

INTERPRETATION NOTE: NO. 22 (Issue 3)

DATE: 22 September 2015

ACT : TRANSFER DUTY ACT NO. 40 OF 1949
SECTION : SECTIONS 9(1)(c) AND 9(1A)
SUBJECT : TRANSFER DUTY EXEMPTION: PUBLIC BENEFIT ORGANISATIONS AND STATUTORY BODIES

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Preamble

In this Note unless the context indicates otherwise –

- **“Companies Act”** means the Companies Act No. 71 of 2008;
- **“declaration”** means a Transfer Duty (TDC01) Declaration submitted via SARS eFiling;
- **“Part I”** means Part I of the Ninth Schedule to the Act;
- **“PBA”** means any “public benefit activity” as defined in section 30(1) which is listed in Part I and any other activity determined by the Minister to be of a benevolent nature, having regard to the needs, interest and well-being of the general public;
- **“PBO”** means a “public benefit organisation” as defined in section 30(1)(a) and approved by the Commissioner under section 30(3);
- **“section”** means a section of the Act;
- **“statutory body”** means an institution, board or body exempt from income tax under section 10(1)(cA)(i) and which has as its sole or principal object the carrying on of one or more PBAs;
- **“TEU”** means the Tax Exemption Unit which is a dedicated office within SARS that deals with applications for approval or exemption from income tax on behalf of the Commissioner;
- **“the Act”** means the Income Tax Act No. 58 of 1962;
- **“Transfer Duty Act”** means the Transfer Duty Act No. 40 of 1949; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides guidance on the interpretation and application of the following sections of the Transfer Duty Act:

- Section 9(1)(c), which exempts from the payment of transfer duty a PBO or any statutory body, which has as its sole or principal object the carrying on of any PBA, provided the whole or substantially the whole of the property acquired is used for carrying on one or more PBAs.
- Section 9(1A), which exempts from transfer duty the transfer of property by a PBO to any other entity controlled by that PBO.

For purposes of this Note, the transactions do not constitute taxable supplies of fixed property under section 7(1)(a) of the Value-Added Tax Act No. 89 of 1991.

2. Background

Transfer duty is levied on a sliding scale on the value of any property¹ acquired by any person under a transaction or in any other manner. The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.

¹ See the definition of “property” in section 1 of the Transfer Duty Act.

All the exemptions from transfer duty are contained in section 9 of the Transfer Duty Act. The exemptions in section 9(1)(c) and section 9(1A) of the Transfer Duty Act apply to PBOs and statutory bodies meeting the requirements discussed in **4.1**, **4.2**, **4.3** and **4.5**.

3. The law

Section 9(1)(c) of the Transfer Duty Act

9. Exemptions from duty.—(1) No duty shall be payable in respect of the acquisition of property by—

- (c) (i) a public benefit organisation contemplated in paragraph (a) of the definition of “public benefit organisation” in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30(3) of that Act; or
- (ii) any institution, board or body, which is exempt from tax in terms of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity contemplated in section 30 of that Act,

in respect of property acquired by such public benefit organisation, institution, board or body, the whole, or substantially the whole, of which will be used for the purposes of one or more public benefit activity carried on by such public benefit organisation, institution, board or body, as the case may be: Provided that if at any time subsequent to the acquisition thereof it is used otherwise than in the manner contemplated in this paragraph, duty shall become payable in respect of the acquisition of that property and the date upon which that property was first so otherwise used shall for the purposes of section 3(1) and section 4 be deemed to be the date of acquisition thereof;

Section 9(1A) of the Transfer Duty Act

(1A) No duty shall be payable in respect of the registration of any property transferred by any public benefit organisation contemplated in paragraph (a) of the definition of “public benefit organisation” in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30(3) of that Act to any other entity which is controlled by that public benefit organisation;

4. Application of the law

4.1 Exemption of a public benefit organisation

In order to qualify for the exemption from the payment of transfer duty for the acquisition of property under section 9(1)(c)(i) of the Transfer Duty Act, the organisation applying for the exemption must be a PBO (see **4.1.1**) and must use the whole or substantially the whole (see **4.3**) of the property acquired for the carrying on of one or more PBAs (see **4.1.2**).

4.1.1 Public benefit organisation

A PBO referred to in section 30(1)(a) means –

- a non-profit company as defined in section 1 of the Companies Act, a trust, or an association of persons incorporated, formed or established in South Africa; or
- any branch within South Africa of any company, association or trust incorporated, formed or established in a country outside South Africa and that is itself exempt from income tax in that other country.

A PBO must have as its sole or principal object the carrying on of one or more PBAs (see 4.1.2).

4.1.2 Public benefit activities

The PBAs are divided into the following categories:

- 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 or Other Resources
- General

Specific activities that qualify as PBAs are listed under each category heading (see **Annexure A**). A PBO that carries on one or more PBAs may qualify for exemption from the payment of transfer duty provided the requirements of section 9(1)(c) of the Transfer Duty Act are met.

Religious, charitable or educational institutions of a public character which were previously exempt under section 10(1)(f), and organisations providing residential accommodation to aged or retired persons which were exempt under section 10(1)(cF), qualified for transfer duty exemption under section 9(1)(c) and section 9(1)(j) of the Transfer Duty Act. Section 10(1)(f) and section 10(1)(cF) were repealed with effect from 15 July 2001 when legislation was introduced to regulate the tax-exempt status of PBOs. These activities were included as PBAs and section 9(1)(c)² of the Transfer Duty Act was accordingly amended and section 9(1)(j)³ was deleted. The discussion that follows will therefore be focused on these activities which were specifically affected by the above legislative amendments.

² Section 3(1)(b) of the Taxation Laws Amendment Act No. 30 of 2000.

³ Section 3(1)(c) of the Taxation Laws Amendment Act No. 30 of 2000.

(a) Provision of residential care for retired persons

Residential care provided to retired persons under a life-right scheme may form part of PBA 3(c) if –

- residential care is provided to retired persons;
- more than 90% of the persons to whom the residential care is provided are over the age of 60;
- nursing services are provided by the organisation carrying on the activity; and
- residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost. The extent to which the residential care must be provided to poor and needy persons is not prescribed in the Act. The requirement is merely that the PBO must actively cross-subsidise poor and needy persons.⁴

Example 1 – Provision of residential care for retired persons*Facts:*

Sunset Hills Retirement Village is a non-profit company incorporated under the Companies Act which has been approved by the TEU as a PBO carrying on PBA 3(c).

Property 1

This property was acquired on 1 August 2014 and will be developed as follows:

- Ten self-contained single units for needy pensioners whose only source of income is a social pension.
- 20 units to be sold under the life-right scheme.
- 20 cottages sold as life-right units.
- 15 semi-furnished single rooms for occupation by persons with no income.
- A frail-care centre that will provide nursing services to all residents.
- A community centre for all residents.
- Dining room and kitchen facility providing meals and refreshments to all residents.

All the accommodation will be for occupation by persons over the age of 60. The rentals charged for accommodation provided to the persons with no income and those whose only source of income is a social pension are not market-related and are below cost-recovery. Income received from selling the life-right accommodation will be used to subsidise the accommodation to poor and needy persons.

Property 2

This property was acquired on 1 November 2014 and will be developed by constructing residential units to be sold under the life-right scheme to persons over the age of 60 years. No cross-subsidisation of poor and needy persons will be provided on the property.

⁴ PBA 3(c)(ii).

Declarations have been submitted for the acquisition of both properties (see 5).

Result:

Property 1

The acquisition of this property will qualify for exemption from the payment of transfer duty because –

- the company is a PBO;
- by developing the property in the manner contemplated above the company will be carrying on PBA 3(c); and
- the whole of the property will be used to carry on the PBA.

Property 2

The acquisition of this property will not qualify for the exemption from the payment of transfer duty since the whole or substantially the whole (see 4.3) of the property will be used to sell units under the life-right scheme. No residential care will be provided for poor and needy retired persons over the age of 60 and the PBO will therefore not carry on a PBA on this property.

(b) Residential accommodation acquired to carry on religious or educational public benefit activities

The acquisition of a property which is used as the official residence (manse) of the pastor or minister of a PBO carrying on activities of the promotion or practice of religion contemplated in PBA 5(a) will qualify for the exemption from the payment of transfer duty provided the whole or substantially the whole (see 4.3) of the property is used for that purpose. It is accepted in such cases that the manse is acquired by the PBO for use in carrying on the PBA. See **Example 5**.

The same principal applies to educational institutions (see 4.1.4) for the acquisition of a residence for occupation by teaching staff.

(c) Provision of assets to another public benefit organisation or statutory body

A PBO that provides funds, assets or other resources⁵ to another PBO or statutory body (see 4.2.1) will qualify for exemption from the payment of transfer duty provided the whole or substantially the whole (see 4.3) of the property acquired by the PBO is used by another PBO or statutory body in the carrying on of a PBA.

Example 2 – PBO providing assets to another PBO

Facts:

Kings Trust, a PBO, has been established to hold immovable property for the benefit of Stuart High School, an independent school carrying on PBA 4(a). The trust has acquired immovable property to be developed as follows:

- Five residential units for occupation by senior educators of the school.
- Swimming pool and tennis courts for use by the learners of the school.

⁵ PBA 10.

- Athletics track for use by the school.

A declaration has been submitted for the acquisition of the property (see 5).

Result:

The acquisition of the immovable property by the trust will qualify for the exemption from the payment of transfer duty, because –

- the trust is a PBO;
- the trust is carrying on PBA 10, namely, the provision of assets to the school which is also a PBO to be used in carrying on its educational PBA; and
- the whole of the property will be used to carry on the PBA.

4.1.3 Educational institutions qualifying as public benefit organisations

The following educational institutions carrying on educational PBAs listed under the category “Educational and Development”⁶ may apply for approval as a PBO:

- An independent school registered under the South African Schools Act No. 84 of 1996 which is established under a founding document such as a constitution, trust deed or memorandum of incorporation.⁷
- A “private higher education institution” as defined and registered under the Higher Education Act No. 101 of 1997 which provides “higher education”.⁸
- A “private centre” defined and registered under the Adult Education and Training Act No. 52 of 2000 which provides “adult education and training”.⁹
- A “private college” defined and registered under the Continuing Education and Training Act No. 16 of 2006 which provides “continuing education and training”.¹⁰

4.2 Exemption for a statutory body

In order to qualify for the exemption from the payment of transfer duty for the acquisition of property under section 9(1)(c)(ii) of the Transfer Duty Act, the organisation applying for the exemption must be a statutory body (see 4.2.1) and must use the whole or substantially the whole (see 4.3) of the property acquired for the carrying on of one or more PBAs (see 4.1.2).

4.2.1 A statutory body

In order to qualify for exemption under section 10(1)(cA)(i), an organisation must be established by or under law for a specific object (see 4.2.2). A statutory body must be approved by the Commissioner before the exemption will apply.

The following organisations are specifically excluded from qualifying for exemption under section 10(1)(cA)(i):

- A company registered under the Companies Act.

⁶ PBA 4.

⁷ PBA 4(a).

⁸ PBA 4(b).

⁹ PBA 4(c).

¹⁰ PBA 4(d).

- A co-operative.
- A close corporation.
- A trust.
- A water services provider.¹¹

The exemption from the payment of transfer duty is inapplicable to a wholly owned subsidiary company of a statutory body which is exempt under section 10(1)(cA)(ii).

4.2.2 Sole or principal object of a statutory body

In order to comply with section 10(1)(cA)(i) the sole or principal object of a statutory body must be to –

- conduct scientific, technical or industrial research;
- provide necessary or useful commodities, amenities or services to the State which includes any provincial administration or members of the general public; or
- carry on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof.

In order to qualify for the exemption from the payment of transfer duty, a statutory body must have as its sole or principal object the carrying on of any PBA (see 4.1.2). The sole or principal object of the statutory body must therefore be the carrying on of one or more of the activities required in section 10(1)(cA)(i) and those activities must also qualify as a PBA. The concept “sole or principal” denotes that either the “only or the main, most important, chief, predominant”¹² object must be the carrying on of one or more of these activities.

This may be illustrated as follows:

Qualifying activities under section 10(1)(cA)(i)	Examples of statutory bodies carrying on qualifying activities	Reference to applicable PBA
Scientific, technical or industrial research.	Institutions, boards or bodies engaged in medical, water, animal or agricultural research.	PBA 8(a)
The provision of necessary or useful commodities, amenities or services to the State or members of the	Institutions, boards or bodies promoting, establishing, protecting, preserving or maintaining areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums including art galleries, archives	PBA 6(a) or (b)

¹¹ See the definition of “water services provider” in section 1(1).

¹² M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus, and Wordpower Guide* (2001) Oxford University Press meaning of “sole” or “principal”, respectively.

general public.	and libraries.	
	Institutions, boards or bodies engaging in the conservation, rehabilitation or protection of the natural environment, including flora and fauna.	PBA 7
	Educational institutions (see 4.2.3).	PBA 4
The promotion of commerce, industry or agriculture.	Sector Education and Training Authorities (SETAs).	PBA 4

Example 3 – Statutory body which has as its sole or principal object the carrying on of a PBA

Facts:

A statutory body is established by law with the object of conducting research, development and technology transfer to promote agriculture and industry and therefore contributes to the improvement of the quality of life in South Africa.

The body complies with all the requirements of section 10(1)(cA)(i). An exemption has been approved by the TEU.

The body has acquired immovable property for purposes of erecting a laboratory to engage in research into the quality of the various cultivars of potatoes and their suitability for agricultural, commercial and consumption purposes. In particular, research is to be conducted into the most suitable type of cultivar for the manufacture of crisps with the least impact on the health of the consumer.

A declaration has been submitted for the acquisition of the property (see 5).

Result:

The acquisition of the property will qualify for the exemption from the payment of transfer duty because –

- the body is exempt under section 10(1)(cA)(i);
- the sole or principal object of the body is to conduct scientific, technical or industrial research which activity qualifies under PBA 8(a); and
- the whole of the property will be used to carry on the PBA.

4.2.3 Educational institutions qualifying as statutory bodies

The following educational institutions carrying on educational PBAs listed under the category “Educational and Development”¹³ do not qualify as PBOs because they are established by or under law and must apply for approval as statutory bodies:

- A “public school” as defined in the South African Schools Act No. 84 of 1996. Such a school is exempt for income tax purposes under section 10(1)(cA)(i).¹⁴

¹³ PBA 4.

¹⁴ PBA 4(a).

SARS has not required each public school to apply for formal approval for exemption under section 10(1)(cA)(i). Approval has been given to the National Education Department for each Provincial Education Department to apply for a group registration for public schools registered in its area. See **Example 4**.

- A “public higher education institution” established or declared as a public higher education institution under the Higher Education Act No. 101 of 1997.¹⁵
- A “public centre” defined in the Adult Education and Training Act No. 52 of 2000 which provides “adult education and training”.¹⁶
- A “public college” defined in the Continuing Education and Training Act No. 16 of 2006 and established by the Minister by notice in the *Gazette* to provide “continuing education and training”.¹⁷

Example 4 – Public school qualifying as a statutory body which has as its sole or principal object the carrying on of a PBA

Facts:

Meadows Primary School is a public school as defined in the South African Schools Act, 1996, and is registered as such by the Western Cape Education Department. The school does not have a formal letter from the TEU confirming exemption under section 10(1)(cA)(i). It has, however, provided confirmation from the relevant Education Department that it is registered as a public school.

The school has acquired a vacant stand to be developed as a sports ground for its sole use in promoting its sporting activities, which form an integral part of the provision of education to its learners.

A declaration has been submitted for the acquisition of the property (see 5).

Result:

The vacant stand acquired will qualify for exemption from the payment of transfer duty since the following requirements are met:

- The school is registered as a public school and has provided the relevant confirmation from the Education Department. It may therefore be accepted that the school qualifies for exemption under section 10(1)(cA)(i).
- The school provides necessary and useful services to the State and members of the general public (see 4.2.2) and its sole or principal object is the carrying on of PBA 4(a).
- The whole of the vacant stand will be used to conduct the PBA.

4.3 Meaning of “substantially the whole”

In order to qualify for exemption from the payment of transfer duty under section 9(1)(c) of the Transfer Duty Act, the whole property, or substantially the

¹⁵ PBA 4(b). The Minister may by notice in the *Gazette*, establish a specific university, technikon or college.

¹⁶ PBA 4(c).

¹⁷ PBA 4(d).

whole of the property acquired by a PBO or statutory body must be used for purposes of carrying on a PBA.

The concept “substantially the whole” was introduced into the Act to ensure that the sole or principal object of a PBO remains the carrying on of PBAs, while at the same time allowing certain parameters within which the PBO can carry on its trading activities.¹⁸ Since PBOs effectively use assets to carry on PBAs as well as trading activities, the legislation dealing with transfer duty was also amended to give effect to the concept of “substantially the whole”.

“Substantially the whole”¹⁹ is regarded by SARS to mean 90% or more. However, in order to overcome certain practical difficulties SARS will accept a percentage of not less than 85% for PBAs. If this percentage at any time in the future becomes less than 85%, transfer duty will become payable (see **4.4**).

The percentage must be determined using a method appropriate to the circumstances. It may therefore be calculated on the use of the property based on time (see **Example 5**) or surface area (see **Example 6**). Any portion of the property not specifically used for PBAs or other purposes, must be excluded from the calculation.

Example 5 – Determination of “substantially the whole” based on time usage

Facts:

Sunrise Church is a PBO which conducts PBA 5(a). On 1 March 2010 the church acquired a manse for occupation by a second resident minister appointed to focus on the youth ministry.

The minister’s term of office ended on 31 August 2014 and in view of the decline in the number of young members of the congregation, it was decided not to fill the vacant position.

The manse was let to a third party from 1 September 2014 to 28 February 2015 and sold on 1 March 2015.

Result:

Initial acquisition

The acquisition of the manse on 1 March 2010 for the second resident minister qualifies for the exemption from the payment of transfer duty because –

- the church is a PBO;
- the church carries on a PBA; and
- the whole of the manse is occupied by the second resident minister employed by the church and therefore the manse is used to carry on the PBA.

¹⁸ Section 10(1)(cN).

¹⁹ See Binding General Ruling (Income Tax): No. 20 dated 10 December 2013 “Interpretation of the Expression ‘Substantially the Whole’”.

Subsequent use up to the date of disposal

For the period 1 September 2014 to 28 February 2015 the manse was used for purposes other than carrying on the PBA.

During the period 1 March 2010 to 28 February 2015 the manse was used to carry on a PBA for 54 months and let for six months. PBA usage therefore amounts to 90% (54 months / 60 months × 100) from the date of acquisition until the date of disposal. This percentage exceeds the minimum acceptable percentage of 85%. The PBO has therefore used substantially the whole of the manse in carrying on its PBA.

Example 6 – Determination of “substantially the whole” based on area usage*Facts:*

Caring Baby Centre, a PBO that is carrying on PBA 1(a), acquired a residence for the purposes of caring for abandoned babies. The centre confirmed that it will use only a portion of the residence for its PBA and will let the remaining rooms to a third party at a market-related rental. The area of the residence is 420 m² of which 360 m² will be used for its PBA.

Confirmation is submitted that the area of the residence to be let is 60 m² and that this area will not be increased in the future.

Result:

The area the PBO will use for its PBA in relation to the whole residence is taken into account to determine whether substantially the whole of the residence will be used for purposes of carrying on a PBA. The area to be used for the PBA in relation to the whole residence is $360 \text{ m}^2 / 420 \text{ m}^2 \times 100 = 85,7\%$. This percentage exceeds the minimum acceptable percentage of 85%. The PBO will qualify for the exemption from the payment of transfer duty for the acquisition of the residence under section 9(1)(c) of the Transfer Duty Act since substantially the whole of the residence is used to carry on a PBA.

4.4 Non-compliance

If at any time subsequent to the acquisition of property that has qualified for the exemption under section 9(1)(c) of the Transfer Duty Act the whole or substantially the whole of the property is used for a purpose other than for carrying on any PBA, transfer duty becomes payable. The date the property is used for a purpose other than for the carrying on of the PBA is deemed under the proviso to section 9(1)(c) of the Transfer Duty Act to be the date of acquisition for the purposes of section 3(1) of the Transfer Duty Act (by whom, when and to whom duty payable) and section 4 of the Transfer Duty Act (penalty and interest on late payment of duty). The value on which transfer duty is payable is, however, determined under section 2 of the Transfer Duty Act and is not affected by the proviso. It follows that transfer duty will be determined on the original value of the property on the actual date of acquisition, payable at the rate applicable at the deemed date of acquisition.

Should the duty not be paid within six months from the deemed date of acquisition, a penalty²⁰ or interest²¹ of 10% a year for each completed month is payable, calculated from the deemed date of acquisition up to the date that the tax is paid.²²

Example 7 – Transfer duty consequences as a result of subsequent non-compliance with the conditions for exemption

Facts:

Animal Safe Haven, a PBO, acquired residential property (first property) for R750 000 on 18 December 2009 for the purpose of providing a shelter for abandoned and ill-treated animals. It submitted confirmation to SARS of its status as an approved PBO together with a declaration that the whole of the property would be used for the carrying on of PBA 7(b).

On 27 May 2014 the haven acquired a second property which provided larger accommodation facilities to enable it to better carry on its PBA. As with the first property it submitted confirmation of its status as PBO together with a declaration that the whole of the second property would be used for the carrying on of PBA 7(b).

As from 1 June 2014, the first property was let for commercial purposes and was therefore no longer used in carrying on its PBA.

Result:

Acquisition of first property

The first property qualified for the exemption from the payment of transfer duty because at the time of acquisition the haven –

- submitted confirmation that it is a PBO; and
- confirmed that the whole of the property will be used to carry on PBA 7(b).

Subsequent change in use

On 1 June 2014 the whole property was used for the purpose other than the carrying on of a PBA. Transfer duty is therefore payable on the value of the property at the date of acquisition which is R750 000 at the rate applicable on 1 June 2014. Unless the PBO pays the transfer duty within six months from the date the property is first used for such other purposes, namely, 1 June 2014, interest will become payable. Interest is calculated at the rate of 10% a year for each completed month that the transfer duty remains unpaid, calculated from the date of acquisition up to the date that the tax is paid.

²⁰ Section 4(1) of the Transfer Duty Act which is applicable to any transaction entered into before 1 March 2005.

²¹ Section 4(1A) of the Transfer Duty Act which is applicable to any transaction entered into on or after 1 March 2005.

²² See *Transfer Duty Guide* in paragraph 9.4.

Acquisition of second property

No transfer duty is payable at the time of the acquisition of the second property because the required confirmation of PBO status and intended usage was submitted to SARS.

4.5 Section 9(1A) of the Transfer Duty Act

In order to qualify for the exemption from the payment of transfer duty under section 9(1A) of the Transfer Duty Act, the organisation transferring the property must –

- be a PBO; and
- transfer the property to any other entity controlled by that PBO.

The transfer and registration of property from a PBO to a separate entity that is taxable for income tax purposes may qualify for the exemption from the payment of transfer duty provided the transferee is controlled by the PBO. This “controlled by” requirement will be met if the transferee is –

- a company of which all the shares are held by a PBO (no shares may be held by any other person);
- a trust, the sole beneficiary of which is a PBO; or
- an association of persons or a non-profit company of which the sole member is a PBO.

There is no restriction or requirement relating to the purpose for which the immovable property is to be used. The property may therefore be used either to carry on PBAs or to carry on business or trading activities.

Example 8 – Transfer of property from a PBO to any other entity controlled by that PBO*Facts:*

Care Bears Community Centre, a PBO, owns the following properties under separate title deeds:

- Improved property in the central business area from where it conducts its activities of caring for homeless and destitute persons.
- Improved property used to care for terminally-ill persons. Part of the property is let for commercial use.
- A property bequeathed to the centre comprising ten flats from which rental income is derived.
- A vacant stand that the centre intends to develop as an orphanage which is currently being used as a parking facility.

For certain practical and administrative reasons, the centre has decided to transfer all the immovable properties into a separate legal entity. For this purpose a company with a share capital of 100 shares was registered as the property-owning company.

The company is wholly owned by the centre.

Result:

The transfer of all the above properties from the PBO to the company will qualify for the exemption from the payment of transfer duty because –

- the centre is a PBO; and
- the properties are transferred to another entity which is controlled by the PBO, being the sole shareholder.

5. Application procedure for transfer duty exemption

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction. Each transaction is considered on its own merits. A declaration which is available on eFiling www.sarsefiling.co.za must be submitted for each acquisition of property for which an exemption is required. No supporting documents are required to be submitted with the submission of the declaration. Supporting documents must, however, be retained and submitted when requested in writing by SARS through eFiling.

Supporting documents may include –

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

6. Application procedure for approval as a public benefit organisation or statutory body

A newly established organisation or an organisation that has previously not applied for approval as a PBO or as a statutory body which requires exemption from the payment of transfer duty for the acquisition of property, must complete the prescribed application form (Form EI 1) available on the SARS website.

The application form and relevant supporting documentation must be submitted to the TEU (see **Annexure B**). A request may be submitted for the application to receive priority attention if there is a transfer duty exemption pending the approval by the TEU of the applicant as a PBO.

The TEU will issue a letter to inform the organisation whether its application for approval as a PBO or statutory body has been approved. It is not a requirement that a PBO or statutory body renew its approval annually. The approval will be sustained as long as the PBO or statutory body continues to comply with all the requirements for approval. In cases of doubt the TEU should be contacted.

The TEU has discretion to approve an organisation as a PBO with retrospective effect if the TEU is satisfied that the organisation during the period before its application complied with the requirements of a “PBO” under section 30.²³ A PBO approved with retrospective effect may request a refund²⁴ of transfer duty if it is proved to the satisfaction of the Commissioner that transfer duty has been paid for an acquisition of property by a person who is, or has become, entitled to an exemption as at the date of the acquisition. Information relating to the application for a refund and the relevant information required in order to process a refund application can be obtained from the SARS website.²⁵

7. Conclusion

This Note provides general guidelines and considers the broad principles of the legislation. The particular circumstances of each case need to be considered before an exemption from the payment of transfer duty can be approved.

The following guides, available on the SARS website, provide comprehensive information and guidance:

- Transfer Duty Guide
- Guide for Transfer Duty via eFiling 2014
- Tax Exemption Guide for Public Benefit Organisations in South Africa
- Basic Guide to Income Tax for Public Benefit Organisations
- VAT 409 – Guide for Fixed Property and Construction
- VAT 414 – Guide for Associations not for Gain and Welfare Organisations

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 11 March 2004
 Date of 2nd issue : 9 December 2008

²³ Section 30(3B).

²⁴ Refunds are dealt with in Chapter 13 of the Tax Administration Act No. 28 of 2011.

²⁵ SARS Home > Types of Tax > Transfer Duty > Refunds.

Annexure A – List of public benefit activities in Part I**NINTH SCHEDULE****PUBLIC BENEFIT ACTIVITIES**

(Section 30)

PART I**WELFARE AND HUMANITARIAN**

1. (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.
- (p) Community development for poor and needy persons and anti-poverty initiatives, including—
 - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
 - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
 - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.
- (q) The promotion of access to media and a free press.

HEALTH CARE

2. (a) The provision of health care services to poor and needy persons.
- (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
- (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
- (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.
- (e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.

LAND AND HOUSING

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

EDUCATION AND DEVELOPMENT

4. (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.

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

RELIGION, BELIEF OR PHILOSOPHY

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

CULTURAL

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

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

RESEARCH AND CONSUMER RIGHTS

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

SPORT

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

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

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

GENERAL

11. (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.
- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—
- (i) the foreign participation in that event; and
 - (ii) the economic impact that event may have on the country as a whole.
- (c) The promotion, monitoring or reporting of development assistance for the poor and needy.
- (d) The provision of funds to an organisation—
- (i) which is incorporated, formed or established in any country other than the Republic;
 - (ii) which is exempt from tax on income in that other country;
 - (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
 - (iv) that carries on each of its activities—
 - (aa) in a non-profit manner;
 - (bb) with altruistic or philanthropic intent;
 - (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
 - (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).

Annexure B – Contact details of the Tax Exemption Unit

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