



Legal Counsel

Income Tax

Basic Guide to Tax-Deductible Donations (Issue 2)



South African Revenue Service

Basic Guide to Tax-Deductible Donations

Preface

This guide has been prepared to assist organisations in understanding the basic requirements for obtaining and retaining approval under section 18A to issue receipts for tax-deductible donations. 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) which is available on the SARS website.

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:
 - Postal address** : PO Box 11955
Hatfield
0028
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 - Telephone** : 012 483 1700
 - Fax** : 012 483 1701
 - E-mail** : **teu@sars.gov.za.**
- 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 –

- **“conduit PBO”** means any PBO which provides funds or assets to other PBOs, institutions, boards, or bodies carrying on PBAs in Part II, in South Africa, which has been approved by the Commissioner under section 18A(1)(b);
- **“co-ordinating body”** means the regulating or controlling body of a group of institutions, boards or bodies sharing a common purpose and which carry on any PBAs in Part II in South Africa;
- **“fiduciary”** means a person who holds a position of trust or responsibility including decision-making powers with respect to the affairs of a section 18A-approved organisation;
- **“government”** means the government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a);
- **“institution, board or body”** means an institution, board or body established by or under law which has been approved by the Commissioner under section 10(1)(cA)(i), and carries on any PBA;
- **“Minister”** means the Minister of Finance;
- **“Part I”** and **“Part II”** mean Part I and Part II of the Ninth Schedule to the Act;
- **“PBA”** means a public benefit activity listed in the Ninth Schedule to the Act;
- **“PBO”** means a public benefit organisation as defined in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1), which is constituted as either a non-profit company as defined in section 1 of the Companies Act 71 of 2008, trust or an association of persons that has been incorporated, formed or established in South Africa, and approved by the Commissioner under section 30(3);
- **“section”** means a section of the Act;
- **“section 18A”** means the section that provides for the tax-deductibility of donations made to section 18A-approved organisations carrying on PBAs in Part II in South Africa;
- **“section 18A-approved organisation”** means any PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1), and any institution, board or body, agency or the government which carries on PBAs in Part II in South Africa, and which has been approved by the Commissioner under section 18A;
- **“section 18A receipt”** means a special prescribed receipt issued under section 18A by a section 18A-approved organisation entitling the donor to a tax deduction for *bona fide* donations made;
- **“specialised agency”** means 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 set out in Schedule 4 to the Diplomatic Immunities and Privileges Act 37 of 2001 (these agencies relate to the United Nations Specialised Agencies);
- **“TEU”** means Tax Exemption Unit a dedicated office within SARS established to consider all applications for approval under section 18A, and to monitor compliance

of section 18A-approved organisations with the legislative requirements in order 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

Government has recognised that 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.

The eligibility to issue section 18A receipts is restricted to specific organisations approved by the Commissioner which use the donations to fund specific PBAs.

2. Approval under section 18A

Organisations must formally apply to the Commissioner for approval under section 18A in order to issue section 18A receipts for donations received. A section 18A receipt can be issued by that organisation only from the date the TEU has confirmed that the organisation qualifies for section 18A approval and has issued it with a reference number.

3. Organisations qualifying for section 18A approval

The following organisations may qualify for approval under section 18A subject to certain conditions and requirements.

3.1 Public benefit organisations

A PBO will qualify for section 18A approval if it physically and actively carries on any Part II PBAs in South Africa.

3.2 Conduit public benefit organisations

A conduit PBO will qualify for section 18A approval if it provides funds or assets to another PBO (see **3.1**), or to an institution, board or body (see **3.3**) which are in turn required to use the funds or assets in carrying on PBAs in Part II in South Africa.

A conduit PBO must comply with additional specific requirements which are discussed in **9.2**.

3.3 Institutions, boards or bodies

An institution, board or body will qualify for section 18A approval if it carries on any PBAs in Part II in South Africa.

3.4 Specialised agencies

A specialised agency will qualify for section 18A approval if it –

- carries on any PBAs in Part II in South Africa;
- submits a written undertaking that it will comply with the provisions of section 18A; and

- submits confirmation that it will waive diplomatic immunity if found to have failed to comply with section 18A. By waiving diplomatic immunity, the agency will be liable to the non-compliance penalties if found to have contravened section 18A (see **10.1**).

3.5 Government

A sphere of government will qualify for section 18A approval if any PBAs in Part II are carried on.

4. Public benefit activities

The PBAs for section 18A purposes are listed in Part II and are categorised as follows:

- Welfare and humanitarian (paragraph 1)
- Health care (paragraph 2)
- Education and development (paragraph 3)
- Conservation, environment and animal welfare (paragraph 4)
- Land and housing (paragraph 5)

These PBAs must be carried on in South Africa.

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

Note:

- PBA 4(d) in Part II is subject to specific requirements. See the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 5) in paragraph 21.2.1 for the relevant requirements.
- PBA 3(o) in Part II is subject to conditions prescribed by the Minister 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 contained in the regulation.

5. Group registration

The Commissioner may approve a group of institutions, boards or bodies sharing a common purpose and carrying on any PBAs in Part II under the direction or supervision of a co-ordinating body, for purposes of section 18A. The co-ordinating body must ensure compliance with section 18A.

Non-compliance by the co-ordinating body in ensuring compliance with section 18A by the institutions, boards or bodies within the group or failing to notify the Commissioner when it becomes aware of any material failure to comply with section 18A, may, after due notice, result in the withdrawal of approval of the group to issue section 18A receipts.

The notice issued by the Commissioner 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 the institutions, boards or bodies within the group on or after the date specified in the notice, will not qualify as a tax deduction in the hands of the donor.

6. Organisations not qualifying for section 18A approval

6.1 Branches of a foreign tax-exempt organisation

A branch established in South Africa by a foreign tax-exempt organisation contemplated in paragraph (a)(ii) of the definition of a “public benefit organisation” in section 30(1) does not qualify for section 18A approval and will not be allowed to issue section 18A receipts for donations received, even if it carries on PBAs in Part II in South Africa.

6.2 Non-approved organisations

An organisation not formally approved by the Commissioner under section 18A may not issue section 18A receipts for donations received.

7. Donations

A donation 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 in exchange it is not a donation.

7.1 Types of donations

7.1.1 Cash donation

A donation may be made in cash (money), which may include payments by electronic fund transfer (EFT), credit or debit card, or postal order.

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

- Amounts paid to attend a fundraising event such as a dinner or charity golf day.
- Memorabilia and other assets donated to be auctioned to raise funds.
- Amounts paid for school fees, school entrance fees or compulsory school levies.
- Amounts paid for raffle or lottery tickets.
- Amounts paid for the successful bid for goods auctioned to raise funds.
- The value of free rent, water and electricity provided by a lessor to the lessee which is a section 18A-approved organisation.
- Payments of debt owed by a section 18A-approved organisation, for example, the cost of repairs to a section 18A-approved organisation’s vehicle paid to the service station on behalf of that organisation and not paid directly to the section 18A-approved organisation.
- Prizes and sponsorships donated for a fundraising event such as a charity golf day.
- Tithes and offerings to churches or other faith-based organisations in support of their religious activities.
- Membership fees.
- Promissory notes.
- Pledges.
- Payments made in future instalments and post-dated cheques.

7.1.2 Donation of property in kind

Donations of property made in kind may include the following:

- A financial instrument provided it is –
 - a share in a listed company; or
 - a share 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 taxpayer. Such trading stock may include livestock or produce donated by a farmer, goods such as computers, foodstuffs, medical supplies, furniture and motor vehicles.
- An asset used by the taxpayer in conducting the taxpayer’s trade but which is 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 taxpayer. Such assets may include personal assets or assets bought by the taxpayer such as vehicles, computers, furniture or sport equipment.
- Property purchased, manufactured, erected, installed or constructed by or on behalf of the taxpayer. Property of this nature may include carpets or cupboards installed, security fencing and buildings such as classrooms erected by or on behalf of the taxpayer for purposes of conducting any PBA in Part II.

A donation of property in kind must be used by the section 18A-approved organisation in carrying on any PBAs in Part II.

The Act specifies how the values to be placed on donations of property in kind must be determined – see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 5) in paragraph 21.6.

A specific formula must be used to determine the amount of any deduction that is claimed by any taxpayer under section 18A for any donation of immovable property of a capital nature when the lower of market value or municipal value exceeds cost.

No deduction will be allowed for any donation of any property in kind which –

- creates or is subject to any fiduciary right, usufruct or other similar right; or
- constitutes an intangible asset or financial instrument, unless the financial instrument meets the requirements set out above.

7.1.3 Donation of a service

The donation of a service such as time, skill or effort to a section 18A-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. 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 a section 18A-approved organisation will not be entitled to a tax deduction for the value of the service.

7.2 Deduction from the taxable income of a taxpayer

A taxpayer, which includes an individual, trust or company, making a *bona fide* donation in cash or of property in kind is entitled to a deduction from the taxpayer’s taxable income

provided the donation is actually paid or transferred during the year of assessment to the section 18A-approved organisation.

A taxpayer may make a donation directly to a section 18A-approved organisation or through a payroll-giving programme operated by the taxpayer's employer.

Any claim for a tax deduction from taxable income of a taxpayer will be allowed only if supported by –

- a section 18A receipt issued by a section 18A-approved organisation; or
- an employees' tax certificate (IRP 5) issued by an employer.

There is a limitation on the amount of a donation that will qualify as a tax deduction from the taxable income of a taxpayer. Any excess amount which is disallowed solely for the reason that the donation exceeds the amount allowed to be deducted from the taxable income of the taxpayer for a year of assessment may be carried forward to the succeeding year of assessment for purposes of section 18A.

The allowable deduction from the taxable income of a taxpayer that is a portfolio of a collective investment scheme is determined in accordance with a specific formula.

8. Section 18A receipts

In order for a section 18A receipt to be a valid receipt it must include the following details:

- The reference number issued to the section 18A-approved organisation by the Commissioner for purposes of section 18A.
- The date the donation is received.
- The name and address of the section 18A-approved organisation issuing the section 18A 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 to the effect that the receipt is issued for purposes of section 18A and that the donation has or will be used exclusively for PBAs in Part II.

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

9. Control measures

Section 18A-approved organisations are required to maintain proper control over the application and spending of donations received which qualify for a tax deduction.

9.1 Public benefit organisations and institutions, boards or bodies

9.1.1 Ring-fencing requirement

A section 18A-approved PBO, institution, board or body that carries on a combination of PBAs, some of which are non-section 18A-approved in Part I, and some of which are section 18A-approved in Part II, may be granted approval to issue section 18A receipts for donations received solely for PBAs in Part II. The section 18A-approved organisation must therefore ring-fence the PBAs in Part II. Donations for which section 18A receipts will be

issued must be received subject to the condition that they will be used solely on any PBAs in Part II.

Donations received must be controlled in such a manner that their usage is restricted to those PBAs only. The record-keeping of a section 18A-approved PBO, institution, board or body must clearly identify the donations received for PBAs in Part II and the use to which those donations were applied.

9.1.2 Audit certificate

Section 18A-approved PBOs, institutions, boards or bodies must obtain an audit certificate confirming that all donations received or accrued during the year for which the PBO, institution, board or body issued section 18A receipts were used solely in carrying on PBAs in Part II. The audit certificate must be retained for record-keeping purposes (see **12**).

9.2 Conduit public benefit organisations

9.2.1 Distribution requirement

A conduit PBO must distribute or undertake to distribute at least 50% of all funds received by donation for which section 18A receipts were issued within 12 months after the end of the year of assessment in which the donation was received.

A conduit PBO that wishes to accumulate funds to fund specific capital projects, which are PBAs in Part II, may request the Commissioner to postpone, reduce or waive the distribution requirement. A request to have this distribution requirement relaxed may be submitted to the TEU together with –

- full details of the capital project or purpose for which the funds are to be accumulated;
- the projected timeframe;
- the estimated costs involved; and
- motivated reasons why the relaxation of the distribution requirement is in the interest of the general public.

9.2.2 Ring-fencing requirement

A conduit PBO that provides funds or assets to other section 18A-approved PBOs, institutions, boards or bodies that carry on a combination of PBAs in Part I and Part II, must also comply with the ring-fencing requirement as discussed in **9.1.1**.

9.2.3 Audit certificate

A conduit PBO must obtain an audit certificate confirming that all donations received or accrued during the year for which the conduit PBO issued section 18A receipts were used by its beneficiaries, namely, the section 18A-approved PBOs, institutions, boards or bodies solely in carrying on PBAs in Part II. The audit certificate must be retained for record-keeping purposes (see **12**).

9.2.4 Conditions for the use of undistributed amounts

Any amount not distributed in accordance with the distribution requirement as discussed in **9.2.1** must be invested.

A conduit PBO is permitted to invest any undistributed amount as desired, provided the investment does not amount to an indirect distribution of profits or the award of an

impermissible benefit. It is expected that fiduciaries will act with the necessary prudence, integrity and reasonable care.

A conduit PBO must distribute or undertake to distribute all amounts received from investment assets held by it, other than amounts received on the disposal of those investment assets, to any other section 18A-approved PBOs, institutions boards or bodies, which carry on PBAs in Part II, no later than six months after every five years from –

- the date on which the Commissioner issued the conduit PBO with a reference number for purposes of section 18A, if that conduit PBO was incorporated, formed or established on or after 1 March 2015; or
- 1 March 2015, if that conduit PBO was incorporated, formed or established and issued with a reference number by the Commissioner for purposes of section 18A before 1 March 2015.

If any conduit PBO has not distributed or undertaken to distribute the amounts received from investment assets held by it, those amounts will be deemed to be taxable income of that conduit PBO in that year of assessment.

10. Abuse of section 18A approval

10.1 Public benefit organisation, institution, board or body and specialised agency

If the Commissioner 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 the objects;
- issued or allowed a section 18A receipt to be issued for fees or other emoluments payable to that organisation;
- issued or allowed a section 18A receipt to be issued in contravention of section 18A; or
- used a donation for which a receipt was issued for any purpose other than for any PBAs in Part II,

the Commissioner may, by written notice, direct that –

- the amount of the donations for which section 18A receipts were issued will be deemed to be taxable income of that section 18A-approved PBO, institution, board or body or specialised agency; and
- unless corrective steps are taken by that section 18A-approved organisation within a 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. Those donations will therefore not qualify for a deduction from taxable income of the donor.

10.2 Government

SARS must notify National Treasury and the Provincial Treasury (if applicable) when an accounting officer or accounting authority of any sphere of government has –

- 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 any PBAs in Part II.

The Commissioner 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. Those donations will therefore not qualify for a deduction from the taxable income of the donor.

11. Non-compliance by responsible person

11.1 Public benefit organisation and institution, board or body

A person who is responsible for the management or control of the income and assets of a section 18A-approved PBO, conduit PBO, or any 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 an organisation is established and governed 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.

11.2 Government

An accounting officer or an accounting authority 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.

12. Record-keeping

Any books of account, records or other documents must be kept for at least five years from the date of submission of the income tax return.

13. Furnishing of information

The Commissioner may submit a written request to any person to furnish information and may require that person to –

- answer any questions relating to a section 18A-approved organisation;
- make books of account, records or other documents relating to a section 18A-approved organisation available for inspection; or
- meet with the Commissioner's representative and produce for examination any documents relating to a section 18A-approved organisation.

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.

14. Objection and appeal

The Commissioner is required to exercise discretion under section 18A to determine –

- the non-compliance of any person responsible in a fiduciary capacity of any section 18A-approved PBO, institution, board or body (see **11.1**);
- the non-compliance of any co-ordinating body of a group of PBOs, institutions, boards, or bodies approved for section 18A purposes (see **5**); and
- the non-compliance of an accounting officer or accounting authority responsible for any department of government (see **11.2**).

Any decision or assessment resulting in the Commissioner exercising discretion under section 18A is subject to objection and appeal.

A section 18A-approved organisation may object to such a decision or assessment within 30 days from the date of the decision or assessment. The objection must be made on the prescribed form and specify in detail the grounds on which it is made.

If on disallowance of the objection the section 18A-approved organisation is dissatisfied with the decision by SARS, it may appeal against such disallowance. The appeal must be in writing and lodged with SARS within the prescribed period.

The following prescribed forms, whichever apply, must be submitted in order for an objection or an appeal to be valid:

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

Annexure A – Frequently asked questions

Q1: What does it mean when an organisation is approved by SARS for section 18A purposes?

A1: An organisation approved by SARS under section 18A may issue section 18A receipts to taxpayers for any *bona fide* donation made in cash or of property in kind.

Q2: What is a section 18A receipt?

A2: A section 18A receipt, also known as a tax-deductible receipt, is a specific receipt that is issued by a section 18A-approved organisation to a donor which entitles the donor to a deduction from the donor's taxable income.

Q3: May donations received for which a section 18A receipt is issued be used for any purpose?

A3: The *bona fide* donation may only be used to carry on or fund PBAs in Part II in South Africa.

Q4: Does SARS make section 18A receipts available to section 18A-approved organisations?

A4: No, section 18A-approved organisations may create their own receipts. The information prescribed by legislation (see 8) must, however, appear on the receipt in order for it to be a valid section 18A receipt.

Q5: May an organisation issue a section 18A receipt without approval from SARS?

A5: No, only organisations that are formally approved by the Commissioner under section 18A may issue section 18A receipts to donors for *bona fide* donations received. The Commissioner must issue the section 18A-approved organisation with a reference number for purposes of section 18A, which must appear on the section 18A receipt.

Q6: May section 18A receipts be issued retroactively?

A6: No, the Act does not allow for section 18A approval by the Commissioner to be granted with retrospective effect. Section 18A receipts may be issued only for *bona fide* donations received on or after the date of the notification issued by the TEU confirming approval under section 18A. This notification contains the reference number allocated to the organisation for section 18A purposes.

Q7: What are the consequences of issuing section 18A receipts without obtaining section 18A approval from SARS?

A7: A section 18A receipt issued by an organisation which has not formally been approved by SARS for section 18A purposes will not be allowed as a deduction from the taxable income of the donor.

Q8: What are the consequences when a section 18A-approved organisation abuses its approval?

A8: If the Commissioner has grounds to believe that a section 18A-approved organisation has acted in contravention of section 18A, the Commissioner may inform the section 18A-approved organisation that the donations received for which section 18A receipts were issued will be treated as taxable income of that section 18A-approved organisation.

Q9: What is the difference between approval under section 18A(1)(a) and 18A(1)(b)?

A9: Section 18A(1)(a) provides approval to issue section 18A receipts to PBOs (excluding branches of foreign tax-exempt organisations) and institutions, boards or bodies which carry on any PBAs in Part II in South Africa.

Section 18A(1)(b) is a separate provision for conduit PBOs that provide funds or assets to PBOs, institutions, boards, or bodies that carry on PBAs in Part II in South Africa, which are approved by the Commissioner under section 18A(1)(a).

Q10: To whom may a conduit PBO provide funds or assets?

A10: A conduit PBO may not provide funds or assets to another conduit PBO but only to a section 18A-approved PBO, institution, board or body that carries on PBAs in Part II in South Africa.

Q11: Does the 50% distribution requirement apply to all section 18A-approved organisations?

A11: No, the distribution requirement applies only to a conduit PBO. It applies to donations for which the conduit PBO issued section 18A receipts.

Q12: What requirements must be complied with after obtaining section 18A approval from SARS?

A12: In order to retain section 18A approval a section 18A-approved organisation is required to:

- Issue section 18A receipts –
 - for *bona fide* donations received;
 - in the year of assessment in which the donations were actually paid or transferred; and
 - for donations which will be used only to carry on or fund PBAs in Part II in South Africa.
- Obtain and retain an audit certificate, if applicable, confirming that all donations for which section 18A receipts were issued were used solely in carrying on or funding PBAs in Part II.

Annexure B – Section 18A

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 50 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).

(2D) Any public benefit organisation contemplated in subsection (1)(b), in respect of any amount that is not distributed referred to in subsection (2A)(b)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, institution, board or body contemplated in subsection (1)(a), no later than six months after—

- (a) every five years from the date on which the Commissioner issued a reference number referred to in subsection (2)(a)(i) to that public benefit organisation referred to in subsection (1)(b), if that public benefit organisation is incorporated, formed or established on or after 1 March 2015; or

- (b) every five years from 1 March 2015, if that public benefit organisation referred to in subsection (1)(b) was incorporated, formed or established and issued with a reference number referred to in subsection (2)(a)(i) prior to 1 March 2015.

(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.

(4) The provisions of section 30(10) 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).

(5C) If any public benefit organisation contemplated in subsection (1)(b), has not distributed amounts as contemplated in subsection (2D), or has not incurred the obligation to distribute those amounts received in respect of investment assets held by it, those amounts shall be deemed to be taxable income of that public benefit organisation in that year of assessment.

(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 C – Part II

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 D – Example of section 18A receipt

 <p>ABC PRIMARY SCHOOL Oxford Street, Pretoria, 0001 – Telephone (00) 000 0000 Exemption Reference Number: 930000000</p>		
<p>DONATION RECEIPT: Issued under section 18A of the Income Tax Act 58 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.</p>		0001
RECEIPT NO.		0001
NAME OF DONOR		
ADDRESS OF DONOR	_____ _____ _____	
AMOUNT OF DONATION	R _____	
NATURE OF DONATION	CASH Amount: R _____ OTHER <ul style="list-style-type: none"> • Description: _____ • Details of 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