisation that carries on any of these listed welfare activities is able to register voluntarily for VAT and deduct input tax without further tests.²⁶ However, if it chooses to register, the welfare organisation must charge and account for VAT on any taxable supplies which it makes for a consideration.

27.6 Donations

The term “donation” is defined in section 1(1) of the VAT Act. The characteristics of a donation are as follows:

- It includes a gratuitous payment of an amount of money or the gratuitous supply of goods or services to an association not for gain.
- The donation must be for the purposes of carrying on, or the carrying out, of the purposes of that association.
- There may not be any identifiable direct valuable benefit arising in the form of a supply of goods or services to the donor or a connected person in relation to the donor.
- A payment made by a public authority or municipality does not qualify as a donation.

A donation made by a donor to an association not for gain is specifically excluded from the definition of “consideration” and is not regarded as payment made in respect of a supply of goods or services. Consequently, there will be no output tax payable by the donee if any money, goods or services are received as a donation, and the donor will not be entitled to deduct any input tax on the amounts so donated.

For further particulars relating to the term “donation” and for more comprehensive information on the VAT implications of transactions relating to PBOs, refer to the VAT 414 –

²⁶ This is, however, subject to the principle that the VAT incurred on supplies may not be deducted if they are acquired for exempt or other non-taxable purposes.

Guide for Associations not for Gain and Welfare Organisations which is available on the SARS website.

28. Employees' tax

Employees' tax is the tax that an employer deducts from the remuneration paid to employees. The employees' tax deducted by the employer is paid over to SARS on behalf of each of the employees as a payment towards that employee's personal income tax liability.

A PBO is not automatically exempt from employees' tax and will have to register for employees' tax with the local SARS branch if any of its employees earns remuneration that is sufficiently high to be liable for the deduction of employees' tax.

For more information on employees' tax see the various publications available on the SARS website.

29. Unemployment Insurance Fund (UIF) contributions

An organisation that pays remuneration to its employees will also be liable for unemployment insurance fund (UIF) contributions unless it qualifies for certain exemptions. These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch where the organisation is also liable for employees' tax or SDL.

For more information see the *Guide for Employers in respect of the Unemployment Insurance Fund* on the SARS website.

30. Customs and excise

A PBO is not currently defined in the Customs and Excise Act 91 of 1964. Schedule No. 4 to that Act provides for the partial or full rebate of customs duties on the importation of specific goods under specified circumstances. Some of these goods include goods for the purposes of cultural, educational, charitable, welfare or youth organisations.

Schedule No. 4 is headed “*General Rebates of Customs Duties and Fuel Levy*” and consists of six parts, of which only Parts 1 to 4 are considered possibly relevant for purposes of this guide, namely:

- Part 1 – Specific rebates of customs duties, which includes provisions for rebates of duty on goods imported for heads of state, diplomatic and other foreign representatives and by immigrants, tourists, returning residents and other passengers for their personal use, on re-imported goods, on goods abandoned or destroyed and on lost, destroyed or damaged goods.
- Part 2 – Temporary rebates of customs duties, which includes various goods mostly subject to a specific permit issued by the International Trade Administration Commission.
- Part 3 – Goods temporarily admitted under rebate of customs duty, which provides for goods temporarily admitted for processing, repair, cleaning or reconditioning, goods temporarily admitted for specific purposes and goods temporarily admitted subject to exportation in the same state.
- Part 4 – Rebates of fuel levy, which provides for a rebate of fuel levy payable on imported fuel levy goods lost, destroyed or damaged in circumstances described in the item.

The following rebates of customs duties in Part 1 to Schedule No. 4 may apply to PBOs or welfare organisations:

| Groups | | Type of goods included | Special requirements / circumstances | Extent of rebate |
|---------------|---|--|--|-------------------------|
| (a) | Importations by international organisations | Building material, monumental building stone and articles thereof | For use by the War Graves Commission and similar international organisations | Full duty |
| (b) | Goods for cultural, educational, charitable, welfare or youth organisations or purposes | Goods for the advancement of journalism | <ul style="list-style-type: none"> • The institutions / bodies must be approved and their main purpose must be the advancement of journalism • The goods must have been forwarded unsolicited and free | Full duty |
| | | Goods for disabled persons or the upliftment of indigent persons – <ul style="list-style-type: none"> • Goods (excluding motor vehicles) specially designed for use by persons with physical or mental defects • Machines, implements and materials for use in the manufacture of goods by persons with physical or mental defects | Importations in these categories are subject to the production of a certificate from either some or all of the following: <ul style="list-style-type: none"> • South African National Council for the Blind • South African National Council for the Deaf • South African National Council for Mental Health • National Council for the Physically Disabled in South Africa • South African National Epilepsy League These certificates must be endorsed by the International Trade Administration Commission. The goods imported, must be for the exclusive use by such handicapped persons | Full duty |
| | | Goods (excluding clothing) donated to welfare organisations | <ul style="list-style-type: none"> • The goods must have been forwarded unsolicited and free to a registered welfare organisation (in terms of the National Welfare Act No. 100 of 1978) • A specific permit from the International Trade Administration Commission is required • The goods must be distributed free of charge by such organisation, or • For official use by the organisation | Full duty |

| Groups | | Type of goods included | Special requirements / circumstances | Extent of rebate |
|---------------|-----------------|--|--|--|
| | | Goods (excluding foodstuffs and clothing) donated to any educational organisation, hospital, clinic, welfare organisation, religious organisation or sporting organisation | <ul style="list-style-type: none"> Quantities and conditions are set by the International Trade Administration Commission | Full duty |
| | | Goods for religious instruction or purposes, including: <ul style="list-style-type: none"> altars, fonts, lecterns, pulpits, church decorations, vestments and other appointments (excluding furniture) | <ul style="list-style-type: none"> For use by a religious body | Full duty less the duty in Section B of Part 2 of Schedule No. 1 |
| | | Any goods for use by the National Sea Rescue Institute of RSA, the RSA Lifesaving Society and RSA Lifesaving | | Full duty |
| | | Cups, medals and other trophies which have been awarded abroad to persons or imported to be awarded | Various | Full duty |
| (c) | General rebates | Various goods, that is, <ul style="list-style-type: none"> Electric motors for the ringing of church bells Nets treated with insecticides for the control of mosquitoes Bequeathed goods from abroad Used property of a person who died while temporarily outside the Republic Lifesaving apparatus Fire extinguishing apparatus Food concentrates for infants Goods imported – <ul style="list-style-type: none"> for the relief of distress of persons in cases of famine or other national disaster; under any technical assistance agreement; or in terms of an obligation under any multilateral international agreement to which the Republic is a party Ileal bladder appliances, and parts thereof; skin protective preparations for use with ostomy appliances; incontinence undergarments, including napkins (excluding babies napkins) and incontinence pads | Various | Various |

Specific requirements could apply before the rebate of duty will be granted. A full detailed list of the goods, circumstances and the rebates allowed can be obtained from the nearest Customs and Excise Controller's office.

Annexure A – Other approvals or exemptions under the Income Tax Act, 1962, dealt with by the TEU

- **Section 10(1)(cA)(i)** – The receipts and accruals of an institution, board or body established by or under law which –
 - conducts scientific, technical or industrial research;
 - provides necessary or useful commodities to the State or members of the general public; or
 - carries on activities to promote commerce, industry or agriculture.
- **Section 10(1)(cA)(ii)** – The receipts and accruals of a company, all the shares of which are held by an entity contemplated in section 10(1)(cA)(i) and whose objects are ancillary or complementary to the object of its shareholder.
- **Section 10(1)(cO)** – A partial exemption of certain receipts and accruals of a recreational and social club that has been approved by the Commissioner under section 30B.
- **Section 10(1)(d)(iii)** – The receipts and accruals of:
 - Any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner under section 30B.
- **Section 10(1)(d)(iv)** – The receipts and accruals of:
 - A company, society or other association of persons (being members of such organisations) promoting the common interests of persons carrying on a particular kind of business, profession or occupation approved by the Commissioner under section 30B.
- **Section 10(1)(e)(i)(cc)** – Exemption in respect of levies received by:
 - An association of persons established to manage the collective interests common to all its members in respect of common immovable property.²⁷

²⁷ Interpretation Note No. 64 (Issue 2) dated 6 November 2012 “Income Tax Exemption: Bodies Corporate established under the Sectional Titles Act No. 95 of 1986, Share Block Companies established under the Share Blocks Control Act No. 59 of 1980 and Associations of Persons Managing the Collective Interests Common to all Members”.

Annexure B – Section 10(1)(cN) of the Income Tax Act, 1962

10. Exemptions.—(1) There shall be exempt from normal tax—

- (cN) the receipts and accruals of any public benefit organisation approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—
 - (i) otherwise than from any business undertaking or trading activity; or
 - (ii) from any business undertaking or trading activity—
 - (aa) if the undertaking or activity—
 - (A) is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of “public benefit organisation” in section 30;
 - (B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
 - (C) does not result in unfair competition in relation to taxable entities;
 - (bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;
 - (cc) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—
 - (A) the scope and benevolent nature of the undertaking or activity;
 - (B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;
 - (C) the profitability of the undertaking or activity; and
 - (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or
 - (dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—
 - (i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
 - (ii) R200 000;

Annexure C – Section 18A of the Income Tax Act, 1962

18A. Deduction of donations to certain organisations.—(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to—

- (a) any—
 - (i) public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30; or
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i), which—
 - (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section; and
 - (bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);
- (b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a); or
- (bA) any agency contemplated in the definition of “specialized agencies” in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), which—
 - (i) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;
 - (ii) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section; and
 - (iii) waives diplomatic immunity for the purposes of subsection (5)(i); or
- (c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a) to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

- (A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$$A = B \times 0,005$$

in which formula:

- (AA) “A” represents the amount to be determined;
- (BB) “B” represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or
- (B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section: Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the department carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the department shall be allowed as a deduction under subsection (1).

(1B) Any activity determined by the Minister in terms of subsection (1)(a) or any requirements prescribed by the Minister in terms of subsection (1A), must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those requirements, as the case may be, in the *Gazette*, for incorporation into this Act.

(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4(d) of Part II of the Ninth Schedule, must expressly provide that the organisation—

- (a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—
 - (i) that donation is made by that person on or after 1 August 2002; and
 - (ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;
- (b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and
- (c) must utilise the amount of—
 - (i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and
 - (ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by—

- (a) a receipt issued by the public benefit organisation, institution, board, body or agency or the department concerned, on which the following details are given, namely—
 - (i) the reference number of the public benefit organisation, institution, board, body or agency issued by the Commissioner for the purposes of this section;
 - (ii) the date of the receipt of the donation;
 - (iii) the name of the public benefit organisation, institution, board, body or agency or the department which received the donation, together with an address to which enquiries may be directed in connection therewith;
 - (iv) the name and address of the donor;
 - (v) the amount of the donation or the nature of the donation (if not made in cash);
 - (vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board, body or agency concerned or, in the case of a department in carrying on the relevant public benefit activity; or
- (b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given.

(2A) A public benefit organisation, institution, board, body or department may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—

- (a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)(a) which carries on activities contemplated in Parts I and II of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule;
- (b) in the case of a public benefit organisation contemplated in subsection (1)(b)—
 - (i) that organisation will within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 75 per cent of all funds received by way of donation during that year in respect of which receipts were issued: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds; and
 - (ii) if that public benefit organisation provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule; or
- (c) in the case of a department, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must obtain and retain an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).

(2C) The Accounting Authority contemplated in the Public Finance Management Act for the department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, other than immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be deemed to be an amount equal to—

- (a) where such property constitutes—
 - (i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8)(C); or
 - (ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8)(C) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or
- (b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of—
 - (i) the fair market value of that property on the date of that donation; or
 - (ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or
- (c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of—
 - (i) the fair market value of that property on the date of that donation; or

- (ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or
- (d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—
 - (i) the fair market value of that property on the date of that donation; or
 - (ii) the cost to the taxpayer of such property.

(3A) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be determined in accordance with the formula:

$$A = B + (C \times D)$$

in which formula:

- (a) "A" represents the amount deductible in respect of subsection (1);
- (b) "B" represents the cost of the immovable property being donated;
- (c) "C" represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and
- (d) "D" represents 66,6 per cent in the case of a natural person or special trust or 33,3 per cent in any other case.

(3B) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is—

- (a) a share in a listed company; or
- (b) issued by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).

(4) The provisions of subsections (9) and (10) of section 30 shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1)(a).

(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board, body or agency (other than an institution, board or body in respect of which subsection (5B) applies) has—

- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board, body or agency was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board, body or agency for purposes not covered by such objects;
- (b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to that organisation, institution, board, body or agency by that taxpayer; or
- (c) issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection,

the Commissioner may by notice in writing addressed to that person direct that—

- (i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board, body or agency during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board, body or agency in that year; and
- (ii) if corrective steps are not taken by that public benefit organisation, institution, board, body or agency within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board, body or agency in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5A) If the Commissioner has reasonable grounds for believing that any regulating or co-ordinating body of a group of public benefit organisations, institutions, boards or bodies contemplated in section 30(3A) or subsection (6) fails to—

- (a) take any steps contemplated in section 30(3A) or subsection (6), to exercise control over any public benefit organisation, institution, board or body in that group; or
- (b) notify the Commissioner where it becomes aware of any material failure by any public benefit organisation, institution, board or body over which it exercises control to comply with any provision of this section,

the Commissioner may by notice in writing addressed to that regulating or co-ordinating body direct that if corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice, any receipt issued by public benefit organisations, institutions, boards or bodies in that group in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5B) If the Commissioner has reasonable grounds for believing that any accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner—

- (a) must notify the National Treasury and the Provincial Treasury (if applicable) of the contravention; and
- (b) may by notice in writing addressed to that accounting officer or accounting authority direct that, if corrective steps are not taken by that accounting officer or accounting authority within a period stated by the Commissioner in that notice, any receipt issued by that institution in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(6) The Commissioner may, for the purposes of this section, approve a group of institutions, boards or bodies contemplated in subsection (1)(a)(ii), sharing a common purpose which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those institutions, boards or bodies in order to ensure that they comply with the provisions of this section.

(7) Any person who is—

- (i) in a fiduciary capacity responsible for the management or control of the income and assets of any public benefit organisation, institution, board or body contemplated in this section; or
- (ii) the accounting officer or accounting authority contemplated in the Public Finance Management Act or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies,

who intentionally fails to comply with any provisions of this section, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

Annexure D – Section 30 of the Income Tax Act, 1962

30. Public benefit organisations.—(1) For the purposes of this Act—

“public benefit activity” means—

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

“public benefit organisation” means any organisation—

- (a) which is—
 - (i) a non-profit company as defined in section 1 of the Companies Act or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
 - (ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;
- (b) of which the sole or principal object is carrying on one or more public benefit activities, where—
 - (i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;
 - (ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and
 - (iii)
- (c) where—
 - (i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
 - (ii)
 - (iii)

(2) Any activity determined by the Minister in terms of paragraph (b) of the definition of “public benefit activity” in subsection (1) or any conditions prescribed by the Minister in terms of subsection (3)(a) must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those conditions in the *Gazette*, for incorporation into this Act.

(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which—

- (a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;
- (b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which is—
 - (i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person;
 - (ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;

- (iii) in the case of a public benefit organisation contemplated in paragraph (a)(i) of the definition of "public benefit organisation" in subsection (1), required on dissolution to transfer its assets to—
 - (aa) any public benefit organisation which has been approved in terms of this section;
 - (bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or
 - (cc) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a), which is required to use those assets solely for purposes of carrying on one or more public benefit activities;
- (iiiA) in the case of a branch of a public benefit organisation contemplated in paragraph (a)(ii) of the definition of "public benefit organisation" in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such branch to any public benefit organisation, institution, board, body, department or administration contemplated in subparagraph (iii), if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic;
- (iv)
- (v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- (vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- (c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (d) has not and will not pay any remuneration, as defined in the Fourth Schedule, 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 and has not and will not economically benefit any person in a manner which is not consistent with its objects;
- (e) complies with such reporting requirements as may be determined by the Commissioner;
- (f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and
- (g)
- (h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

(3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.

(3B) Where an organisation applies for approval, the Commissioner may approve that organisation for the purposes of this section with retrospective effect, to the extent that the Commissioner is satisfied that that organisation during the period prior to its application complied with the requirements of a "public benefit organisation" as defined in subsection (1).

(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.

(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply

(a)

(b)

if the person responsible in a fiduciary capacity for the funds and assets of such organisation furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

(5) Where the Commissioner is—

(a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or

(b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of the organisation with effect from the commencement of that year of assessment, where corrective steps are not taken by that organisation within a period stated by the Commissioner in that notice.

(5A) Where any regulating or co-ordinating body contemplated in subsection (3A)—

(a) with intent or negligently fails to take any steps contemplated in that subsection to exercise control over any public benefit organisation; or

(b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations with effect from the commencement of that year of assessment, where corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice.

(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any public benefit organisation, institution, board or body or the government as contemplated in subsection (3)(b)(iii).

(6A) As part of—

(a) the dissolution of an organisation contemplated in paragraph (a)(i) of the definition of "public benefit organisation" in subsection (1); or

(b) the termination of the activities of a branch contemplated in paragraph (a)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic,

the organisation or branch must transfer its assets to any public benefit organisation, institution, board or body or the government contemplated in subsection (3)(b)(iii).

(7) If the organisation fails to transfer, or to take reasonable steps to transfer, its assets, as contemplated in subsection (6) or (6A), an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the organisation, must for purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment in which approval was withdrawn or the dissolution of the organisation or termination of activities took place.

(8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.

(9) Any books of account, records or other documents relating to any approved public benefit organisation shall—

- (a) where kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after the date of the last entry in any book; or
- (b) where not kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after completion of the transactions, act or operations to which they relate.

(10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—

- (a) to answer any questions relating to such organisation; or
- (b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or
- (c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation and who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

(12)

Annexure E – Part I of the Ninth Schedule to the Income Tax Act, 1962

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.
- (e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.

LAND AND HOUSING

- 3. (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) The provision of residential care for retired persons, where—
 - (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
 - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
- (d) Building and equipping of—
 - (i) clinics or crèches; or
 - (ii) community centres, sport facilities or other facilities of a similar nature, for the benefit of the poor and needy.
- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
- (f) Granting of loans for purposes of subparagraph (a) or (b), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.
- (g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
- (h) The provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations.

EDUCATION AND DEVELOPMENT

- 4. (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- (d) “Further education and training” provided by a “public college” or “private college” as defined in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.
- (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- (f) The training or education of persons with a severe physical or mental disability.
- (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- (h) The provision of educare or early childhood development services for pre-school children.

- (i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

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.

CULTURAL

- 6. (a) The advancement, promotion or preservation of the arts, culture or customs.
- (b) The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries.
- (c) The provision of youth leadership or development programmes.

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

- 7. (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
- (b) The care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.
- (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.
- (d) The establishment and management of a transfrontier area, involving two or more countries, which—
 - (i) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and
 - (ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.

RESEARCH AND CONSUMER RIGHTS

8. (a) Research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research.
- (b) The protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

SPORT

9. The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

10. The provision of—
 - (a) funds, assets, services or other resources by way of donation;
 - (b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
 - (c) funds by way of loan at no charge; or
 - (d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,
to any—
 - (i) public benefit organisation which has been approved in terms of section 30;
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
 - (iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
 - (iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a).

GENERAL

11. (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.
- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—
 - (i) the foreign participation in that event; and
 - (ii) the economic impact that event may have on the country as a whole.
- (c) The promotion, monitoring or reporting of development assistance for the poor and needy.
- (d) The provision of funds to an organisation—
 - (i) which is incorporated, formed or established in any country other than the Republic;
 - (ii) which is exempt from tax on income in that other country;
 - (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
 - (iv) that carries on each of its activities—
 - (aa) in a non-profit manner;
 - (bb) with altruistic or philanthropic intent;

- (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
- (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).

Annexure F – Part II of the Ninth Schedule to the Income Tax Act, 1962

NINTH SCHEDULE

PART II

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 traumatised 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.
- (e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.

EDUCATION AND DEVELOPMENT

3.
 - (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
 - (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
 - (c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.
 - (d) “Further education and training” provided by a “public college” or “private college” as defined in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.
 - (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
 - (f) The training or education of persons with a severe physical or mental disability.
 - (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
 - (h) The provision of educare or early childhood development services for pre-school children.
 - (i) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
 - (j) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
 - (k) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
 - (l) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
 - (m) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
 - (n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10 (1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
 - (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
 - (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

4.
 - (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
 - (b) The care of animals, including the rehabilitation or prevention of the ill-treatment of animals.
 - (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.

(d) The establishment and management of a transfrontier area, involving two or more countries, which—

- (i) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and
- (ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries of the peace park, and the building of peace and understanding between the nations concerned.

LAND AND HOUSING

5. (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.

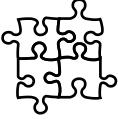
(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).

(c) Building and equipping of clinics or crèches for the benefit of the poor and needy.

(d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

(e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

Annexure G – Example of section 18A receipt

| | |
|--|--|
|  <p>ABC PRIMARY SCHOOL Oxford Street, Pretoria, 0001 – Telephone (000) 000-0000 Exemption Reference Number: 930000000</p> | |
| DONATION RECEIPT: Issued under section 18A of the Income Tax Act of 1962. The donation received below will be used exclusively for the objects of ABC Primary School in carrying out public benefit activities approved under section 18A. | |
| RECEIPT NO. | 0001 |
| NAME OF DONOR | |
| ADDRESS OF DONOR | <hr/> <hr/> <hr/> |
| AMOUNT OF DONATION | R _____ |
| NATURE OF DONATION | CASH Amount: R _____ OTHER • Description: _____ • Details how the value was determined: _____ _____ • Value: R _____ |
| DATE OF DONATION | |
| I confirm that the above donation was received by ABC Primary school and will be used exclusively for the objects of conducting a public benefit activity approved by the Minister of Finance in Part II of the Ninth Schedule to the Income Tax Act, 1962. _____ _____ HEADMASTER/SECRETARY/BURSAR | |
| DATE | |

Annexure H – Regulations

Regulation No R302 dated 28 February 2003 (Regulation Gazette No 24941)

REGULATIONS ISSUED IN TERMS OF PARAGRAPH 4(o) OF PART I OF THE NINTH SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS FOR THE PROVISION OF SCHOLARSHIPS, BURSARIES AND AWARDS FOR STUDY, RESEARCH AND TEACHING

By virtue of the power vested in me by paragraph 4(o) of Part I of the Ninth Schedule to 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 any scholarships, bursaries and awards for study, research and teaching must be provided for purposes of that paragraph and section 30 of the Act.

T. A. MANUEL

MINISTER OF FINANCE

SCHEDULE

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.
2. For purposes of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, an organisation which provides any scholarships, bursaries and awards for study, research or teaching must comply with the conditions prescribed in these regulations.
3. Subject to regulation 4, the founding document of the organisation contemplated in regulation 2, must expressly provide that –
 - (a) all scholarships, bursaries or awards granted by that organisation must be *bona fide* and be granted to an individual on grounds of objective merit or need;
 - (b) no scholarship, bursary or award granted by that organisation may –
 - (i) be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;
 - (ii) be subject to conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary or award; or
 - (iii) be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or that organisation (or any associated institution in relation to that donor or organisation) or any relative of that person, unless circumstances indicate that that scholarship, bursary or award would have been granted to that person or his or her relative, even if that person had not been an employee of that donor, organisation or associated institution;

- (c) all decisions regarding the granting of scholarships, bursaries and awards must be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted; and
- (d) all scholarships, bursaries and awards granted by that organisation in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
 - (i) to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
 - (ii) to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in subparagraph (i).

4. Where the founding document of an organisation which was established before 1 January 2003 does not expressly provide for the conditions contemplated in regulation 3, the organisation will be deemed to comply with regulation 3 until 31 December 2007, if the person responsible in a fiduciary capacity for the funds and assets of that organisation submits a written undertaking to the Commissioner that all scholarships, bursaries and awards granted by that organisation comply with the provisions of these regulations.
5. Copies of all documents and information relating to any scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award is granted must be made available to the Commissioner on request.

Regulation No. R333 dated 8 April 2005 (Regulation Gazette No 27455)

REGULATIONS ISSUED IN TERMS OF PARAGRAPH 3(o) OF PART II OF THE NINTH SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS FOR THE PROVISION OF SCHOLARSHIPS, BURSARIES AND AWARDS FOR STUDY, RESEARCH AND TEACHING

By virtue of the power vested in me by paragraph 3(o) of Part II of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby determine that the regulations issued in terms of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, and published under Government Gazette Notice No. R.302 in Gazette No 24941 of 28 February 2003, and any amendments thereto, apply *mutatis mutandis* for purposes of paragraph 3(o) of Part II of the Ninth Schedule to the Act.

T. A. MANUEL
MINISTER OF FINANCE

Annexure I – Contact details of the TEU

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**