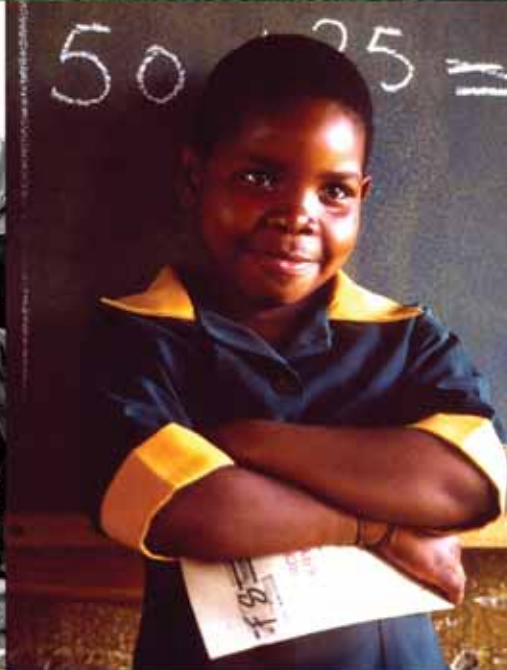




Tax Exemption Guide for Public Benefit Organisations in South Africa



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This document is a general guide dealing with the tax exemption of Public Benefit Organisations in South Africa.

Although fairly comprehensive it does not deal with all the legal detail associated with the exemption of Public Benefit Organisations.

It serves the purpose of a guide only and should not be used as a legal reference. Binding general rulings are therefore not dealt with in this Guide.

The Guide is based on the legislation as at 31 August 2007.

If an answer to your specific situation is not provided in this document or should you require additional information you may:

- Contact your own tax advisors or practitioners
- Contact the SARS Tax Exemption Unit (contact details in Annexure I)
- Visit the SARS website at www.sars.gov.za

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Legal and Policy Division

SOUTH AFRICAN REVENUE SERVICE

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1 Glossary

Act

Income Tax Act, 1962 (Act No. 58 of 1962 as amended)

Basic exemption

The threshold determined by calculating the amount of total receipts and accruals derived from taxable trading activities which are exempt from normal tax.

Capital Gains Tax (CGT)

The tax payable on the profit arising from the disposal of assets, determined in accordance with the Eighth Schedule of the Act

Commissioner

Commissioner for the South African Revenue Service

Co-ordinating body

The regulating or co-ordinating body of a group of related organisations which share the same objectives and governance provisions.

Donations Tax

Tax at the rate of 20% payable by the donor on the value of property disposed of under a donation, in terms of the Act.

Estate Duty

Duty payable on the dutiable amount of an estate of a deceased person at a rate of 20%, in terms of the Estate Duty Act, No.45 of 1955.

Fiduciary

A person who holds a position of trust or responsibility including decision making powers with respect to the affairs of an organisation.

Founding document

The written founding document establishing and governing an organisation. In the case of a company incorporated under section 21 of the Companies Act, No. 61 of 1973 it is the Memorandum and Articles of Association; in respect of a voluntary association of persons, it is the written constitution and in respect of a trust, the Trust Deed.

Income and related taxes, duties and levies

Income tax, donations tax, estate duty, transfer duty, stamp duty, VAT and skills development levy.

Minister

Minister of Finance.

NPO

Non-profit organisation.

Partial taxation

The method of taxing the receipts and accruals derived from business or trading activities which fall outside the parameters of the exempt categories including the basic exemption threshold.

PBA

Public benefit activity.

Poor and Needy

Impoverished, having little means and few possessions and therefore in need of basic necessities and assistance.

Public Benefit Activity

Any activity listed in Part 1 of the Ninth Schedule to the Act (see **Annexure E**) and any other activity determined by the Minister of Finance 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

Any organisation which is -

- a company incorporated in the Republic under section 21 of the Companies Act, 1973
- a trust formed in the Republic;
- an association of persons established in the Republic; or
- a branch established in the Republic by a charity which has been formed or established in terms of the laws of any country outside the Republic and which is exempt from income tax in such other country, which carries on a public benefit activity and complies with the provisions of section 30 of the Act (see **5**).

PBO

Public benefit organisation

Republic

Republic of South Africa

SARS

South African Revenue Service

Section 10(1)(cN) of the Act

The section of the Act which provides for the exemption from normal tax of certain receipts and accruals of those public benefit organisations which have been approved by the Commissioner in terms of section 30 of the Act and for the taxation of certain receipts and accruals derived from business activities falling outside the allowable trading rules.

Section 18A

The section of the Act providing for the tax deductibility of donations made to approved public benefit organisations, institutions, boards or bodies or the government, provincial administrations or local authorities, carrying on certain approved PBAs as listed in Part II of the Ninth Schedule to the Act (see **Annexure F**).

Section 18A receipts

Special prescribed receipts issued to donors in terms of section 18A of the Act entitling the donors to a tax deduction.

Section 30

The section of the Act detailing the conditions and requirements which must be complied with by public benefit organisations in order to gain and retain approval by the Commissioner for purposes of tax exemption.

Tax Exemption Unit (TEU)

A division within SARS having special responsibility for matters relating to exemption from specific taxes and duties in respect of certain organisations.

Transfer Duty

Duty payable on the transfer of property in terms of the Transfer Duty Act No. 40 of 1949.

VAT

Value-added tax payable in terms of the VAT Act, No. 89 of 1991

VAT Act

Value-Added Tax Act, No. 89 of 1991

2 Introduction

This Guide has been prepared to assist non-profit organisations in the Republic to understand the tax implications affecting them with specific reference to income tax, donations tax, capital gains tax, estate duty, stamp duty, transfer duty, customs duty and skills development levy.

The VAT implications affecting these organisations are not discussed in detail. A brief summary is included. A separate Guide dealing with this aspect is available from your local SARS office or on the SARS website.

Non-profit organisations play a significant role in society as they undertake a shared responsibility for the social and development needs of the country thereby relieving the financial burden, which otherwise falls on the State. Tax benefits are designed to assist non-profit organisations 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 does not mean that it is automatically exempt from income tax. The organisation will, however, only be exempt from income and related taxes if it is specially approved for this purpose by the Commissioner and if it complies with the relevant requirements and conditions as set out in the Act.

3 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 (SA), religious, charitable and educational institutions of a public character were formerly exempt from income and related taxes. However, in the absence of comprehensive case law and statutory definitions, the Commissioner was burdened with the problems of interpretation and implementation of these provisions and was often unable to accommodate worthy organisations because their activities did not fall within the letter of the Act.

Following recommendations by the Katz Commission, the Minister, in his 2000 Budget Speech, announced wide-ranging changes to the legislation regulating the income tax exemption of NPOs. The objective of the new legislation was to cluster certain types of entities together and treat them uniformly and provide more certainty for taxpayers and the Commissioner on the qualifying requirements of tax exempt entities. The Taxation Laws Amendment Act, No. 30 of 2000, which came into operation on 15 July 2001, introduced two new concepts of a "public benefit organisation" and a "public benefit activity." As required by the Act, the Minister has approved a list of qualifying PBAs which he may expand from time to time by notice in the *Gazette*. The new provisions are more detailed and comprehensive than was previously the case, resulting in more consistency and greater certainty. Specific sanction measures have also been introduced to deal with situations where a PBO misuses its exempt status or does not comply with the provisions of the Act.

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

the initial legislation contained strict provisions prohibiting approved PBOs from conducting trading or business activities outside certain narrowly defined permissible trading rules. If a PBO did not comply with these trading rules its tax exempt status could be terminated altogether. In 2006 legislation was introduced to allow for a system of "partial taxation" of PBOs whereby the receipts from trading or business activities in excess of the permissible tax free limits become subject to normal tax but without the public benefit organisation losing the exemption for its underlying PBAs.

A special dedicated office, the Tax Exemption Unit, (TEU) has been established to ensure specialised and uniform treatment and to assist in the prevention of malpractice or abuse. The TEU deals not only with applications for exemption but also applications for section 18A status. It undertakes the review and annual assessment of exempt organisations. (Contact details of the TEU are set out in **Annexure I**)

The types of organisations permitted to issue tax certificates entitling donors to a tax deduction has also been broadened. In terms of the prior repealed legislation this benefit was substantially limited to donations made to secondary and tertiary educational institutions. When the new legislation was introduced, the eligible categories of organisations and activities qualifying for deductibility of donations were considerably extended to include a much broader spectrum of PBAs. Over the years this list has been progressively broadened and currently a wide range of activities are approved for this purpose (see **Annexure F**). The maximum amount of such deductible donations has also been increased – firstly in respect of individuals, from 2% to 5% of taxable income and more recently, the limit was increased from 5% to 10% in respect of both individuals and companies (see **13** - Tax deductibility of donations).

4 Income tax exemption

Preferential tax treatment is granted to non-profit organisations established for the benefit of the general public. However, this preferential treatment will only be available to organisations complying with the provisions of the Act and related legislation, both on application for exemption from taxes and duties, and thereafter on a continuous basis throughout the existence of the organisation.

This brochure contains information which is relevant only to public benefit organisations which qualify for income tax and related tax exemptions. A summary of other organisations which also qualify for exemption from income tax is provided in **Annexure A**.

Certain receipts and accruals of PBOs are exempt from income tax in terms of section 10(1)(cN) of the Act. In terms of the provisions of section 30 the Commissioner must approve a PBO if it complies with the requirements and conditions set out in that section.

Approved PBOs have the privilege and responsibility of spending public funds in the public interest on a tax free basis which they derive from donors including the general public and directly or indirectly the State. It is therefore important to ensure that exempt organisations utilise their funds responsibly and solely for their stated objectives, without any personal gain being enjoyed by any person including the founders and the fiduciaries.

Being a NPO such as a company incorporated under section 21 of the Companies Act, No.61 of 1973 or being registered under the NPO Act, is not, in itself sufficient to justify an income tax exemption. The Commissioner will approve a PBO only if its sole or principal object is to carry on one or more of the listed PBAs and only if it complies with the other prescribed requirements of the Act as detailed hereafter.

5 Qualifying PBOs

5.1 Public Benefit Organisation

5.1.1 Type of organisation

To be approved by the Commissioner as a PBO an organisation must be constituted in one of the following ways:

- A company incorporated and registered in the Republic under section 21 of the Companies Act, 1973 whose founding document is a memorandum and articles of association.
- A trust established in the Republic and is registered with the Master of the High Court whose founding document is a trust deed.
- An association established in the Republic, as a voluntary association of persons whose founding document is a constitution adopted by its members.
- A branch established in the Republic by a foreign charitable organisation which is exempt from income tax in its country of origin.

5.1.2 Object of organisation

The sole or principal object of the organisation must be to carry on one or more of the PBAs listed in the Ninth Schedule (see 5.2) or which have been subsequently determined as such by the Minister.

The organisation may, itself, conduct the PBAs or it may provide funds to enable other approved PBOs to carry on these activities.

5.1.2.1 How must the PBAs be carried on?

The PBAs must be carried on in a non-profit manner and with an altruistic or philanthropic intent. The carrying on of a PBA as part of a profit-making venture will not qualify, but the carrying on of a profit-making venture as part of a PBA may qualify, provided it meets certain criteria.

5.1.2.2 No self-interest

No activity may directly or indirectly promote the economic self-interest of any fiduciary or employee. This does not prohibit the payment of reasonable remuneration to employees or office bearers.

5.1.2.3 Where carried on?

PBAs must be carried on in the Republic. At least 85% of the activities of a PBO, measured by taking into consideration either the cost related to the activities or the time spent on these activities, must be for the benefit of persons in SA. In special circumstances, the Minister may relax these limits and permit more than 25% of the activities to be carried on outside the Republic, without jeopardising the tax exempt status of the PBO. Donations received from organisations or persons not resident within the Republic may be expended for the benefit of persons outside the Republic, without being subject to these restrictions.

Example 1

An approved PBO carries on relief work both within the Republic and Mozambique. Expenditure is incurred within South Africa amounting to R60 000 and expenditure is incurred within Mozambique amounting to R 80 000.

Time spent on the approved activity in the Republic amounts to 86% while the time spent on the activity in Mozambique is 14%.

Although the expenditure incurred by this approved PBO is less than 85% within the Republic, the dual test requires that either 85% of the expenditure must be incurred within the Republic or 85% of the time needs to be spent within the Republic. This PBO would not be in contravention with this provision and would qualify for exemption from income tax.

Example 2

An approved PBO carries on relief work both within the Republic and Mozambique. It has received donations of R100 000 from local donors and R40 000 from foreign donors. Expenditure of R90 000 is incurred for the benefit of people in the Republic and R50 000 is incurred for the benefit of people in Mozambique. The R50 000 expenditure incurred for the benefit of people in Mozambique will be reduced by the R40 000 in foreign donations for purposes of the 85% cost test. The PBO then passes the test as 90% of its remaining costs are incurred for the benefit of people in the Republic.

5.1.2.4 For whose benefit?

The activities of a PBO must be carried on for the benefit of the general public. This requirement will be met if the activities are widely accessible to or for the benefit of the general public at large. This may include a specific sector of the general public, but may not be a small and exclusive group.

Example 3

- An organisation which engages in an activity which is only available for a select group, such as one which has been established to provide residential accommodation for retired employees of a specific company, would not qualify.
- An organisation which engages in an activity for the benefit of a certain sector of the general public, such as a school established for persons of the Hindu, Muslim or Christian faith, would qualify.
- A PBO engaged in an activity for the benefit of a broad spectrum of the community, such as providing home care to AIDS sufferers in a particular area, would qualify.

5.2 Public benefit activities

The PBAs determined by the Minister thus far, are listed in Part 1 of the Ninth Schedule to the Act. The Minister may however, determine additional PBAs from time to time by way of a notice in the *Gazette*, provided such activities are considered to be of a benevolent nature taking into account the needs, interests and well-being of the general public. Any such additional PBAs as may be determined by the Minister must be approved by Parliament and formally incorporated into the Ninth Schedule within twelve months.

PBAs are categorised as follows:

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment and Animal Welfare
- Research and Consumer Rights
- Sport
- Providing of funds, assets and other resources to approved organisations carrying on PBAs.
- General

A complete list of the approved PBAs is available as **Annexure E** to this Brochure.

5.3 Formal requirements to be incorporated in founding document

The Commissioner may approve an organisation as a PBO only if its constitution or founding document meets a number of prescribed requirements set out in section 30 of the Act. The founding document or constitution must clearly state that the activities and resources of the organisation must be exclusively applied in the furtherance of its stated object of

conducting one or more approved PBAs. A clause must also be included which clearly sets out the aims and objectives of the PBO, which must be to carry on one or more approved PBAs. It is not adequate to make a general statement to this effect and specific activities including projects and programmes must be identified. The founding document must also provide for the requirements as set out hereafter. When considering an application for exemption, the founding document as a whole will be examined to ensure that these requirements are complied with, notwithstanding the specific wording used to give effect thereto.

The following requirements must, therefore, specifically be included in the founding document:

5.3.1 Fiduciary responsibility

A PBO is required to have at least three unconnected persons who accept fiduciary responsibility for the organisation. No single person may have the ability or authority, directly or indirectly, to control the decision-making powers of the organisation.

However, a trust established in terms of the will of any person who died on or before 31 December 2003 is not subject to this limitation. The reason for this exclusion is that such wills preceded the coming into effect of this legislation and cannot be amended following the death of the testator.

Natural persons are considered to be connected if they are close relatives to one another. Such close relatives include spouses and anybody related to a person or his spouse within the third degree of consanguinity. An adopted child is deemed to be related to his adoptive parents within the first degree of consanguinity.

Any person who is in a fiduciary capacity responsible for the management or control of the income or assets of an approved PBO and who fails to comply with the provisions of the Act may in certain circumstances be found guilty of an offence. This is discussed in **11** of this Guide.

5.3.2 Use of funds

5.3.2.1 Sole or principal object

The tax exempt status of a PBO effectively entitles the PBO to the utilisation of public money to achieve its objectives for the benefit of the general public. The sole or principal object of a PBO must be to carry on one or more PBA and its funds must be utilised solely for carrying on such objectives unless excess funds are invested for income and future use. The word "principal" is used in conjunction with the word "sole" in light of the recognition that a PBO may now conduct trading activities provided such activities form a source of funding for the approved PBAs. However, this concept means that the sole, main, predominant and foremost aim or objective must remain the carrying on of one or more PBA (see **6**). It will not be acceptable for a PBO to have a sole or principal object of conducting a commercial business activity in order to fund a PBA.

5.3.2.2 Prohibition from distribution

A PBO may not distribute its funds directly or indirectly to any person, unless this occurs in the undertaking of a PBA. 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. However, funds provided to a trustee or office bearer to finance private business activities is not permitted.

5.3.2.3 Investment of surplus funds

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

5.3.3 Dissolution

A PBO which has enjoyed exemption from tax and has utilised this concession to carry on approved PBAs, may therefore not, on dissolution, distribute any of its funds to individuals or other tax-paying entities, thus enabling the recipients to share in the concession of the exemption which the PBO had enjoyed.

The founding document of an approved PBO must therefore state that on dissolution, the remaining assets must be transferred to one or more of the following:

- A similar PBO formed, incorporated or established in the Republic which has also been approved by the Commissioner as a PBO in terms of section 30 of the Act.
- An organisation established by or under law which is exempt from tax in terms of section 10(1)(cA)(i) of the Act, whose sole or principal object is the carrying on of any approved PBA.
- A department of state or administration in the national, provincial or local sphere of Government of SA.

On termination of the activities of a branch of a foreign charity which has been approved in terms of section 30, the remaining assets of the SA branch must also be distributed to one or more of the above mentioned organisations. However, foreign donations received which have not been expended may be transferred to organisations outside the Republic.

5.3.4 Non-revocable donations

A PBO may not accept any donation that may be recalled by the donor, except where the recipient fails to abide by the conditions of the donation. Furthermore, a donor may not impose conditions which will entitle the donor or a connected person to obtain some direct or indirect benefit from the application of the donation.

This prohibition is, however, not applicable where the donor is another approved PBO, or an entity established by or under law which is exempt from income tax in terms of Section 10(1)(cA)(i) and which itself is carrying on a PBA such as a foundation established to benefit a University.

5.3.5 Amendments

A PBO is obliged to submit a copy of all amendments to its founding document to the Commissioner. A provision to this effect must also be included in the founding document. The amendments must be submitted as soon as they have been effected. It will therefore not be possible to submit a founding document which complies with the provisions of the Act at the time of applying for exemption and subsequent to obtaining formal exemption, amending it to include contrary provisions. This will jeopardise the exempt status of the PBO.

See also **5.4.6** Written undertaking/amendments.

5.4 Other requirements

5.4.1 Participation in tax avoidance schemes

Once an exemption is approved, it is subject to annual review upon receipt of the income tax return and financial statements of the PBO. Only if it continues to comply with all the requirements relative to the approval, will the exemption be sustained and provided that the organisation is not a party to and does not permit itself to be used for any tax avoidance scheme to reduce, postpone or avoid the liability for tax of any other person.

5.4.2 Remuneration

Employees, office bearers, members or other persons serving a PBO may receive reasonable remuneration for services actually rendered to a PBO provided that -

- the remuneration is not excessive; and
- the remuneration does not benefit any person in a manner inconsistent with the objects of the PBO.

Reasonable remuneration is determined based on the extent of the service rendered and what is considered fair and reasonable in the specific sector.

5.4.3 Funds to associations of persons

The provision of funds to associations of persons in this context refers to the PBA described in paragraph 10(d)(iii) of Part 1 of the Ninth Schedule. This concept refers to informal community activities where no formal PBO with a founding document has been established. In terms of previous legislation, exempt organisations could only make funds available to other associations or organisations that were formally constituted and if they were similarly exempt from income tax. The result was that many deserving informal community projects could not be funded. The legislation now provides that a PBO is entitled, under certain conditions to donate funds to a voluntary or informal group of persons carrying on PBAs, despite such voluntary or informal group of persons not having a formal founding document and not being approved as a PBO.

Example 4 – Associations of persons

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

The Commissioner will only allow the provision of funds in these circumstances if satisfied that the PBO has taken reasonable steps to ensure that the funds are utilised for the purpose for which they were provided, namely to promote a PBA carried on by the association of persons and not utilised to economically benefit any single individual person. As it is difficult for the Commissioner to readily monitor such informal associations of persons, or to ensure proper compliance, the donor is required to take reasonable steps to ensure that the funds are, in fact, so used for the purposes intended.

5.4.4 NPO Act

It is no longer a precondition for a PBO to register with the Director of Non-Profit Organisations (NPOs) in terms of the Nonprofit Organisations Act, No. 71 of 1997, in order to be approved as a PBO in terms of the Act. Such registration is a voluntary commitment by an organisation.

However, the Commissioner may, upon request by the Director of NPOs, withdraw approval of a PBO if the PBO is convicted of an offence under the NPO Act.

5.4.5 Political objects

The promotion of political objects is not considered to be for the public benefit and a PBO may, therefore, not use its resources directly or indirectly to support, advance or oppose any political party. A separate income tax exemption for registered political parties is provided for in section 10(1)(cE) of the Act.

5.4.6 Written undertaking/amendments

Organisations carrying on PBAs may be established in terms of the will of a deceased person or in terms of a founding document or a constitution. In certain circumstances the founding document may not comply or cannot be amended to comply with the requirements of section 30, as discussed in 5.3 above. Provision is accordingly made for the persons

responsible for the administration of the funds and assets of the organisation to submit a written undertaking that the organisation will be administered in compliance with the provisions of section 30 of the Act.

A similar provision for a written undertaking of compliance exists where the founding document of a PBO that conducts the approved PBA of providing scholarships, bursaries or awards as set out in paragraph 4(o) of Part 1 of the Ninth Schedule, does not comply with the conditions set out in the regulations.

Where a foreign exempt charity establishes a branch in South Africa and applies for approval in terms of section 30, a written undertaking must be submitted that the branch will be administered in compliance with the provisions of section 30.

Such written undertaking will be binding on the organisation and non-compliance with its terms will result in the same penalties and actions as if the conditions had been contained in the founding document. These implications are discussed in detail in **12** - Tax avoidance / non-compliance.

An example of the written undertaking (EI 2) to be submitted to the Commissioner for purposes of section 30 as well as the written undertaking (EI 3) for the conditions prescribed for the PBA of providing scholarships, bursaries or awards (PBA 4(o) in Part 1 of the Ninth Schedule) are available on the SARS website.

6 Trading and partial taxation

6.1 Background

When the new legislation pertaining to PBOs was introduced in 2001, it contained strict provisions prohibiting PBOs from carrying on business or trading activities outside certain restricted parameters. There were four categories where trading activities conducted by a PBO did not affect its tax exempt status. Where a PBO fell foul of these trading provisions it forfeited its exempt status entirely or, in order to retain the exemption, was required to transfer the non-compliant trading activity to a separate taxable entity. This "all or nothing approach" resulted in harsh consequences for some PBOs.

In his 2005 Budget Speech the Minister announced that legislation would be introduced to allow for a system of partial taxation for PBOs whereby the business activities in excess of the prescribed limits would become fully taxable without undermining the exemption enjoyed by the PBO for the underlying PBAs.

Appropriate legislation has been introduced which came into operation on 1 April 2006 and applies to a PBO in respect of its first year of assessment commencing on or after that date.

The trading provisions, which were previously included in section 30 of the Act now form part of the amended section 10(1)(cN) to create the platform for the partial taxation of trading receipts. The relevant provisions relating to the requirement of ministerial approval and to related and occasional trading activities remain essentially unchanged. However, a new basic exemption or threshold has been introduced.

6.2 Current provisions

Effectively PBOs are now permitted to carry on business or trading activities on a tax-free basis within certain specific parameters, but will be taxed on the receipts and accruals derived from any business undertaking or trading activity that falls outside the parameters of these permissible trading rules, after deducting the basic exemption. There are three categories of permissible trading activities where there is no limit to the amount of receipts and accruals which

are exempt from normal tax. Each category has its own conditions and requirements and each rule is applied separately. The fourth rule is the basic exemption rule which is applied to the commercial trading activities which do not qualify in terms of the other three exclusion rules. Where a PBO carries on more than one commercial trading activity the basic exemption rule is applied collectively to the total receipts derived from all such other trading activities.

However, the requirements of section 30 must continue to be complied with and in particular the sole or principal object of the PBO must remain the carrying of one or more approved PBA. A PBO may now conduct a trading activity or business undertaking where the activity is utilised as a source of funding for the approved PBAs, provided that the carrying on of a business involving a commercial activity with the intention of earning a profit, does not in effect become the sole or principal object or activity. Where PBO approval has been granted but it subsequently transpires that the PBO does not comply with these requirements, the exempt status may be withdrawn retrospectively.

If a PBO is the beneficiary of a trust that carries on trading activities and the trustees exercise their discretion to distribute an amount in accordance with section 25B(2) of the Act, such amount will be deemed to be from a business undertaking or trading activity in the hands of the PBO. This distribution will be taken into account in the determination of the basic exemption of the PBO.

6.3 Meaning of certain terminology

Basic exemption – The threshold determined by calculating the amount of receipts and accruals derived from business or trading activities not otherwise excluded which is exempt from income tax. In terms of this exclusion an amount constituting the greater of 5% of the total receipts and accruals of the PBO or R100 000 will be exempt.

Note: This basic amount of R100 000 is applicable to a PBO as from its first year of assessment ending on or after 30 April 2007. Prior to this period the basic threshold was R50 000. This means that for a PBO whose year of assessment commences on or after 1 April 2006 and ends on or before 31 March 2007, the basic exemption is the greater of 5% of the total receipts and accruals or R50 000.

Example 5

An approved PBO conducts PBAs from a property which it owns. In order to augment its income, it lets a portion of the property which is not used for carrying on the PBAs. The following total receipts and accruals were received for the year ended 30 June 2007.

Donations received	R450 000
Rental income (gross)	90 000
Interest income	<u>50 000</u>
Total receipts	<u>R590 000</u>

- In terms of section 10(1)(cN)(ii)(dd), an amount being the greater of 5% of the total receipts and accruals or R100 000 will be exempt from tax.
- Five per cent (5%) of the total receipts (R590 000) amounts to R29 500.
- The total receipts from letting of the property (R90 000) will be exempt as the PBO gets the benefit of the greater of R100 000 or R29 500.

Business – Business is not defined in the Act. However, based on tax law, it is generally accepted to include anything which occupies the time, attention and labours of man for profit. There are no hard and fast rules in determining what is business. However, a number of factors will be taken into account, such as the intention, motive, frequency and the nature of the activity.

Example 6

The passive investment of surplus funds in shares or in an investment in a financial institution is not normally regarded as a business undertaking or trading activity. However, where 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 activity.

Integral and directly related – The activity must be directly connected, linked and associated with the approved PBA which is conducted by the PBO.

Example 7

A PBO conducts a PBA of providing health care services to poor and needy persons. In addition to providing a medical consultation service, the PBO also provides medication at a cost which is not market related. The provision of medication at a cost is regarded to be integral and directly related to the activity of providing a medical consultation service to poor and needy.

Occasional – The activity is conducted on an irregular or infrequent basis or as a special event.

Example 8

Activities of an occasional nature may include:

- An annual jumble sale selling unwanted clothing.
- Annual fundraising events such as cake sales, fêtes or the sale of raffle tickets where the prizes have been donated.
- A gala dinner held to raise funds.

Recovery of cost – The goods are not sold to maximize profits but rather with the intention of recovering the direct and reasonable indirect costs.

Example 9

An approved PBO which carries on educational PBAs, operates a tuck shop which serves and sells refreshments to the learners for a consideration which is determined by taking into account the cost of the goods. Assistance in the tuck shop is provided by volunteers. The cost of the goods sold includes 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, deepfreeze, etc. A minimum profit margin is also taken into account which is utilised by the PBO to fund its PBAs.

Sole or principal – The word “principal” is used in conjunction with the word “sole” in light of the recognition that PBOs may utilise trading activities as a source of funding their approved PBAs. However, this concept means that the sole, main, predominant and foremost aim or objective must remain the carrying on of one or more PBA. It will not be acceptable for a PBO to have a sole or principal object of conducting a commercial business activity in order to fund a PBA. The trading activity may never supersede or take preference over the carrying on of the PBAs. A number of factors could be taken into account such as time, cost, space allocated, etc, or a combination thereof.

Example 10

An organisation conducting a commercial business activity of a supermarket is open 7 days a week. Some of the stock in trade is utilised to provide free meals to homeless people on a regular basis. In this particular instance the sole or principal object is not to provide meals to homeless people, but to conduct a commercial trading activity.

Substantially with assistance on a voluntary basis – Means significantly, greatly, to a large extent.

Example 11

At a school fête each of the 20 classes is 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. In this particular fundraising event, the assistance provided was substantially voluntary.

Substantially the whole – Is regarded as being 90% or more. However, in order to conform with the provisions of section 30 and to overcome certain practical difficulties, a percentage of not less than 85% will be accepted. This concept may be motivated by taking into account time or cost.

Example 12

An approved PBO provides educational PBAs. In order to fund the provision of these approved PBAs, the PBO charges tuition fees. The fees are based on the estimated cost to the PBO in providing the tuition. The tuition fee is the principal source of income for the PBO. It is considered that substantially the whole of the PBA is carried out on a cost recovery basis.

Total receipts and accruals – Includes the total sum of all receipts and accruals from any source within or outside South Africa, irrespective of whether on capital or revenue account.

Example 13

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

Trade – Is defined in section 1 of the Act and includes every profession, trade, business, employment, calling, occupation or venture, letting of property and the use of or the grant of permission to use a patent, trademark or copyright. The courts have interpreted trade to be neither exhaustive nor restrictive and will include any activity where a person risks something with the object of making a profit.

Example 14

Trade will include activities such as the letting of immovable property, conducting farming activities, providing legal services, the use of a copyright or patent.

6.4 Trading rules – categories of trading activities not subject to tax

6.4.1 Integral and directly related trade [section 10(1)(cN)(ii)(aa)]

The undertaking or activity is –

- *integral and directly related to the sole or principal object of the PBO as contemplated in paragraph (b) of the definition of “public benefit organisation” in section 30;*
- *is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and*
- *does not result in unfair competition in relation to taxable entities.*

All three of the following requirements must be complied with:

- The trading or business activity must be integral and directly related to the approved PBA carried on by the PBO.
- Substantially the whole of the trading activity must be conducted on a cost recovery basis. It is accepted that it is not always possible to base trading activities on a 100% cost recovery basis and it is for this reason that the legislation requires that substantially the whole of the trading activity must be based on recovery of cost. The concepts “recovery of cost” and “substantially the whole” are explained in **6.3** above.

- The trading activity should not be seen as being in unfair competition with other taxable entities. This means that the PBO should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same trading activity, in that it is not required to sacrifice a portion of the profit in the form of tax. Each case would be considered on its own merit and various factors could possibly be taken into account, such as active advertising or marketing, whether or not the activity is conducted on a competitive basis with the intention of maximising profits and whether the income received is market related or not, etc.

Example 15

Facts:

A PBO engages in PBAs of caring for adult persons with severe mental disabilities. The residents are not capable of obtaining work in either the open labour or protected workshop facilities. Residents are placed in various groups with house parents and each group is assigned to a particular farming activity. The residents are responsible for the household chores as well as being involved in the particular farming activity. The mechanical labour as well as veterinary services are provided at no cost by a nearby agricultural college. The farming activities are conducted for self sufficiency and own consumption and the produce, in excess of their needs, is sold to a nearby farmers market. In addition, certain of the residents, who are unable to take part in the manual farming activities, 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.

Determine: Whether the trading activities conducted by the PBO (farming operations and the sale of bread) fall within the ambit of section 10(1)(cN)(ii)(aa).

Application of legislation:

- The trading activities are integral and directly related to the sole object of the PBO, namely, caring for persons suffering from a severe mental disability. The primary purpose of the activities is to provide for their own consumption (self sustaining) and only the excess being sold. 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. The main purpose of conducting the trading activities, is not to sell the goods at a profit, but for own consumption and to sell excess produce in order to recover certain costs. 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 taxpaying entities. The primary purpose is for own consumption and therapeutic benefit for the residents and only the excess to their own needs being sold.

Note: Where assets are used to generate income, for example, the letting of parking facilities, a hall, tennis courts, etc to members of the public, this will not be regarded as a related trading activity, but as income from a taxable trading activity.

6.4.2 Occasional trade [section 10(1)(cN)(ii)(bb)]

The undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.

To qualify under this item the trading activity must –

- 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

- Fundraising activities such as fêtes, cake sales, raffles and jumble sales which usually take place on an annual basis and with the assistance of helpers or volunteers who are not remunerated for their services.
- The sale of Christmas cards which have been reconditioned by volunteers.

6.4.3 Ministerial approval [section 10(1)(cN)(ii)(cc)]

The undertaking or activity is approved by the Minister by notice in the Gazette having regard to –

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

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

The submission, together with fully motivated representations, must be forwarded to:

The General Manager
Legal and Policy Division: Interpretation and Rulings
South African Revenue Service
P.O. Box 402
PRETORIA
0001

6.4.4 Basic exemption [section 10(1)(cN)(ii)(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% of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
(ii) R100 000

Where a PBO carries on trading activities which do not fall within the ambit of the exemptions set out in items (aa), (bb) or (cc) of section 10(1)(cN)(ii), the PBO will be taxable on the taxable income derived from all such other business or trading activities. The greater of 5% of the total receipts and accruals of the organisation or R100 000 will not be subject to tax.

Example 17

Facts: A PBO conducting religious PBAs operates a book shop in a shopping mall. An analysis of the total receipts as reflected in the income statement:

Donations from members	R 850 000
Interest	R 60 000
Bequest	R 40 000
Letting of parking during week days	R 35 000
Total receipts from book shop	R 480 000
Annual fête	<u>R 140 000</u>
Total receipts and accruals	<u>R1 605 000</u>

Determine: The basic exemption of trading income which will not be taxable.

Result:

- 5% of the total receipts of R1 605 000 amounts to R80 250. This means that R100 000 of the total receipts and accruals derived from the taxable trading activities (parking R35 000 and R480 000 book shop) will be excluded from calculating the taxable income derived from the trading activities.
- The total gross receipts which will be taxable amount to R415 000 (R35 000 + R480 000 = R515 000 – R100 000 = R415 000).
- The “exempt” portion (R100 000) must be allocated on a *pro rata* basis to the taxable trading income, namely the letting of parking and the income from the bookshop.

In the case of a co-ordinating body, in respect of a group of PBOs sharing a common purpose and conducting the same PBAs, which has been approved as a PBO (see 11.1), 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 5% of the total receipts and accruals. However, the basic threshold of R100 000 is not increased by the number of individual organisations within the group, as this amount is applicable to an approved PBO, which in this case is the co-ordinating body.

For a comprehensive explanation of the trading provisions refer to Interpretation Note No. 24 (Issue 2) dated 31 August 2007 which is available on the SARS website.

6.5 Transfer of immovable property

Where a business asset which constitutes immovable property is transferred to a separate taxable entity and, provided the separate entity is wholly controlled by the PBO, the transaction will not be subject to transfer duty.

For further information in this regard refer to Interpretation Note No. 22 available on the SARS website.

7 Specific issues in respect of PBOs

7.1 Tax rates for trading activities in respect of approved PBOs

A PBO which has been approved in terms of section 30 of the Act and which becomes liable to tax on its trading income will be taxed at a single flat rate of 29%, irrespective whether it is established as a trust, a company incorporated under section 21 of the Companies Act, 1973 or as an association of persons.

7.2 Provisional tax payments

A PBO which has been approved by the Commissioner is exempt from making provisional tax payments for a three-year transitional period as from its first year of assessment commencing on or after 1 April 2006. This period may be extended by the Minister by notice in the *Gazette*.

7.3 Branches of foreign charities

Where a charity which has been established outside the Republic, establishes a branch in the Republic for purposes of conducting approved PBAs, the branch may be approved as a PBO in terms of section 30. A precondition of the approval is that the foreign charity is exempt from income tax in its country of origin. The branch will be required to submit this confirmation together with a written undertaking to comply with the provisions of section 30, insofar as the governance, funding and activities of the branch are concerned.

Neither the foreign charity nor the South African branch will qualify for section 18A status for donations to be tax deductible.

7.4 Educational institutions: Schools

In terms of the South African Schools Act, No. 84 of 1996, a school must be registered as either a public school or an independent school.

7.4.1 Public Schools

7.4.1.1 Income Tax Exemption

Public schools, as defined in terms of the SA Schools Act, 1996, fall under the jurisdiction of provincial legislation, are funded by the State and established in terms of the relevant statute law. A public school is a juristic person but is not established, formed or incorporated as a company, trust or association of persons and it is also not brought into existence in terms of a founding document such as a constitution, memorandum of association or trust deed. It is therefore not a PBO and can therefore not be approved as such in terms of section 30 of the Act. However, being established under law, it may qualify for exemption from income tax in terms of section 10(1)(cA)(i) of the Act.

An organisation which has been established in order to provide funding and other support for a public school may be eligible for a tax exempt status as PBO and also for approval for purposes of section 18A.

7.4.1.2 Tax deductibility of donations

Section 18A specifically provides for organisations which are established by law and which carry on PBAs approved for section 18A purposes, to be entitled to the same beneficial tax treatment as a PBO. The section 18A status must be formally approved by the Commissioner.

A public school wishing to apply for approval to issue tax deductible receipts to donors (see **13** - Tax deductibility of donations) must complete an *Application for Exemption Form EI 1* and submit the completed form with the relevant documentation to SARS, clearly indicating that it is a public school.

7.4.2 Independent schools

Independent schools which are registered as such in terms of the SA Schools Act, 1996, can be established as an association of persons or as a trust or a company incorporated under section 21 of the Companies Act, 1973. The school will therefore have a constitution, trust deed or memorandum and articles of association as a founding document. Provided the activities and the founding document comply with the provisions of section 30, the Commissioner may approve the school as a PBO. If the school is approved as a PBO it may also apply for approval in terms of section 18A to issue receipts permitting tax deductibility of donations.

An independent school will be subject to the trading provisions provided for in section 10(1)(cN) of the Act.

7.5 Sporting associations

Sporting associations which qualify for exemption from tax can be divided in two categories, namely social and recreational clubs and amateur sporting bodies. Although both categories qualify for tax exemption, they are exempt in terms of different sections of the Act. Professional sporting bodies do not qualify for exemption from income tax.

7.5.1 Social and recreational clubs

Clubs are often established to provide social and recreational amenities or facilities to their members, and not to the general public. In other words members of the public need to join and become members if they are to enjoy the use

of the facilities or amenities. These clubs include recreation clubs such as tennis, golf, bowls, polo, fishing, sailing, as well as social clubs formed for common interests of the members such as cultural, music, literature, art, quilters, stamp collecting, etc. Certain recreational clubs provide meals, liquor or other refreshments.

Social and recreational clubs providing amenities or facilities for their members qualify for a partial exemption in terms of section 10(1)(cO), provided they are approved by the Commissioner in terms of section 30A of the Act. Clubs which have been approved in terms of section 30A, are exempt from normal tax on membership fees and subscriptions and also in respect of receipts and accruals that are integral and directly related to the sole or principal object of providing social and recreational amenities or facilities for the members, provided certain conditions are met. Receipts from fundraising activities will also be exempt provided the activities are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation. A basic exemption has been provided for receipts and accruals derived from other sources to the extent of the greater of 5% of the total membership and subscriptions for the relevant year or R50 000.

7.5.2 Amateur sporting bodies

The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime, is included in the Ninth Schedule as an approved PBA. An organisation that complies with the provisions of section 30 of the Act and conducts such PBAs may qualify for approval as a PBO.

Organisations engaged in amateur sporting activities could include regional, provincial or national federations which are formed to administer, develop, co-ordinate or promote a particular sport or code, provided the participants partake in the sport as a pastime, on a non-professional basis and are not rewarded financially.

7.6 Scholarships

The provision of scholarships, bursaries or awards for study, research, and teaching has been approved as a PBA. Provided the organisation complies with the provisions of section 30 as well as the regulations published in the *Gazette* setting out the conditions which a scholarship, bursary or award must comply with, the organisation may be approved as a PBO. Where the founding document does not comply with the conditions set out in the regulation, a written undertaking may be submitted.

The requirements are as follows:

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

- o refund the full amount of the scholarship, bursary or award should he decide not to remain in the Republic.

Refer to **Annexure H** for the relevant Regulations published by the Minister.

The provision of repayable study loans to needy students, albeit at low interest rates, does not fall within the ambit of the provisions of paragraph 4(o) of Part 1 of the Ninth Schedule.

7.7 Transfrontier areas / Peace Parks

The activity of establishing and managing transfrontier conservation areas was approved as a PBA in Part II of the Ninth Schedule by way of regulation. This activity is now listed in paragraph 7(d) of Part I and paragraph 4(d) of Part II of the Ninth Schedule. PBOs conducting this approved PBA qualify for approval to issue tax deductible receipts for donations received subject to certain conditions and requirements being met. In this regard refer to **13.2.5**.

7.8 Granting of loans

Regulations relating to the granting of loans by a PBO as referred to in Paragraphs 1(p)(iii) and 3(f) of Part I of the Ninth Schedule to the Act have, as yet, not been published.

8 Reporting requirements

8.1 Record keeping

Any books of account, records or other documents of an approved PBO must be retained and carefully preserved for a period of at least four years after the last date of an entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transaction, act or operation to which they relate. It is the responsibility of the person in control of the organisation to ensure that the necessary records are kept. Failure to keep the necessary records is an offence which may result in a fine or imprisonment (see **12** - Tax avoidance/non-compliance).

8.2 Income tax returns

All PBOs are obliged to render annual income tax returns, notwithstanding the approval which may result in no tax liability for the PBO. The return enables the Commissioner to assess whether the PBO is operating within the prescribed limits of its exemption. An association of persons (see **5.1.1**) falls within paragraph (d) of the definition of "company" in section 1 of the Act and is therefore regarded to be a company for income tax purposes.

The year of assessment of an association of persons as well as a company incorporated under section 21 of the Companies Act, 1973 coincides with its financial year. If the financial year-end is 30 June, its year of assessments will run from 1 July to 30 June. Permission to change the year end must be obtained from the TEU.

In the case of a trust, the year of assessment commences on 1 March and ends on the last day of February. Relief provisions are however, available to draw up financial accounts for periods ending on dates other than the last day of February. For further information in this regard, refer to Interpretation Note No.19 (Issue 2) available on the SARS website.

The prescribed *IT 12EI Return of Income* may be submitted either via e-filing or via a return which will be posted to the PBO annually.

8.3 Financial statements

As from 2007, supporting documents must not be submitted together with the return. Such documentation must however, be retained for a period of five years should SARS require you to substantiate any aspect of the declaration in the tax return. Such supporting documents will include financial statements constituting an income statement, balance sheet and any other accounts necessary to support the information. The accounts must be signed by the person responsible in a fiduciary capacity and by the person who has prepared them on behalf of the taxpayer.

Where the PBO is a company incorporated under section 21 of the Companies Act, 1973 it is a requirement of that Act that audited annual financial statements be produced.

In the case of a trust or an association of persons, it is not a requirement of SARS that the financial statements must be completed by a qualified accountant. The circumstances of the specific PBO will determine the level of sophistication of the financial statements. If it is a well established and financially sound PBO, proper financial statements prepared by a qualified accountant would be expected. If, however, it is a small and under-funded PBO, a lesser requirement may be accepted.

An approved PBO that conducts both section 18A approved and non-section 18A approved PBAs, namely PBAs listed in Parts I and II of the Ninth Schedule, is required to have an audit certificate confirming that donations received in respect of which tax deductible receipts were issued, were utilised in carrying on PBAs that have been approved for section 18A by the Minister.

8.4 Information available to SARS

To assist in enforcing the provisions of the Act, the Commissioner may require any person to –

- provide, in writing, information relating to an approved PBO by answering questions;
- 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 books of account, records or other documents relating to the PBO.

9 Implementation dates

The PBO legislation was introduced by section 35(1) of the Taxation Laws Amendment Act, No. 30 of 2000, but only came into effect on 15 July 2001. The Commissioner may approve an exemption in respect of a PBO with retroactive effect, where the organisation previously qualified for exemption in terms of the repealed legislation, but did not apply. These entities should have applied before the last day of their first year of assessment or before 31 December 2004, whichever was the later.

Organisations that qualified for section 18A tax deductible donation status under the previous legislation, should have re-applied before 31 December 2003 for approval in terms of new legislation. Failure to re-apply means that no receipts may be issued for section 18A purposes as from 1 January 2004, until similar approval is granted by the Commissioner under the re-enacted provisions of section 18A. This approval is not effective retroactively (see 13.11).

The principle of partial taxation of receipts and accruals derived from certain business undertakings or trading activities for a PBO came into operation on 1 April 2006 and is applicable to a PBO as from its first year of assessment commencing on or after that date.

Following this amendment PBOs are now liable to CGT on any capital gain made on the disposal of an asset which was not substantially used for the carrying on of a PBA. This amendment is applicable to a PBO in respect of the first day of its first year of assessment commencing on or after 1 April 2006.

10 Transitional provisions

10.1 Organisations exempt in terms of the repealed legislation

Organisations that were exempt from income tax in terms of the provisions of the previous legislation will continue to enjoy the exemption if they have re-applied for exemption in terms of the new legislation on or before 31 December 2004. If the founding document did not comply with the provisions of section 30, the application should have been accompanied by a signed written undertaking. The previous exemption will continue to apply until such time as notified by the Commissioner of his decision in terms of the new legislation.

The PBO is, however, required to formally amend its founding document to comply with the provisions of section 30 of the Act within a specified period as notified or earlier if it chooses to effect any other amendment to the founding document.

Where an organisation previously enjoyed section 18A status and failed to re-apply before 31 December 2003, the section 18A approval will no longer be applicable as from 1 January 2004. However, the exemption from income tax in terms of the repealed legislation will be retained, provided the organisation has re-applied before 31 December 2004.

10.2 New applications

Organisations which are currently not formally exempt from income tax, must submit a completed application form (EI 1) together with the required supporting documentation, as well as a signed written undertaking (EI 2) if the founding document does not comply with the provisions of section 30. The Commissioner may approve an application for exemption with retrospective effect, if application is made before the last day of the first year of assessment of the organisation or before 31 December 2004, whichever is the later. However, no retrospective approval for purposes of section 18A may be given.

Where a PBO commences activities and applies for approval before the last day of its first year of assessment, the Commissioner may approve the PBO with effect from the date on which that organisation qualified for approval.

11 Group registration

11.1 General

The Commissioner has authority to grant approval to a group of organisations, such as a religious denomination, if they share a common purpose and if the group carries on a PBA under the direction and supervision of a regulating or co-ordinating body. In such circumstances, the regulating or co-ordinating body must take responsibility to ensure that all the affiliated organisations comply with the provisions of section 30 of the Act.

Group registrations for PBOs must comply with, *inter alia*, the following requirements:

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

When submitting the application for exemption, the co-ordinating body must submit a list of the names and addresses of all the entities in the group. On approval, only one income tax reference number will be allocated to the group as a whole. Group registrations could apply to religious organisations or any organisation functioning nationwide under the auspices of a regulating or co-ordinating body and, which would comply with the aforementioned criteria.

In calculating the basic exemption applicable to the PBO, namely the co-ordinating body, the total receipts and accruals of all the PBOs within the group must be taken into account. Note however, the amount of R100 000 is not multiplied by the number of the individual PBOs within the group (see also 6.4.4).

11.2 Non-compliance

Non-compliance by the regulating or co-ordinating body, intentionally or negligently to exercise the required control over any PBO in the group, or to notify the Commissioner of any material failure of any group entity to comply with any provision of section 30, may, after due notice, result in the withdrawal of the exemption of the group, unless the necessary corrective steps are taken to the satisfaction of the Commissioner or unless the defaulting organisation disassociates itself from the group and the regulating or co-ordinating body ceases to acknowledge and assume responsibility for its future compliance. The withdrawal will be effective from the beginning of the year of assessment in which the non-compliance or failure occurred, unless the required corrective steps are taken within the period allowed by the Commissioner. Before withdrawal of the exemption, the Commissioner must first give notice of intention to withdraw and it must be clear that no corrective steps have been taken by the organisation within the period stated by the Commissioner in the notice.

12 Tax avoidance/non-compliance

12.1 Exemption not granted

A non-profit organisation which has not been approved as a PBO will be liable for income and other taxes and duties as normal taxpayers.

- A company incorporated under section 21 of the Companies Act, 1973, not approved as a PBO, will therefore be liable for tax at the company rate of tax on all its taxable income, namely gross income less exempt income and allowable deductions.
- A trust which is not approved as a PBO will be subject to tax on taxable income at the rate applicable to trusts, subject to the provisions of section 25B of the Act.
- Any other association of persons is deemed to be a company and will be subject to tax at the rate applicable to companies.

12.2 Offences

Any person in a fiduciary capacity responsible for the management or control of the income and assets of an approved PBO who knowingly and deliberately fails to or refuses to comply with the provisions of section 30 of the Act may be guilty of an offence.

If a person, with the intent to evade taxation, makes a false statement or entry in a return, or signs any statement without reasonable grounds for believing it to be true, gives any false answer, prepares any false books of account or other records or falsifies any books of account or records or makes use of any fraud, art or contrivance, he or she shall be guilty of an offence. When it is proved that any false statement or entry is made by or on behalf of a taxpayer, the taxpayer shall be presumed, until the contrary is proven, to have knowingly made the false statement or to have allowed it to be made.

12.3 Penalties

If a person is guilty of any of the offences as discussed above, he or she shall, on conviction, be liable to a fine, or imprisonment for a period not exceeding two years.

12.4 Additional tax

A taxpayer, who defaults in rendering a return, omits any income from a return or makes an incorrect statement in the return which would result in paying less tax than the tax properly chargeable, shall be liable to twice the tax chargeable in respect of his income. The Commissioner may remit the additional charge or any part thereof as the Commissioner deems fit if there are extenuating circumstances and the Commissioner is satisfied the act or omission was not done deliberately to evade tax. A PBO will not have any chargeable tax, but upon withdrawal of the approval (see 11.2), the organisation may be liable to additional tax up to twice the chargeable tax levied in terms of section 30(7) of the Act.

12.5 Withdrawal of approval

12.5.1 Under which circumstances

If the Commissioner is satisfied that a PBO has, in any year of assessment in any material respect or on a continuous or repetitive basis failed to comply with the provisions of section 30 of the Act or its founding document as it relates to the provisions of section 30, he may withdraw his approval. After due notice is given to the transgressing PBO, the approval shall be withdrawn with effect from the beginning of the relevant year of assessment, unless the PBO has taken corrective steps within a period specified by the Commissioner in the notice to the PBO.

12.5.2 Consequences

Once the approval of the Commissioner is withdrawn, the organisation must, within six months, unless the Commissioner allows a longer period, transfer or take reasonable steps to transfer its remaining assets to another approved PBO that is not connected to the defaulting PBO.

If the organisation fails to transfer its remaining assets as specified above, an amount equal to the market value of the assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the PBO, will be deemed to be taxable income which accrued to the organisation during the year of assessment in which the approval was withdrawn.

12.5.3 Re-application

Once an exemption has been withdrawn, an organisation may re-apply for approval in the year of assessment following the year of the withdrawal. If the Commissioner is satisfied that the non-compliance giving rise to the withdrawal has been rectified, the Commissioner may grant the approval.

13 Tax deductibility of donations

13.1 General

Government has recognised the need that PBOs are often dependent upon the generosity of the public and accordingly to assist them, donations made to approved organisations conducting certain categories of PBAs may be deducted from the taxable income of the donating taxpayer. These PBAs which are approved for section 18A purposes, are identified by the Minister by way of notice in the *Gazette* and published in Part II of the Ninth Schedule to the Act (see Annexure F). This list may be extended from year to year at the discretion of the Minister. The PBAs which qualify for section 18A approval must be carried on in the Republic.

The Commissioner must issue the PBO or organisation with a reference number for purposes of section 18A. The Commissioner may also publish a list of approved PBOs for purposes of section 18A.

Approval for purposes of section 18A may also be granted to a group of organisations under the direction or supervision of a regulating or co-ordinating body that ensures that all organisations in the group comply with the provisions of the Act (see **11**).

Branches established in the Republic by foreign exempt charities will not be eligible to apply for section 18A approval and will therefore not be able to issue tax deductible receipts in terms of section 18A.

13.2 Organisations qualifying for section 18A approval

13.2.1 PBOs and entities established by or under law conducting approved PBAs

A PBO which has been approved in terms of section 30 of the Act or an entity which has been approved by the Commissioner and is exempt in terms of section 10(1)(cA)(i) of the Act, and which carries on any approved PBA as set out in Part II of the Ninth Schedule (see **Annexure C**), may apply for tax deductible status in respect of donations received which are utilised for section 18A approved PBAs. Where a PBO conducts PBAs as approved in both Parts I and II of the Ninth Schedule, the section 18A approval is subject to the condition that the section 18A PBAs must be ring-fenced and substantiated by a certificate of an auditor to the effect that all donations for which tax-deductible receipts were issued were utilised solely in carrying out such eligible PBAs (see **13.7.1**).

Public schools are also included in this category (refer to **7.4.1.2**).

13.2.2 PBOs providing funds to PBOs

A PBO approved in terms of section 30 of the Act and which provides funds or assets to PBOs or entities referred to in **13.2.1** above, will also be entitled to issue receipts for the deduction of donations to it. This means that conduit funds providing funds or assets to PBOs and entities conducting PBAs listed in Parts I and II of the Ninth Schedule, will also qualify for section 18A approval, in respect of donations received to fund PBAs approved for section 18A purposes. This is subject to certain control measures described in **13.7.1**.

A PBO which provides funds to other PBOs and qualifying organisations is obliged to distribute or incur the obligation to distribute during the following year of assessment, at least 75% of those funds received by it which represent tax deductible donations.

Having regard to the public interest and purpose for which the PBO wishes to accumulate the funds, the Commissioner may, subject to such conditions, waive the obligation to distribute any of the funds received by way of tax deductible donations.

Example 18

The ABC Orphanage Funding Trust has been formed to provide funds for the ABC Orphanage (a separate PBO) to enable it to carry out the objects and activities of caring for abandoned and orphaned children. The trust wishes to collect sufficient funds to enable the orphanage to build a home for abandoned babies. In terms of the projected cost and taking into account the annual income budget it will take the trust fund three years to raise sufficient funds. In such instances the Commissioner may be approached for a relaxation of the 75% distribution rule.

Note: The rule will not be relaxed for purposes of merely providing a general endowment or capital fund.

13.2.3 Government, provincial administration or municipality

Donations made to the government, any provincial administration or a municipality, which are utilised for purposes of an activity that is listed as qualifying for tax deductible status in Part II of the Ninth Schedule to the Act, may qualify for deduction by the donor.

The relevant state department will be required to submit on an annual basis, an audit certificate by the accounting authority as defined in the Public Finance Management Act, 1999, certifying that all donations for which receipts were issued, were utilised for an activity listed as qualifying for such tax deductible status.

Example 19

The following are possible PBAs conducted by a state department:

- A separate unit established within the SA Police Service to assist and care for physically abused children.
- A municipality establishes a feeding scheme for homeless persons living in the inner city.

13.2.4 Group registration

The Commissioner may approve a group of entities contemplated in section 10(1)(cA)(i) for purposes of section 18A, provided the entities within the group share a common purpose and carry on their activities under the direction or supervision of a regulating or co-ordinating body. The Commissioner may prescribe steps as may be necessary to exercise control over the entities.

This provision may apply to public schools provided the relevant provincial education authority has applied for group registration for section 18A tax deductible status in respect of all public schools in its jurisdiction.

13.2.5 PBO carrying on the establishment and management of transfrontier conservation areas.

The activity of establishing and managing transfrontier conservation areas was approved as a PBA in Part II of the Ninth Schedule. PBOs conducting this approved PBA are eligible for approval to issue tax deductible receipts for donations received. However, the receipt for a tax deductible donation may only be issued if the following requirements and conditions have been met:

- Donations only qualify if made on or after 1 August 2002 but before 31 March 2010.
- The donor, (in the case of a company, together with any other company in the same group of companies as that company) has during the year of assessment of that person, donated an amount of at least R1million to the approved PBO.
- Every donation in respect of which a 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 the Republic.
- All donations received for which a tax deductible receipt is issued must be utilised in the Republic in carrying on the PBA.
- All off-shore donations received must be utilised either in the Republic in carrying on the approved PBA or in respect of a transfrontier conservation area of which the Republic forms part.

13.3 Deduction of donations from taxable income

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

- is supported by the necessary receipt issued by the organisation (see **13.6**); and
- does not exceed 10% of the taxable income (excluding any retirement fund lump sum benefit) of the taxpayer, calculated before allowing any deduction under section 18A or any deduction for medical and dental expenses.

Note: The 10% deduction is applicable as from years of assessment ending on or after 1 January 2008. For prior years the deduction is 5%.

13.4 Donations

13.4.1 What is a *bona fide* donation

A donation is a gratuitous donation or gift disposed of by the donor out of liberality or generosity, whereby the donee is enriched and the donor impoverished. It is a voluntary gift which is freely given to the donee. There may 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.

The donor may not impose conditions which could enable him or any connected person in relation to himself to derive some direct or indirect benefit from the application of the donation. The donation may not be revocable by the donor. The donation which will qualify as a deduction must be made in money (cash) or of property made in kind (see **13.4.3**) to the organisation which has been approved in terms of section 18A.

The donation must actually be paid or transferred during the year of assessment. Promissory donations as well as payments to be made in future instalments or post-dated cheques will not qualify. The donation must be made directly to the organisation which has been approved in terms of section 18A.

13.4.2 Donations of property made in kind

No deduction will be allowed 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 consists of an intangible asset or financial instrument. However, the donation of a financial instrument which is a share in a listed company or is issued by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 listed will be accepted.

Donations of property made in kind may include:

- A financial instrument, which complies with the requirements set out in the above paragraph. An example would be shares in a listed company or a financial instrument issued by a registered financial institution. Where the financial instrument forms part of the trading stock of the donor the value of the donation must be determined in accordance with section 18A(3)(a)(i) (see **13.5.1**). Where the financial instrument was purchased the value is determined in accordance with section 18A (3)(d)(i) (see **13.5.5**).
- Trading stock which forms part of the business undertaking or trading activity conducted by the donor. This may include livestock or produce in the case where the donor conducts farming operations, goods such as computers, foodstuffs, medical supplies, furniture, motor vehicles. The value of the donation must be determined in accordance with section 18A(3)(a)(ii) (see **13.5.2**).
- An asset used by the donor in conducting his trade but not trading stock. This may include computers, furniture, office equipment, delivery vehicles, cash registers, garden equipment, crockery or kitchen utensils. The value is determined in accordance with section 18A(3)(b) (see **13.5.3**).
- An asset which is not trading stock or used in the business of the donor. This may include personal assets such as a residence, motor vehicle, computer, furniture, sport equipment or reference books used for private purposes donated to the PBO for use in carrying on the approved PBA. The value is determined in accordance with section 18A(3)(c) (see **13.5.4**). Depreciation must be taken into account in the case of a movable asset.
- Property which is purchased, manufactured, erected, installed or constructed by or on behalf of the donor. This may include the cost of blankets or foodstuffs purchased by the donor, security fencing erected on behalf of the donor, carpets or cupboards installed or buildings erected by or on behalf of the donor or a building donated to the PBO for purposes of conducting the approved PBA. The value of the donation is determined in accordance with section 18A(3)(d) (see **13.5.5**).

13.4.3 Donation in respect of services rendered

The contributions of a service, namely time, skills or efforts rendered free of charge, is not property and will not qualify for purposes of a tax deduction in terms of section 18A.

Where an auditor, medical doctor, lawyer, accountant, plumber, electrician, or any other professional person provides a voluntary service or renders their service free of charge, no tax deduction certificate may be issued.

13.4.4 Payments that do not constitute a *bona fide* donation for purposes of section 18A

The following do not constitute a *bona fide* donation:

- An amount paid for attending a fundraising dinner and dance.
- Memorabilia, etc donated to be auctioned to raise funds.
- The amount paid for the successful bid of goods auctioned to raise funds by a charity.
- Amounts paid for raffle or lottery tickets.
- Amounts paid for school fees, entrance fees for school admittance or compulsory school levies.
- Value of free rent, water and electricity provided by a lessor to the lessee which is an approved PBO.
- Payments in respect of debt due by an entity approved in terms of section 18A. An example would be the cost of repairs to a vehicle paid on behalf of the PBO.

13.5 Value in respect of the donation of property made in kind

A taxpayer may claim a deduction for a donation of property made in kind (see **13.4.2**) to an organisation which has been approved for section 18A purposes. The value of the donation to be allowed in respect of such donated property must be determined as set out below:

- 13.5.1 Where the property constitutes a financial instrument which is trading stock, the lower of fair market value on the date of the donation or the amount taken into account in respect of the value of the trading stock.
- 13.5.2 Where the property forms part of trading stock of the taxpayer, including livestock or fresh produce of farmers, the lower of the market value of the trading stock or the amount taken into account in respect of the trading stock.
- 13.5.3 Where the property is an asset used in his trade, the lower of the fair market value or the cost to the taxpayer less any allowance (other than an investment allowance) deducted from the income of the taxpayer for that asset.
- 13.5.4 Where the property is not trading stock and not a business asset, the lower of the fair market value on the date of the donation or the cost to the taxpayer less any reasonable depreciation in the case of deterioration of movable property.
- 13.5.5 Where the property 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.

13.6 Receipt to be issued

A taxpayer will only be allowed to claim a deduction for a donation to a section 18A approved organisation if it is supported by a receipt issued by the organisation (see **13.3**). The receipt issued by the organisation must include at least the following details:

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

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

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

13.7 Control measures

Qualifying organisations are required to maintain proper control over the spending or application of donations received which qualify as a tax deduction. A receipt for a tax deductible donation may only be issued in respect of a donation which is utilised for section 18A approved PBAs.

13.7.1 PBOs and entities referred to in 13.2.1. and 13.2.2

Entities referred to in **13.2.1** and **13.2.2** that carry on activities in both Parts I and II of the Ninth Schedule (namely section 18A approved PBAs and non section 18A approved PBAs) must, together with their annual income tax return, submit an auditor's certificate certifying that all donations, for which tax deductible receipts were issued, were utilised solely in carrying out the PBAs as approved in Part II of the Ninth Schedule to the Act.

13.7.2 Government, provincial administration or municipality

In the case of Government, provincial administration or municipality (referred to in **13.2.3**), the accounting authority must submit annually an audit certificate to the Commissioner, confirming that the donations received were solely utilised in carrying out the relevant PBA approved in terms of section 18A.

13.7.3 Group registration

An audit certificate must be submitted annually confirming that all donations in respect of which receipts were issued in terms of section 18A, were utilised solely in carrying on the PBAs approved in Part II of the Ninth Schedule of the Act.

13.8 Abuse of approval

13.8.1 Single entities - PBOs and bodies referred to in 13.2.1 and 13.2.2

If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management, control of the income or assets of a PBO or body referred to in section 10(1)(cA)(i) of the Act which has been approved for section 18A purposes, has –

- failed to ensure that the objects of the organisation are carried out or has expended the moneys of the organisation for purposes not covered by the objects;
- issued section 18A receipts to any taxpayer for any fees or other emoluments payable by the taxpayer to the organisation;
- acted in contravention of the requirements of the Act or utilised a donation in respect of which a receipt was issued for purposes other than carrying on PBAs listed in Part II,

the Commissioner may give written notice that donations in respect of which receipts were issued will be treated as taxable income for the relevant organisation or body.

If corrective steps are not taken within a period stated by the Commissioner, any receipt issued by such organisation or body from a specified date, will not qualify as a tax deductible donation in the hands of the donors. This will have a negative impact on all donors that have made bona fide contributions to the organisation, as they will lose their benefit of a tax deduction.

13.8.2 Groups of entities – group registration (entities referred to in 13.2.4)

Where any regulating or co-ordinating body of a group of institutions, boards or bodies sharing a common purpose and which have been approved for purposes of section 18A as a group, fails to take certain steps to exercise control as required by the Act, or fails to notify the Commissioner where it becomes aware of any material failure to comply with the provisions of the Act, the Commissioner may notify that controlling body that if corrective steps are not taken within a stated period, receipts issued by bodies within the group, will not qualify for tax deductible donations in the hands of donors on or after the date specified in the notice.

13.8.3 Government, provincial administrations and municipalities

Where the accounting officer or accounting authority in respect of the above institutions has issued or allowed a receipt to be issued in contravention of the requirements of the Act or utilised a donation for which a tax deduction receipt was issued for purposes other than the PBAs contemplated in Part II of the Ninth Schedule the Commissioner must notify the National Treasury or the Provincial Treasury of the contravention. The Commissioner may also inform the accounting officer or accounting authority that if corrective steps are not taken within a stated period, receipts issued by that institution from a specified date will not qualify as a tax deduction in the hands of the donor.

13.9 Intentional abuse of approval

Where a person in a fiduciary capacity responsible for the management and control of the income and assets of a PBO approved in terms of section 30 or of a body contemplated in section 10(1)(cA)(i) which is approved in terms of section 18A, or the accounting officer or accounting authority of an institution contemplated in the Public Finance Management Act, No.1 of 1999 or Local Government: Municipal Finance Management Act, No 56 of 2003, intentionally fails to comply with the provisions relevant to the approval in terms of section 18A, that person shall be guilty of an offence and be liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

13.10 Re-application for approval

Organisations that enjoyed section 18A donor deductible status in terms of the previous legislation (prior to the amendment which came into effect on 15 July 2001), should have re-applied before 31 December 2003, for approval in terms of the new amended provisions. Failure to re-apply by the deadline will lead to the loss of section 18A status as from 1 January 2004 and a new application must be submitted.

13.11 Effective date to issue receipts

Receipts for tax deductible donations may only be issued in respect of donations received on or after the date of formal approval by SARS. Legislation does not allow for approval to be effective retroactively.

14 Exemption from other taxes and duties

In addition to being exempt from the payment of income tax, PBOs will also enjoy the benefit of being exempt from a number of other taxes and duties. The exemptions are subject to the approval of the organisation as a PBO in terms of section 30.

14.1 Donations tax

Donations tax is payable at a rate of 20% on the value of any gratuitous disposal of property by one person to another,

including the disposal of property at less than its market value. Donations tax is payable by the donor, but if the donor fails to pay the tax timeously, the donor and donee shall be jointly and severally liable for the tax.

A specific exemption is granted for donations made by or to any PBO and any organisation established by or under law. The exemption is also applicable to government, local authorities, political parties and organisations exempt from income tax in terms of sections 10(1)(cO), (d) and (e) of the Act (see **Annexure A**).

Natural persons are exempt from donations tax on the first R100 000 of property donated during any year of assessment.

In the case of a taxpayer who is not a natural person, such as a private company or close corporation, the exemption of donations is limited to casual gifts not exceeding R10 000 per year of assessment.

Public companies are exempt from donations tax.

14.2 Estate duty

Estate duty is levied at a rate of 20% on the net estate of a deceased person. Any property bequeathed to a PBO is excluded from the value of the estate and therefore not subject to estate duty.

14.3 Transfer duty

Transfer duty is levied on a sliding scale on the value of fixed property acquired by any person. The rates vary from 0% to 8% in the case of natural persons. Legal persons (such as a company or a close corporation) and trusts pay transfer duty at the rate of 8%. A PBO, exempt from income tax in terms of section 10(1)(cN) of the Act, as well as an institution, board or body exempt from income tax in terms of section 10(1)(cA)(i) of the Act, and which has as sole or principal object the carrying on of any PBA, is exempt from the payment of transfer duty on property acquired, provided the whole or substantially the whole of the property will be used for the purpose of carrying on one or more approved PBAs. The transfer duty exemption is granted per transaction and will be considered upon receipt of the letter issued by the Commissioner approving the exemption from income tax, together with details of the activities to be carried out on the property and confirmation that the whole or substantially the whole of the property will be used to conduct approved PBAs. The relevant documentation must be submitted to the local SARS office.

Where property is transferred by an exempt PBO to any other entity which is controlled by the PBO no transfer duty is payable in terms of section 9(1A) of the Transfer Duty Act, 1949.

For further information relating to transfer duty exemption and PBOs please refer to Interpretation Note No. 22 dated 11 March 2004, available on the SARS website.

14.4 Stamp duty

Stamp duty is levied on instruments such as leases of immovable property and the transfer and cancellation of marketable securities at different rates. PBOs are exempt from the payment of stamp duties only if the duty is legally payable and borne by the PBO.

14.5 Uncertificated securities tax (UST)

UST is payable in respect of change in beneficial ownership in any listed securities, at the rate of 0.25% on the taxable amount of such securities. Interest-bearing securities are exempt.

A PBO which is exempt from stamp duty in terms of section 4 of the Stamp Duties Act, No. 77 of 1968 will be exempt from UST in respect of change in beneficial ownership in securities, provided the change was not as a result of a purchase as contemplated in section 4 of the UST Act, No. 31 of 1998.

14.6 Skills development levy (SDL)

A compulsory levy to fund education and training is levied based broadly on 1% of the payroll of employers. An approved PBO is exempt from the payment of the skills development levy if it solely carries on an approved PBA as contemplated in paragraphs 1; 2(a), (b), (c), (d) and 5 of Part I of the Ninth Schedule to the Act or if it is a PBO that provides funds solely to such PBO which carries on these PBAs.

Employers whose annual payroll will not exceed R500 000 in the following 12 months are exempt from paying the levy.

For further information please also refer to Interpretation Note No. 10 dated 24 March 2003, available on the SARS website.

14.7 Capital gains tax (CGT)

14.7.1 General

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

14.7.2 Capital gain or capital loss to be disregarded

Any capital gain or capital loss made by a PBO on the disposal of an asset which has been used in the following three categories will be disregarded:

14.7.2.1 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. This includes assets which have been used exclusively for conducting PBAs. Only the usage of the asset on or after the valuation date is taken into account. Any trade usage before that date is ignored.

Example 20 - Asset used exclusively on or after valuation date in carrying on a PBA

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

Result: In terms of paragraph 63A(a) the capital gain of R100 000 must be disregarded as the asset was used exclusively on or after the valuation date (1 May 2006) to carry on PBAs. Any trade usage prior to valuation date is disregarded.

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

Example 21 – Asset "held" not "used"

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

Result: The capital gain must be disregarded in terms of paragraph 63A(a), since the participatory interests were "held" by the PBO and are not "used" in carrying on a business undertaking or trading activity.

14.7.2.2 Minimal trading assets

This category applies where substantially the whole of the use of the asset by the PBO on or after valuation date was directed at a purpose other than carrying on a business undertaking or trading activity. An example of such an asset is one that is used 10% of the time for trading purposes and 90% of the time to conduct PBAs. Of critical importance are the words “substantially the whole of the use”. This is accepted to mean 90% or more. However SARS is prepared to accept a usage of not less than 85%. The assets referred to in this category are excluded from the first category (see 14.7.2.1) as 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 22 – Determine “substantially the whole of the use” on a time basis.

Facts: A religious institution has a year end of 30 April and has been approved in terms of section 30 of the Act. It acquired a manse in 1995 for occupation by the 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 July 2006. The newly-appointed minister took occupation on 1 August 2006. The manse was sold on 31 March 2007.

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 eleven months from valuation date to the date of sale (1 May 2006 to 31 March 2007). During this period the manse was utilised to carry on PBAs for ten months and let for one month. This represents a usage of 90.9% (10/11 x 100) for carrying on PBAs from the valuation date. This means that the PBO has utilised substantially the whole of the manse from the valuation date in carrying on its PBAs. Paragraph 63A(b)(i) is applicable and the PBO must accordingly disregard any capital gain or loss on the disposal of the manse.

14.7.2.3 Permissible trading assets

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

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

The permissible business undertakings or trading activities are as follows:

- **Related trade [section 10(1)(cN)(ii)(aa)]**

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

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

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

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

Result: The vegetable gardening activity falls within the permissible trading rules of section 10(1)(cN)(ii)(aa) as 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 [section 10(1)(cN)(ii)(bb)]

To qualify under this category the trading activity must –

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

Example 24 – Asset used to carry on a permissible trading activity contemplated in section 10(1)(cN)(ii)(bb)

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

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

- Ministerial approval [section 10(1)(cN)(ii)(cc)]

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

14.7.3 Valuation date

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

14.7.4 Base cost

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

- The market value of the asset on valuation date.
- Twenty percent (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 (TAB) of an asset as determined in terms of paragraph 30.

14.7.4.1 Market value

If a PBO wishes to adopt the market value method it must do so within two years from the valuation date to value an asset.

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

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

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

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

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

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

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

14.7.4.2 Time-apportionment base cost (TAB)

For workings of the TAB method, reference should be made to the *Comprehensive Guide to CGT* on the SARS website where the method is explained in detail. Where a PBO acquired an asset before valuation date for no consideration, it will have an acquisition cost of nil for the purposes of determining "B" in the TAB formula. This will result in a larger capital gain than would otherwise be the case. In such circumstances the market value method may well give a better result. **Note:** Market value can only be used if the asset has been valued within the prescribed two year period.

14.7.4.3 Twenty percent (20%) of proceeds method

This method, which is likely to be a method of last resort, is also explained in detail in the *Comprehensive Guide to CGT* (available on the SARS website) to which reference should be made.

14.7.5 Donations and bequests to an approved PBO

Any capital gain or loss determined in respect of an asset which has been donated or bequeathed to an approved PBO, must be disregarded in the hands of the donor.

For further comprehensive information relating to PBOs and CGT refer to Interpretation Note No. 44 dated 31 August 2007 which is available on the SARS website.

15 Objections and appeals

Any decision of the Commissioner in the exercise of his discretion in section 30 will be subject to objection and appeal.

The Commissioner will exercise his discretion to determine whether:

- An organisation is or was knowingly a party to, or knowingly allowed itself to be used as part of a tax avoidance scheme.
- A PBO granting funds to an association of persons not approved as a PBO has taken reasonable steps to ensure that the funds are utilised for the purpose for which it was provided.
- A PBO has in any material respect, or on a continuous or repetitive basis failed to comply with the provisions of section 30, before giving notice that the exemption will be withdrawn.
- The non-compliance giving rise to withdrawal of a PBO approval has been rectified before considering a re-application for approval as a PBO.

Being subject to objection and appeal, a taxpayer may object against any of the above decisions within 30 days from the date of the decision. The objection must be in writing and specify in detail the grounds upon which it is made. The Commissioner will consider the objection and may alter his decision, or disallow the objection. On disallowance of the objection, an organisation dissatisfied with the decision may appeal to the Tax Court for hearing Income Tax Appeals. Such appeal must be in writing and lodged with the Commissioner within 30 days of the notice of disallowance of the objection.

Rules regarding objections and appeals have been formulated in terms of section 107A of the Act for assessments issued, objections lodged or appeals. These rules are available on the Dispute Resolution website. Essentially, they set strict timeframes for both SARS and the taxpayers' adherence in order that objections and appeals may be dealt with in an expeditious manner. In terms of these new rules, objections need to be lodged at the address specified on the assessment. Additionally, these rules make provision for alternative dispute resolution. Further information including a *Guide on Tax Dispute Resolution* will be found on the Dispute Resolution website at www.sars.gov.za/dr.

When lodging an objection the PBO must complete an *ADR 1* and in respect of an appeal the *ADR 2* must be completed.

16 VAT Implications

16.1 Background

The terms "public benefit organisation" and "public benefit activity" which are used for income tax purposes are not used in the VAT Act. Instead the VAT legislation refers to an "association not for gain" and a "welfare organisation". Both entities qualify for special VAT treatment. Companies incorporated under section 21 of the Companies Act, 1973 do not automatically qualify as associations not for gain or welfare organisations for VAT purposes. They must meet the criteria set out below (16.2 and 16.3) and the benefits follow accordingly.

Associations not for gain and welfare organisations are included in the VAT system. The benefit of this inclusion is that if they can register for VAT, they can claim the VAT that they incur as input tax and only levy output tax where there is a charge for the supply of goods and services.

For VAT purposes, any person is required to register for VAT if an enterprise is carried on and taxable supplies in excess of R300 000 for any 12-month period are made. However, where the value of taxable supplies is less than R300 000 for any 12-month period, but exceeds R20 000 a person may register voluntarily. A person cannot register if only exempt supplies (such as education) are made.

16.2 Associations not for gain

An association not for gain, as defined in section 1 of the VAT Act, is essentially a religious institution or other society, association or organisation (including an educational institution of a public character) which is not carried on for profit and is required to use any property or income solely in the furtherance of its aims and objects. To qualify for voluntary VAT registration, the organisation must have made taxable supplies in excess of R 20 000 in the past 12 month period.

An association not for gain is treated much like any other business if it makes taxable supplies, but the following special provisions will apply:

- No output tax is payable on any donations received. For example, where a person donates money to an amateur football association to cover costs of new kit and footballs to be used by the players.
- The association may be registered on the payments basis of accounting for VAT on supplies. This assists those associations using simple accounting systems and which rely extensively on cash flow for their operations.
- Certain goods which are forwarded free of charge to an association not for gain are exempt from VAT on importation.
- Different activities of associations not for gain can be regarded as separate persons for VAT purposes. This can be used to reduce the impact of VAT.
- Certain subsidies or grants received from National or Provincial Government (public authority) are zero-rated.

16.3 Welfare organisations

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

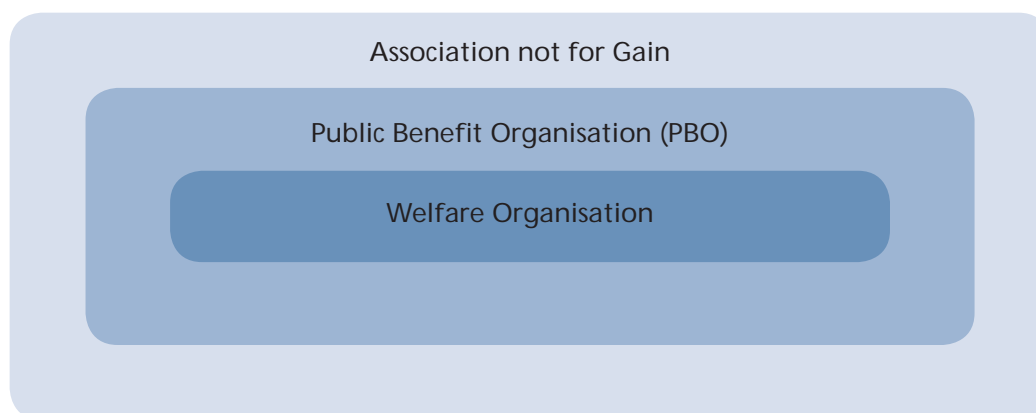
A welfare organisation is not required to meet the R20 000 threshold of taxable supplies to qualify for voluntary VAT registration, as is the case with an association not for gain.

In addition to the special concessions described above, welfare organisations also enjoy the following advantages:

- Even where no charge is made for supplies, the organisation may still register for VAT and obtain input tax relief on its purchases relating to the carrying on of welfare activities. For example, 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 as the clothes are supplied free of charge, there will be no output tax.
- Subsidies or grants received from the Government (or municipalities) will be zero-rated if it relates to the carrying on of welfare activities.

16.4 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 public benefit organisation and a welfare organisation can be illustrated as follows:



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

An **association not for gain** includes a public benefit organisation and a welfare organisation. However, the scope of qualifying as an association not for gain goes beyond that of a public benefit organisation and a welfare organisation. For example, a sporting or social club does not necessarily qualify as a public benefit organisation and consequently it will not be a welfare organisation. The sporting or social club may, however, be an association not for gain and provided that it can register for VAT under the normal rules, the organisation can benefit from the special VAT provisions.

A **public benefit organisation** qualifies as an association not for gain. It will therefore be able to benefit from the special VAT provisions applicable to an association not for gain. However, in order to benefit from these provisions, it must conduct an enterprise, which includes the supply of goods or services at a consideration to other persons, and qualify for VAT registration. A public benefit organisation does not automatically qualify as a welfare organisation for VAT purposes.

A **welfare organisation** must in the first instance be a public benefit organisation and will also qualify as an association not for gain. Its status as an association not for gain therefore ensures that it also benefits from the special VAT provisions applicable to an association not for gain. By design, a welfare organisation conducts an enterprise for VAT purposes and may register for VAT without further tests, for example, the supply of goods or services at a consideration.

16.5 Donations

A donation made by a donor is not regarded as consideration, namely the payment for goods and/or services supplied as it is specifically excluded from the definition of "consideration". Output tax is therefore not payable by the donee upon receipt of the donation. For further particulars relating to "donation" refer to paragraph 2.5 of the VAT 414 Guide. For comprehensive information relating to the VAT implications for PBOs, refer to the VAT 414 *Guide for Associations not for Gain and Welfare Organisations* which is available on the SARS website.

17 Employees' tax (SITE and PAYE)

The fact that a non-profit organisation has been granted an income tax exemption by SARS does not necessarily mean that it is exempt from employees' tax. Employees' tax is the tax that an employer has to deduct from the remuneration that it pays to its employees. The employer must then pay this deducted employees' tax over to SARS on behalf of each of its employees as a payment towards that employee's personal income tax liability.

A non-profit organisation will, therefore, have to register for employees' tax with SARS where one or more of its employees earn remuneration that is sufficiently high to be liable for the deduction of employees' tax. For more information in this regard, please refer to the EMP 10 *Guidelines for Employers*, which is available on the SARS website under Taxes at the link PAYE/SDL/UIF.

18 Unemployment Insurance Fund (UIF) contributions

A non-profit organisation that pays remuneration to its employees will also be liable for unemployment insurance fund (UIF) contributions unless it qualifies for certain exemptions. These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch where the non-profit organisation is also liable for employees' tax or the skills development levy. For more information in this regard, please refer to the EMP 10 – *Guidelines for Employers* and other guides on UIF, which are available on the SARS website under Taxes at the link PAYE/SDL/UIF.

19 Customs and excise implications

No definition of a PBO currently exists in the Customs and Excise Act 1964 (Act No. 91 of 1964). However, Schedule No. 4 to the Customs and Excise Act, 1964, provides for the partial or full rebate of customs duties on the importation of specific goods under specified circumstances. Some of these goods include goods for cultural, educational, charitable, welfare or youth organisations or purposes.

Schedule No 4 is headed: *General Rebates of Customs Duties and Fuel Levy*. It consists of four parts: Part 1: Specific rebates of customs duties, Part 2: Temporary rebates of customs duties, Part 3: Goods temporarily admitted under rebate of customs duties and Part 4: Rebates of fuel levy.

Part 1 of Schedule No. 4 – Specific rebates of customs duties:

This includes provision for rebates of duty on goods imported for heads of state, diplomatic and other foreign representatives and by immigrants, tourists, returning residents and other passengers for their personal use, on re-imported goods, on goods abandoned or destroyed and on lost, destroyed or damaged goods.

Part 2 of Schedule No. 4 – Temporary rebates of customs duties:

This includes various goods mostly subject to a permit issued by the Director General: Trade and Industry.

Part 3 of Schedule No. 4 – Goods temporarily admitted under rebate of customs duty:

This part provides for goods temporarily admitted for processing, repair, cleaning or reconditioning, goods temporarily admitted for specific purposes and goods temporarily admitted subject to exportation in the same state.

Part 4 of Schedule No. 4 – Rebates of fuel levy:

This part provides for a rebate of fuel levy payable on imported fuel levy goods lost, destroyed or damaged in circumstances described in the item.

The following rebates of customs duties in Part 1 to Schedule No. 4 could apply to public benefit or welfare organisations:

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

		Goods (excluding foodstuffs and clothing) donated to any educational organisation, hospital, clinic, welfare organisation, religious organisation or sporting organisation	<ul style="list-style-type: none"> Quantities and conditions are set by the International Trade Administration Commission 	Full duty
		Goods for religious instruction or purposes, including: altars, fonts, lecterns, pulpits, church decorations, vestments and other appointments (excluding furniture)	<ul style="list-style-type: none"> For use by a religious body 	Full duty less the duty in Section B of Part 2 of Schedule No.1
		Any goods for use by the National Sea Rescue Institute of RSA, the RSA Lifesaving Society and RSA Lifesaving		Full duty
		Cups, medals and other trophies which have been awarded abroad to persons or imported to be awarded	Various	Full duty
(c)	General rebates	<p>Various goods, i.e.</p> <ul style="list-style-type: none"> Electric motors for the ringing of church bells Nets treated with insecticides for the control of mosquitoes Bequeathed goods from abroad Used property of a person who died while temporarily outside the Republic Life saving apparatus Fire extinguishing apparatus Food concentrates for infants Colostomy, ileostomy, ureterostomy and ileal bladder appliances, disposable colostomy or ileostomy drainage bags, incontinence under garments and pads 	Various	Various

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

Annexure A - Other exemptions in terms of the Income Tax Act, 1962

- **Section 10(1)(cA)(i)** – An institution, board or body established by or under law which-
 - conducts scientific, technical or industrial research;
 - provides necessary or useful commodities to the State or members of the general public; or
 - carries on activities to promote commerce, industry or agriculture.
- **Section 10(1)(cA)(ii)** – A company, all the shares of which are held by an entity contemplated in section 10(1)(cA)(i) and whose objects are ancillary or complementary to the object of its shareholder.
- **Section 10(1)(cE)** – Registered political party
- **Section 10(1)(cO)** – Recreational and social club
- **Section 10(1)(cP)** – Mining environmental rehabilitation fund
- **Section 10(1)(d)** –
 - Pension, provident and retirement annuity fund.
 - Benefit fund.
 - Mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association.
 - Any company, society or other association of persons promoting the common interests of persons carrying on a particular kind of business, profession or occupation.
- **Section 10(1)(e)** –Exemption in respect of levies received by:
 - A body corporate.
 - A share block company.
 - Any association of persons established to manage the collective interests common to all its members in respect of common immovable property.

For further information refer to Practice Note No. 8 which is available on the SARS website.

- **Section 10(1)(t)** – Specific exemptions

Due to the nature and extent of their activities, the legislation specifically provides for the exemption of the receipts and accruals of the following organisations:

- The Council for Scientific and Industrial Research.
- The South African Inventions Development Corporation.
- The South African National Roads Agency Ltd.
- The Armaments Development and Production Corporation of South Africa and certain wholly-owned subsidiaries whose objects are ancillary or complementary to the objects of the corporation.
- Any traditional council or traditional community established or recognised or deemed to have been established or recognised in terms of the Traditional Leadership and Governance Framework Act, 2003 or any tribe as defined in that Act.
- Any regional electricity distributor as defined in the Income Tax Act.
- Any water services provider as defined in the Income Tax Act.
- The Development Bank of Southern Africa.

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

This extract is an unofficial consolidation of section 10(1)(cN) of the Income Tax Act, 58 of 1962. Whilst care has been taken errors may exist and the original legislation should be consulted.

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 percent of the total receipts and accruals of that public benefit organisation during relevant year of assessment; or
 - (ii) R100 000;

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

This extract is an unofficial consolidation of section 18A of the Income Tax Act, 58 of 1962. Whilst care has been taken errors may exist and the original legislation should be consulted.

18A. Deduction of donations to certain public benefit 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

(c) the Government, any provincial administration or municipality as contemplated in section 10(1)(a) or (b) to be used for the purpose of any activity contemplated in Part II of the Ninth Schedule, as does not exceed ten per cent of the taxable income (excluding any retirement fund lump sum benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.

(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the government, provincial administration or municipality 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 government, provincial administration or municipality 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, but on or before 31 March 2010; 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 receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or municipality concerned, on which the following details are given, namely -
- (a) the reference number of the public benefit organisation, institution, board or body issued by the Commissioner for the purposes of this section;
 - (b) the date of the receipt of the donation;
 - (c) the name of the public benefit organisation, institution, board or body or the government, provincial administration or municipality which received the donation, together with an address to which enquiries may be directed in connection therewith;
 - (d) the name and address of the donor;
 - (e) the amount of the donation or the nature of the donation (if not made in cash);
 - (f) 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 or body concerned or, in the case of the government, provincial administration or municipality in carrying on the relevant public benefit activity.
- (2A) A public benefit organisation, institution, board, body, government, provincial administration or municipality 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 so distribute at least 75 per cent of all funds received by way of donation during that year in respect of receipts that 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 PBAs 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 the government, provincial administration or municipality, 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 together with its annual return for a year of assessment submit to the Commissioner 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, 1999 (Act No. 1 of 1999) for the government, provincial administration or municipality which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).
- (3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, 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); 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) 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) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is—
- (a) a share in a listed company; or
 - (b) issued by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).
- (4) The provisions of subsections (9) and (10) of section 30 shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1)(a).
- (5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board or body (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 or body was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board or body for the 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 such organisation, institution, board or body 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 or body during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board or body in that year; and
 - (ii) if corrective steps are not taken by that public benefit organisation, institution, board or body within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board or body 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, 1999 (Act No. 1 of 1999), 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 of which that Act applies, has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner –

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

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

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

This extract is an unofficial consolidation of section 30 of the Income Tax Act, 58 of 1962. Whilst care has been taken errors may exist and the original legislation should be consulted.

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 company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), 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 terms of the laws of 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 PBAs, 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) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise: Provided that cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by that organisation from persons who are not resident and receipts and accruals derived directly or indirectly therefrom which donations, receipts and accruals have not previously been taken into account for purposes of this proviso; and
- (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 who died on or before 31 December 2003;
 - (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 similar public benefit organisation which has been approved in terms of this section;
 - (bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or
 - (cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b);
 - (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 –
 - (aa) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in subsection (1) which has been approved in terms of this section;
 - (bb) any institution, board, body, department or administration contemplated in subsection 3(b)(iii)(bb) or (cc) ; or
 - (cc) any person if the branch paid for the asset out of the funds derived from a source outside 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 I of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and
 - (g) ...
 - (h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party.
- (3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.
- (3B) Where an organisation applies for approval before 31 December 2003 or the last day of its first year of assessment, the Commissioner may approve that organisation for the purposes of this section or for the purposes of any provision contained in section 10, which was repealed on 15 July 2001, with retrospective effect.
- (3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.
- (4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply
- (a)...

(b)...

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

(5) Where the Commissioner is –

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

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

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

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

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

(b) fails to notify the Commissioner where it become 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 other organisation which is -

(a) approved in terms of this section; and

(b) not a connected person in relation to such organisation.

(7) If the organisation fails to transfer, or to take reasonable steps to transfer its assets, as contemplated in subsection (6) 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.

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

- (9) Any books of account, records or other documents relating to any approved public benefit organisation shall -
- (a) where kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after the date of the last entry in any book; or
 - (b) where not kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after completion of the transactions, act or operations to which they relate.
- (10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—
- (a) to answer any questions relating to such organisation; or
 - (b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or
 - (c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) ...

(12) ...

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

Section 30 approved PBAs.

This extract is an unofficial consolidation of Part 1 of the Ninth Schedule to the Income Tax Act, 58 of 1962. Whilst care has been taken errors may exist and the original legislation should be consulted.

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES (SECTION 30)

Part I

1. Welfare and Humanitarian

- (a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counselling 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 counselling 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 counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counselling 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.

2. Health Care

- (a) The provision of health care services to poor and needy persons.
- (b) The care or counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling 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, counselling or treatment of persons afflicted with HIV/AIDS, including the care or counselling 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.

3. Land and Housing

- (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 R3500 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.

4. Education and Development

- (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- (d) “Further education and training” provided by a “public further education and training institution” as defined in the Further Education and Training Act 1998, (Act No. 98 of 1998).
- (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 PBAs contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counselling 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 and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.

5. Religion, Belief or Philosophy

- (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.

6. Cultural

- (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.

7. Conservation, Environment and Animal Welfare

- (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 co-ordinated 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.

8. Research and Consumer Rights

- (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.

9. Sport

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.

10. Providing of Funds, Assets or Other Resources

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 PBAs 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) or (b).

11. General

- (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 PBAs 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.

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

Section 18A approved PBAs.

This extract is an unofficial consolidation of Part 2 of the Ninth Schedule to the Income Tax Act, 58 of 1962. Whilst care has been taken errors may exist and the original legislation should be consulted.

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES (SECTION 18A)

Part II

1. Welfare and Humanitarian

- (a) The care or counselling of, or the provision of education programmes relating to abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counselling of poor and needy persons where more than 90 percent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counselling 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 counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counselling 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.

2. Health Care

- (a) The provision of health care services to poor and needy persons.
- (b) The care or counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling 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, counselling or treatment of persons afflicted with HIV/AIDS, including the care or counselling 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.

3. Education and Development

- (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- (d) “Further education and training” provided by a “public further education and training institution” as defined in the Further Education and Training Act 1998, (Act No. 98 of 1998).
- (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 PBAs 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 counselling 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 and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.

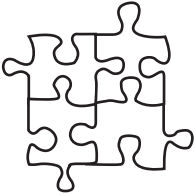
4. Conservation, Environment and Animal Welfare

- (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 co-ordinated 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.

5. Land and Housing

- (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 R3 500 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) Building and equipping of clinics or crèches for the benefit of the poor and needy.
- (d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

Annexure G– Example of section 18A certificate

<p>ABC PRIMARY SCHOOL</p> <p>Oxford Street, Pretoria, 0001 – Telephone (000) 000-0000 Exemption Reference Number: 93/0000</p> <div style="text-align: center; margin-top: 20px;">  </div>	
<p>DONATION RECEIPT: Issued in terms of Section 18A of the Income Tax Act of 1962. The donation received below will be used exclusively for the objects of ABC Primary School in carrying out PBAs approved in terms of section 18A.</p>	0001
RECEIPT NO.	0001
NAME OF DONOR	
ADDRESS OF DONOR	<hr/> <hr/> <hr/> <hr/>
AMOUNT OF DONATION	R <hr/>
NATURE OF DONATION	<p>CASH Amount: R <hr/></p> <p>OTHER</p> <ul style="list-style-type: none"> • Description: <hr/> • Details how the value was determined: <hr/><hr/> • Value: R <hr/>
DATE OF DONATION	<hr/>
<p>I confirm that the above donation was received by ABC Primary school and will be used exclusively for the objects of conducting a public benefit activity approved by the Minister of Finance in Part II of the Ninth Schedule to the Income Tax Act, 1962.</p>	
<hr/> HEADMASTER/SECRETARY/BURSAR	<hr/> DATE

Annexure H – Regulations

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

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

By virtue of the power vested in me by paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto, the conditions on which any scholarships, bursaries and awards for study, research and teaching must be provided for purposes of that paragraph and section 30 of the Act.

T. A. MANUEL
MINISTER OF FINANCE

SCHEDULE

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning assigned thereto.
2. For purposes of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, an organisation which provides any scholarships, bursaries and awards for study, research or teaching must comply with the conditions prescribed in these regulations.
3. Subject to regulation 4, the founding document of the organisation contemplated in regulation 2, must expressly provide that –
 - (a) all scholarships, bursaries or awards granted by that organisation must be bona fide and be granted to an individual on grounds of objective merit or need;
 - (b) no scholarship, bursary or award granted by that organisation may -
 - (i) be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;
 - (ii) be subject to conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary or award; or
 - (iii) be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or that organisation (or any associated institution in relation to that donor or organisation) or any relative of that person, unless circumstances indicate that that scholarship, bursary or award would have been granted to that person or his or her relative, even if that person had not been an employee of that donor, organisation or associated institution;
 - (c) all decisions regarding the granting of scholarships, bursaries and awards must be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted; and
 - (d) all scholarships, bursaries and awards granted by that organisation in respect of overseas study, research

or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –

- (i) to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
 - (ii) to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in subparagraph (i).
4. Where the founding document of an organisation which was established before 1 January 2003 does not expressly provide for the conditions contemplated in regulation 3, the organisation will be deemed to comply with regulation 3 until 31 December 2007, if the person responsible in a fiduciary capacity for the funds and assets of that organisation submits a written undertaking to the Commissioner that all scholarships, bursaries and awards granted by that organisation comply with the provisions of these regulations.
5. Copies of all documents and information relating to any scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award is granted must be made available to the Commissioner on request.

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

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

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

T. A. MANUEL
MINISTER OF FINANCE

Annexure I - Contact Details of the Tax Exemption Unit

Tax Exemption Unit SARS

Postal address:

PO Box 11955
HATFIELD
0028

Physical address:

Pro-Equity Court
1250 Pretorius Street
Hatfield
Pretoria
0083

Telephone: 012 - 422 8800

Fax: 012 - 422 8830

012 - 422 8850

e- mail: teu@sars.gov.za

SARS website: www.sars.gov.za

Tax Exemption Unit: On the SARS website under “ Taxes ” on the left hand menu select “ Exemptions ” in the drop down menu.



Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk 0181, Private Bag X923, Pretoria, 0001, South Africa
Telephone: +27 12 422 4000, Fax: +27 12 422 5181, Web: www.sars.gov.za