



Legal Counsel

Income Tax

**Basic Guide to Income Tax Exemption
for Public Benefit Organisations
(Issue 2)**



South African Revenue Service

Basic Guide to Income Tax Exemption for Public Benefit Organisations

Preface

This guide has been prepared to assist organisations in understanding the basic requirements to obtain and retain approval as a public benefit organisation. It does not go into comprehensive technical and legal detail and should therefore not be used as a legal reference. For comprehensive information on the tax treatment of PBOs see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 5). The *Basic Guide to Section 18A Approval* (Issue 2) provides a basic understanding of the requirement to obtain and retain approval under section 18A to issue tax-deductible receipts.

This guide 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 relevant application procedure.

Should you require more information you may –

- contact the SARS Tax Exemption Unit –

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- visit your nearest SARS branch office;
- contact the SARS National Contact Centre on 0800 00 7277;
- visit the SARS website; or
- contact your own tax advisor or tax practitioner.

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

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Glossary

In this guide unless the context indicates otherwise –

- **“branch of a foreign tax-exempt organisation”** means any branch established in South Africa by any company, association or trust incorporated, formed or established in a country outside South Africa and which is itself exempt from income tax in that other country;
- **“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;
- **“Ninth Schedule”** means the Ninth Schedule to the Act;
- **“NPC”** means a “non-profit company” as defined in section 1 of the Companies Act 71 of 2008;
- **“NPO”** means a “non-profit organisation” as defined in section 1 of the Nonprofit Organisations Act 71 of 1997;
- **“Part I”** means Part I of the Ninth Schedule;
- **“partial taxation”** means the method of taxing the receipts and accruals derived from business undertakings or trading activities which fall outside the permissible business or trading activity categories including the basic exemption as set out in section 10(1)(cN)(ii);
- **“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) which has been approved by the Commissioner under section 30(3);
- **“prescribed requirements”** mean the formal conditions and requirements set out in section 30 that an organisation must comply with to qualify for approval as a PBO;
- **“section”** means a section of the Act;
- **“section 10(1)(cN)”** means the section that provides for the exemption from income tax of certain receipts and accruals of PBOs and the taxation of receipts and accruals which fall outside the permissible business undertaking or trading activity categories provided in that section;
- **“section 30”** means the section setting out the conditions and requirements that an organisation must comply with to obtain and retain approval as a PBO;
- **“testamentary trust”** means a trust established under the will of a deceased person;
- **“TEU”** means the Tax Exemption Unit, a dedicated office within SARS established to consider all applications by organisations for approval as a PBO, to raise assessments on PBOs, and to monitor compliance by approved PBOs with the legislative requirements to prevent malpractice and abuse;
- **“the Act”** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Introduction

The mere fact that an organisation has a non-profit motive or is established or registered as an NPO registered under the NPO Act, or is established as an NPC, does not mean that it automatically qualifies for preferential tax treatment or approval as a PBO.

An organisation will enjoy preferential tax treatment only after it has applied for and been granted approval as a PBO by the Commissioner, and continues to comply with the relevant prescribed requirements.

2. Approval as a public benefit organisation

The Commissioner will approve an organisation as a PBO only if –

- its sole or principal object is to carry on one or more PBAs; and
- it complies with all the prescribed requirements (see **10**).

The approval as a PBO is generally effective from the date the approval is granted by the Commissioner, unless it is granted with retrospective effect. The Commissioner must be satisfied that the organisation complied with the requirements of section 30 during the period before it lodged its application for approval. Each request for retrospective approval will be considered on its own merits.

An organisation approved as a PBO is subject to partial taxation (see **17**).

3. Type of organisation qualifying for approval

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

- An NPC incorporated in South Africa.
- A trust established in South Africa.
- An association of persons formed or established in South Africa.
- A branch of a foreign tax-exempt organisation.

4. Object of the organisation

The sole or principal object of an organisation must be to carry on one or more PBAs. It is unacceptable to make a general statement in the founding document that the object of the organisation is to carry on one or more PBAs, or to simply list the PBAs as they appear in the Ninth Schedule. Specific activities including projects and programmes carried on by the organisation must be set out in its founding document.

5. Public benefit activities

The PBAs are listed in Part I and are categorised as follows:

- Welfare and Humanitarian (paragraph 1)
- Health Care (paragraph 2)
- Land and Housing (paragraph 3)
- Education and Development (paragraph 4)

- Religion, Belief or Philosophy (paragraph 5)
- Cultural (paragraph 6)
- Conservation, Environment and Animal Welfare (paragraph 7)
- Research and Consumer Rights (paragraph 8)
- Sport (paragraph 9)
- Providing of Funds, Assets and Other Resources (paragraph 10)
- General (paragraph 11)

See **Annexure C** for a complete list of PBAs falling under each of the above categories.

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

Note:

- Regulations prescribed by the Minister setting out the relevant conditions relating to the granting of loans by a PBO carrying on PBAs 1(p)(iii), 3(f) and 4(o) in Part I have, as yet, not been published.
- PBA 4(o) in Part I is subject to conditions prescribed by the Minister of Finance by regulation in the *Government Gazette*. See the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 5) in paragraph 22.3 for the relevant conditions.

6. Manner in which public benefit activities 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. An organisation carrying on a business undertaking or trading activity as part of a PBA may, however, qualify as a PBO provided it meets all the business or trading requirements discussed in 17.

7. No self-interest

A PBA may not directly or indirectly promote the economic self-interest of any fiduciary or employee. The payment of reasonable remuneration to office bearers or employees for conducting the affairs of a PBO to enable it to achieve its objectives is allowed.

8. 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. The general public may include a specific sector but may not be for the benefit of a small and exclusive group.

9. Founding document

An organisation that applies for approval as a PBO must have a founding document. The founding document will depend on the type of organisation established:

- An NPC will have a memorandum of incorporation.
- A trust will have a trust deed.

- A testamentary trust will have a will of a deceased person.
- An association of persons will have a constitution adopted by its members.
- A branch of a foreign tax-exempt organisation will have the founding document of the foreign tax-exempt organisation.

The conditions set out in **3** to **9** above must be met in order to qualify for approval as a PBO. In addition to those conditions, the prescribed requirements as discussed in **10** must be included in the founding document, except in the case of a branch of a foreign tax-exempt organisation or a testamentary trust (see **14**).

The founding document must be submitted to the Commissioner as part of the application for approval as a PBO. The founding document as a whole will be examined to ensure that the prescribed requirements are included.

10. Prescribed requirements

10.1 Fiduciary responsibility

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

Natural persons are considered to be connected if they are relatives in relation to one another. A relative includes a person's spouse and anyone related to the person or the person's spouse within the third degree of consanguinity.

10.2 Prohibition from distribution

A PBO may not distribute its funds directly or indirectly to any person unless the distribution occurs when a PBA is carried on. The funds must be used solely for the sole or principle object for which the PBO was established, which must be to carry on one or more PBA, as set out in its founding document.

Surplus funds may be accumulated or invested by a PBO for future use in carrying on its sole or principal object. The surplus funds may be invested as chosen provided such investment 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.

10.3 Dissolution

On dissolution, a PBO must transfer its remaining assets to one or more of the following organisations:

- another PBO;
- any institution, board or body established by or under law, which is approved by the Commissioner under section 10(1)(cA)(i); or
- any sphere of government in South Africa.

This requirement will apply to a branch of a foreign tax-exempt organisation only if more than 15% of its receipts and accruals are derived from a source within South Africa during the period of three years preceding the termination of its activities in South Africa.

See **15** for the consequences of failing to transfer the assets as set out above.

10.4 Non-revocable donations

A PBO may not accept any donation that may be withdrawn by the donor for reasons other than the PBO failing to meet the purposes and conditions of the donation. A donor may not impose conditions which will allow the donor or a connected person in relation to the donor to get some direct or indirect benefit from the use of the donation. This requirement will not apply if the donor is another PBO or an institution, board or body exempt under section 10(1)(cA)(i), that has as its sole or principal object the carrying on any PBAs.

10.5 Amendments to the founding document

A PBO must submit a copy of any amendment to its founding document to the Commissioner as soon as it has been affected. This allows the Commissioner to ensure that any amendment is not contrary to the prescribed requirements.

It will be unacceptable for an organisation to submit a founding document that complies with the Act at the time of applying for approval and then, after obtaining PBO approval, to amend the founding document to include non-qualifying provisions.

11. Other requirements

11.1 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. This rule will apply irrespective of whether the PBO itself or any other person benefitted from the reduction, postponement or avoidance of any applicable tax, duty or levy such as income tax, capital gains tax, value-added tax, transfer duty or employees' tax.

11.2 Remuneration

Employees, office bearers, members and 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 objects of the PBO.

11.3 Reporting

A PBO must comply with any reporting requirements determined by the Commissioner (see **25**).

11.4 Compliance requirement for public benefit organisations providing funds to associations of persons

A PBO that provides funds, assets, services or other resources to an association of persons referred to in PBA 10 in Part I 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 in this PBA is a voluntary informal association or group of persons that do not have a founding document. The association of persons cannot be approved as a PBO (see **9**).

A PBO that provides funds to any association of persons is responsible to satisfy the Commissioner that reasonable steps have been taken to ensure that the funds, assets, services or other resources provided to an association of persons, has been used for the purpose for which they have been given, which must be to carry on any PBAs, and not used to benefit any individual person.

11.5 Payments to political parties

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

12. Group registration

The Commissioner may grant approval to a group of organisations which fall directly under the direction and supervision of a co-ordinating body provided certain conditions and requirements are complied with, such as the PBOs within the group must share a common purpose, carry on the same PBAs, and prepare consolidated annual financial statements. The co-ordinating body must take responsibility to ensure that all the organisations within the group comply with section 30.

13. Registration as a non-profit organisation

Registration as an NPO is not a condition for approval as a PBO since the registration as an NPO is a voluntary registration lodged with the Department of Social Development.

14. Written undertaking

A branch of a foreign tax-exempt organisation which is governed under the founding document of that foreign tax-exempt organisation, and a testamentary trust which comes into existence after the death of the testator, must submit a written undertaking to the Commissioner since their founding documents are legally incapable of being amended to comply with the prescribed requirements for approval as a PBO. The written undertaking must be submitted, as part of the application for approval as a PBO, to confirm that the branch or testamentary trust will be administered in accordance with the prescribed requirements (see **10**).

All other organisations (see **3**) must provide for the prescribed requirements in their founding documents before the Commissioner can grant approval as a PBO.

15. Withdrawal of approval

15.1 Circumstances under which approval may be withdrawn

The Commissioner may withdraw the approval as a 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 Commissioner must first give notice to the transgressing PBO of the intention to withdraw the approval as a PBO and also specify a period within which corrective steps must be taken. If no corrective steps are taken by the PBO within the period stated in the

notice, the approval will be withdrawn from the beginning of the year of assessment in which the non-compliance or failure by the PBO occurred.

15.2 Consequences of withdrawal

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

- another PBO;
- any institution, board or body established by or under law, which has been approved by the Commissioner under section 10(1)(cA)(i); or
- any sphere of government in South Africa.

Failure to transfer or take reasonable steps to transfer the remaining assets of the PBO on withdrawal of its approval as a PBO will result in an amount equal to the market value of the assets not transferred less an amount equal to the *bona fide* liabilities of the PBO being deemed to be taxable income which accrued to the PBO during the year of assessment in which the approval was withdrawn.

15.3 Reapplication after withdrawal

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

16. Non-compliance by fiduciary

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.

17. Partial taxation

A PBO is permitted to carry on a business undertaking or trading activity provided its sole or principal object remains the carrying on of PBAs. Receipts and accruals from a business undertaking or trading activity will be exempt from income tax only if they fall within one of the four categories of exemption included in section 10(1)(cN). These four categories are dealt with in **17.1**. Each category 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 income tax under the exemptions in **17.1.1** to **17.1.3**. There is, however, a limitation on the amount of the exemption discussed in **17.1.4**.

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

For comprehensive information on partial taxation as well as a step-by-step guide to calculating the taxable income of PBOs see Interpretation Note No. 24 (Issue 3) dated

17.1 Categories of permissible business undertakings or trading activities

17.1.1 Integral and directly related trade

The following requirements must be complied with to qualify for this exemption:

- The business undertaking or trading activity must be integral and directly related to the sole or principal object, which is the PBA carried on by the PBO.
- Substantially the whole of the business undertaking or trading activity must be conducted on a cost-recovery basis. This requirement will be met when not less than 85% of the business undertaking or trading activity is carried out to recover direct and reasonable indirect costs.
- The business undertaking or trading activity should not result in unfair competition with other taxable entities 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.

17.1.2 Occasional trade

The following requirements must be complied with to qualify for this exemption:

- The business undertaking or trading activity must take place on an occasional, infrequent basis, or as a special event.
- The business undertaking or trading activity must be predominantly undertaken on a voluntary basis, without compensation. This requirement excludes the repayment of reasonable and necessary out-of-pocket expenditure.

17.1.3 Ministerial approval

A business undertaking or trading activity may be approved by the Minister of Finance by notice in the *Gazette* taking certain factors into account. Any submission in this regard must clearly demonstrate the benefits of the business undertaking or trading activity for the general public, and motivate why it will not result in unfair competition with other taxpayers, or erode the tax base.

17.1.4 Basic exemption

The greater of 5% of the total receipts and accruals from all business or trading activities not qualifying for exemption under the permissible business or trading categories, set out in **17.1.1**, **17.1.2** or **17.1.3**, of the PBO or R200 000 will be deducted from those receipts and accruals.

The basic exemption is applied collectively to the total receipts and accruals derived from all such business undertakings or trading activities and not individually to each such undertaking or activity.

With a group registration the total receipts and accruals of all the individual PBOs within the group 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 applies to a PBO, which in this case is the co-ordinating body of the group of PBOs.

18. Rate of tax

A PBO 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 an NPC, a trust, or as an association of persons.

19. Application for approval

An organisation not formally approved as a PBO must complete the prescribed application form (EI 1). The completed form with the required registration information together with all requested supporting documentation must be submitted to the TEU or to the nearest SARS branch office.

The notification of approval as a PBO is issued by the TEU by letter. The letter contains a unique reference number generally referred to as a PBO or exemption reference number, which is a different reference number to the taxpayer reference number (see **25.1**). The organisation is required to keep this letter confirming approval as part of its records (see **24**).

A written notification will also be issued by the TEU to the organisation if the approval is not granted together with reasons why the organisation failed to meet the conditions and requirements of section 30.

20. Approval not granted or withdrawn

An organisation that has not been approved by the Commissioner as a PBO or which has had its approval withdrawn will be liable for income tax and other taxes and duties as a normal taxpayer.

21. 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, such as donations tax, estate duty, transfer duty, dividends tax, securities transfer tax and skills development levy, provided the conditions and requirements relevant to those taxes and duties are met.

22. Furnishing of information

The Commissioner 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.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions requested by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

23. Changes in registered particulars

A PBO must inform SARS of changes in its registered particulars, such as its postal, physical or electronic addresses, representative taxpayer and banking particulars.

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

24. Record-keeping

All PBOs must keep records for five years from the date of the submission of a return. There are, however, circumstances in which records may be required to be retained for longer periods.

The records, books of account, or documents which must be kept and retained may include anything that contains a written, sound or pictorial record or other record of information whether in physical or electronic form.

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a PBO is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

25. Income tax returns

A PBO must submit income tax returns even if its approval or exemption results in no tax liability. The income tax return enables the Commissioner to annually assess whether the PBO is operating within the prescribed limits of its approval and to determine whether the partial taxation principles have been applied to receipts and accruals derived from a business undertaking or trading activity which does not qualify for exemption.

The prescribed Income Tax Return for Exempt Organisations (IT12EI) must be submitted on an annual basis. It may be obtained from –

- the eFiling website;
- the TEU;
- any SARS branch office; or
- the SARS National Contact Centre.

A return must be a full and true return and be signed by the PBO or by the PBO's duly authorised representative. The persons signing the return will be regarded as being cognisant of the statements made in the return.

Income tax returns may be submitted manually or electronically on the eFiling website.

Non-receipt of a return does not affect the obligation to submit an income tax return. A person who wilfully fails or neglects to submit a return is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

25.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of the registration for income tax purposes. For a group registration a taxpayer reference number will be allocated to the coordinating body and not to each individual PBO within the group.

The taxpayer reference number must be included when filing a return or any document with SARS.

25.2 Supporting documentation

It is not a requirement for supporting documents, such as financial statements or any other documents necessary to support the information contained in the income tax return, to be submitted together with the income tax return.

The PBO will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

25.3 Financial statements

A PBO that is an NPC must comply with the requirements of the Companies Act.

26. Tax clearance certificate

A tax clearance certificate (TCC) will be issued only after a PBO has completed the required prescribed application form. In order for a PBO to apply for a TCC, the PBO must first be registered for income tax purposes and allocated a taxpayer reference number.

A TCC will be issued only if, in addition to being registered for income tax purposes, the following requirements are met:

- The taxpayer reference number as well as any other tax reference numbers which may be allocated for purposes of employees' tax or value-added tax must be active. In other words, the reference numbers must not be deregistered or suspended on the SARS register.
- There must be no outstanding debt for any of the taxes.
- There must be no outstanding returns except those for which an arrangement acceptable to SARS has been made for their submission.

27. Objection and appeal

Any decision of SARS in the exercise of its discretion under section 30 is subject to objection and appeal. A PBO may object to a decision or an assessment within 30 days from the date of the decision or assessment. The following prescribed forms, whichever apply, must be submitted together with detailed grounds on which the objection or appeal is made, in order for an objection or appeal to be valid:

- A Notice of Objection (NOO) or Alternative Dispute Resolution (ARD 1).
- A Notice of Appeal (NOA) or Alternative Dispute Resolution (ADR 2).

28. Provisional tax payments

PBOs are not required to submit provisional tax payments. Any liability to income tax on taxable income will become payable on assessment.

29. Employees' tax

A PBO is not exempt from the obligation to deduct or withhold employees' tax. A PBO must register as an employer for employees' tax purposes.

Annexure A – Section 10(1)(cN)

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 B – Section 30

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 it 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 if the persons contemplated in subsection (3)(b)(i) responsible in a fiduciary capacity for the funds and assets of a branch contemplated in paragraph (a)(ii) of the definition of “public benefit organisation” in subsection (1) or any trust established in terms of a will of any person 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 organization” 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)

(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 C – Part I

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).