



# **Legal Counsel**

## **Income Tax**

### **Tax Exemption Guide for Public Benefit Organisations in South Africa (Issue 5)**



*South African Revenue Service*

# Tax Exemption Guide for Public Benefit Organisations in South Africa

## Preface

This guide provides general guidance on –

- approval and taxation of public benefit organisations; and
- approval under section 18A to issue tax-deductible receipts.

The guide deals with the following taxes that may affect organisations approved as public benefit organisations:

- Income tax
- Donations tax
- Estate duty
- Transfer duty
- Dividends tax
- Securities transfer tax
- Skills development levy
- Capital gains tax
- Value-added tax
- Employees' tax
- Unemployment insurance fund
- Customs and excise

Information relating to taxes, duties, levies and contributions reflect the rates applicable as at the date of issue of this guide.

All guides, interpretation notes, forms, returns and tables referred to in this guide are available on the SARS website at **[www.sars.gov.za](http://www.sars.gov.za)**.

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 the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the relevant application procedure.

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## Glossary

In this guide unless the context indicates otherwise –

- **“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, contemplated in section 18A(1)(bA);
- **“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;
- **“CGT”** means capital gains tax, being the portion of income tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eighth Schedule;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“conduit PBO”** means any PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1), providing funds or assets to other PBOs, institutions, boards or bodies carrying on Part II PBAs, in South Africa, contemplated in section 18A(1)(b);
- **“co-ordinating body”** means the regulating or controlling body of a group of related organisations sharing the same objectives and governance provisions contemplated in section 30(3A) and section 18A(6);
- **“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;
- **“government”** means the government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a);
- **“income tax”** means “normal tax” as defined in section 1(1);
- **“institution, board or body”** means an institution, board or body established by or under law approved by the Commissioner under section 10(1)(cA)(i);
- **“Minister”** means the Minister of Finance;
- **“NPC”** means a “non-profit company” as defined in section 1 of the Companies Act;
- **“NPO Act”** means the Nonprofit Organisations Act 71 of 1997;
- **“NPO”** means a “nonprofit organisation” as defined in section 1 of the NPO Act;
- **“Part I”** and **“Part II”** mean Part I and Part II of the Ninth Schedule;
- **“partial taxation”** means the method of taxing the receipts and accruals derived from business or trading activities falling outside the permissible business or trading activity categories including the basic exemption 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) approved by the Commissioner under section 30(3);

- “**poor and needy**” means impoverished, having little means and few possessions and therefore in need of basic necessities and assistance;
- “**prescribed requirements**” mean the formal conditions and requirements set out in section 30(3)(b), which an organisation must comply with in order to qualify for approval as a PBO;
- “**Schedule**” means a Schedule to the Act;
- “**section**” means a section of the Act;
- “**section 10(1)(cN)**” means the section providing for the exemption from income tax of certain receipts and accruals of PBOs and the taxation of receipts and accruals falling outside the permissible business or trading activity categories provided in that section;
- “**section 18A**” means the section providing for the tax deductibility of donations made to section 18A-approved organisations carrying on Part II PBAs 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), any institution, board or body, agency or the government carrying on Part II PBAs in South Africa approved by the Commissioner under section 18A;
- “**section 18A receipt**” means a special prescribed receipt issued under section 18A(2) by a section 18A-approved organisation entitling the donor to a tax deduction for *bona fide* donations made;
- “**section 30**” means the section setting out the conditions and requirements an organisation must comply with in order to obtain and retain approval as a PBO;
- “**South Africa**” means the “Republic” as defined in section 1(1);
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**testamentary trust**” means a trust established under the will of a deceased person;
- “**TEU**” means the Tax Exemption Unit;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the Act.

## 1. Introduction

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

The mere fact that an organisation has a non-profit motive or is established or registered as an NPO under the NPO Act, or is established as an NPC<sup>1</sup> 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 requirements and conditions set out in the Act.

## 2. Background

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

In South Africa, religious, charitable and educational institutions of a public character used to be fully exempt from income tax<sup>2</sup> and other taxes. In the absence of comprehensive case law and statutory definitions, the Commissioner was burdened with the interpretation and application of the exemption provisions and often unable to accommodate worthy organisations because their activities did not fall within the letter of the Act.

The Minister, following recommendations by the Katz Commission,<sup>3</sup> announced in his 2000 Budget Speech wide-ranging changes to legislation regulating the income tax exemption of NPOs. The objective of the legislation was to group certain types of entities together, treat them uniformly and provide more certainty for both taxpayers and the Commissioner on the qualifying requirements for an exemption from income tax.

Section 10(1)(cN) and section 30 were introduced into the Act<sup>4</sup> to deal with previously exempt entities. These sections introduced the concept of “PBO” carrying on a “PBA”. The provisions of these sections are more detailed and comprehensive resulting in improved consistency and certainty.

The type of organisations permitted to issue section 18A receipts entitling donors to a tax deduction has also been extended considerably to include a much broader spectrum of PBAs. Under the repealed legislation<sup>5</sup> this benefit was substantially limited to donations made to secondary and tertiary educational institutions.

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<sup>1</sup> See item 1(6) of Schedule 1 of the Companies Act.

<sup>2</sup> Section 10(1)(f) was repealed by section 21(1)(a) of the Taxation Laws Amendment Act 30 of 2000, with effect from 15 July 2001, subject to certain provisos regarding extended exemption.

<sup>3</sup> M M Katz *et al* (1999) *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa*.

<sup>4</sup> Section 21(1)(c) and section 35(1) of the Taxation Laws Amendment Act 30 of 2000 introduced section 10(1)(cN) and section 30, respectively. These amendments came into operation on 15 July 2001.

<sup>5</sup> Section 18A was substituted by section 24(1) of the Taxation Laws Amendment Act 30 of 2000.

Specific punitive measures have been introduced in the Act to deal with situations in which a PBO or section 18A-approved organisation misuses its approval or exemption status or does not comply with the provisions of the Act.

Since the introduction of the revised tax system for PBOs in 2001, Government has continued to adjust the tax system and amended legislation to address needs and problems identified.

#### **Example 1 – Examples of the continued adjustment to the tax system for PBOs**

- Repeal of the investment restriction.<sup>6</sup>
- Repeal of the requirement to register under the NPO Act.<sup>7</sup>
- Introduction of partial taxation.<sup>8</sup>
- Increase from 5% to 10% of the amount of deductible donations for both individuals and companies during a year of assessment.<sup>9</sup>
- Taxation of the taxable income of a PBO at a single rate of tax.<sup>10</sup>
- Carry-forward treatment of donations exceeding the 10% limitation.<sup>11</sup>
- Lowering the distribution requirement for a conduit PBO from 75% to 50%.<sup>12</sup>

### **3. Tax Exemption Unit**

The TEU is a dedicated office within SARS established to –

- consider all applications by organisations for approval as PBOs;
- consider all applications for approval to issue section 18A receipts for donations; and
- raise assessments on PBOs.

The centralisation of the approval and assessment processes is intended to promote uniform treatment by SARS. The TEU also monitors compliance by PBOs with the legislative requirements in order to prevent malpractice and abuse.

<sup>6</sup> Section 30(3)(b)(ii) was amended by section 24(1)(d) of the Revenue Laws Amendment Act 20 of 2006. The amendment is deemed to come into operation on 2 November 2006 and applies to any year of assessment commencing on or after that date.

<sup>7</sup> Section 30(3)(g) was deleted by section 24(1)(g) of the Revenue Laws Amendment Act 20 of 2006. The amendment is deemed to come into operation on 2 November 2006 and applies to any year of assessment commencing on or after that date.

<sup>8</sup> Section 10(1)(cN) was inserted by section 10(1)(j) of the Revenue Laws Amendment Act 20 of 2006. The amendment came into operation on 1 April 2007 and applies to any year of assessment commencing on or after that date.

<sup>9</sup> Section 18A(1)(B) was amended by section 18 of the Taxation Laws Amendment Act 8 of 2007. The amendment is deemed to come into operation as from the commencement of years of assessment ending on or after 1 January 2008.

<sup>10</sup> Section 1(1) of the Taxation Laws Amendment Act 3 of 2008 fixes the rate of tax. Paragraph 5 of Part I of Appendix I to that Act fixes the rate of tax for PBOs.

<sup>11</sup> The proviso to section 18A(1)(B) was inserted by section 52(1)(c) of the Taxation Laws Amendment Act 31 of 2013 and applies to donations paid or transferred during years of assessment commencing on or after that date.

<sup>12</sup> Section 18A(2A)(b)(i) was amended by section 29(1)(a) of the Taxation Laws Amendment Act 43 of 2014. The amendment comes into operation on 1 March 2015.

## 4. 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 conditions and requirements of section 30 as detailed in this guide.

The approval as a PBO is generally effective from the date the approval is granted by the Commissioner, unless the Commissioner advises otherwise (see **15**).

An organisation approved as a PBO is subject to partial taxation (see **20**).

## 5. Type of organisation qualifying for approval as a public benefit organisation

For an organisation to be approved as a PBO, it must be constituted in one of the following ways:<sup>13</sup>

- An NPC incorporated in South Africa.
- A trust<sup>14</sup> established in South Africa.
- An association of persons formed or established in South Africa.
- A branch of a foreign tax-exempt organisation (see **22.1**).

Pre-existing companies<sup>15</sup> incorporated or deemed to be incorporated under section 21 of the repealed Companies Act 61 of 1973 continue to exist under the Companies Act and will qualify for approval as a PBO provided all the conditions and requirements of section 30 are complied with.

## 6. Object of the organisation

The sole or principal object<sup>16</sup> of an organisation must equate to the activities it physically and actively carries on, which must be to carry on one or more PBAs (see **20.1.5**).

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.

The sole or principle object of a PBO may not be to conduct a commercial business activity in order to use profits derived from the business undertaking or trading activity to fund a PBA.

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<sup>13</sup> Paragraph (a) of the definition of “public benefit organisation” in section 30(1).

<sup>14</sup> The term “trust” is defined in section 1(1).

<sup>15</sup> The terms “pre-existing company” and “company” are defined in section 1 of the Companies Act.

<sup>16</sup> Paragraph (b) of the definition of “public benefit organisation” in section 30(1).

## 7. Public benefit activities

The PBAs are listed in Part I<sup>17</sup> 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 D** for a complete list of PBAs falling under each of the above categories.

A PBO may itself carry on PBAs or it may provide funds, assets or other resources to enable other PBOs, institutions, boards or bodies, associations of persons (see **13.4**) or the government to carry on these PBAs.

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) have, as yet, not been published.

The Minister may determine additional PBAs from time to time by notice in the *Government Gazette*, provided such activities are considered to be of a benevolent nature taking into account the needs, interests and well-being of the general public.<sup>18</sup> Any additional PBAs must be approved by Parliament and formally incorporated into the Ninth Schedule within 12 months.<sup>19</sup>

## 8. 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.<sup>20</sup> An organisation carrying on a PBA as part of a profit-making venture will not qualify for approval as a PBO. However, an organisation carrying on a business undertaking or trading activity as part of a PBA may qualify as a PBO provided it meets all the business or trading requirements discussed in **20**.

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<sup>17</sup> Paragraph (a) of the definition of “public benefit activity” in section 30(1).

<sup>18</sup> Paragraph (b) of the definition of “public benefit activity” in section 30(1).

<sup>19</sup> Section 30(2).

<sup>20</sup> Paragraph (b)(i) of the definition of “public benefit organisation” in section 30(1).

## 9. 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 employees or office bearers conducting the affairs of a PBO to enable it to achieve its objectives is permitted.<sup>21</sup>

## 10. Benefit of the general public

The PBAs must be carried on for the benefit of, or be widely accessible to, the general public at large. This may include a specific sector of the general public but may not be for the benefit of a small and exclusive group.<sup>22</sup>

### Example 2 – PBAs carried on for the benefit of the general public

An organisation engaging in a PBA for the benefit of –

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

## 11. Founding document

An organisation that applies for approval as a PBO must have a founding document.<sup>23</sup> The founding document will depend on the type of organisation established.

### Example 3 – Examples of founding documents

- 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<sup>24</sup> 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 **5** to **10** must be met in order to qualify for approval as a PBO. In addition to those conditions the prescribed requirements as discussed in **12.1** to **12.5** must be complied with and included in the founding document of the organisation.

<sup>21</sup> Paragraph (b)(ii) of the definition of “public benefit organisation” in section 30(1).

<sup>22</sup> Paragraph (c)(i) of the definition of “public benefit organisation” in section 30(1).

<sup>23</sup> Section 30(3)(b).

<sup>24</sup> This refers to an association of persons referred to in paragraph (a) in the definition of “public benefit organisation” in section 30(1) and not to an association of persons referred to in PBA 10(iii) in Part I.

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.

It may not be possible to amend the founding document of a branch of a foreign tax-exempt organisation or testamentary trust to meet the prescribed requirements. In such circumstances the organisation may submit a written undertaking as part of its application for approval as a PBO (see 17).

## 12. Prescribed requirements

### 12.1 Fiduciary responsibility

A PBO, except a testamentary trust, is required to have at least three persons who are not connected persons<sup>25</sup> 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.<sup>26</sup>

Natural persons are considered to be connected if they are relatives<sup>27</sup> to one another. A relative includes a person's spouse and anybody related to a person or that person's spouse within the third degree of consanguinity.

For more information on the interpretation and application of the definition of "connected person" see Interpretation Note 67 (Issue 2) dated 14 February 2014 "Connected Persons".

### 12.2 Prohibition on distributions

A PBO may not distribute its funds directly or indirectly to any person, unless this occurs in the course of undertaking a PBA. It must use its funds solely for the sole or principal object for which it was established, which must be to carry on one or more PBAs, as set out in its founding document.<sup>28</sup>

Surplus funds may be accumulated or invested for future use in carrying on its sole or principal object. The surplus funds may be invested 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 should act with prudence, integrity and reasonable care.

### 12.3 Dissolution

A PBO may not, on dissolution, distribute any of its funds to individuals or other tax-paying entities and in so doing enable the recipients to share in the tax concession it has enjoyed.

On dissolution a PBO must transfer its remaining assets to –<sup>29</sup>

- another PBO;
- any institution, board or body whose sole or principal object is the carrying on of any PBA;
- the government; or

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<sup>25</sup> The term "connected person" is defined in section 1(1).

<sup>26</sup> Section 30(3)(b)(i).

<sup>27</sup> The term "relative" is defined in section 1(1).

<sup>28</sup> Section 30(3)(b)(ii).

<sup>29</sup> Section 30(3)(b)(iii).

- the National Finance Housing Corporation contemplated in section 10(1)(t)(xvii).<sup>30</sup>

These organisations are required to use the assets received on dissolution of a PBO solely for purposes of carrying on one or more PBAs.

The above dissolution requirement will apply to a branch of a foreign tax-exempt organisation if during the three years preceding the termination of its activities in South Africa more than 15% of its receipts and accruals are derived from a source within South Africa.<sup>31</sup>

If a PBO or a branch of a foreign tax-exempt organisation fails to transfer, or to take reasonable steps to transfer, its remaining assets as required, an amount equal to the market value of the assets not transferred less the amount of the *bona fide* liabilities of the PBO or branch, will be deemed to be taxable income which accrued to the PBO or branch during the year of assessment<sup>32</sup> in which dissolution or termination of its activities took place.<sup>33</sup>

## 12.4 Non-revocable donations

A PBO may not accept any donation that may be revoked by the donor for reasons other than the PBO failing to abide by the designated purposes and conditions of the donation. A donation may also be revoked if the PBO misrepresents the tax deductibility of the donation under section 18A and such tax deduction was a condition of the donation (see 21.4).

In addition, a donor may also not impose conditions that will entitle the donor or a connected person in relation to the donor to obtain some direct or indirect benefit from the application of the donation. If the donor is another PBO or an institution, board or body this prohibition on the derivation of a benefit does not apply.<sup>34</sup>

In order to determine whether a donation is revocable or non-revocable will depend on the facts and circumstances of each case.

### Example 4 – Revocable and non-revocable donations

The following are non-exhaustive examples of donations that are revocable and non-revocable:

- A PBO may not accept a donation made subject to the condition that it may be revoked should the donor require funds to cover future private expenses.
- A donation given to a school approved as a PBO on condition that the funds are to be used for purposes of building an extra classroom may be revoked by the donor if the school is not able to build the additional classroom.

<sup>30</sup> Section 30(3)(b)(iii) was amended by section 51(a) of the Tax Laws Amendment Act 15 of 2016 and deemed to have come into operation on 1 April 2016 and applicable to years of assessment commencing on or after that date.

<sup>31</sup> Section 30(3)(b)(iiiA).

<sup>32</sup> The term “year of assessment” is defined in section 1(1).

<sup>33</sup> Section 30(7).

<sup>34</sup> Section 30(3)(b)(v).

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

## 12.5 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.<sup>35</sup> This requirement will enable 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 such approval, to amend the founding document to include non-qualifying provisions.

Pre-existing companies approved as PBOs which may have amended their memoranda and articles of association or replaced the latter with a memorandum of incorporation under the Companies Act must ensure that the prescribed requirements remain included in the amended or replacement founding documents. A copy of the amended or replacement founding documents must be submitted to the Commissioner.

## 13. Other requirements

### 13.1 Participation in tax avoidance schemes

A PBO may not be a 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<sup>36</sup> 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.<sup>37</sup> 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.

### 13.2 Remuneration

Employees, office bearers, members or other persons may receive remuneration from a PBO for services actually rendered to that PBO provided the remuneration –<sup>38</sup>

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

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<sup>35</sup> Section 30(3)(b)(vi).

<sup>36</sup> These taxes, duties or levies may, amongst other things, include income tax (including CGT), VAT, transfer duty, or employees' tax.

<sup>37</sup> Section 30(3)(c).

<sup>38</sup> Section 30(3)(d).

### 13.3 Reporting

A PBO must comply with any reporting requirements determined by the Commissioner (see 28).<sup>39</sup>

### 13.4 Funds provided to any association of persons

A PBO carrying on PBA 10(iii) in Part I of providing funds to an association of persons must take reasonable steps to ensure that the funds are used for the purpose for which those funds have been provided, which must be to carry on one or more PBAs in South Africa.<sup>40</sup>

The association of persons referred to in PBA 10(iii) in Part I does not relate to an association of persons as referred to in the definition of “public benefit organisation”<sup>41</sup> since the latter is a formal association of persons established by adopting a legal founding document, and which may qualify for approval as a PBO, provided its founding document and objectives comply with the prescribed requirements.

The association of persons referred to in PBA 10(iii) in Part I is regarded as a voluntary informal association or group of persons that collectively carry on one or more PBAs but do not have a constitution or any other written instrument as a founding document.<sup>42</sup>

The PBO providing funds to any associations of persons must satisfy the Commissioner that reasonable steps have been taken to ensure that the funds are used for the purpose for which they have been given, which must be to carry on any PBAs, and are not used to economically benefit any individual person.

#### **Example 5 – Funds provided to an association of persons**

*Facts:*

A rural community in a remote area does not have running water available in its village. The leaders in the community have formed an informal association committed to embark on a project to provide their community members with running water. The informal association does not have a constitution and cannot be approved as a PBO. A PBO, Water 4 All, has undertaken to provide assistance by overseeing the project at no cost and also to provide funds for the cost of the installation of pipes and a water pump to ensure that water is accessible to all members of the community.

*Result:*

The community leaders are regarded as the association of persons for purposes of PBA 10(iii), who are carrying on PBA 1(p).

The PBO, Water 4 All, is regarded as carrying on PBA 10(iii) in Part I and must take reasonable steps to ensure that the community leaders use the funds for the purpose for which they were provided.

<sup>39</sup> Section 30(3)(e).

<sup>40</sup> Section 30(3)(f).

<sup>41</sup> See paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1).

<sup>42</sup> The association of persons must carry on any PBAs except the provision of funds, assets or other resources contemplated in PBA 10.

### 13.5 Payments to political parties

A PBO may not use its resources directly or indirectly to support, advance or oppose any political party.<sup>43</sup>

## 14. Group registration

A group of organisations may be approved as a PBO provided the following requirements are met:<sup>44</sup>

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

The co-ordinating body must submit a list of the names and addresses of all the organisations within the group when submitting its application for approval to the Commissioner.

The Commissioner may withdraw the approval as a PBO of the group if the co-ordinating body –<sup>45</sup>

- intentionally or negligently fails to exercise the required control over any PBO in the group; or
- fails to notify the Commissioner of any material failure of any PBO within the group to comply with any provision of section 30.

The Commissioner will give notice to the co-ordinating body of the intention to withdraw the approval as a PBO of the group and also specify a period within which corrective steps must be taken. If no corrective steps are taken by the co-ordinating body 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 co-ordinating body occurred. See **18.2** for the consequences of the withdrawal of the approval as a PBO of the group.

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<sup>43</sup> Section 30(3)(h).

<sup>44</sup> Section 30(3A).

<sup>45</sup> Section 30(5A).

## 15. Retrospective approval as a public benefit organisation

The Commissioner may approve a PBO with retrospective effect to the extent the Commissioner is satisfied that the organisation has complied with the requirements of section 30 during the period before it lodged its application.<sup>46</sup> Each request for retrospective approval will be considered on its own merits.

## 16. Registration as an Nonprofit organisation

Registration as an NPO is not a condition for approval as a PBO since the registration as an NPO under the NPO Act is a voluntary registration lodged with the Directorate of NPOs. Useful information can be obtained from the Department: Social Development's website at [www.dsd.gov.za](http://www.dsd.gov.za).

The Commissioner may on request from the Directorate of NPOs withdraw the approval as a PBO if the PBO is convicted of an offence under the NPO Act.<sup>47</sup> See **18** for the circumstances, process and consequences relating to withdrawal of the approval as a PBO.

## 17. Written undertaking

A written undertaking must be submitted by the following:<sup>48</sup>

- Branch of a foreign tax-exempt organisation governed by the founding document of that foreign tax-exempt organisation.
- Testamentary trust, the founding document of which generally cannot be amended at the time when the trust comes into existence which is after the death of the testator.

In the above circumstances the founding documents are legally incapable of being amended to comply with the prescribed requirements for approval as a PBO.

The founding documents of the branch of a foreign tax-exempt organisation or testamentary trust will be deemed to comply with the prescribed requirements if the persons responsible in a fiduciary capacity for the funds and assets of such a branch or testamentary trust submit, as part of the application for approval as a PBO, a written undertaking that the branch or testamentary trust will be administered in compliance with the prescribed requirements.<sup>49</sup>

The written undertaking will be a permanent measure and binding on the branch of a foreign tax-exempt organisation or testamentary trust. Non-compliance with its terms will result in the same penalties and actions as if the prescribed requirements are contained in the founding document.

The following written undertakings are available to assist persons accepting fiduciary responsibility to administer a branch of a foreign tax-exempt organisation or testamentary trust in accordance with the prescribed requirements –

- form EI 2 a specimen written undertaking for testamentary trusts; and
- form EI 2B a specimen written undertaking for branches of a foreign tax-exempt organisation.

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<sup>46</sup> Section 30(3B).

<sup>47</sup> Section 30(3C).

<sup>48</sup> Section 30(4).

<sup>49</sup> Section 30(4) was amended by section 48 of the Taxation Laws Amendment Act 43 of 2014. The amendment came into operation on 20 January 2015.

All other organisations (see 5) must provide for the prescribed requirements in their founding documents before the Commissioner can grant approval as a PBO.

## **18. Withdrawal of approval as a public benefit organisation**

### **18.1 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, however, 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.<sup>50</sup>

### **18.2 Consequences of withdrawal**

On withdrawal of the approval as a PBO the affected organisation must transfer or take reasonable steps to transfer its remaining assets within six months or a longer period allowed by the Commissioner to –<sup>51</sup>

- another PBO;
- any institution, board or body; or
- the government.

Failure to transfer, or to take reasonable steps to transfer the remaining assets of the organisation on withdrawal of its approval as a PBO will result in an amount equal to the market value of the assets not transferred less the amount of the *bona fide* liabilities of the organisation, being deemed to be taxable income which accrued to the organisation during the year of assessment in which the approval was withdrawn.<sup>52</sup>

### **18.3 Reapplication after withdrawal**

An organisation may reapply for approval as a PBO in the year of assessment following the year of assessment in which the approval was withdrawn. The Commissioner may grant the approval in that subsequent year if satisfied that the non-compliance giving rise to the withdrawal of approval has been rectified.<sup>53</sup>

## **19. Non-compliance by responsible person**

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.<sup>54</sup>

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<sup>50</sup> Section 30(5).

<sup>51</sup> Section 30(6).

<sup>52</sup> Section 30(7).

<sup>53</sup> Section 30(8).

<sup>54</sup> Section 30(11).

## 20. 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 that arise 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 **20.2**. Each category has its own conditions and requirements and is applied separately.

There is no limit on the amount of receipts and accruals exempt from income tax under the categories in **20.2.1**, **20.2.2** and **20.2.3**. There is, however, a limitation on the amount of the basic exemption discussed in **20.2.4**.

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 further information on the interpretation and application of section 10(1)(cN) as well as a step-by-step guide to calculating the taxable income of PBOs see Interpretation Note 24 (Issue 3) dated 4 February 2014 “Income Tax: Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts”.

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

#### 20.1.1 Receipts and accruals

Section 10(1)(cN) exempts from income tax the “receipts and accruals” of a PBO to the extent that they are derived in the manner specified in the subsection. The type of receipt or accrual envisaged is one which is included in the definition of “gross income”. Thus, receipts or accruals of a capital nature which are not deemed to be included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cN) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain which is included directly in taxable income. While a taxable capital gain is potentially subject to income tax, the exemptions in section 10 do not apply to it because a taxable capital gain is not a receipt or accrual. Paragraph 63A of the Eighth Schedule contains the rules for disregarding capital gains and losses of a PBO.

The basic exemption<sup>55</sup> refers to 5% of the “total receipts and accruals” of a PBO. These receipts and accruals do include amounts of a capital nature since the 5% rule is concerned with a limitation on the amount of the receipts and accruals falling within gross income that qualify for exemption.

#### Example 6 – Examples of “total receipts and accruals” of a PBO

- Donations and bequests
- Subsidies
- School fees
- Rent
- Fundraising activities

<sup>55</sup> Section 10(1)(cN)(ii)(dd)(i).

- Investment income
- Sale of movable and immovable assets

### 20.1.2 Business undertaking

The term “business” is not defined in the Act. Based on case law, it is generally accepted to include anything which occupies the time, attention and labours of a person for profit. There are no hard and fast rules in determining what constitutes business. However, in determining whether a business undertaking<sup>56</sup> is being carried on a number of factors may be taken into account such as the intention, motive, frequency and nature of the activity.

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

### 20.1.3 Trading activity

The term “trade” includes every profession, trade, business, employment, calling, occupation or venture, letting of property and the use of or the grant of permission to use a patent, design, trade mark or copyright.<sup>57</sup> The courts have interpreted trade to be neither exhaustive nor restrictive and will include any activity involving risking something with the object of making a profit. Each case will, however, be determined on its own merits.

#### Example 7 – Examples of trading activities<sup>58</sup>

- Letting of immovable property
- Conducting farming activities
- Providing of professional services
- The granting of permission to use a copyright or patent

### 20.1.4 Integral and directly related

The business undertaking or trading activity must be integral and directly related<sup>59</sup> to the PBA carried on by the PBO.

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

#### Example 8 – Integral and directly related

*Facts:*

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

<sup>56</sup> Section 10(1)(cN)(ii).

<sup>57</sup> The term “trade” is defined in section 1(1).

<sup>58</sup> Section 10(1)(cN)(ii).

<sup>59</sup> Section 10(1)(cN)(ii)(aa)(A).

*Result:*

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

### **20.1.5 Sole or principal object**

The word “principal” is used in conjunction with the word “sole” and the concept means that the sole or predominant object must be the carrying on of one or more PBAs.<sup>60</sup> A PBO cannot have more than one sole or principal object.

#### **Example 9 – Sole or principal object**

*Facts:*

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

*Result:*

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

### **20.1.6 Substantially the whole**

In the strict sense the concept “substantially the whole”<sup>61</sup> is regarded by SARS as 90% or more. In order to overcome certain practical difficulties SARS will, however, accept a percentage of not less than 85%.<sup>62</sup> This percentage must be determined using a method appropriate to the circumstances and may be motivated by taking into account time or cost.

#### **Example 10 – Substantially the whole of the activity is undertaken on a cost-recovery basis**

*Facts:*

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

*Result:*

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

<sup>60</sup> Section 10(1)(cN)(ii)(aa)(A).

<sup>61</sup> Section 10(1)(cN)(ii)(aa)(B).

<sup>62</sup> See Binding General Ruling (Income Tax) 20 (Issue 2) dated 20 January 2016 “Interpretation of the Expression ‘Substantially the Whole’ ”.

### 20.1.7 Recovery of cost

It is not always possible to base trading activities on a 100% cost-recovery basis and it is for this reason that legislation requires that substantially the whole of the business undertaking or trading activity must be based on recovery of cost.<sup>63</sup> This requirement will be met when substantially the whole (see 20.1.6) of the business undertaking or trading activity is carried out to recover direct and reasonable indirect costs.

#### Example 11 – Recovery of cost

*Facts:*

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

*Result:*

The running of the tuck shop is regarded as being carried out or conducted on a cost-recovery basis since substantially the whole of its business activities are directed towards the recovery of cost.

### 20.1.8 Unfair competition

A PBO should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity.<sup>64</sup> A PBO has an advantage in that it is not required to sacrifice a portion of its profit in the form of tax. In determining whether a PBO has an unfair advantage, each case will be considered on its own merits.

#### Example 12 – Unfair competition

*Facts:*

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

*Result:*

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

### 20.1.9 Occasional nature

A business undertaking or trading activity of an occasional nature<sup>65</sup> is one conducted on an irregular, infrequent basis or as a special event.

<sup>63</sup> Section 10(1)(cN)(ii)(aa)(B).

<sup>64</sup> Section 10(1)(cN)(ii)(aa)(C).

<sup>65</sup> Section 10(1)(cN)(ii)(bb).

### **Example 13 – Examples of business undertakings or trading activities of an occasional nature**

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

#### **20.1.10 Substantially with assistance on a voluntary basis**

Any assistance must be predominantly undertaken on a voluntary basis, without compensation.<sup>66</sup>

### **Example 14 – Substantially with assistance on a voluntary basis**

#### *Facts:*

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

#### *Result:*

All the assistance given to the school at the fundraising event is provided on a voluntary basis. The requirement that assistance should be provided on a voluntary basis has therefore been met.

#### **20.1.11 Basic exemption**

The basic exemption is determined as a threshold and applied to the total receipts and accruals derived from a business undertaking or trading activity not qualifying for a specific exemption in **20.2.1**, **20.2.2** and **20.2.3**.

The basic exemption is calculated as an amount equal to the greater of 5% of the total receipts and accruals of the PBO during the relevant year of assessment or R200 000.<sup>67</sup>

## **20.2 Categories of permissible business undertakings or trading activities**

### **20.2.1 Integral and directly related trade**

In order to qualify for this exemption –<sup>68</sup>

- 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; and

<sup>66</sup> Section 10(1)(cN)(ii)(bb).

<sup>67</sup> Section 10(1)(cN)(ii)(dd).

<sup>68</sup> Section 10(1)(cN)(ii)(aa).

- the business undertaking or trading activity should not result in unfair competition with other taxable entities.

**Example 15 – Trade integral and directly related to the sole or principal object of the PBO**

*Facts:*

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

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

*Result:*

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

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

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

**20.2.2 Occasional trade**

In order to qualify for exemption as an occasional trade the business undertaking or trading activity must –<sup>69</sup>

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

**Example 16 – Examples of occasional trade with voluntary assistance**

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

<sup>69</sup> Section 10(1)(cN)(ii)(bb).

### 20.2.3 Ministerial approval

A business undertaking or trading activity may be approved by the Minister by notice in the *Gazette* by taking into account the –<sup>70</sup>

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

Any submission in this regard must clearly –

- demonstrate the benefits of the undertaking or activity for the general public; and
- motivate why it will not result in unfair competition with other tax-paying entities, or erode the tax base.

### 20.2.4 Basic exemption

A PBO carrying on business undertakings or trading activities not falling within the ambit of the permissible business or trading activity categories in **20.2.1**, **20.2.2** and **20.2.3** will, subject to the basic exemption, be taxed on the receipts and accruals derived from all such other business or trading activities. The greater of 5% of the total receipts and accruals of the PBO or R200 000 will be deducted from those receipts and accruals.<sup>71</sup>

#### Example 17 – Basic exemption

*Facts:*

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

The PBO's total receipts and accruals for the year ended 28 February 2016 are as follows:

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

*Result:*

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

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

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

<sup>70</sup> Section 10(1)(cN)(ii)(cc).

<sup>71</sup> Section 10(1)(cN)(ii)(dd).

## 20.3 Practical application of the basic exemption

The total receipts and accruals derived from all trading activities not qualifying for exemption under the permissible business or trading activity categories must be added together before the deduction of the basic exemption. The value of the basic exemption threshold must therefore be applied collectively to the total receipts and accruals from all commercial business or trading activities and not individually to each such business undertaking or trading activity.

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

The term “total receipts and accruals” includes receipts or accruals of a capital nature.

## 21. Approval under section 18A to issue tax-deductible receipts

### 21.1 Public benefit organisations qualifying for section 18A approval

A PBO may qualify for approval if it carries on any Part II PBAs in South Africa.<sup>72</sup> The PBO must itself be physically and actively engaged in carrying on any Part II PBAs.

A PBO carrying on PBA 4(d) in Part II is subject to specific requirements<sup>73</sup> which are detailed in **21.2.1**.

### 21.2 Institutions, boards or bodies qualifying for section 18A approval

Any institution, board or body may qualify for approval if it carries on any Part II PBAs in South Africa.<sup>74</sup>

#### Example 18 – Examples of institutions, boards or bodies carrying on Part II PBAs

- Public schools registered under the South African Schools Act 84 of 1996 providing education to learners (see **22.2.1**) contemplated in PBA 3(a) in Part II.
- Public higher education institutions defined under the Higher Education Act 101 of 1997, which may include universities, universities of technology and colleges, providing higher education contemplated in PBA 3(b) in Part II.
- Public continuing education and training colleges registered under the Continuing Education and Training Act 16 of 2006 providing continuing education and training contemplated in PBA 3(d) in Part II.

<sup>72</sup> Section 18A(1)(a)(i).

<sup>73</sup> Section 18A(1C).

<sup>74</sup> Section 18A(1)(a)(ii).

### 21.3 Conduit public benefit organisations qualifying for section 18A approval

A PBO<sup>75</sup> may qualify for approval if it has as its sole or principal object the provision of funds or assets to another PBO referred to in 21.1, or to an institution, board or body referred to in 21.2.<sup>76</sup>

Conduit PBOs do not carry on Part II PBAs but provide funds or assets to other PBOs, or to institutions, boards or bodies which are required to use those funds or assets in carrying on Part II PBAs in South Africa.

The approval is specifically limited to the provision of funds or assets and does not include the provision of services or other resources contemplated in PBA 10 in Part I.

A conduit PBO must comply with additional specific requirements discussed in 21.3.2.

### 21.4 Agencies qualifying for section 18A approval

Any agency may qualify for approval if it –<sup>77</sup>

- carries on any Part II PBAs 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 the provisions of section 18A. By waiving diplomatic immunity the agency will be liable to the non-compliance penalties if found to have contravened section 18A (see 21.10).

### 21.5 Government qualifying for section 18A approval

Any sphere of government will qualify for approval if any Part II PBAs are carried on.<sup>78</sup>

#### Example 19 – Examples of spheres of government carrying on Part II PBAs

- A separate unit established within the South African Police Service to provide preventative and education programmes regarding addiction to dependence-forming substances contemplated in PBA 1(h) in Part II.
- A feeding scheme established by a municipality for homeless children living in the inner city contemplated in PBA 1(a) in Part II.

### 21.2 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)

<sup>75</sup> A PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1).

<sup>76</sup> Section 18A(1)(b).

<sup>77</sup> Section 18A(1)(bA).

<sup>78</sup> Section 18A(1)(c).

- Conservation, Environment and Animal Welfare (paragraph 4)<sup>79</sup>
- Land and Housing (paragraph 5)<sup>80</sup>

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.

The Minister may, in certain instances, by notice in the *Gazette* determine that additional PBAs qualify. The Minister may also by regulation prescribe additional requirements that these additional PBAs will need to comply with.<sup>81</sup> Any additional PBAs or requirements must be approved by Parliament and formally incorporated into the Ninth Schedule or the Act within 12 months.<sup>82</sup>

### 21.2.1 Establishment and management of a transfrontier area

A PBO carrying on PBA 4(d) in Part II qualifies for approval to issue section 18A receipts for donations received provided the following specific requirements are complied with and its founding document expressly provides that:

- A section 18A receipt will not be issued for any donation made by a person unless –
  - that donation is made by that person on or after 1 August 2002; and
  - 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 the PBO.
- Every donation for which a section 18A receipt has been issued must be matched by a donation of the same amount made by a person who is not a resident and which is made from funds generated and held outside South Africa.
- The PBO must use the amount of –
  - all donations received for which a section 18A receipt is issued, and all income derived from those donations, in South Africa in carrying on PBA 4(d) in Part II; and
  - all donations received from persons who are not residents, either in South Africa in carrying on PBA 4(d) in Part II, or for a transfrontier conservation area<sup>83</sup> of which South Africa forms part.

### 21.3 Control measures

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

A section 18A receipt may be issued only for a donation which is solely and exclusively used for Part II PBAs in South Africa.

<sup>79</sup> Limited PBAs in Part I are included in this category in Part II.

<sup>80</sup> Limited PBAs in Part I are included in this category in Part II.

<sup>81</sup> Section 18A(1A).

<sup>82</sup> Section 18A(1B).

<sup>83</sup> The concept “transfrontier conservation area” is not defined in the Act. It generally refers to relatively large areas extending between two or more countries covering large-scale natural systems including one or more protected areas.

### 21.3.1 Public benefit organisations and institutions, boards or bodies

#### (a) Ring-fencing requirement

A PBO, institution, board or body carrying 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 Part II PBAs.<sup>84</sup> The section 18A-approved PBO, institution, board or body must therefore ring-fence the Part II PBAs. Donations for which section 18A receipts will be issued must be received subject to the prerequisite that it will be used solely on a Part II PBA in South Africa.

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

#### (b) 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 they issued section 18A receipts were used solely in carrying on Part II PBAs. The audit certificate must be retained by section 18A-approved PBOs, institutions, boards or bodies as part of their records.<sup>85</sup>

### 21.3.2 Conduit public benefit organisations

#### (a) Distribution requirement

A conduit PBO is obliged to distribute or incur the obligation to distribute at least 50%<sup>86</sup> 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.<sup>87</sup>

#### Example 20 – Distribution requirement

*Facts:*

Fury Friends Trust was established to provide funds or assets for the benefit of Fury Friends Shelter, a PBO carrying on PBA 4(b) in Part II. The trust has been approved by the Commissioner as a conduit PBO. The trust received donations for which it issued section 18A receipts during the following years of assessment ending 28 February:

	<b>R</b>
2014	100 000
2015	150 000
2016	200 000

<sup>84</sup> Section 18A(2A)(a).

<sup>85</sup> Section 18A(2B).

<sup>86</sup> The percentage was lowered from at least 75% to 50% by section 29(1)(a) of the Taxation Laws Amendment Act 43 of 2014 and applies to donations received on or after 1 March 2015 for which section 18A receipts were issued.

<sup>87</sup> Section 18A(2A)(b)(i).

*Result:*

In order to comply with the distribution requirement the trust is required to distribute to the shelter at least –

- R75 000 (75% of R100 000) of donations received during 2014 must be distributed within but no later than the end of the 2015 year of assessment;
- R112 500 (75% of R150 000) of donations received during 2015 must be distributed within but no later than the end of the 2016 year of assessment; and
- R100 000 (50% of R200 000) of donations received during 2016 must be distributed within but no later than the end of the 2017 year of assessment.

The Commissioner having regard to the public interest and purpose for which the conduit PBO wishes to accumulate funds may defer, reduce or waive the obligation to distribute at least 50% of the funds as set out above subject to conditions the Commissioner may determine.

The Commissioner's discretion will be exercised in instances when a conduit PBO is accumulating funds to fund specific capital projects which are Part II PBAs. In exercising the discretion the Commissioner will consider the details and timeframe of the particular capital project. A request to have this distribution requirement relaxed may be submitted to the Commissioner at 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.

Failure to use the funds for a Part II PBA may have harsh consequences for the conduit PBO.

**Example 21 – Relaxation of the distribution requirement**

*Facts:*

Happy Days Trust established to provide funds for Happy Days Orphanage, which cares for abandoned and orphaned children. The orphanage has been approved by the Commissioner as a PBO carrying on PBA 1(a) in Part II and the trust as a conduit PBO.

A request has been submitted by the trust to have the distribution requirement waived because it wishes to collect sufficient funds to enable the orphanage to build a home for abandoned babies. The orphanage has reached its maximum capacity and additional facilities are required to enable it to carry on its PBA to better serve the community. The trust has submitted that the estimated cost of the project is R1 million and will take at least three years to raise sufficient funds taking into account its annual income budget.

*Result:*

The Commissioner, having regard to the public interest and purpose for which funds are to be accumulated by the trust, has waived the distribution requirement for the three years as requested by the trust.

**(b) Ring-fencing requirement**

A conduit PBO providing funds or assets to other section 18A-approved PBOs, institutions, boards or bodies carrying on a combination of PBAs in Part I and Part II, must also comply with the ring-fencing requirement as discussed in **21.3.1 (a)**.<sup>88</sup>

**(c) 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, section 18A-approved PBOs, institutions, boards or bodies solely in carrying on Part II PBAs.<sup>89</sup> The conduit PBO is required to retain the audit certificate as part of its records.

**(d) Conditions for the use of undistributed amounts**

In order to allow conduit PBOs to build up reserves to ensure some degree of financial sustainability and create an opportunity to earn passive income, any amount not distributed in accordance with the distribution requirement as discussed in **21.3.2 (a)** 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 incur the obligation to distribute all amounts received from investment assets held by it, other than amounts received on the disposal of those investment assets, to other section 18A-approved PBOs, institutions, boards or bodies carrying on Part II PBAs in South Africa, no later than six months after every five years from –<sup>90</sup>

- the date on which the Commissioner issued the conduit PBO with a reference number for purposes of section 18A,<sup>91</sup> 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.

<sup>88</sup> Section 18A(2A)(b)(ii).

<sup>89</sup> Section 18A(2B).

<sup>90</sup> Section 18A(2D) was introduced by section 29(1)(b) of the Taxation Laws Amendment Act 43 of 2014 with effect from 1 March 2015.

<sup>91</sup> Section 18A(2)(a)(i).

If any conduit PBO has not distributed or has not incurred the obligation 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.<sup>92</sup>

### **Example 22 – Conditions for the use of undistributed amounts**

#### *Facts:*

The Kings Trust has been approved as a conduit PBO and issued with a reference number for purposes of section 18A by the Commissioner on 6 June 2003. The trust received donations for which it issued section 18A receipts amounting to R500 000 during the year of assessment ending 28 February 2016. The trust beneficiary is Knights Preparatory School, a PBO carrying on PBA 4(a) in Part II, in South Africa.

#### *Result:*

The trust will be required to distribute or incur the obligation to distribute at least R250 000 (R500 000 × 50%) to its beneficiary within but no later than the end of the 2017 year of assessment in accordance with the distribution requirement.

The remaining R250 000 (or a lesser amount if more than R250 000 was distributed) is required to be invested by the trust.

The trust is required to distribute or incur the obligation to distribute all amounts received from the investment of the undistributed amount no later than six months after every five years from 1 March 2015, namely –

- 29 February 2020 distributed no later than 31 July 2020; and
- 28 February 2025 distributed no later than 31 July 2025, and so on.

Thus, if the trust derived interest income of R20 000 a year on invested funds of R250 000 between 1 March 2015 and 29 February 2020, it must distribute all those amounts by no later than 31 July 2020 (R20 000 × 5 = R100 000). Likewise, all income derived on amounts accumulated during the five-year period ending 28 February 2025 must also be distributed on or before 31 July 2025.

### **21.3.3 Government**

The donations for which section 18A receipts were issued by any sphere of government must be used solely in carrying on Part II PBAs.<sup>93</sup>

### **21.4 Bona fide donations**

A donation<sup>94</sup> is a gratuitous disposal by the donor out of liberality or generosity, under which the donee is enriched and the donor impoverished. It is a voluntary gift which is freely given to the donee. There must be no *quid pro quo*, no reciprocal obligations and no personal benefit for the donor. If the donee gives any consideration at all it is not a donation.

A PBO may not accept donations which are subject to conditions that could enable the donor or any connected person in relation to the donor to derive some direct or indirect

<sup>92</sup> Section 18A(5C). The Commissioner's discretion was removed from this section by section 34 of the Taxation Laws Amendment Act 25 of 2015 with effect from 8 January 2016.

<sup>93</sup> Section 18A(2A)(c).

<sup>94</sup> The term "donation" is defined in section 55(1).

benefit from the application of the donation. The donation may also, subject to limited exceptions, not be revocable by the donor (see **12.4**).

## **21.5 Types of donations**

### **21.5.1 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 cash donation must actually be paid or transferred during the year of assessment to a section 18A-approved organisation.

#### **Example 23 – Examples of payments or transfers not qualifying as tax deductible donations**

- Amounts paid for attending a fundraising dinner or dance.
- 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.
- 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 contributed 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.

### **21.5.2 Donation of property in kind**

Donations of property made in kind may include the following:<sup>95</sup>

- Qualifying financial instruments held by the taxpayer as trading stock.
- Trading stock forming part of the business undertaking or trading activity conducted by the taxpayer. Such trading stock may include livestock or produce donated by a farmer or goods such as computers, foodstuffs, medical supplies, furniture and motor vehicles.
- An asset other than trading stock used by the taxpayer in conducting the taxpayer's trade. Such assets may include computers, furniture, office equipment, delivery vehicles, cash registers, garden equipment, crockery or kitchen utensils.

<sup>95</sup> Section 18A(3).

- 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. Such property 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 Part II PBAs.

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

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

- constituting a financial instrument unless it is –<sup>96</sup>
  - a share in a listed company; or
  - issued by a “financial institution” as defined in section 1 of the Financial Services Board Act 97 of 1990.
- creating or is subject to any fiduciary right, usufruct or other similar right; or
- constituting an intangible asset.

The donation of a service such as time, skill or effort to a section 18A-approved organisation is not a donation of property made in kind. Any professional person, such as an auditor, artist (which may include 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.

## 21.6 Value of a donation of property in kind

If any deduction is claimed by any taxpayer under section 18A for any donation of property in kind, with the exception of immovable property of a capital nature when the lower of market value or municipal value exceeds cost, the amount of such deduction will be deemed to be an amount equal to the following:<sup>97</sup>

- A financial instrument which is trading stock of the taxpayer, the lower of fair market value on the date of the donation or the amount which has been taken into account for that year of assessment for the value of that trading stock under section 22(8)(C).<sup>98</sup>
- Any other trading stock of the taxpayer (including any livestock or produce of a farmer), the amount which has been taken into account for that year of assessment for the value of that trading stock forming part of trading stock of the taxpayer under section 22(8)(C) or paragraph 11 of the First Schedule, as appropriate.
- An asset used in the taxpayer’s trade, the lower of the fair market value on the date of donation of the property or the cost to the taxpayer of such property less any allowance (other than an investment allowance) deducted from the income of that taxpayer for that asset.

<sup>96</sup> Section 18A(3B).

<sup>97</sup> Section 18A(3).

<sup>98</sup> For guidance on the application and interpretation of section 22(8) see Interpretation Note 65 (Issue 2) dated 5 February 2014 “Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade”.

- Property that is not trading stock of the taxpayer and not a business asset, the lower of the fair market value on the date of the donation or the cost to the taxpayer of such asset less depreciation using the 20% reducing balance method in the case of deterioration of movable property.
- Property that is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer to form the subject of the donation, the lower of the fair market value on the date of the donation or the cost to the taxpayer of such property.

If any deduction 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, the amount of the deduction must be determined using a specific formula.<sup>99</sup>

## 21.7 Allowable deduction from the taxable income of a taxpayer

A taxpayer, which may include 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 a section 18A-approved organisation.<sup>100</sup>

The allowable deduction from the taxable income of a taxpayer that is a portfolio of a collective investment scheme for all qualifying donations paid or transferred during the year of assessment is determined according to a specific formula.<sup>101</sup>

For all other taxpayers the allowable deduction from the taxable income of a taxpayer may not exceed 10% 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 for donations under section 18A.<sup>102</sup>

Any excess amount of a donation made which is disallowed solely for the reason that it exceeds the amount of the deduction allowable for a year of assessment may be carried forward for purposes of section 18A. The excess amount carried forward will be deemed to be a donation actually paid or transferred in the next succeeding year of assessment subject to the 10% limitation.<sup>103</sup> If any excess remains it can be further rolled over but always subject to the 10% limitation.<sup>104</sup>

<sup>99</sup> Section 18A(3A) was inserted by section 52(1)(g) of the Taxation Laws Amendment Act 31 of 2013 with effect from 1 March 2014 and applicable to amounts paid or transferred during years of assessment commencing on or after that date.

<sup>100</sup> Section 18A(1).

<sup>101</sup> Section 18A(1)(A).

<sup>102</sup> Section 18A(1)(B).

<sup>103</sup> The proviso to section 18A(1)(B) was inserted by section 52(1)(c) of the Taxation Laws Amendment Act 31 of 2013.

<sup>104</sup> The carry-forward treatment applies to donations paid or transferred during years of assessment commencing on or after 1 March 2014.

### Example 24 – Carry-forward treatment for excess deductible donations

	Year 1 R	Year 2 R	
Taxable income	1 000 000	1 500 000	
Allowable deduction	100 000	150 000	
Actual donation made	150 000	0	
Deduction claimed	100 000	50 000	(including amount carried forward)
Amount carried forward	50 000	0	

## 21.8 Tax-deductible donations

Any claim for a tax deduction from the taxable income of a taxpayer will be allowed only if supported by –<sup>105</sup>

- a section 18A receipt issued by a section 18A-approved organisation; or
- an employees' tax certificate (IRP 5 certificate).<sup>106</sup>

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

### 21.8.1 Donations made directly to section 18A-approved organisations

The section 18A receipt must be issued by the section 18A-approved organisation in the year of assessment in which the donation is received.

The deduction of donations made directly to a section 18A-approved organisation for which it has issued a section 18A receipt is claimed by the taxpayer annually on assessment of the income tax return.

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

### 21.8.2 Donations made by payroll-giving

A payroll-giving programme operated by an employer enables employees to donate from their salaries on a monthly basis to section 18A-approved organisations.

A section 18A-approved organisation must issue a section 18A receipt to the employer for the total amount of donations paid by the employer on behalf of the employees. Section 18A receipts may be issued to the employer on a monthly basis or for a period that either coincides with the interim (1 March to 31 August) or annual (1 March to 28 / 29 February) period for which the employer is required to submit a reconciliation declaration to SARS for employees' tax purposes (see **33**).

## 21.9 Section 18A receipts

In order for a section 18A receipt to be a valid receipt it must include the following details:<sup>107</sup>

- The reference number issued to it by the Commissioner for purposes of section 18A.
- The date the donation is received.

<sup>105</sup> Section 18A(2).

<sup>106</sup> The term "employees' tax certificate" is defined in paragraph 1 of the Fourth Schedule.

<sup>107</sup> Section 18A(2)(a).

- 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 Part II PBAs.

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

### **21.10 Abuse of section 18A approval**

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 agency has –<sup>108</sup>

- materially failed to ensure that the objects for which that organisation was established have been carried out;
- expended that organisation's monies for purposes not covered by its objects;
- issued or allowed a 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 section 18A receipt was issued for any purpose other than for any Part II PBAs.

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 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 the taxable income of the donor.

SARS must notify National Treasury and the Provincial Treasury (if applicable) when an accounting officer<sup>109</sup> or accounting authority<sup>110</sup> of any sphere of government has –<sup>111</sup>

- 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 Part II PBAs.

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

<sup>108</sup> Section 18A(5).

<sup>109</sup> See the term "accounting officer" in the Public Finance Management Act 1 of 1999 and in the Local Government Municipal Finance Management Act 56 of 2003.

<sup>110</sup> See the term "accounting authority" in the Public Finance Management Act.

<sup>111</sup> Section 18A(5B).

qualify as a valid section 18A receipt. Those donations will therefore not qualify for a deduction from the taxable income of the donor.

### **21.11 Non-compliance by responsible person**

A person who is responsible in a fiduciary capacity for the management or control of the income and assets of a section 18A-approved PBO, 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 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.<sup>112</sup>

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.<sup>113</sup>

### **21.12 Group registration**

The Commissioner may approve a group of institutions, boards or bodies sharing a common purpose and carrying on any Part II PBAs in South Africa under the direction or supervision of a co-ordinating body, for purposes of section 18A.<sup>114</sup>

A co-ordinating body of a group of PBOs,<sup>115</sup> institutions, boards or bodies approved as a group for purposes of section 18A must ensure compliance with section 18A.

Non-compliance by the co-ordinating body in taking the steps prescribed by SARS (see **14**) or failing to notify the Commissioner when it becomes aware of any material failure to comply with the provisions of section 18A may, after due notice, result in the withdrawal of the approval 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 section 18A-approved PBOs, institutions, boards or bodies within the group on or after the date specified in the notice, will not qualify for a tax deduction in the hands of the donor.<sup>116</sup>

## **22. Other issues**

### **22.1 Branch of a foreign tax-exempt organisation**

An organisation established outside South Africa, may establish a branch in South Africa for purposes of conducting PBAs. The branch may be approved as a PBO provided the foreign organisation is exempt from income tax in its country of origin. The branch will be required to submit confirmation of exemption from foreign income tax of the foreign organisation together with a copy of its founding document when the application is submitted to the Commissioner.

A branch governed by the founding document of the foreign tax-exempt organisation must submit a written undertaking to confirm compliance with section 30, insofar as the governance, funding and activities of the branch are concerned (see **17**).

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<sup>112</sup> Section 18A(7)(i).

<sup>113</sup> Section 18A(7)(ii).

<sup>114</sup> Section 18A(6).

<sup>115</sup> See section 30(3A) regarding the approval of a group registration for PBOs.

<sup>116</sup> Section 18A(5A).

A branch approved by the Commissioner as a PBO does not qualify for section 18A approval and will not be allowed to issue section 18A receipts even if it carries on Part II PBAs in South Africa.<sup>117</sup>

## **22.2 Educational institutions**

A “school” is defined in the South African Schools Act 84 of 1996 as either a “public” or an “independent” school.

### **22.2.1 Public schools**

A public school is a juristic person but is not established, formed or incorporated as an NPC, trust or an association of persons<sup>118</sup> and therefore not brought into existence under a founding document.

A public school whose functions are governed by the provisions of the South African Schools Act cannot be approved as a PBO but is regarded for income tax purposes as an institution established under law providing necessary and useful services to the state and members of the general public and therefore regarded as an institution, board or body.

Section 18A specifically provides for an institution, board or body carrying on a Part II PBA to be entitled to the same beneficial tax treatment as a PBO.

A public school applying for approval to issue section 18A receipts to donors must clearly indicate that it is a public school when submitting its application to the Commissioner.

A group registration may apply to public schools provided the relevant provincial education department has applied for group registration for public schools registered in its area. The education authority will therefore be required to accept responsibility of all public schools within the group to ensure compliance with the provisions of section 18A.

A PBO established to provide funding or assets to a public school may be eligible for approval as a conduit PBO and may qualify for section 18A approval.

### **22.2.2 Independent schools**

An independent school must be registered as such by the Head of the Education Department responsible for education in a province. A registered independent school can be established either as an NPC, trust or an association of persons. It will therefore have a memorandum of incorporation, a trust deed or a constitution as its founding document.

The Commissioner may approve an independent school as a PBO provided its activities and founding document comply with the provisions of section 30. It may also qualify for approval under section 18A to issue tax-deductible receipts.

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<sup>117</sup> A branch contemplated in paragraph (a)(ii) of the definition of “public benefit organisation” in section 30(1) is excluded from qualifying for approval under section 18A(1)(a).

<sup>118</sup> An association of persons contemplated in paragraph (a) of the definition of “public benefit organisation” in section 30(1).

### 22.3 Provision of scholarships, bursaries, awards and loans

The provision of scholarships, bursaries, awards and loans for study, research, and teaching contemplated in PBA 4(o) in Part I<sup>119</sup> and PBA 3(o) in Part II<sup>120</sup> are subject to conditions prescribed by the Minister by regulation in the *Gazette*.

An organisation carrying on this PBA must comply with the prescribed conditions contained in these regulations and its founding document must expressly provide as follows:

- All scholarships, bursaries or awards must be *bona fide* and be granted to an individual on grounds of objective merit or need.
- The scholarship, bursary or award may not be –
  - revocable other than for reasons of failure to conform with the intended purpose and condition of that scholarship, bursary or award;
  - subject to conditions enabling the donor of the funds or any connected person in relation to the donor to derive a direct benefit; and
  - granted to any person who is or will become an employee<sup>121</sup> of the donor or organisation or associated institution<sup>122</sup> or any relative, unless it can be indicated that even if that person had not been an employee the bursary, scholarship or award would have been granted.
- All decisions regarding the granting of the scholarship, bursary or award must be made by a duly constituted committee consisting of three persons unconnected to the donor or the person to whom it will be granted.
- All scholarships, bursaries or awards granted for overseas study, research or teaching are subject to the recipient submitting a written undertaking to –
  - apply the knowledge obtained immediately after completion in South Africa for a period at least equal to the period funded by the organisation; or
  - refund the full amount of the scholarship, bursary or award if the recipient decides not to apply the knowledge in South Africa.

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

Regulations prescribed by the Minister setting out the relevant conditions relating to the provision of loans have, as yet, not been published.

For information on scholarships or bursaries that qualify for exemption from income tax under section 10(1)(q) see Interpretation Note 66 dated 1 March 2012 “Scholarships or Bursaries”.

### 22.4 Applications for PBO and section 18A approval

Organisations not formally approved as a PBO or approved under section 18A to issue tax deductible receipts must complete the prescribed application form EI 1. The completed application form with the required registration information together with all requested

<sup>119</sup> See GN R 302 GG 24941 of 28 February 2003.

<sup>120</sup> See GN R 333 GG 27455 of 8 April 2005.

<sup>121</sup> The term “employee” is defined in paragraph 1 of the Fourth Schedule.

<sup>122</sup> The term “associated institution” is defined in paragraph 1 of the Seventh Schedule.

supporting documentation must be submitted to the TEU or to the nearest SARS branch office.

The notification of approval as a PBO and approval under section 18A 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 **28.1**). The organisation is required to retain the letter confirming approval as part of its records.

A written notification will also be issued by the TEU to the organisation should the approval not be granted together with reasons why the organisation failed to meet the conditions and requirements of section 30 or section 18A.

## **22.5 Approval not granted or withdrawn**

An organisation not 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. An organisation constituted as –

- an NPC and any association of persons,<sup>123</sup> will be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies;<sup>124</sup> and
- a trust will be liable for tax on its taxable income at the rate applicable to trusts,<sup>125</sup> subject to sections 7 and 25B.

## **23. 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 as discussed in **23.1** to **23.7**. For more information on any of these taxes and duties see *Taxation in South Africa*.

### **23.1 Donations tax**

Donations tax is payable by any resident<sup>126</sup> (the donor) who makes a donation to another person (the donee). Donations tax is payable at a rate of 20%<sup>127</sup> on the value of any gratuitous disposal of property including the disposal of property at less than its market value.

Donations tax is payable by the donor, but if the donor fails to pay the tax within the prescribed period, the donor and donee are jointly and severally liable for the tax.<sup>128</sup>

Donations made by or to a PBO are exempt from the payment of donations tax.<sup>129</sup>

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<sup>123</sup> See paragraph (d) of the definition of “company” in section 1(1).

<sup>124</sup> See paragraph 3(a) in Appendix I to the Act.

<sup>125</sup> See paragraph 2 in Appendix I to the Act.

<sup>126</sup> The term “resident” is defined in section 1(1).

<sup>127</sup> Section 64.

<sup>128</sup> Section 59.

<sup>129</sup> Section 56(1)(h).

## 23.2 Estate duty

Estate duty is levied under the Estate Duty Act 45 of 1955 at a rate of 20%<sup>130</sup> on the dutiable amount of the estate of a deceased person.

Any property bequeathed to a PBO is excluded from the value of the estate and not subject to estate duty.<sup>131</sup>

## 23.3 Transfer duty

Transfer duty is levied under the Transfer Duty Act 40 of 1949 on a sliding scale on the value of any property<sup>132</sup> acquired by any person. The rates vary from 0% to 13% for all persons. The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty. Transfer duty will apply only if the property transaction is not a taxable supply for VAT purposes as discussed in **32**.

A PBO is exempt from the payment of transfer duty on any property acquired provided that the whole or substantially the whole<sup>133</sup> of the property is used for the purpose of carrying on one or more PBAs.<sup>134</sup> The transfer of property by a PBO to a separate entity controlled by that PBO may also qualify for an exemption from transfer duty.<sup>135</sup>

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction. Each transaction is therefore considered on its own merits. A declaration<sup>136</sup> available on eFiling [www.sarsefiling.co.za](http://www.sarsefiling.co.za) must be submitted for each acquisition of property for which an exemption is required. No supporting documents need to be submitted at the time that the required declaration is submitted. Supporting documents must, however, be retained and submitted when requested in writing by SARS through eFiling. Supporting documents may include –

- the letter issued by the Commissioner granting approval to the PBO;
- an affidavit setting out the activities to be carried out on the property; and
- confirmation that the whole or substantially the whole of the property will be used to carry on one or more PBAs.

If at any time subsequent to the acquisition of property that has qualified for the exemption from transfer duty the whole or substantially the whole of the property is used for a purpose other than for carrying on any PBAs, transfer duty becomes payable. The date that the property is used for a purpose other than for the carrying on of the PBA is deemed to be the date of acquisition. The transfer duty will be calculated at the rate applicable at the deemed date of acquisition but will be based on the value of the property as at the original date of acquisition.

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<sup>130</sup> Section 2(2) and at the rate set out in the First Schedule to the Estate Duty Act.

<sup>131</sup> Section 4(h) of the Estate Duty Act.

<sup>132</sup> See definition of “property” in section 1(1) of the Transfer Duty Act.

<sup>133</sup> See Binding General Ruling (Income Tax) 20 (Issue 2) dated 20 January 2016 “Interpretation of the Term ‘Substantially the Whole’ “.

<sup>134</sup> Section 9(1)(c) of the Transfer Duty Act.

<sup>135</sup> Section 9(1A) of the Transfer Duty Act.

<sup>136</sup> The declaration is required under section 14 of the Transfer Duty Act and is regarded as a “return” and subject to the provisions of section 25 of the TA Act.

For guidance on the interpretation and application of transfer duty exemption relating to PBOs see Interpretation Note 22 (Issue 3) dated 22 September 2015 “Transfer Duty Exemption: Public Benefit Organisations and Statutory Bodies”.

For further information on transfer duty in general and the processing of transactions on eFiling see External Guide – *Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

## 23.4 Dividends tax

The provisions relating to dividends tax are contained in section 64D to section 64N and apply to any dividend paid by a company on or after 1 April 2012. Although dividends tax is part of the Act, it is a separate tax from income tax.

Any dividend paid before 1 April 2012 was subject to secondary tax on companies (STC) which was a tax levied on the company paying the dividend.

Dividends tax is levied at the rate of 15%<sup>137</sup> of the amount of a dividend paid by a company that is a resident.<sup>138</sup> Dividends tax is also payable on a foreign dividend to the extent that the foreign dividend does not constitute the distribution of an asset *in specie* and it is paid by a foreign company whose shares are listed on the Johannesburg Stock Exchange.

Dividends tax on a cash dividend is levied on the person entitled to the benefit of the dividend attaching to the share. This person is generally known as the beneficial owner.<sup>139</sup>

A company paying a dividend is liable for dividends tax when a dividend is paid that constitutes the distribution of an asset *in specie*.

Generally, a company that declares and pays a dividend must withhold an amount of dividends tax, except to the extent that the dividend consists of a distribution of an asset *in specie*, in which case, the company paying the dividend is liable for dividends tax.

It is not the responsibility of the company or regulated intermediary<sup>140</sup> paying the dividend to determine who the beneficial owner of a dividend is and whether the person qualifies for an exemption from dividends tax. The exemptions from dividends tax for cash dividends are contained in section 64F while the exemptions for dividends *in specie* are contained in section 64FA.

A PBO that is the beneficial owner of a dividend is exempt from dividends tax.<sup>141</sup> This exemption applies only if the PBO has submitted a declaration to the company that declared and paid the dividend or to the regulated intermediary that paid the dividend, that it is exempt from dividends tax. The PBO is also required to submit a written undertaking to the company or regulated intermediary that it will inform such company or regulated intermediary in writing should it cease to be the beneficial owner of the shares or if the circumstances affecting the exemption change.<sup>142</sup>

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<sup>137</sup> Section 64E(1).

<sup>138</sup> A reduced or nil rate may apply under specific circumstances.

<sup>139</sup> The term “beneficial owner” is defined in section 64D.

<sup>140</sup> The term “regulated intermediary” is defined in section 64D. A regulated intermediary is generally an entity that temporarily holds a dividend paid by a company before it is paid over to the ultimate beneficial owner.

<sup>141</sup> Section 64F(1)(c) and section 64FA(1)(a).

<sup>142</sup> Section 64G(2)(a) and section 64H(2)(a).

The Commissioner has not issued actual forms to be used for purposes of a declaration or written undertaking but has prescribed the required wording and minimum information required in the forms which are to be prepared by the company, regulated intermediary or beneficial owner.

The obligation lies with the PBO which is the beneficial owner of the dividend to ensure that the prescribed declaration and written undertaking are filed timeously with the company or regulated intermediary paying the dividend.

It is important for PBOs that hold investments through trusts to determine whether the investment vehicle is structured as either a vesting or discretionary trust. Beneficiaries who have a vested right in the dividends received by a trust will be regarded as the beneficial owners. PBOs who have a vested right in dividends received by a trust should ensure that the prescribed declarations of exemption are filed with the companies or regulated intermediaries paying dividends to the trust to ensure that the dividends are not subject to dividends tax. Beneficiaries of a discretionary trust are not regarded as the beneficial owners of dividends paid to the trust. Beneficiaries of a discretionary trust do not have a right to dividends earned by a discretionary trust and are entitled to the dividends only once the trustees exercise their discretion to distribute dividends to them. It is therefore not possible for beneficiaries of discretionary trusts to file declarations of exemption since these beneficiaries are not entitled to the benefit of dividends attaching to the shares held by a discretionary trust, unless the trustees exercise their discretion in this regard. PBOs that are beneficiaries of discretionary trusts should be aware that dividends paid to the trust may attract dividends tax at 15%.

A PBO that has received a dividend that is exempt or partially exempt from dividends tax<sup>143</sup> must submit to SARS a Dividends Tax Return (DTR02),<sup>144</sup> which is available on the eFiling website, by the last day of the month following the month during which the dividend is received.<sup>145</sup>

For more information see the *Comprehensive Guide to Dividends Tax*.

### 23.5 Securities transfer tax

Securities transfer tax (STT) is levied under the Securities Transfer Tax Act 25 of 2007 at the rate of 0.25% on the taxable amount of every listed and unlisted security transferred.<sup>146</sup>

STT is not payable if the security is transferred to a PBO, provided the STT would legally have been payable by that PBO.<sup>147</sup> The exemption will apply only if a declaration<sup>148</sup> is lodged with the participant,<sup>149</sup> who holds and administers that security.<sup>150</sup>

For more information on STT and the electronic submission of STT declarations and payments on the e-STT system via eFiling see *External Reference Guide – Securities Transfer Tax*.

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<sup>143</sup> Section 64F or section 64FA.

<sup>144</sup> Section 64K(1A) was inserted by section 5(b) of the Tax Administration Laws Amendment Act 44 of 2014 with effect from 20 January 2015.

<sup>145</sup> See *Declaration of Dividends Tax via eFiling*.

<sup>146</sup> The terms “listed security”, “unlisted security” and “security” are defined in section 1 of the Securities Transfer Tax Act.

<sup>147</sup> Section 8(1)(d) of the Securities Transfer Tax Act.

<sup>148</sup> Section 8(2) of the Securities Transfer Tax Act.

<sup>149</sup> The term “participant” is defined in section 1 of the Securities Transfer Tax Act.

<sup>150</sup> Section 8(3) of the Securities Transfer Tax Act.

## 23.6 Skills development levy

Skills development levy (SDL) is a compulsory levy to fund education and training under the Skills Development Levies Act 9 of 1999. SARS administers the collection of this levy which is levied based broadly on 1% of the payroll of employers. Employers providing training to employees may receive grants from the Sector Education and Training Authorities (SETAs).

A PBO is exempt from the payment of SDL if it –

- is registered as an employer and its annual payroll will not exceed R500 000 in the following 12 months;<sup>151</sup>
- solely carries on PBAs 1, 2(a), 2(b), 2(c), 2(d) and 5;<sup>152</sup> or
- solely provides funds to a PBO that solely carries on the above PBAs.<sup>153</sup>

For more information see the *External Guide – Guide for Employers in respect of Skills Development Levy* and Interpretation Note 10 (Issue 2) dated 18 August 2015 “Skills Development Levy Exemption: Public Benefit Organisations”.

## 23.7 Capital gains tax

A capital gain or loss must be determined under the Eighth Schedule when a person disposes of an asset. A capital gain arises when the proceeds on disposal of an asset exceed its base cost. A capital loss arises when the base cost exceeds the proceeds.

Different rules apply for determining the base cost of an asset depending on whether it was acquired before, or on or after the “valuation date” (effective date for implementation of CGT). The base cost of a pre-valuation date asset is its “valuation date value” plus any further qualifying costs incurred on or after the valuation date.<sup>154</sup> For assets acquired on or after the valuation date the base cost of an asset is generally its actual cost determined under paragraph 20 of the Eighth Schedule. The base cost of an asset can be required to be determined at market value under specified circumstances such as when it is acquired by donation, for a consideration not measurable in money or at a non-arm’s length price from a connected person.<sup>155</sup>

Capital gains and losses may under specified circumstances be disregarded.

A taxable capital gain is included in a person’s taxable income and an assessed capital loss is carried forward to the following year of assessment for set-off against future capital gains.

Up until years of assessment commencing on or after 1 April 2006, PBOs enjoyed complete exemption from income tax and CGT. Following the introduction of partial taxation PBOs no longer qualify for full exemption from CGT.

As from the first day of their first year of assessment commencing on or after 1 April 2006 any capital gain or capital loss made by a PBO on the disposal of an asset which has been used for a business undertaking or trading activity or substantially the whole of which has been used in such an undertaking will not be disregarded.

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<sup>151</sup> Section 4(b) of the Skills Development Levies Act.

<sup>152</sup> Section 4(c)(i) of the Skills Development Levies Act.

<sup>153</sup> Section 4(c)(ii) of the Skills Development Levies Act.

<sup>154</sup> Paragraph 25 of the Eighth Schedule.

<sup>155</sup> Paragraph 38 of the Eighth Schedule.

The following publications on CGT are available:

- Interpretation Note 44 (Issue 2) dated 4 February 2014 “Public Benefit Organisations: Capital Gains Tax”
- *Comprehensive Guide to Capital Gains Tax* (Issue 5)
- *Guide on Valuation of Assets for Capital Gains Tax Purposes* (Issue 3)
- *The ABC on Capital Gains Tax for Companies* (Issue 6)

### 23.7.1 Valuation date

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

### 23.7.2 Capital gain or capital loss to be disregarded

Any capital gain or capital loss made by a PBO on the disposal of an asset falling into one of the three categories discussed below must be disregarded.<sup>156</sup>

#### (a) Non-trading assets

This category applies to assets which have not been used by the PBO on or after the valuation date in carrying on any business undertaking or trading activity and includes assets which have been used exclusively for conducting PBAs. Only the usage of the asset on or after the valuation date is taken into account. Any trade usage before that date is ignored.<sup>157</sup>

#### **Example 25 – Asset used exclusively on or after the valuation date in carrying on a PBA**

##### *Facts:*

The financial year of a PBO carrying on the PBA of providing health care services to poor and needy persons ends on 30 April. The PBO acquired immovable property on 30 June 2003 from which it carries on its PBA. During the period 30 June 2003 to 30 April 2006, 30% of the property was let to third parties while the remaining usage was for its PBAs. As from the valuation date the property was used exclusively in carrying on PBAs. The property was sold on 30 September 2015 resulting in a capital gain of R100 000.

##### *Result:*

The capital gain of R100 000 must be disregarded since the asset was used exclusively on or after the valuation date, which is 1 May 2006, to carry on PBAs. Any trade usage before the valuation date is disregarded.

Also included in this category are assets which are not “used” but “held”. Such assets include investments in the nature of shares and participatory interests in collective investment schemes.

<sup>156</sup> Paragraph 63A of the Eighth Schedule.

<sup>157</sup> Paragraph 63A(a) of the Eighth Schedule.

### **Example 26 – Asset “held” not “used”**

*Facts:*

A PBO carrying on a PBA of caring for homeless children invested its surplus funds in a collective investment scheme. The PBO disposed of its participatory interest in the collective investment scheme at a capital gain to fund the purchase of additional accommodation.

*Result:*

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

### **(b) Minimal-trading assets**

This category applies when substantially the whole of the use of the asset by the PBO on or after the valuation date was directed at a purpose other than carrying on a business undertaking or trading activity.<sup>158</sup> An example of such an asset is one that is used 10% of the time for trading purposes and 90% of the time to carry on PBAs. Of critical importance are the words “substantially the whole of the use” which are explained in **20.1.6**.

The assets referred to in this category are excluded from the non-trading category since they are used, albeit to a limited extent, in carrying on a business undertaking or trading activity. The percentage of the asset used for trade or business purposes must be determined using a method appropriate to the circumstances, for example, one based on time or floor area.

### **Example 27 – Determination of “substantially the whole of the use” on a time basis**

*Facts:*

The financial year of a religious organisation approved as a PBO, ends on 30 April. It acquired a manse in 1995 for occupation by its resident minister. The minister’s term of office ended on 30 June 2006 and the manse was let to a third party from 1 July 2006 to 31 December 2007. The newly appointed minister took occupation on 1 January 2008 and continued to occupy the manse until it was sold on 30 April 2016.

*Result:*

The PBO’s valuation date is 1 May 2006, being the first day of its first year of assessment commencing on or after 1 April 2006.

The asset was held for 120 months from the valuation date to the date of sale (1 May 2006 to 30 April 2016). During this period the manse was used to carry on PBAs for 102 months (2 months from 1 May 2006 to 30 June 2006 and 100 days from 1 January 2008 to 30 April 2016) and let for 18 months (1 July 2006 to 31 December 2007). The manse was thus used on or after the valuation date 85% of the time ( $102 / 120 \times 100$ ) for carrying on PBAs.

It follows that the PBO has used substantially the whole of the manse from the valuation date in carrying on its PBAs. The PBO must accordingly disregard any capital gain or capital loss on the disposal of the manse.

<sup>158</sup> Paragraph 63A(b)(i) of the Eighth Schedule.

### (c) Permissible trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after the valuation date was directed at carrying on a business undertaking or trading activity qualifying for exemption under section 10(1)(cN)(ii)(aa) to (cc).<sup>159</sup>

The permissible business undertakings or trading activities are as follows:

- Integral and directly related trade contemplated in section 10(1)(cN)(ii)(aa) as discussed in **20.2.1**.

#### **Example 28 – Asset used to carry on an integral and directly related trading activity**

*Facts:*

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

*Result:*

The vegetable gardening activity is regarded as an integral and directly related trading activity because it forms part of the PBA of caring for and providing training for the residents. The capital gain realised on the sale of the property is disregarded for CGT purposes.

- Occasional trade contemplated in section 10(1)(cN)(ii)(bb) as discussed in **20.2.2**.

#### **Example 29 – Asset used to carry on an occasional trading activity**

*Facts:*

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

*Result:*

This event qualifies as an occasional trading activity. If the marquee is sold, any resulting capital gain or capital loss must be disregarded for CGT purposes.

- Ministerial approval contemplated in section 10(1)(cN)(ii)(cc) as discussed in **20.2.3**.

Any capital gain or capital loss made on the disposal of an asset used in a trading activity or business undertaking that does not fall within the ambit of the permissible business or trading activities set out above, and which is subject to the basic exemption under section 10(1)(cN)(ii)(dd) as discussed in **20.2.4** will not be disregarded.

### **23.7.3 Base cost**

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

- The market value of the asset on valuation date.

<sup>159</sup> Paragraph 63A(b)(ii) of the Eighth Schedule.

- 20% of the proceeds from the disposal of the asset after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after valuation date.
- The time-apportionment base cost of an asset.<sup>160</sup>

**(a) Market value**

A PBO wishing to adopt the market-value method for an asset must have valued it within two years from the valuation date.<sup>161</sup>

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

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

<b>Year of assessment ending on the last day of</b>	<b>Valuation date</b>	<b>Final day for completion of valuation</b>
March	1 April 2006	31 March 2008
April	1 May 2006	30 April 2008
May	1 June 2006	31 May 2008
June	1 July 2006	30 June 2008
July	1 August 2006	31 July 2008
August	1 September 2006	31 August 2008
September	1 October 2006	30 September 2008
October	1 November 2006	31 October 2008
November	1 December 2006	30 November 2008
December	1 January 2007	31 December 2008
January	1 February 2007	31 January 2009
February	1 March 2007	28 February 2009

<sup>160</sup> The time-apportionment base cost of an asset is determined under paragraph 30 of the Eighth Schedule.

<sup>161</sup> Paragraph 29(4)(b)(i) of the Eighth Schedule.

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

Description	Market value on valuation date
Financial instrument listed on a recognised exchange for which a price was quoted on that exchange <sup>162</sup>	Ruling price on last business day before valuation date
A participatory interest in a local collective investment scheme in: <sup>163</sup> <ul style="list-style-type: none"> <li data-bbox="252 539 432 573">• Securities</li> <li data-bbox="252 595 416 629">• Property</li> </ul>	Price at which a participatory interest can be sold to the management company of the scheme on valuation date

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

**(b) “Twenty per cent of proceeds” method**

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

**(c) Time-apportionment base cost**

The detailed workings of the time-apportionment method are explained in the *Comprehensive Guide to Capital Gains Tax*. A time-apportionment calculator “*TAB Calculator for PBOs and Recreational Clubs*” is available on the SARS website.

An asset acquired by donation or inheritance by a PBO before the valuation date for no consideration will have an acquisition cost equal to the market value of the asset at the time of its acquisition for the purposes of determining “B” in the time-apportionment formula.

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

**23.7.4 Donations and bequests to a public benefit organisation**

Any capital gain or capital loss determined on an asset which has been donated or bequeathed to a PBO must be disregarded by the donor.<sup>164</sup>

**24. Administrative provisions – Tax Administration Act**

The TA Act<sup>165</sup> deals with tax administration and seeks, among other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.

<sup>162</sup> Paragraph 31(1)(a) of the Eighth Schedule.

<sup>163</sup> Paragraph 31(1)(c)(i) of the Eighth Schedule.

<sup>164</sup> Paragraph 62(b) of the Eighth Schedule.

<sup>165</sup> The TA Act came into effect on 1 October 2012.

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act that imposes that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.<sup>166</sup> If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.<sup>167</sup>

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **27**), returns (see **28**), assessments, dispute resolution (see **31**), interest, refunds and anti-avoidance will therefore also apply to PBOs.

For comprehensive information relating to taxpayers obligations and entitlements under the TA Act see *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

## 25. Furnishing of information

The Commissioner may, in order to assist in enforcing the provisions of the Act, submit a written request to any person to furnish information about any PBO and may require that person to –<sup>168</sup>

- 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.

These provisions also apply to any section 18A-approved institution; board or body carrying on any Part II PBAs.<sup>169</sup>

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.<sup>170</sup>

## 26. Changes in registered particulars

A PBO must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A PBO must communicate to SARS any change of postal, physical or electronic addresses, representative taxpayer and banking particulars.<sup>171</sup>

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.<sup>172</sup>

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<sup>166</sup> Section 4(2) of the TA Act.

<sup>167</sup> Section 4(3) of the TA Act.

<sup>168</sup> Section 30(10) and section 46(1) of the TA Act.

<sup>169</sup> Section 18A(4).

<sup>170</sup> Section 234(h)(i) and (ii) of the TA Act.

<sup>171</sup> Section 23 of the TA Act.

<sup>172</sup> Section 234(a) of the TA Act.

## 27. Record-keeping

All PBOs are required to keep records for five years<sup>173</sup> from the date of the submission of a return under the TA Act and no longer four years<sup>174</sup> as previously required under the Act.

A return<sup>175</sup> includes any form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS. This return includes the prescribed application form EI 1 for approval or exemption from income tax, the required supplementary information and documentation and the relevant written undertaking (if applicable) on which the Commissioner based the decision to approve or not to approve an exemption from income tax.

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained for longer periods.<sup>176</sup>

### **Example 30 – Examples of record retention periods for which records, books of account or documents are required to be kept and retained**

- Five years from the date of the submission of a return.
- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.
- If an objection or appeal against an assessment or decision is lodged the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.<sup>177</sup>
- A person notified of, or is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded or the applicable five-year period has elapsed, whichever is the later.

The records, books of account, or documents that 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.

### **Example 31 – Examples of records, books of account or documents that must be kept and retained**

- Cash books
- Debtors, creditors and sales ledgers
- Journals

<sup>173</sup> Section 29(3) of the TA Act.

<sup>174</sup> Section 3 and section 4 of the Tax Administration Laws Amendment Act 44 of 2014 amended and repealed section 18A(4) and section 30(9), respectively. These amendments came into operation on 20 January 2015.

<sup>175</sup> The term “return” is defined in section 1 of the TA Act.

<sup>176</sup> Section 32 of the TA Act.

<sup>177</sup> See *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)* (Issue 2).

- Fixed-asset register
- Bank statements and deposit slips
- Invoices
- Section 18A receipts issued by section 18A-approved organisations
- Audit certificates
- Minutes of meetings at which any scholarship, bursary or award was granted (see **22.3**).

In order 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.<sup>178</sup>

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.<sup>179</sup> The rules require that electronic records must be kept in their original form,<sup>180</sup> and should within a reasonable time, be accessible to and readable by SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups and conversions.<sup>181</sup>

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.<sup>182</sup>

## **28. Income tax returns**

The Commissioner annually gives public notice in the *Gazette* of the persons that must furnish an income tax return.<sup>183</sup>

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 not qualifying for exemption.

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

- the eFiling website;
- the TEU;
- any SARS branch office; or

<sup>178</sup> Section 30 of the TA Act.

<sup>179</sup> See GN 787 GG 35733 of 1 October 2012.

<sup>180</sup> See section 14 of the Electronic Communications and Transactions Act 25 of 2002. Under that section a document will be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

<sup>181</sup> For further information in this regard see *Electronic Communications Guide*.

<sup>182</sup> Section 234(e) of the TA Act.

<sup>183</sup> Section 66(1).

- the SARS National Contact Centre.

For assistance on how to complete the income tax return see *How to complete the Return of Income: Exempt Organisations (IT12EI return)*.

A return must be a full and true return<sup>184</sup> and be signed by the PBO or by the PBO's duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.<sup>185</sup>

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.<sup>186</sup> A person who wilfully and without cause refuses or neglects to submit a return or document to SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.<sup>187</sup>

### **28.1 Taxpayer reference number**

A taxpayer reference number is allocated on completion of registration for income tax purposes.<sup>188</sup> For a group registration a taxpayer reference number will be allocated to the co-ordinating 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.

### **28.2 Filing an income tax return**

The public notice issued annually by the Commissioner also prescribes the period within which returns must be submitted for the years of assessment specified in that notice.

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

### **28.3 Year of assessment**

A PBO that is a trust or a testamentary trust will have a year of assessment ending on the last day of February. A trust can apply for permission to draw up its financial statements to a different closing date if it would be more convenient for it to do so.<sup>189</sup>

A PBO that is an NPC or an association of persons established under a constitution or any other written instrument will have a year of assessment ending on the date that coincides with its financial year-end. If the financial year-end is 30 June, its year of assessment will run from 1 July to 30 June of the following year. The Commissioner may exercise discretion to accept financial accounts of a company for a period ending on a day differing from the last day of the company's financial year.<sup>190</sup>

<sup>184</sup> Section 25(2) of the TA Act.

<sup>185</sup> Section 25(3) of the TA Act.

<sup>186</sup> Section 25(4) of the TA Act.

<sup>187</sup> Section 234(d) of the TA Act.

<sup>188</sup> The term "taxpayer reference number" is defined in section 1 of the TA Act and means the number referred to in section 24 of the same Act.

<sup>189</sup> See Interpretation Note 19 (Issue 4) dated 15 February 2016 "Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February".

<sup>190</sup> See Interpretation Note 90 dated 18 August 2016 "Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company's Financial Year".

## 28.4 Supporting documentation

It is not a requirement for supporting documents 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.

A PBO whose income tax return is supported by any balance sheet, statement of assets and liabilities or account prepared by any other person may be requested to submit a certificate or statement recording –<sup>191</sup>

- the extent of the examination by the preparer of the books of account and of the documents from which the books of account were prepared; and
- in so far as may be ascertained by the examination, whether the entries in those books and documents disclose the true nature of any transaction, receipt, accrual or payment or debit.

The accounts must be signed by a person responsible for the PBO in a fiduciary capacity and by the person who prepared them on behalf of the PBO.

## 28.5 Financial statements

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

## 29. Provisional tax

Provisional tax<sup>192</sup> is dealt with in the Fourth Schedule. It is not a separate tax but merely a mechanism to assist taxpayers in meeting their tax liability by spreading it over the relevant year of assessment as opposed to paying a large amount at the end of a year of assessment. A provisional taxpayer<sup>193</sup> is required to estimate taxable income for a year of assessment and calculate provisional tax payable on that estimate.

PBOs are excluded from the definition of “provisional taxpayer” in the Fourth Schedule and are not required to submit provisional tax payments.<sup>194</sup> Any liability to income tax on taxable income will become payable on assessment.

For comprehensive information on provisional tax see *Taxation in South Africa and Guide for Provisional Tax*.

## 30. Rate of tax

A PBO liable to income tax on receipts and accruals not qualifying for exemption will pay tax at a single rate of 28%<sup>195</sup> on its taxable income, irrespective of whether it is established as an NPC, a trust or as an association of persons.<sup>196</sup>

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<sup>191</sup> Section 28 of the TA Act.

<sup>192</sup> The term “provisional tax” is defined in paragraph 1 of the Fourth Schedule.

<sup>193</sup> The term “provisional taxpayer” is defined in paragraph 1 of the Fourth Schedule.

<sup>194</sup> Paragraph (aa) of the exclusions to the definition of “provisional taxpayer” in paragraph 1 of the Fourth Schedule.

<sup>195</sup> See paragraph 4 in Appendix 1 to the Act.

<sup>196</sup> For tax rates relating to previous years of assessments see *Guide for Tax Rates / Duties / Levies* (Issue 12).

## 31. Objection and appeal

Any decision of SARS in the exercise of its discretion under section 30 and section 18A(5), (5A) and (5B)<sup>197</sup> is subject to objection and appeal.<sup>198</sup>

The Commissioner's discretion under section 30 will be exercised to determine whether –

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

The Commissioner's discretion under section 18A will be exercised to determine –

- the non-compliance of any person acting in a fiduciary capacity in relation to any PBO, institution, board or body (see **21.10**);
- the non-compliance of any co-ordinating body of a group of PBOs, institutions, boards, or bodies approved for section 18A purposes (see **21.12**); and
- the non-compliance of an accounting officer or accounting authority responsible for any department of government (see **21.11**).

A PBO may object to a decision or an assessment within 30 days from the date of the decision or assessment.<sup>199</sup> The objection must be made on the prescribed form and specify in detail the grounds on which it is made. SARS will consider the objection and may disallow the objection or allow the objection in whole or in part.

If on disallowance of the objection the PBO is dissatisfied with the decision by SARS it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.

Chapter 9 of the TA Act provides the legal framework for these disputes which must be read together with the rules for objections and appeals.<sup>200</sup> For more information on the resolution of tax disputes see *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and *Alternative Dispute Resolution: Quick Guide*.

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).

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<sup>197</sup> Section 3(4)(b) was amended by section 1(1) of the Tax Administration Laws Amendment Act 23 of 2015 to delete the reference to section 18A(5C) and to include section 18A(5), (5A) and (5B).

<sup>198</sup> Section 3(4)(b).

<sup>199</sup> See Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in case of Late Objection or Appeal".

<sup>200</sup> The rules for objections and appeals are formulated under section 103 of the TA Act and published in GN 550 GG 37819 of 11 July 2014.

## 32. Value-added tax

VAT is an indirect tax levied under the VAT Act. VAT is presently levied at a standard rate of 14% on most supplies and services in South Africa and on most goods imported into the country. There is a limited range of goods and services which are subject to VAT at the zero rate when supplied in South Africa and on exports to other countries. Certain goods are also exempt when supplied in, or imported into South Africa. VAT is payable only on imported services which are acquired for non-taxable purposes.

VAT is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor. Supplies which attract VAT at either the standard or zero rate are called “taxable supplies”. Any person that makes taxable supplies above the compulsory registration threshold or has been allowed to register voluntarily for VAT is referred to as a “vendor”. A vendor includes a person that is liable to register for VAT, even if that person has not actually registered.

The terms “public benefit organisation” and “public benefit activity” used for income tax purposes are not used in the VAT Act. Instead reference is made to an “association not for gain” and a “welfare organisation”. Both types of entity qualify for special VAT treatment provided they qualify to be registered for VAT. The benefits available to each type of entity differ depending on whether the criteria set out in **32.2** or **32.3** are met.

For comprehensive information on the VAT implications of transactions relating to PBOs see *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

### 32.1 Registration

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

A person cannot register if only exempt supplies, such as education, are made.

#### 32.1.1 Compulsory registration

Any person, including an association not for gain,<sup>201</sup> is required to register for VAT purposes if an enterprise is carried on and taxable supplies in excess of R1 million are made in any consecutive 12 month period.

This requirement means that an existing association not for gain making taxable supplies must register from the beginning of the month if the value of taxable supplies for the preceding 12 months has exceeded the compulsory registration threshold. Application for registration must be made within 21 days of exceeding the threshold.

An existing or newly created association not for gain that enters into a written contract to make taxable supplies exceeding R1 million within the next 12 month period must register within 21 days of entering into the contract.

#### 32.1.2 Voluntary registration

Any person, including an association not for gain carrying on an enterprise which makes taxable supplies with a value of less than R1 million in any consecutive 12 month period, may choose to register voluntarily if certain conditions are met.

<sup>201</sup> The term “association not for gain” includes a “welfare organisation”.

A person may apply for voluntary registration when –

- the value of taxable supplies has already exceeded the minimum voluntary registration threshold of R50 000 within the preceding 12 months, or if there is a written contractual commitment to make taxable supplies exceeding R50 000 within the next 12 month period;<sup>202</sup> or
- the R50 000 threshold has not yet been reached because the person carries on certain types of activities which will lead to taxable supplies being made only after a period of time (exceeding 12 months).

The specific conditions which must be met in order to qualify for voluntary registration under these circumstances are prescribed by regulation.<sup>203</sup>

In addition to the normal rules relating to compulsory and voluntary registration, there is a special rule that a “welfare organisation”<sup>204</sup> may register voluntarily for VAT for certain “welfare activities” carried on. In that case, the R50 000 voluntary registration threshold does not apply.

### **32.2 Associations not for gain**

An “association not for gain” is essentially a religious institution or other society, association or organisation (including an educational institution of a public character) which is not carried on for profit and is required to use any property or income solely in the furtherance of its aims and objects.<sup>205</sup>

An association not for gain that has met the requirements for compulsory or voluntary registration is treated like any other business that makes taxable supplies, but the following special provisions apply:

- No output tax is payable on any donations. For example, no output tax will be declared by a VAT registered amateur football association if it receives money as a donation to cover the costs of new kit and footballs to be purchased for use by the club’s players.
- The association can apply to account for VAT on the cash (payments) basis instead of on the accrual (invoice) basis. Adoption of the cash basis will assist associations that rely extensively on cash flow to fund their day-to-day operations.
- Certain goods donated to an association not for gain are exempt from VAT on importation.<sup>206</sup>
- Different activities carried on by different organisational divisions of the same association which are sufficiently separate and distinct can be regarded as separate persons for VAT purposes. This treatment can be used to reduce the impact of VAT on the association.
- Financial assistance in the form of a subsidy or grant received from national or provincial government (a public authority) is zero-rated. In order to qualify for the

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<sup>202</sup> Persons supplying “commercial accommodation” are subject to a minimum threshold for voluntary registration of R60 000 and not R50 000. With effect from 1 April 2016 this threshold will increase to R120 000.

<sup>203</sup> See section 23(3)(b) and section 23(3)(d) of the VAT Act and the relevant regulations published in GN R 446 and GN R 447 GG 38836 of 29 May 2015.

<sup>204</sup> The term “welfare organisation” is defined in section 1(1) of the VAT Act.

<sup>205</sup> The term “association not for gain” is defined in section 1(1) of the VAT Act.

<sup>206</sup> See paragraph 5 of Schedule 1 to the VAT Act for further details.

zero-rating, the amount received must meet the definition of “grant”<sup>207</sup> and be aimed at funding the taxable activities of the association as a whole.<sup>208</sup>

### 32.3 Welfare organisations

In order to qualify as a welfare organisation for VAT purposes, the organisation must fall within paragraph (a) of the definition of “public benefit organisation” in section 30(1),<sup>209</sup> be approved by the Commissioner under section 30(3), and carry on a listed welfare activity.

The approved welfare activities which allow an association not for gain to qualify as a “welfare organisation” are listed in Government Notice 112 in *Government Gazette* 27235 of 11 February 2005. The list of welfare activities is based on the categories of PBAs set out in the Ninth Schedule. However, only five of these 11 categories of PBAs have been included and do not include any PBA which is conducted in the course of making exempt supplies under section 12 of the VAT Act.

The welfare activities are categorised as follows:<sup>210</sup>

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Conservation, Environment and Animal Welfare

In addition to the special concessions set out in **32.2**, welfare organisations also enjoy the following advantages:

- The minimum threshold of taxable supplies to qualify for voluntary VAT registration mentioned in **32.1.2** does not need to be met as is the case with an association not for gain.
- The organisation may still register for VAT and obtain input tax relief on its purchases relating to the carrying on of welfare activities even if it only makes supplies for no consideration. For example, if a welfare organisation has a street collection to raise money to buy clothes for street children, the VAT paid on the purchase of the clothing may be claimed as input tax, but since the clothes are supplied to the poor and needy at no charge, there will be no output tax.

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<sup>207</sup> The term “grant” is defined in section 1(1) of the VAT Act.

<sup>208</sup> See Interpretation Note 39 (Issue 2) dated 8 February 2013 “VAT Treatment of Public Authorities, Grants and Transfer Payments” for more information on whether an amount received constitutes a “grant” as defined.

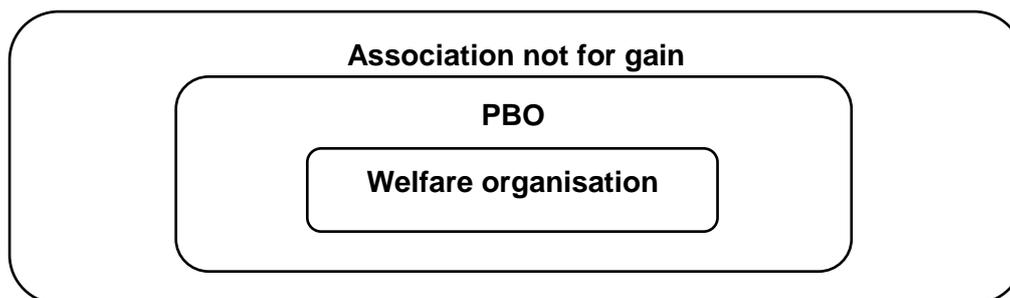
<sup>209</sup> The organisation will usually be an association not for gain for VAT purposes. Although a trust is not an “association not for gain” as defined, it can qualify as a PBO for income tax purposes. As such, it may also qualify as a “welfare organisation” for VAT purposes.

<sup>210</sup> See definition of “welfare organisation” in section 1(1) of the VAT Act.

- When financial assistance in the form of a “grant” is paid to a designated entity<sup>211</sup> by a public authority, municipality or constitutional institution, the normal rule is that the amount is subject to VAT at the standard rate. In the case of a welfare organisation the grant will be subject to VAT at the zero rate to the extent that the grant funds are used for carrying on welfare activities.<sup>212</sup>

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

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



From the diagram the following general guidelines can be established:

- An **association not for gain** includes a PBO and a welfare organisation. However, the range of different entities that qualify as an association not for gain is much wider than those that would qualify as a PBO or a welfare organisation. For example, a sporting or social club does not necessarily qualify as a PBO, and in that case, it will not qualify as a welfare organisation for VAT purposes. The club may, however, qualify as an association not for gain. Provided that it can register for VAT under the normal rules, it can benefit from the special VAT treatment.
- A **PBO** that is an association not for gain for VAT purposes will be able to benefit from the special VAT provisions. It must, however, meet the general requirements to qualify for VAT registration as is the case for any other association not for gain. A PBO does not automatically qualify as a welfare organisation for VAT purposes, as this will depend on the type of activities it conducts.
- A **welfare organisation** must in the first instance be a PBO (see 5). A welfare organisation will therefore be able to access any benefits available to an association not for gain under the VAT Act. An additional benefit for a welfare organisation is that it is not required to supply goods or services for a consideration or to meet the voluntary registration requirements mentioned in 32.1.2. By design, a welfare organisation conducts an enterprise merely by carrying on certain listed welfare activities. As such, it may choose to register voluntarily so that it can deduct input tax on any VAT-inclusive expenses incurred in carrying on the welfare activities.<sup>213</sup> However, if it chooses to register, the welfare organisation must charge and account for VAT on any taxable supplies which it makes for a consideration.

<sup>211</sup> The term “designated entity” is defined in section 1(1) of the VAT Act and includes a welfare organisation.

<sup>212</sup> The zero rating is also subject to the requirement that the amount received does not constitute payment by the public authority, municipality or constitutional institution for the procurement of any goods or services by that entity or for a specific supply to a third party.

<sup>213</sup> This will not apply to any VAT incurred on goods or services which are acquired for exempt or other non-taxable purposes.

## 32.5 Donations

The characteristics of a donation<sup>214</sup> are as follows:

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

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

## 33. Employees’ tax

Employees’ tax is dealt with in the Fourth Schedule. It is often referred to as Pay-As-You-Earn or PAYE. The purpose of the employee’s tax system is to ensure that an employee’s income tax liability is settled at the same time that the employee’s remuneration is earned, thus avoiding burdening the employee with a large tax bill on assessment. Employees’ tax deducted serves as an income tax credit that is set off against the income tax liability<sup>215</sup> of an employee, calculated on an annual basis in order to determine the employees’ final income tax liability for a year of assessment.

Employees’ tax must be deducted or withheld by every employer (or representative employer when the employer is not resident in South Africa) who pays or becomes liable to pay an amount of remuneration<sup>216</sup> to any person.

A PBO is not exempted from the obligation to deduct or withhold employees’ tax. The PBO must register as an employer for employees’ tax purposes. The PAYE to be deducted or withheld is calculated according to the tax deduction tables prescribed by the Commissioner.

A PBO that is an employer must register for employees’ tax within 21 business days of becoming an employer.<sup>217</sup> Registration is done by completing the prescribed application form EMP 101e and submitting it to the local SARS branch office. The application form EMP 101e is available at all SARS branch offices as well as on the SARS website.

A registered employer will receive a monthly return, the EMP 201 form, which must be completed and submitted together with the payment of employees’ tax within seven days after the end of the month during which the deduction was made.

An employer must issue an employee with an employees’ tax certificate (IRP 5 certificate) if employees’ tax was deducted from the employees’ remuneration. This certificate discloses,

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<sup>214</sup> The term “donation” is defined in section 1(1) of the VAT Act.

<sup>215</sup> Paragraph 28 of the Fourth Schedule.

<sup>216</sup> The term “remuneration” is defined in paragraph 1 of the Fourth Schedule.

<sup>217</sup> Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.

among other things, the total remuneration earned during a year of assessment and the employees' tax and unemployment insurance fund contributions deducted by the employer.

Employers who administer donations made by employees through payroll-giving must take these donations into account when determining the monthly employees' tax to be deducted from their remuneration. The deduction is limited for employees' tax purposes to 5% of remuneration after deducting certain amounts as specified in the Fourth Schedule.<sup>218</sup> Donations may be taken into account only if the employer received section 18A receipts issued by section 18A-approved organisations for donations made on behalf of employees. If an employee makes a donation to a section 18A-approved organisation independently of the employer, the employer is not entitled to take the donation into account (see **21.8.1**). Although the section 18A receipt is issued to the employer by the section 18A-approved organisation, the employer does not qualify for a deduction under section 18A. The section 18A receipts must be retained by the employer for record purposes.<sup>219</sup>

### **34. Unemployment insurance fund**

The purpose of the unemployment insurance fund (UIF) is to insure employees who become unemployed or their beneficiaries against loss of earnings owing to the termination of the employee's employment, illness, maternity or adoption leave, and in so doing alleviate the harmful economic and social effects of unemployment.<sup>220</sup>

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act 63 of 2001 and the Unemployment Insurance Contributions Act 4 of 2002. These statutes, among other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

UIF contributions, which are equal to 2% of the remuneration paid or payable by an employer to its employees, subject to specified exclusions, are payable by employers on a monthly basis. The employer may deduct only 1% of the contribution from the employees' remuneration.

A PBO that pays remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.

These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch office where the PBO is also liable for employees' tax or skills development levy within seven days after the end of the month during which the amount was deducted.

For more information see the *Guide for Employers in respect of the Unemployment Insurance Fund*. Useful information can also be obtained from the Department of Labour's website at [www.labour.gov.za](http://www.labour.gov.za).

### **35. Customs**

The South African customs administration plays an integral role in the facilitation of movement of goods and people entering or exiting the borders of South Africa by –

- providing border control management, community and industry protection;

<sup>218</sup> Paragraph 2(4)(f) of the Fourth Schedule.

<sup>219</sup> Section 29 of the TA Act.

<sup>220</sup> See section 2 of the Unemployment Insurance Act.

- administering of trade policy measures and industry schemes; and
- the collection of revenue.

### **35.1 Customs duty**

“Customs duty” means any duty leviable under Part I of Schedule 1 or Schedule 2 of the Customs and Excise Act 91 of 1964 on goods imported into South Africa.<sup>221</sup>

### **35.2 Excise duty and levy**

“Excise duty” is any duty leviable under Part 2 of Schedule 1 of the Customs and Excise Act on any goods imported into or manufactured in South Africa.<sup>222</sup>

Excise duties and levies are mostly imposed on high-volume daily consumable products, such as petroleum, alcohol and tobacco products, as well as on certain non-essential or luxury items, such as electronic equipment and cosmetics.

The primary function of these duties and levies is to ensure a constant stream of revenue for the state, with a secondary function of discouraging consumption of certain products which are harmful to human health or to the environment.

### **35.3 Customs duties rebates**

Schedule 4 (General Rebates) to the Customs and Excise Act consists of six parts providing for the partial or full rebate of customs duties on the importation of specific goods under specified circumstances. Parts 1 to 4 may be relevant for purposes of this guide. They comprise the following:

- Part 1 provides for “Specific rebates of customs duties” (see table for a summary of rebates of customs duties under this part).
- Part 2 provides for “Temporary rebates of customs duties” which includes various goods mostly subject to a specific permit issued by the International Trade Administration Commission (ITAC).
- Part 3 provides for “Goods temporarily admitted under rebate of customs duty” which includes goods temporarily admitted for processing, repair, cleaning or reconditioning, goods temporarily admitted for specific purposes and goods temporarily admitted subject to exportation in the same state.
- Part 4 provides for “Rebates of fuel levy” which is a rebate of the fuel levy payable on imported fuel levy goods lost, destroyed or damaged under specific circumstances.

Specific requirements may apply before the rebate of duty will be granted. A full detailed list of the goods, circumstances and the rebates allowed can be obtained from the nearest SARS branch office.

<sup>221</sup> The term “customs duty” is defined in section 1 of the Customs and Excise Act.

<sup>222</sup> The term “excise duty” is defined in section 1 of the Customs and Excise Act.

The rebates of customs duties in Part I of Schedule 4 to the Customs and Excise Act that may apply to PBOs are summarised below:

<b>Groups</b>	<b>Type of goods included</b>	<b>Special requirements or circumstances</b>	<b>Extent of rebate</b>
Importations by international organisations	Building material, monumental building stone and articles thereof	For use by the War Graves Commission and similar international organisations	Full duty
Goods for cultural, educational, charitable, welfare or youth organisations or purposes	Goods for the advancement of journalism	The institutions or bodies must be approved and their main purpose must be the advancement of journalism  The goods must have been forwarded unsolicited and free	Full duty
	Goods for disabled persons or the upliftment of indigent persons –  <ul style="list-style-type: none"> <li>• Goods (excluding motor vehicles) specially designed for use by persons with physical or mental defects</li> <li>• Machines, implements and materials for use in the manufacture of goods by persons with physical or mental defects</li> </ul>	Importations are subject to the production of a certificate endorsed by ITAC from either some or all of the following South African National Councils for the –  <ul style="list-style-type: none"> <li>• Blind;</li> <li>• Deaf;</li> <li>• Mental Health;</li> <li>• Physically Disabled; or</li> <li>• South African National Epilepsy League</li> </ul> The goods imported, must be for the exclusive use by such handicapped persons	Full duty
	Goods (excluding clothing) donated to welfare organisations	The goods must be –  <ul style="list-style-type: none"> <li>• forwarded unsolicited and free to a registered welfare organisation (under the National Welfare Act 100 of 1978); and</li> <li>• distributed free of charge by the welfare organisation, or use by such organisation</li> <li>• A specific permit from the ITAC is required</li> </ul>	Full duty
	Goods (excluding foodstuffs, clothing) donated to any educational, welfare, religious or sporting organisation, hospital and clinic	Quantities and conditions are set by ITAC	Full duty

<b>Groups</b>	<b>Type of goods included</b>	<b>Special requirements or circumstances</b>	<b>Extent of rebate</b>
	Goods for religious instruction or purposes including altars, fonts, lecterns, pulpits, church decorations, vestments and other appointments but excluding furniture	For use by a religious body	Full duty less the duty in Section B of Part 2 of Schedule 1
	Any goods for use by the National Sea Rescue Institute of RSA, the South African Lifesaving Society and SA Lifesaving	For use by such organisations	Full duty
	Cups, medals and other trophies which have been awarded abroad to persons or imported to be awarded	Various	Full duty
General rebates	<p>Various goods, that is,</p> <ul style="list-style-type: none"> <li>• Nets treated with insecticides for the control of mosquitoes</li> <li>• Bequeathed goods from abroad</li> <li>• Used property of a person who died while temporarily outside the Republic</li> <li>• Lifesaving apparatus</li> <li>• Fire extinguishing apparatus</li> <li>• Food concentrates for infants</li> <li>• Goods imported – <ul style="list-style-type: none"> <li>➢ for the relief of distress of persons in cases of famine or other national disaster;</li> <li>➢ under any technical assistance agreement; or</li> <li>➢ an obligation under any multilateral international agreement to which the Republic is a party</li> </ul> </li> <li>• Ileal bladder appliances, and parts thereof; skin protective preparations for use with ostomy appliances; incontinence undergarments, including napkins (excluding babies napkins) and incontinence pads</li> </ul>	Various	Various

## 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 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 – 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;
  - (cc) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a); or
  - (dd) the National Finance Housing Corporation contemplated in section 10(1)(f)(xvii),

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 those funds have 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 D – 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 education and training”, as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- (d) “Continuing education and training” provided by a “public college” or “private college” as defined in the Continuing 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.
- (q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r).
- (r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

#### RELIGION, BELIEF OR PHILOSOPHY

- 5. (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.
- (b) The promotion and/or practice of a belief.
- (c) The promotion of, or engaging in, philosophical activities.

#### CULTURAL

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

#### CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

- 7. (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
- (b) The care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.

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

#### RESEARCH AND CONSUMER RIGHTS

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

#### SPORT

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

#### PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

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

#### GENERAL

- 11. (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.
- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—
  - (i) the foreign participation in that event; and
  - (ii) the economic impact that event may have on the country as a whole.
- (c) The promotion, monitoring or reporting of development assistance for the poor and needy.

- (d) The provision of funds to an organisation—
- (i) which is incorporated, formed or established in any country other than the Republic;
  - (ii) which is exempt from tax on income in that other country;
  - (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
  - (iv) that carries on each of its activities—
    - (aa) in a non-profit manner;
    - (bb) with altruistic or philanthropic intent;
    - (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
    - (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).

## Annexure E – 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 education and training", as defined in the Adult Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.
  - (d) "Continuing education and training" provided by a "public college" or "private college" as defined in the Continuing 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.

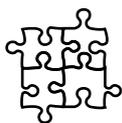
#### CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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 F – Example of section 18A receipt



### ABC PRIMARY SCHOOL

Oxford Street, Pretoria, 0001

Telephone: (000) 000 0000

Email: [abcprimaryschool@org.za](mailto:abcprimaryschool@org.za)

Website: [www.abcprimaryschool.com](http://www.abcprimaryschool.com)

Reference Number: 930000000

RECEIPT NUMBER	0001
NAME OF DONOR	
ADDRESS OF DONOR	
AMOUNT OF DONATION (CASH)	R
NATURE OF DONATION (IF NOT IN CASH)	
DATE DONATION RECEIVED	
The receipt is issued for the purposes of section 18A of the Income Tax Act 58 of 1962 (the Act). The donation received has or will be used exclusively for the object of ABC Primary School in carrying on public benefit activities listed Part II of the Ninth Schedule to the Act.	
HEADMASTER / SECRETARY / BURSAR	
DATE RECEIPT ISSUED	