

INTERPRETATION NOTE: 22 (Issue 5)

DATE: 22 September 2022

ACT : TRANSFER DUTY ACT 40 OF 1949
SECTION : SECTIONS 9(1)(c) AND 9(1A)
SUBJECT : TRANSFER DUTY EXEMPTION: PUBLIC BENEFIT ORGANISATIONS AND INSTITUTIONS, BOARDS OR BODIES

Contents

Preamble	2
1. Purpose.....	2
2. Background	3
3. The law.....	3
4. Application of the law.....	4
4.1 Exemption of a public benefit organisation	4
4.1.1 Public benefit organisation.....	4
4.1.2 Public benefit activities	4
4.2 Exemption of an institution, board or body.....	5
4.2.1 An institution, board or body	6
4.2.2 Sole or principal object of an institution, board or body.....	6
4.3 Meaning of “substantially the whole”.....	10
4.4 Non-compliance	11
4.5 Exemption of the transfer of property from a public benefit organisation to any other entity controlled by that organisation	13
5. Application procedure for transfer duty exemption.....	14
6. Application procedure for approval as a public benefit organisation or exemption of an institution, board or body	14
7. Conclusion	15
Annexure A – List of public benefit activities in Part I of the Ninth Schedule to the Act	16

Preamble

In this Note unless the context indicates otherwise –

- **“declaration”** means a Transfer Duty (TDC01) Declaration submitted via SARS eFiling;
- **“institution, board or body”** means an institution, board or body approved by the Commissioner under section 10(1)(cA)(i) and has as its sole or principal object the carrying on of one or more PBAs;¹
- **“Part I”** means Part I of the Ninth Schedule to the Act;
- **“PBA”** means any “public benefit activity” as defined in section 30(1) 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 paragraph (a) of the definition of “public benefit organisation” in section 30(1) and approved by the Commissioner under section 30(3);²
- **“section”** means a section of the Act;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“Transfer Duty Act”** means the Transfer Duty Act 40 of 1949; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides, interpretation notes, forms 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 the following sections of the Transfer Duty Act:

- Section 9(1)(c), which exempts from the payment of transfer duty a PBO or any institution, board or body 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.³

¹ For further commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies*.

² For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

³ Section 7(1)(a) of the Value-Added Tax Act 89 of 1991.

2. Background

Transfer duty is levied on a sliding scale⁴ on the value of any property⁵ acquired by any person⁶ under a transaction⁷ or in any other manner.⁸ The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.⁹

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 only to PBOs and institutions, boards or bodies meeting the requirements considered 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 Section 2(1) of the Transfer Duty Act.

⁵ The term “property” as defined in section 1(1) of the Transfer Duty Act means land in South Africa and any fixtures thereon. The defined term has specific inclusions listed.

⁶ The term “person” as defined in section 1(1) of the Transfer Duty Act includes the estate of a deceased or insolvent person and any trust.

⁷ The term “transaction” is defined in section 1(1) of the Transfer Duty Act.

⁸ For further commentary, see the *Transfer Duty Guide*, the *External Guide: Guide for Transfer Duty via eFiling*, the *VAT 409 – Guide for Fixed Property and Construction* and the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

⁹ Section 3(1) of the Transfer Duty Act.

4. Application of the law

4.1 Exemption of a public benefit organisation

In order to qualify for the exemption from 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 whole¹⁰ 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 paragraph (a) of the definition of “public benefit organisation” in section 30(1) means –

- a non-profit company as defined in section 1 of the Companies Act 71 of 2008,¹¹ a trust,¹² or an association of persons¹³ incorporated, formed or established in South Africa;¹⁴ 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.¹⁵

A PBO must have as its sole or principal object¹⁶ the carrying on of one or more PBAs.¹⁷

4.1.2 Public benefit activities

The PBAs are divided into the following categories:¹⁸

- Welfare and Humanitarian (paragraph 1)
- Health Care (paragraph 2)
- Land and Housing (paragraph 3)
- Education and Development (paragraph 4)

¹⁰ The word “whole” is described in the *Dictionary.com* available at www.dictionary.com/browse/whole as “comprising the full quantity, amount, extent, number, etc. without diminution or exception; entire; full, or total” [Accessed 22 September 2022].

¹¹ The term “non-profit company” as defined in section 1 of that Act means a company (a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1 and (b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1 of that Act.

¹² The term “trust” as defined in section 1(1) means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person.

¹³ An association of persons is generally established or formed by adopting a legal founding document. See GJ Pienaar “Formation” 2 (Third Edition Volume) *LAWSA* [online] (My LexisNexis: 28 February 2015) in paragraph 155.

¹⁴ Paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1).

¹⁵ Paragraph (a)(ii) of the definition of “public benefit organisation” in section 30(1).

¹⁶ The word “principal” is used in conjunction with “sole” and this concept implies that the PBO must have as the only, or predominant, or foremost aim to carry on one or more PBAs. See M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus, and Wordpower Guide* (2001) Oxford University Press for the meaning of “sole” or “principal”, respectively.

¹⁷ Paragraph (b) of the definition of “public benefit organisation” in section 30(1).

¹⁸ See Part I of the Ninth Schedule to the Act.

- Religion, Belief or Philosophy (paragraph 5)
- Cultural (paragraph 6)
- Conservation, Environment and Animal Welfare (paragraph 7)
- Research and Consumer Rights (paragraph 8)
- Sport (paragraph 9)
- Providing of Funds, Assets or Other Resources (paragraph 10)
- General (paragraph 11)

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

Example 1 – 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.
- 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 under section 9(1)(c)(i) of the Transfer Duty Act 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.

4.2 Exemption of an institution, board or body

In order to qualify for the exemption from 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 an institution, board or body 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 An institution, board or body

In order to qualify for exemption under section 10(1)(cA)(i), an organisation must be established by or under law and in the furtherance of its sole or principal object, engage in specified prescribed activities (see 4.2.2). An institution, board or body must be approved by the Commissioner before the exemption will apply.¹⁹

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

- A company registered under the Companies Act 71 of 2008.
- A co-operative.²⁰
- A close corporation.²¹
- A trust.
- A water services provider.²²

The exemption from transfer duty is inapplicable to a wholly owned subsidiary company of an institution, board or body which is exempt under section 10(1)(cA)(ii).

4.2.2 Sole or principal object of an institution, board or body

An institution, board or body must in the furtherance of its sole or principal object –

- conduct scientific, technical or industrial research;²³
- provide necessary or useful commodities, amenities or services to the State including any provincial administration or members of the general public;²⁴ 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.²⁵

In order to qualify for the exemption from transfer duty an institution, board or body must have as its sole or principal object the carrying on of any PBA (see 4.1.2). The only, main or predominate²⁶ object of the institution, board or 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.

¹⁹ Paragraph (a) of the first proviso to section 10(1)(cA).

²⁰ The term “co-operative” as defined in section 1(1) means any association of persons registered in terms of section 27 of the Co-operatives Act 91 of 1981 or section 7 of the Co-operatives Act 14 of 2005.

²¹ The term “close corporation” as defined in section 1(1) means a close corporation within the meaning of the Close Corporations Act 69 of 1984.

²² The term “water services provider” is defined in section 1(1). A qualifying water services provider is exempt from the payment of transfer duty under section 9(1)(bB) of the Transfer Duty Act.

²³ Section 10(1)(cA)(i)(aa).

²⁴ Section 10(1)(cA)(i)(bb).

²⁵ Section 10(1)(cA)(i)(cc).

²⁶ M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus, and Wordpower Guide* (2001) Oxford University Press for the meaning of “sole” or “principal”, respectively.

This may be illustrated as follows:

Qualifying activities under section 10(1)(cA)(i)	Examples of institutions, boards or bodies carrying on qualifying activities	Examples of equivalent PBAs (see Annexure A)
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 general public.	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 and libraries.	PBA 6(a) or (b)
	Institutions, boards or bodies engaging in the conservation, rehabilitation or protection of the natural environment, including flora and fauna.	PBA 7
	The following educational institutions: <ul style="list-style-type: none"> • A “public school” as defined in the South African Schools Act 84 of 1996. 	PBA 4(a)
	<ul style="list-style-type: none"> • A “public higher education institution” established or declared as a public higher education institution under the Higher Education Act 101 of 1997.²⁷ 	PBA 4(b)
	<ul style="list-style-type: none"> • A “public college” defined in the Continuing Education and Training Act 16 of 2006 and established by the Minister by notice in the Gazette to provide “continuing education and training”. 	PBA 4(d)

²⁷ The Minister may by notice in the *Government Gazette* establish a specific university, university of technology or college.

Qualifying activities under section 10(1)(cA)(i)	Examples of institutions, boards or bodies carrying on qualifying activities	Examples of equivalent PBAs (see Annexure A)
The promotion of commerce, industry or agriculture.	Institutions, boards or bodies engaging in the management of natural forests, woodlands and plantations.	PBA 7(a)
	Institutions, boards or bodies engaging in the development of national standards to promote conformity in the quality relating to commodities, products and services.	PBA 8(b)

Example 2 – An institution, board or body, which has as its sole or principal object the carrying on of a PBA

Facts:

An institution, board or 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 institution, board or body complies with all the requirements of section 10(1)(cA)(i) and the Commissioner has confirmed that its receipts and accruals are exempt under that section.

The institution, board or 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 under section 9(1)(c)(ii) of the Transfer Duty Act because the –

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

Example 3 – A public school qualifying as an institution board, or body, which has as its sole or principal object the carrying on of a PBA

Facts:

A public school as defined in the South African Schools Act, 1996, is registered as such by the Provincial Education Department.²⁸

The school does not have a formal letter from the Commissioner confirming exemption under section 10(1)(cA)(i).²⁹ It, however, has provided confirmation from the Provincial 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 forms 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 under section 9(1)(c)(ii) of the Transfer Duty Act, since the following requirements are met:

- The school is registered as a public school and has provided confirmation from the Provincial Education Department. It is an institution providing services to the general public. It may therefore be accepted that the school qualifies for exemption under section 10(1)(cA)(i)(bb).
- 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.

²⁸ The term “educational department” is defined in section 1(1) of the South African Schools Act 84 of 1996 and means the department established by section 7(2) of the Public Service Act 103 of 1994, which is responsible for education in a province. See Schedule 2 of the Public Service Act, 1994.

²⁹ The Provincial Education Departments applied for a group registration for public schools registered in their area in accordance with section 18A(6) for purposes of approval under section 18A. The Commissioner issued letters to the relevant Provincial Education Departments who applied for such a group registration confirming approval of the group registration for section 18A approval purposes. A public school forming part of a group registration will therefore not have a letter issued by the Commissioner confirming approval as an institution, board or body under section 10(1)(cA)(i). A copy of the letter issued by the Commissioner to the relevant Provincial Education Department, however, may be regarded as sufficient evidence of such approval. If any doubt exists the Commissioner should be contacted for confirmation. Public schools who applied individually for exemption under section 10(1)(cA)(i) and section 18A, however, will be in possession of a letter issued by the Commissioner confirming such approval.

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 whole of the property acquired by a PBO or an institution, board or 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 business undertakings or trading activities.³⁰ Since PBOs effectively use assets to carry on PBAs as well as business undertakings or trading activities, the legislation dealing with transfer duty was also amended to give effect to the concept of “substantially the whole”.

Although the expression “substantially the whole” is used in various sections it is not defined in the Act.³¹ In Binding General Ruling (Income Tax): 20 “Interpretation of the Expression ‘Substantially the Whole’ ” it is stated that the expression “substantially the whole” is regarded by SARS to mean 90% or more. PBOs, however, operate in an uncertain environment, which makes proper planning difficult therefore in these circumstances SARS accepts a percentage of not less than 85%. 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 4**) or surface area (see **Example 5**).³² Any portion of the property not specifically used for PBAs or other purposes, must be excluded from the calculation.

Example 4 – Determination of “substantially the whole” based on time usage

Facts:

Sunrise Church is a PBO which conducts PBA 5(a). On 1 March 2016 the church acquired a second property to be used for church services and bible studies to be offered to the youth. Each year during the period of 1 December to 31 December, no youth activities take place on the property and is available to the general public to hire as a function venue.

Result:

The PBO will be using the property for carrying on PBA 5(a) for 92% of the time (334 days / 365 days). The PBO therefore meets the minimum percentage of the substantially the whole requirement and no transfer duty is payable on acquisition of the second property.

³⁰ Section 10(1)(cN). For further commentary, see Interpretation Note 24 “Income Tax: Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts”.

³¹ For further commentary, see Interpretation Note 102 “Classification of Risk Policy and the Once-off Election to Transfer Certain Policies or Classes of Policies Issued Before 2016 to the Risk Policy Fund”.

³² A taxpayer under section 102(1)(a) of the Tax Administration Act 28 of 2011 bears the burden of proving that an amount, transaction, event or item is exempt or otherwise not taxable. The taxpayer must therefore be able to demonstrate the merits for using a specific calculation method.

Example 5 – Determination of “substantially the whole” based on area usage*Facts:*

Caring Baby Centre, a PBO 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 that 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 transfer duty for the acquisition of the residence under section 9(1)(c)(i) 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 Act³³ and section 4 of the Transfer Duty Act.³⁴ The value on which transfer duty is payable is 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 penalty³⁵ or interest³⁶ 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.³⁷

³³ The section deals with by whom, when and to whom transfer duty is payable.

³⁴ The section deals with the penalty and interest on late payment of transfer duty.

³⁵ Section 4(1) of the Transfer Duty Act, which is applicable to any transaction entered into before 1 March 2005.

³⁶ Section 4(1A) of the Transfer Duty Act, which is applicable to any transaction entered into on or after 1 March 2005.

³⁷ For further commentary, see the *Transfer Duty Guide*.

Example 6 – 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 2016 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 (see 5) that the whole of the property would be used for the carrying on of PBA 7(b).

On 27 May 2021 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 2021, 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 under section 9(1)(c)(i) of the Transfer Duty Act 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 2021 the whole of the first property was used for the purpose other than the carrying on of a PBA. Transfer duty is therefore payable on the original value of the property as at the original date of acquisition which is R750 000 at the rate applicable on 1 June 2021.

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 2021, 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.

Acquisition of second property

No transfer duty was payable under section 9(1)(c)(i) of the Transfer Duty Act 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 Exemption of the transfer of property from a public benefit organisation to any other entity controlled by that organisation

In order to qualify for the exemption from 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 undertakings or trading activities.

The transfer duty exemption contemplated in section 9(1A) of the Transfer Duty Act does not apply to any property transferred by an institution, board or body exempt under section 10(1)(cA)(i), even if it has as its sole or principal object the carrying on of any PBA.

Example 7 – 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 under section 9(1A) of the Transfer Duty Act because the –

- centre is a PBO; and
- 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 must be completed on eFiling for every transaction for which transfer duty exemption is required. If requested, supporting documents must be submitted with the declaration. The requested supporting documents must be uploaded on the transaction link provided on eFiling.

Supporting documents may include –

- the letter issued by the Commissioner granting approval to the PBO or exemption to an institution, board or body;
- an affidavit setting out the activities to be carried out on the property;
- confirmation that the whole or substantially the whole of the property will be used to carry on one or more PBAs; and
- a copy of the sale agreement.

6. Application procedure for approval as a public benefit organisation or exemption of an institution, board or body

A newly established organisation or an organisation that has previously not applied for approval as a PBO or as an institution, board or body requiring exemption from transfer duty for the acquisition of property must complete the prescribed application form EI 1. The application form and required supporting documentation and supplementary information must be submitted to the Commissioner.

A letter will be issued by the Commissioner to inform the organisation whether its application for approval as a PBO or the exemption as an institution, board or body has been approved. It is not a requirement that a PBO or an institution, board or body renew its approval annually. The approval and exemption will be sustained as long as the PBO or institution, board or body continues to comply with all the requirements relevant to that approval or exemption.

The approval by the Commissioner of an organisation as a PBO³⁸ or as an institution, board or body³⁹ is generally effective from the date of the notice of approval, that is, it is prospective. The relevant legislation provides retrospective approval only for a PBO and therefore a PBO may on written request apply for the approval to be applied to years of assessment before the approval date subject to prescribed conditions and requirements being met.⁴⁰ Retrospective approval as a PBO will be granted only if the Commissioner is satisfied that the organisation complied with the requirements of section 30 during the period before it lodged its application for approval as a PBO. The organisation will be responsible to prove to the Commissioner that it complied with the requirements relative to the approval during the period before it lodged its application for approval as a PBO. To prevent any potential abuse, each request for retrospective approval will be considered on its own merits and specific facts.

A PBO approved with retrospective effect may request a refund⁴¹ 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 retrospectively become entitled to an exemption. Application for a refund must be made within five years from the date of payments. 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.

7. Conclusion

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

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SOUTH AFRICAN REVENUE SERVICE

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³⁸ Section 30(3B) was amended by section 35 of the Taxation Laws Amendment Act 34 of 2019. The amendment is effective from date of promulgation, namely, 15 January 2020.

³⁹ Section 10(1)(cA) does not make provision for the exemption to be granted with retrospective effect.

⁴⁰ Section 30(3B)(a).

⁴¹ Refunds are dealt with in Chapter 13 of the Tax Administration Act 28 of 2011.

Annexure A – List of public benefit activities in Part I of the Ninth Schedule to the Act**NINTH SCHEDULE****PUBLIC BENEFIT ACTIVITIES**

(Section 30)

PART I**WELFARE AND HUMANITARIAN**

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

HEALTH CARE

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

LAND AND HOUSING

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

EDUCATION AND DEVELOPMENT

- 4.
- (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
 - (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
 - (c) “Adult education and training”, as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
 - (d) “Continuing education and training” provided by a “private college” as defined in the Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.

- (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- (f) The training or education of persons with a severe physical or mental disability.
- (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- (h) The provision of educare or early childhood development services for pre-school children.
- (i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.
- (q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r).
- (r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

RELIGION, BELIEF OR PHILOSOPHY

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

CULTURAL

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

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

RESEARCH AND CONSUMER RIGHTS

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

SPORT

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

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

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

GENERAL

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