South African Revenue Service

INTERPRETATION NOTE 124

DATE: 29 September 2022

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 3(*c*) IN PART I OF THE NINTH SCHEDULE
SUBJECT : PUBLIC BENEFIT ORGANISATIONS: PROVISION OF RESIDENTIAL CARE FOR RETIRED PERSONS

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Preamble

In this Note unless the context indicates otherwise –

- **"Part I"** means Part I of the Ninth Schedule;
- **"PBA"** means a "public benefit activity" listed in Part I of the Ninth Schedule and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;
- **"PBO"** means a "public benefit organisation" as defined in section 30(1) and approved by the Commissioner under section 30(3);
- **"Ninth Schedule"** means the Ninth Schedule to the Act;
- **"section"** means a section of the Act;
- **"TA Act"** means the Tax Administration Act 28 of 2011;
- **"the Act"** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides, interpretation notes and rulings referred to in this Note are available on the SARS website at **www.sars.gov.za**. Unless indicated otherwise the latest issue of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of PBA 3(*c*) relating to the provision of residential care for retired persons.

2. Background

Institutional care of older persons was in the past prioritised by government and non-governmental organisations resulting in the establishment of old age homes and care centres. Government policy, however, shifted the emphasis to –

- encourage older people to live active, healthy and independent lives within the community to retain their independence for as long as possible;
- encourage family and home care of older persons; and
- restrict institutional care to the frail elderly who require 24-hour care and who do not have the financial resources to meet their own needs.

The care for older persons has therefore become the responsibility of every citizen.

Retired persons who can afford to do so therefore may choose to live in housing schemes built to meet their particular needs, to maintain relative independence and to secure a comfortable quality of life. These housing schemes typically comprise housing units that range from freestanding houses with private gardens to multi-storey apartments, or flats, or a combination of these. The housing schemes are also normally walled or fenced off to form a separate village or complex and may offer communal facilities such as gyms, tennis courts, swimming pools, bowling greens, community centres as well as laundry services.

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Section 10(1)(*c*F), which was repealed on 15 July 2001,[1] provided an exemption from income tax for organisations providing residential accommodation under a sale or a lease or otherwise to aged or retired persons in a building, housing complex or village. An organisation had to provide at least one meal per day as well as nursing services in addition to residential accommodation in order to qualify for exemption under section 10(1)(*c*F). Organisations exempted under the repealed section 10(1)(*c*F) were thus mainly organisations selling accommodation by operating Life-Right Schemes contemplated in the Housing Schemes for Retired Persons Act 65 of 1988.

Section 10(1)(*c*N) and section 30 were introduced into the Act[2] to deal with exempt organisations. The concept of a "PBO" carrying on a "PBA" was introduced. Specific PBAs were included in the Ninth Schedule to be carried on by a qualifying PBO.[3] One such PBA is the provision of residential care for retired persons as contemplated in PBA 3(*c*). Section 10(1)(*c*F) was repealed simultaneously with the introduction of these sections.

Organisations previously exempted under section 10(1)(*c*F) were required to re-apply to the Commissioner for approval as a PBO carrying on PBA 3(*c*) on or before a prescribed date.[4] An organisation that did not submit a re-application to the Commissioner before the prescribed date lost its exempt status and became a normal taxpayer.

Approval of the previously exempt organisations by the Commissioner as a PBO was not automatic. Many organisations exempted under the repealed section 10(1)(*c*F), especially those operating only Life-Right Schemes, did not qualify as carrying on PBA 3(*c*).

This Note considers the requirements of only PBA 3(*c*) (see **4.2**) and not those of the repealed section 10(1)(*c*F).

3. The law

The relevant sections of the Act are quoted in the **Annexure**.

4. Application of the law

4.1 General

4.1.1 Type of organisation qualifying for approval as a public benefit organisation

In order for an organisation to qualify as a PBO it must be incorporated, formed or established in South Africa as –[5]

- a "non-profit company" as defined in section 1 of the Companies Act 71 of 2008;
- a trust; or

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1 See section 21(1)(*a*) of the Taxation Laws Amendment Act 30 of 2000.

2 Sections 21(1)(*c*) and 35(1) of the Taxation Laws Amendment Act 30 of 2000 introduced sections 10(1)(*c*N) and 30, respectively. These amendments came into operation on 15 July 2001.

3 See section 41 of the Taxation Laws Amendment Act 30 of 2002.

4 See section 21(2)(*a*) of the Taxation Laws Amendment Act 30 of 2000 amended by section 63 of the Taxation Laws Amendment Act 30 of 2002 and section 198 of the Revenue Laws Amendment Act 45 of 2003.

5 Paragraph (*a*)(i) of the definition of "public benefit organisation" in section 30(1).

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- an association of persons.[6]

Housing schemes for retired persons may be established under a number of different legal structures that vary from scheme to scheme.[7] The types of schemes may include sectional-title schemes, share-block schemes, club schemes, long-lease agreements and life-right schemes.[8] Some housing schemes for retired persons may offer healthcare facilities while others do not (see **4.2.4**).

The Act is not prescriptive on the type of housing scheme that would meet the requirements of PBA 3(*c*). However, any organisation constituted in the above manner providing residential care to retired persons as its sole or principal object (see **4.1.2**) will enjoy preferential tax treatment only after it is approved as a PBO by the Commissioner, and continues to comply with the relevant prescribed requirements.

Preferential tax treatment includes the benefit of partial taxation, which is a method of taxing the receipts and accruals of PBOs derived from business undertakings or trading activities falling outside the permissible business undertaking or trading activity categories including the basic exemption set out in section 10(1)(*c*N)(ii) (see **5**). In addition, to being exempt from the payment of income tax on certain receipts and accruals, PBOs will also enjoy the benefit of being exempt from certain other taxes and duties, which include, among other things, capital gains tax,[9] dividends tax,[10] donations tax, estate duty, and transfer duty.[11]

4.1.2 Sole or principal object

A PBO must have as its sole or principal object the carrying on of one or more PBAs.[12] The words "sole", "principal" and "object" are not defined in the Act.

The method of attributing meaning to the words used in legislation involves, as a point of departure, examining the language of the provision at issue, the language and design of the statute as a whole and its statutory purpose.[13] In *C: SARS v Dunblane (Transkei) (Pty) Ltd*[14] the court held that words in a section of an Act of Parliament must not be looked at in isolation but in the context in which they are found, both in the

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6 An association of persons contemplated in paragraph (*a*)(i) of the definition of "public benefit organisation" in section 30(1) is generally established or formed by adopting a legal founding document such as a constitution or other written instrument. See GJ Pienaar "Formation" 2 (Third Edition Volume) *LAWSA* [online] (My LexisNexis: 28 February 2015) in 155.

7 L Kilbourn "Retirement Villages: An Introduction to their Legal Nature, Applicable Legislation and the Risks Faced by Investors in such Schemes (2)" [online] (My LexisNexis: September 2008) in Property/Property Law Digest.

8 The term "housing development scheme" as defined in section 1 of the Housing Development Schemes for Retired Persons Act 65 of 1988 means, amongst other things, any scheme, arrangement or undertaking under which housing interests are alienated for occupation in a development scheme, share block scheme, membership of or participation in any club, association, organisation or other body, or the issuing of shares, or otherwise, but excluding a property time-sharing scheme.

9 For further commentary, see Interpretation Note 44 "Public Benefit Organisations: Capital Gains Tax".

10 For further commentary, see the *Comprehensive Guide to Dividends Tax*.

11 For further commentary, see Interpretation Note 22 "Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies".

12 Paragraph (*b*) of the definition of "public benefit organisation" in section 30(1).

13 See *Chetty t/a Nationwide Electrical v Hart NO & another* 2015 (6) SA 424 (SCA), 4 All SA 401.

14 2002 (1) SA 38 (SCA), 64 SATC 51 at 57.

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immediate context of the sub-section in which they occur and in the general context of the Act. Furthermore, in *C: SARS v Terraplas South Africa (Pty) Ltd*[15] the court confirmed that a dictionary meaning of a word cannot govern the interpretation it can only be used as a guide. The question is, therefore, what is the meaning applicable to the words in the context of the specific document, or section under consideration.

The following words are described in the *Dictionary.com* as follows:

- "Sole" as "being the only one; only."[16]
- "Principal" as "first or highest in rank, importance, value, chief."[17]
- "Objective" as "something that one's efforts or actions are intended to attain, accomplish, purpose, goal, target."[18]

In ITC 1569[19] the judge referred to the following two meanings of "principal" in the *Oxford English Dictionary*:

> "1. First or highest in rank or importance; that is at the head of all the rest; of the greatest account or value; foremost.
>
> 2. Less definitely: belonging to the first or highest group in rank or importance; of the first order; main, prominent, leading."

Having regard to the dictionary meaning, context and purpose of the section the words "principal" and "sole" imply that the PBO must have as the only, or predominant, or foremost aim to carry on one or more PBAs.

4.1.3 Manner in which public benefit activities must be carried on

All PBAs carried on by a PBO must be carried on in a non-profit manner and with an altruistic or philanthropic intent.[20] The words "non-profit", "manner", "altruistic", "philanthropic" and "intent" are not defined in the Act.

The word "non-profit" is described in the *Cambridge English Dictionary* as –[21]

> "not intended to make a profit, but to make money for a social or political purpose or to provide a service that people need".

Investopedia describes "not for profit" as –[22]

> "a type of organization that does not earn profits for its owners. All of the money earned by or donated to a not-for-profit organization is used in pursuing the organization's objectives and keeping it running".

The word "manner" is described in the *Dictionary.com* as –[23]

> "a way of doing, being done, or happening; mode of action, occurrence, etc.".

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15 [2014] 3 All SA 11 (SCA), 76 SATC 377.
16 **www.dictionary.com/browse/sole** [Accessed 29 September 2022].
17 **www.dictionary.com/browse/principal?s=t** [Accessed 29 September 2022].
18 **www.dictionary.com/browse/objective** [Accessed 29 September 2022].
19 (1993) 56 SATC 86 (C) at 90.
20 Paragraph (*b*)(i) of the definition of "public benefit organisation" in section 30(1).
21 **https://dictionary.cambridge.org/dictionary/english/non-profit** [Accessed 29 September 2022].
22 **www.investopedia.com/terms/n/not-for-profit.asp** [Accessed 29 September 2022].
23 **www.dictionary.com/browse/manner** [Accessed 29 September 2022].

The intent of an organisation carrying on any PBA must not be to generate a profit or financial return. A PBO must not conduct activities for purposes of making a distributable profit. It will be unacceptable for a PBO to conduct profit-making activities as its sole or principal object to fund the cost of running the PBO. The activities carried on by a PBO should not be to maximise profits but rather to recover direct and reasonable indirect costs.[24] An organisation carrying on a PBA as part of a profit-making venture will not qualify for approval as a PBO. However, an organisation carrying on a business undertaking or trading activity as part of a PBA may qualify as a PBO provided it meets all the business or trading requirements (see **5**).

Altruistic motives or behaviour is described in the *CollinsDictionary.com* as –[25]

> "the concern for the happiness and welfare of other people rather than for yourself".

Altruism generally means a concern for the well-being of others with no thought about oneself. Altruism is the opposite of self-interest. The intention of an organisation must not be to carry on any PBA for the personal profit, benefit or advantage of the organisation to the exclusion or regard of the well-being of the general public.

In *Ex Parte Henderson & another, NNO* Miller J provided the following explanation of philanthropy:[26]

> "The word 'philanthropy' is generally used to convey the idea of 'practical benevolence towards men in general; the disposition or active effort to promote the happiness and well-being of one's fellow-men' (*Oxford English Dictionary*). Not every philanthropic purpose will necessarily also be a charitable purpose, for philanthropic energy may be expended for the benefit of selected individuals, rather than for the general public benefit. But it is true to say that many a philanthropist is also a public benefactor and a philanthropic purpose is very often synonymous with a charitable purpose or so closely akin to it that the distinction is not significant."

The words "philanthropic" and "charitable" are used to describe goodwill towards men in general and the active effort to promote the happiness and well-being of one's fellow men.

The *Dictionary.com* describes "intent" as –[27]

> "something that is intended, purpose, design, the act or fact or intending, as to do something, the state of a person's mind that directs his or her actions toward a specific object".

The intent of an organisation is a subjective test and it is not always an easy task to establish. In the first instance one will have to give due consideration to the organisation's purpose, that is, what the organisation states its intent to be in its founding document. An organisation's activities generally provide an indication of that organisation's stated intent.

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24 Indirect costs, amongst other things, include administrative costs, salaries, utilities, insurance, cleaning material, repairs and maintenance, etc.

25 **www.collinsdictionary.com/dictionary/english/altruistic** [Accessed 29 September 2022].

26 1971 (4) SA 549 (D) at 556.

27 **www.dictionary.com/browse/intent** [Accessed 29 September 2022].

Altruistic or philanthropic intent therefore suggests the idea of practical benevolence towards men in general; the disposition or active effort to promote the happiness and well-being of one's fellow-men. Thus there must be no *quid pro quo*, reciprocal obligations and no direct or indirect personal benefit or return resulting from the PBAs carried on by the PBO.

An organisation carrying on PBA 3(*c*) as its sole or principal object will meet this requirement if its primary intent is not to generate a profit or financial return from the provision of residential care (see **4.2.1**) or nursing services (see **4.2.4**). The making of profit must therefore not be the focus of carrying on PBA 3(*c*).

4.2. Requirements of public benefit activity 3(*c*)

PBA 3(*c*) relates to the provision of residential care (see **4.2.1**) for retired persons (see **4.2.2**). PBA 3(*c*) has two subparagraphs listing the requirements that an organisation providing residential care to retired persons must meet. The two subparagraphs of PBA 3(*c*) are cumulative and connected by the word "and" indicating that the requirements of both subparagraphs must be met. The requirements are that –

- more than 90% of the retired persons to whom residential care is provided, by that organisation, must be over the age of 60 (see **4.2.3**) and nursing services must be provided by that organisation (see **4.2.4**);[28] and
- residential care for retired persons who are poor and needy must actively be provided by that organisation without full recovery of cost (see **4.2.5**).[29]

4.2.1 Provision of residential care

The opening sentence of PBA 3(*c*) requires that an organisation must provide residential care. The words "provision" and "residential care" are not defined in the Act.

The *CollinsDictionary.com* describes "provision" as follows:[30]

> "The provision of something is the act of giving it or making it available to people who need or want it."

An organisation must therefore itself engage in or participate in making residential care available for retired persons by expending effort or taking action. It will not suffice merely to provide funding to another organisation to provide the residential care.[31]

The *Lexico Dictionaries* describes "residential care" separately as follows:

- "Residential" as "designed for people to live in."[32]
- "Care" as "the provision of what is necessary for the health, welfare, maintenance, and protection of someone or something."[33]

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28 PBA 3(*c*)(i).

29 PBA 3(*c*)(ii).

30 **www.collinsdictionary.com/dictionary/english/provision** [Accessed 29 September 2022].

31 The PBA dealing with the distribution of funds by a PBO is a separate PBA included under paragraph 10 of Part I.

32 **www.lexico.com/en/definition/residential** [Accessed 29 September 2022].

33 **www.lexico.com/en/definition/care** [Accessed 29 September 2022].

Having regard to the dictionary meanings, "residential" referred to in PBA 3(*c*) should be interpreted as the provision of a building for retired persons to live in whereas "care" may be interpreted broader to include accommodation, as well as the general health, welfare and protection of retired persons. The "care" of retired persons by an organisation may therefore include the physical and mental well-being of retired persons and may include the provision of activities such as excursions to museums, galleries and musical shows, games, arts and grafts, physical exercises, or any other activity that may provide physical or mental stimulation for retired persons. Residential care does not include nursing services (see **4.2.4**) since that specific service is mentioned separately in PBA 3(*c*).

The meaning of "building" has been considered in a number of court cases from which several general principles have emerged. A building is normally a substantial structure, more or less of a permanent nature, consisting of walls, a roof and the necessary appurtenances (accessories).[34] PBA 3(*c*) does not require that the organisation providing the residential care to retired persons must be the owner of the building used to provide such care. There is also no requirement regarding the number of units that must be used to provide residential care or any requirement that the units must be furnished. The residential care may be provided on single or multiple premises (see **Example 5**). The building used for the provision of the residential care also does not have to be used exclusively for this purpose. An organisation carrying on PBA 3(*c*) is not expected to provide meals.

Based on the presumption that references in statutes to conduct are references to valid or permissible conduct,[35] the residential care referred to in PBA 3(*c*) contemplates that it complies with all relevant legislative or regulatory requirements.

Example 1 – Conduit non-profit company carrying on PBA 10 and operating company carrying on PBA 3(*c*)

Facts:

Conduit non-profit company JKL NPC

JKL NPC provides funds to HJK NPC, its sole beneficiary.

Operating non-profit company HJK NPC

HJK NPC is a separate operating non-profit company, which provides residential care and nursing services. HJK NPC uses the funds received from JKL NPC to subsidise residential care to retired persons who are poor and needy.

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[34] *CIR v Le Sueur* 1960 (2) SA 708 (A), 23 SATC 261 at 273. For further commentary, see Interpretation Note 106 "Deduction in respect of Certain Residential Units".

[35] LM du Plessis "Statute Law and Interpretation" 25(1) (Second Edition Volume) *LAWSA* [online] (My LexisNexis: 31 March 2011) in 343.

Result:

Conduit non-profit company JKL NPC

The sole or principal object of JKL NPC is the provision of funds to its sole beneficiary, namely, HJK NPC. JKL NPC qualifies for approval as a PBO carrying on PBA 10[36] provided HJK NPC is an approved PBO.

Operating non-profit company HJK NPC

HJK NPC may qualify for approval as a PBO carrying on PBA 3(*c*) provided it can satisfy the Commissioner that –

- its sole or principal object (see **4.1.2**) is the provision of residential care for retired persons (see **4.2.2**);
- more than 90% of the retired person including retired persons who are poor and needy to whom residential care is provided are over the age of 60 (see **4.2.3**);
- nursing services are provided (see **4.2.4**);
- nursing services are provided to retired persons who are poor and needy albeit it does not have to be at less than full cost (see **4.2.4**);
- residential care is actively provided for retired persons who are poor and needy (see **4.2.5**); and
- the full cost of providing residential care for retired persons who are poor and needy is not recovered [see **4.2.5 (c)**].

Example 2– Property holding and operating non-profit companies

Facts:

Property holding non-profit company ABC NPC

A property holding non-profit company, ABC NPC, owns land and buildings. The sole or principal object of ABC NPC is the selling of life-rights by operating a Life-Right Schemes contemplated in the Housing Schemes for Retired Persons Act 65 of 1988. The selling of life-rights is not conducted for profit but substantially to recover costs incurred in relation to the land and buildings owned. The receipts and accruals derived from the sale of life-rights is used to fund the operating activities of XYZ NPC, which is the sole beneficiary of the funds from ABC NPC. ABC NPC itself does not provide any residential care and nursing services.

Operating non-profit company XYZ NPC

XYZ NPC is a separate operating non-profit company, which provides residential care and nursing services from the land and buildings owned by ABC NPC. XYZ NPC uses the funds received from ABC NPC to subsidise residential care to retired persons who are poor and needy.

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[36] PBA 10 is the provision of funds, assets or other resources to PBOs, institutions, boards or bodies exempt under section 10(1)(*c*A)(i) carrying on one or more PBA, association of persons carrying on any PBA except PBA 10, or the national, provincial or local sphere of government contemplated in section 10(1)(*a*).

Result:

Property holding non-profit company ABC NPC

The sole or principal object of ABC NPC is the selling of life-rights under the life-right scheme, which is a commercial business undertaking or trading activity and does not fall within the ambit of any approved PBA.

The provision of funds derived from the sale of life-rights to XYZ NPC is not the sole or principal object of ABC NPC. ABC NPC is not carrying on PBA 10.

ABC NPC is also not carrying on PBA 3(*c*), since it does not provide residential care and nursing services as required in that PBA.

ABC NPC does not qualify for approval as a PBO because its sole or principal object is not the carrying on any approved PBA.

Operating non-profit company XYZ NPC

XYZ NPC may qualify for approval as a PBO carrying on PBA 3(*c*) provided it can satisfy the Commissioner that –

- its sole or principal object (see **4.1.2**) is the provision of residential care for retired persons (see **4.2.2**);
- more than 90% of the retired persons including retired persons who are poor and needy to whom residential care is provided are over the age of 60 (see **4.2.3**);
- nursing services are provided (see **4.2.4**);
- nursing services are provided to retired persons who are poor and needy albeit it does not have to be at less than full cost (see **4.2.4**);
- residential care is actively provided for retired persons who are poor and needy (see **4.2.5**); and
- the full cost of providing residential care for retired persons who are poor and needy is not recovered [see **4.2.5 (c)**].

4.2.2 Retired persons

The opening sentence of PBA 3(*c*) requires that an organisation must provide residential care to retired persons.

The term "retired persons" is not defined in the Act. It is defined in other legislation and the meaning may vary in the context of the different acts. However, for purposes of determining the meaning of "retired" in the context of PBA 3(*c*), the word must be interpreted according to its ordinary meaning, which is described in the *Merriam-Webster Dictionary* as –[37]

> "withdrawn from one's position or occupation: having concluded one's working or professional career".

[37] **www.merriam-webster.com/dictionary/retired** [Accessed 29 September 2022].

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Having regard to the above, the term “retired” refers to persons having concluded their working life, career, occupation, business or profession owing to having attained retirement age relevant to that particular career, occupation, business or profession, or persons retired owing to ill-health or infirmity, or retrenchment, or any other reason. Persons, however, can retire for reasons other than age, for example, when they are eligible for retirement benefits or social assistance provided in the form of old age grants. PBA 3(*c*) does not prescribe the reason for retirement.

A person who has never been employed or who was not employed before going on retirement do not fall within the meaning of “retired persons” since such a person did not withdraw from working life, or an occupation or career at the point of retirement. Retirement is thus a factual issue having regard to the facts of each case.

In order to meet the requirements of PBA 3(*c*), all persons to whom the organisation provides residential care must be retired persons. However, should an organisation provide residential care to retired persons and persons not falling within the definition of “retired”, for example spouses of retired persons who do not meet the requirement, the provision of residential care to retired persons must be the principal object of that organisation (see **4.1.2**). Thus the organisation should predominantly provide residential care to persons falling within the description of “retired persons”.

The word “persons” in this context refers to natural persons. Thus, if an organisation provides residential care to a retired person, and that person’s spouse, the organisation is providing residential care to two persons and is not limited only to the retired person (see **Example 3**).

It will be acceptable for retired persons to whom an organisation provides residential care to undertake casual or temporary work to supplement their income.

4.2.3 Percentage and age requirement of persons to whom residential care is provided by an organisation

PBA 3(*c*)(i) requires that an organisation must provide residential care for retired persons of whom more than 90% are over the age of 60.

This requirement refers to all persons to whom an organisation provides residential care, which includes spouses of retired persons and retired persons who are poor and needy [see **4.2.5 (a)**]. This allows an organisation to provide residential care to retired persons and their spouses who are under the age of 60 limited to less than 10% of the total number of persons residential care is provided to by that organisation.

The percentage and age requirements referred to in PBA 3(*c*)(i) are definite and not subject to the Commissioner’s discretion. None of the requirements can therefore in general or in a particular instance be relaxed or waived.

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Example 3 – Provision of residential care to more than 90% of retired persons over the age of 60

Facts:

Hope Eternal Retirement Village provides residential care to 10 retired persons. All of the persons have retired from an occupation. The persons' ages are as follows:

	Age
Person 1	59
Spouse of person 1	51
Person 2	62
Spouse of person 2	62
Person 3	54
Person 4	56
Person 5	73
Spouse of person 5	75
Person 6	83
Spouse of person 6	82

Result:

All of the residents are retired from an occupation and therefore meet the retirement requirement. Six of the 10 retired residents to whom residential care is provided are over the age of 60. Hope Eternal Retirement Village provides residential care for retired persons of whom only 60% are over the age of 60. Hope Eternal Retirement Village does therefore not meet the requirement of PBA 3(*c*)(i) and will not qualify for approval as a PBO since it does not provide residential care for retired persons of whom more than 90% are over the age of 60.

4.2.4 Provision of nursing services

PBA 3(*c*)(i) requires that nursing services must be provided by the organisation carrying on the provision of residential care to retired persons.

The word "provided" is used in conjunction with the words "by that organisation". An organisation that provides residential care is therefore required to make available nursing services to retired persons to whom that organisation provides residential care who may need or want such services.

The words "nursing services" are not defined in the Act. The word "nursing" is described in the *Lexico Dictionaries* as follows:[38]

> "The profession or practice of providing care of the sick and infirm."

In the absence of a definition in the Act, SARS cannot be prescriptive on what the nature and extent of the nursing services should be or whether the nursing services provided by the organisation carrying on the provision of residential care to retired persons should be on the same premises as the residential care. Examples of such services, among other things, could include an infirmary on the premises in which sick residents who do not require hospitalisation are nursed back to health, a frail-care centre accommodating residents whose physical or mental capabilities have

[38] **www.lexico.com/en/definition/nursing** [Accessed 29 September 2022].

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deteriorated to such an extent that they can no longer live alone or without assistance, or basic medical rooms, or services provided by a nurse when required.[39]

Although PBA 3(*c*)(i) does not explicitly stipulate to whom the nursing services must be provided, it is submitted that in the context and because the requirements listed in the subparagraphs to PBA 3(*c*) are cumulative, an organisation carrying on PBA 3(*c*) is required to provide nursing services to all retired persons to whom it provides residential care including retired persons who are poor and needy as contemplated in PBA 3(*c*)(ii) [see **4.2.5 (a)**].

PBA 3(*c*)(ii) provides that residential care for retired persons who are poor and needy must be provided without full recovery of cost [see **4.2.5 (c)**]. PBA 3(*c*)(i), however, does not stipulate that an organisation must provide nursing services for retired persons who are poor and needy without full recovery of cost.

Any income derived by an organisation from nursing services provided to persons other than from retired persons to whom it provides residential care will be regarded as receipts and accruals derived from a business undertaking or trading activity not falling within the ambit of the permissible business undertaking or trading activity categories (see **5**) and will be taxable subject to the basic exemption.[40]

4.2.5 Actively providing residential care for retired persons who are poor and needy without full recovery of cost

PBA 3(*c*)(ii) requires an organisation providing residential care for retired persons must also actively provide residential care for retired persons who are poor and needy without full recovery of cost.

(a) Poor and needy retired persons

Poverty is not a simple phenomenon and consequently no single or fixed meaning can be applied to all cases. The term “poor and needy” is not defined in the Act. However, in the context of PBOs the term “poor and needy” has been interpreted by SARS to mean “impoverished, having little means and few possessions and therefore in need of basic necessities and assistance”.[41] Basic necessities may include adequate housing, health care, sufficient food and water, social security including social assistance, and education.[42]

Retired persons who have low or no income, deteriorating health, a disability, low levels of education, or those who do not have access to basic necessities are normally at greater risk of being affected by poverty. The critical issue is therefore whether the persons in question have the means to provide for their basic needs without assistance or support. Access by an individual or a household to most measures of well-being such as housing, health, education and basic services is based on income. Although a lack of income may be a main cause of a person’s poverty status, it should not be

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39 L Kilbourn “Retirement Villages: An Introduction to their Legal Nature, Applicable Legislation and the Risks Faced by Investors in such Schemes (1)” [online] (My LexisNexis: June 2008) in Property/Property Law Digest.

40 Section 10(1)(*c*N)(ii)(*dd*) provides a basic exemption, which is determined as a threshold and is applied to the total receipts and accruals derived from all non-qualifying business undertakings or trading activities. For further commentary, see Interpretation Note 24 “Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts”.

41 See the Glossary in the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

42 Sections 26, 27 and 29 of the Constitution of the Republic of South Africa, 1996.

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used as the only measure of poverty.[43] An organisation carrying on PBA 3(*c*) should have some form of means testing to evaluate the income, assets and general well-being of retired persons to determine whether they may be regarded as "poor and needy" and in need of basic necessities and assistance, which in this instance, is the need for residential care and nursing services.

Since the requirements under PBA 3(*c*)(i) and (ii) are cumulative, the percentage and age requirement also applies to retired persons who are poor and needy [see **4.2.5 (a)**].

(b) Meaning of actively

PBA 3(*c*) does not prescribe the extent to which residential care must be provided to poor and needy retired persons. No indication is given as to how many of the total retired persons to whom an organisation provides residential care should be poor and needy or how many housing units should be provided by an organisation for that purpose. It, however, is prescribed that the organisation must actively provide residential care to such persons.

The word "actively" is not defined in the Act. "Actively" is described in the *Merriam-Webster Dictionary* as –[44]

> "in a manner involving great or constant activity".

The word "actively", however, should not be read in isolation, since PBA 3(*c*)(ii) requires that the residential care for retired persons who are poor and needy must be "actively provided by that organisation" without full recovery of cost. Thus, an organisation carrying on PBA 3(*c*) must itself throughout its existence on a regular, recurrent and continual basis supply or put at the disposal of retired poor and needy persons residential care, without full recovery of cost. In addition, to providing residential care, the organisation must also provide nursing services to retired persons who are poor and needy [see **4.2.4 (a)**].

(c) Meaning of recovery of cost

PBA 3(*c*)(ii) does not prescribe the extent to which the cost of residential care should be recovered but stipulates only that the full cost of providing such residential care should not be recovered. This requirement is not applicable to the provision of nursing services (see **4.2.4**) to retired persons who are poor and needy [see **4.2.5 (a)**].

Generally, cost-recovery involves merely recovering the cost of providing residential care. This requirement will be met if the provision of residential care to retired persons who are poor and needy is carried out without recovering all direct and reasonable indirect costs.

It is likely that organisations deriving income from the provision of residential care to retired persons who can afford market-related rates or from the granting of life rights may use such income to subsidise residential care for retired persons who are poor and needy who cannot afford market-related or cost-recovery rates.

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[43] I Friedman & L Bhengu *Fifteen Year Review of Income Poverty Alleviation Programmes in the Social and Related Sectors* (2008) Health Systems Trust available online at **www.hst.org.za** [Accessed 29 September 2022].

[44] **www.merriam-webster.com/thesaurus/actively** [Accessed 29 September 2022].

Example 4 – Recovery of cost

Facts:

The estimated monthly cost to an organisation providing residential care to the poor and needy is based, amongst other things, on the following:

	R
Accommodation	6 500
Utilities (telephone, electricity and water)	2 000
Repairs and maintenance	2 500
Insurance	2 000
Cleaning materials	500
Nursing services	5 500
Total monthly estimated cost	19 000

The organisation charges a monthly fee of R10 000 for residential care provided to poor and needy retired persons. The shortfall of R9 000 is subsidised from accumulated reserves, income derived from the provision of residential care to retired persons by granting of life rights, market-related lease agreements, monthly grants received from the Department of Social Development, as well as annual fundraising activities.

Result:

The provision of residential care to poor and needy retired persons is provided by the organisation without full recovery of cost and the requirement of PBA 3(*c*)(ii) is therefore met.

5. Business undertakings or trading activities

A PBO may carry on a business undertaking or trading activity provided its sole or principal object (see **4.1.2**) remains the carrying on of PBAs. The receipts and accruals arising from that business undertaking or trading activity will be exempt from income tax provided it falls within one of the four categories of permissible business undertakings or trading activities in section 10(1)(*c*N)(ii).[45] For example, the receipts and accruals derived from the granting of life rights and the provision of residential care for retired persons are regarded as receipts and accruals derived from a business undertaking or trading activity.[46]

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[45] For further commentary, see Interpretation Note 24 "Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts".

[46] The letting of property is included in the term "trade" as defined in section 1(1).

However, such receipts and accruals may qualify for exemption from income tax under the integral and directly related permissible business undertaking or trading activity category in section 10(1)(*c*N)(i)(*aa*) provided the business undertaking or trading activity from which the receipts and accruals are derived –

- is integral and directly related to the sole or principal object of the PBO, which must be to carry on PBA 3(*c*);[47]
- is carried out or conducted on a basis substantially the whole[48] of which is directed towards the recovery of cost; and[49]
- does not result in unfair competition with other taxable entities.[50]

A PBO may not be a party to, or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone, or avoid any tax, duty or levy, which would otherwise have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner.[51] This rule will apply irrespective of whether the PBO itself or any other person benefitted from the reduction, postponement or avoidance of any applicable tax, duty or levy.

Example 5 – Provision of residential care for retired persons

Facts:

Golden Years Retirement Village, an organisation approved as a PBO by the Commissioner under section 30(3), provides residential care on two properties to retired persons of which more than 90% are over the age of 60.

Property 1

The principal object and activity of Golden Years Retirement Village is conducted on this property. The property comprises the following:

- 15 semi-furnished single rooms for occupation by poor and needy retired persons whose only source of income is a grant for older persons.
- 20 units sold under the life-right scheme.
- A frail-care centre providing nursing services to all residents.
- A community centre for the use of all residents.

The rentals charged for residential care provided to persons whose only source of income is a grant for older persons are not market-related and are below cost-recovery.

Income received from the granting of life rights meets the requirements of section 10(1)(*c*N)(ii)(*aa*) and will be used to subsidise residential care to retired persons who are poor and needy.

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47 Section 10(1)(*c*N)(ii)(*aa*)(A).

48 For further commentary, see Binding General Ruling (Income Tax) 20 "Interpretation of the Expression 'Substantially the Whole' ".

49 Section 10(1)(*c*N)(ii)(*aa*)(B).

50 Section 10(1)(*c*N)(ii)(*aa*)(C).

51 Section 30(3)(*c*).

Property 2

Residential units on this property are sold under the life-right scheme at a profit. This, however, is not the principal object of the Golden Years Retirement Village and is done on a small scale. No cross-subsidisation of poor and needy retired persons is provided on the property.

Result:

Property 1

The activities conducted on this property meet the requirements of PBA 3(*c*).

Property 2

Since units available on this property will be sold under the life-right scheme, no residential care will be provided for poor and needy retired persons as required by PBA 3(*c*)(ii). The organisation will therefore not be carrying on PBA 3(*c*) on this property.[52]

Any income derived from the granting of units under the life right scheme will comprise receipts and accruals derived from a business undertaking or trading activity and be subject to partial taxation under section 10(1)(*c*N)(ii)(*dd*).

The PBO approval granted to Golden Years Retirement Village will be jeopardised should this become its sole or principal object or if no cross-subsidisation is undertaken on any of its properties.

6. Tax-deductible donations

Part I of the Ninth Schedule lists a variety of activities recognised as PBAs for approval as a PBO for purposes of section 30.

Part II of the Ninth Schedule lists some, but not all, of the activities listed in Part I for the purposes of section 18A. Section 18A is the section providing for the tax-deductibility of *bona fide* donations made to certain organisations[53] approved by the Commissioner, carrying on PBAs in Part II in South Africa.[54]

PBA 3(*c*) is listed only in Part I and not included in Part II of the Ninth Schedule and therefore donations made to a PBO to carry on that activity will not qualify for a tax deduction under section 18A.

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52 The acquisition of this property will not qualify for the exemption from the payment of transfer duty under section 9(1)(*c*) of the Transfer Duty Act 40 of 1949 because the whole or substantially the whole of the property is not used for carrying on a PBA. For further commentary, see Interpretation Note 22 "Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies".

53 See sections 18A(1)(*a*), (*b*), (*b*A) and (*c*).

54 For further commentary on the basic requirements for obtaining and retaining approval under section 18A, see the *Basic Guide to Tax-Deductible Donations* for the basic requirements for obtaining and retaining approval under section 18A.

7. Objection and appeal

Any decision of SARS in the exercise of its discretion under section 30 is subject to objection and appeal in accordance with Chapter 9 of the TA Act.[55]

An organisation may object within 30 days from the date of –

- a decision by the Commissioner under section 30, for example, not to approve an organisation as a PBO carrying on PBA 3(*c*); or
- an assessment issued in accordance with section 10(1)(*c*N).

The objection must be made on the prescribed form and specify in detail the grounds on which it is made.[56] SARS will consider the objection and may disallow the objection or allow the objection completely or in part.

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

8. Record-keeping

A person must keep the records, books of account or documents that –[57]

- enable the person to observe the requirements of a tax Act;
- are specifically required under a tax Act or by the Commissioner by public notice; and
- enable SARS to be satisfied that the person has observed these requirements.

The records referred to above must be kept or retained in –[58]

- their original form in an orderly fashion and in a safe place;
- the form, including electronic form, as may be prescribed by the Commissioner in a public notice;[59] or
- a form specifically authorised by a senior SARS official.

These records should be available for inspection purposes by a SARS official to verify compliance with the requirements as explained above, or for purposes of an inspection, audit or investigation.[60]

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55 Section 3(4)(*b*).

56 The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Notice 550 in *Government Gazette* 37819 of 11 July 2014. For further commentary, see the *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and the *Alternative Dispute Resolution: Quick Guide*.

57 Section 29(1) of the TA Act

58 Section 30(1) of the TA Act.

59 See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

60 Section 31 of the TA Act.

Records that are relevant to an audit or investigation or an objection or appeal must be retained until the audit or investigation is concluded or until the assessment or the decision becomes final in the event of an objection or appeal (in case the five-year retention period is exceeded).[61]

9. Conclusion

In order to be approved as a PBO an organisation carrying on PBA 3(*c*) must, on application, and after obtaining such approval on submission of its annual income tax return, satisfy the Commissioner that –[62]

- its sole or principal object is the provision of residential care for retired persons;
- more than 90% of the retired persons including retired persons who are poor and needy to whom residential care is provided are over the age of 60;
- nursing services are provided by that organisation;
- nursing services are provided to retired persons who are poor and needy albeit it does not have to be at less than full cost;
- residential care for retired persons who are poor and needy is actively provided by that organisation;
- the organisation does not recover the full cost of providing residential care for retired persons who are poor and needy; and
- the receipts and accruals derived by the organisation providing residential care meet the requirements of section 10(1)(*c*N)(ii).

An organisation bears the onus of proving that it complies with the requirements relative to the approval as a PBO carrying on PBA 3(*c*) as discussed in this Note[63] and must retain the necessary evidence to support the view taken (see **8**).[64] The burden may be discharged by way of supporting evidence submitted by the organisation, provided such evidence is reasonable.[65]

Whether an organisation complies with the requirements of PBA 3(*c*) will be a factual enquiry and since the facts and circumstances, pertaining to each organisation may differ, each case will be considered on its own merits.

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61 Section 32 of the TA Act.
62 Section 30(10), and section 46(1) of the TA Act.
63 Section 102 of the TA Act.
64 Section 29 of the TA Act.
65 See ITC 1872 (2014) 76 SATC 225 (WC) in 29 to 31. Although the income tax case does not create precedent, it may be used as a guide.

Annexure – The law

Section 10(1)(*c*N)

10. Exemptions.—(1) There shall be exempt from normal tax—

(*c*N) the receipts and accruals of any public benefit organisation approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—

(i) otherwise than from any business undertaking or trading activity; or

(ii) from any business undertaking or trading activity—

(*aa*) if the undertaking or activity—

(A) is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of "public benefit organisation" in section 30;

(B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

(C) does not result in unfair competition in relation to taxable entities;

(*bb*) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;

(*cc*) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or

(*dd*) other than an undertaking or activity in respect of which item (*aa*), (*bb*) or (*cc*) applies and do not exceed the greater of—

(i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or

Section 30

30. Public benefit organisations.—(1) For the purposes of this Act—

"public benefit activity" means—

(*a*) any activity listed in Part I of the Ninth Schedule; and

(*b*) any other activity determined by the Minister from time to time by notice in the *Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;

"public benefit organisation" means any organisation—

(*a*) which is—

(i) a non-profit company as defined in section 1 of the Companies Act or a trust or an association of persons that has been incorporated, formed or established in the Republic; or

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(ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;

(*b*) of which the sole or principal object is carrying on one or more public benefit activities, where—

(i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;

(ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and

(iii) . . . . . .

(*c*) where—

(i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);

(ii) . . . . . .

(iii) . . . . . .

(2) Any activity determined by the Minister in terms of paragraph (*b*) of the definition of "public benefit activity" in subsection (1) or any conditions prescribed by the Minister in terms of subsection (3)(*a*) must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those conditions in the *Gazette*, for incorporation into this Act.

(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which—

(*a*) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;

(*b*) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is—

(i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person;

(ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;

(iii) in the case of a public benefit organisation contemplated in paragraph (*a*)(i) of the definition of "public benefit organisation" in subsection (1), required on dissolution to transfer its assets to—

(*aa*) any public benefit organisation which has been approved in terms of this section;

(*bb*) any institution, board or body which is exempt from tax under the provisions of section 10(1)(*c*A)(i), which has as its sole or principal object the carrying on of any public benefit activity;

(*cc*) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(*a*); or

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(*dd*) the National Finance Housing Corporation contemplated in section 10(1)(*t*)(xvii),

which is required to use those assets solely for purposes of carrying on one or more public benefit activities;

(iiiA) in the case of a branch of a public benefit organisation contemplated in paragraph (*a*)(ii) of the definition of "public benefit organisation" in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such branch to any public benefit organisation, institution, board, body, department or administration contemplated in subparagraph (iii), if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic;

(iv) . . . . . .

(v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(*c*A)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;

(vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;

(*c*) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;

(*d*) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;

(*e*) complies with such reporting requirements as may be determined by the Commissioner;

(*f*) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which those funds have been provided; and

(*g*) . . . . . .

(*h*) has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

(3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.

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(3B) (*a*) Subject to paragraph (*b*), where an organisation applies for approval, the Commissioner may approve that organisation for the purposes of this section with retrospective effect, if the Commissioner is satisfied that that organisation during the relevant period prior to its application complied with the requirements of a public benefit organisation as defined in subsection (1).

(*b*) For the purposes of paragraph (*a*), where the organisation—

(i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of section 99(1) of that Act not be made; or

(ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of section 99(1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with section 25(1) of that Act.

(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.

(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(*b*), it shall be deemed to so comply if the persons contemplated in subsection (3)(*b*)(i) responsible in a fiduciary capacity for the funds and assets of a branch contemplated in paragraph (*a*)(ii) of the definition of "public benefit organisation" in subsection (1) or any trust established in terms of a will of any person furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

(5) Where the Commissioner is—

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

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

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

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

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

(*b*) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations with effect from the commencement of that year of assessment, where corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice.

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(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any public benefit organisation, institution, board or body or the government as contemplated in subsection (3)(*b*)(iii).

(6A) As part of—

(*a*) the dissolution of an organisation contemplated in paragraph (*a*)(i) of the definition of "public benefit organization" in subsection (1); or

(*b*) the termination of the activities of a branch contemplated in paragraph (*a*)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic,

the organisation or branch must transfer its assets to any public benefit organisation, institution, board or body or the government contemplated in subsection (3)(*b*)(iii).

(7) If the organisation fails to transfer, or to take reasonable steps to transfer, its assets, as contemplated in subsection (6) or (6A), an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the organisation, must for purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment in which approval was withdrawn or the dissolution of the organisation or termination of activities took place.

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

(9) . . . . . .

(10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—

(*a*) to answer any questions relating to such organisation; or

(*b*) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or

(*c*) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation and who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

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Public benefit activity 3(*c*) in Part I of the Ninth Schedule

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

3. (*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.

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