

Basic Guide to Income Tax Exemption for Public Benefit Organisations

Income Tax



South African Revenue Service

Basic Guide to Income Tax Exemption for Public Benefit Organisations

Preface

This guide has been prepared to assist organisations in understanding the basic requirements to obtain and retain approval as a public benefit organisation. It does not go into comprehensive technical and legal detail and should therefore not be used as a legal reference. For comprehensive information on the tax treatment of public benefit organisations, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*. The *Basic Guide to Tax-Deductible Donations* provides a basic understanding of the requirements to obtain and retain approval under section 18A.

All guides, interpretation notes, rulings and forms referred to in this guide are the latest versions available on the SARS website at **www.sars.gov.za** unless the context indicates otherwise.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a general binding ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the relevant application procedure.

For more information you may –

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 - E-mail** : **teu@sars.gov.za**
- visit your nearest SARS branch office;
- contact the SARS National Contact Centre on 0800 00 7277;
- visit the SARS website; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be emailed to **policycomments@sars.gov.za**.

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SOUTH AFRICAN REVENUE SERVICE

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Glossary

In this guide unless the context indicates otherwise –

- **“branch of a foreign tax-exempt organisation”** means any branch established in South Africa by any company, association or trust incorporated, formed or established in a country outside South Africa and is exempt from income tax in that other country;
- **“Commissioner”** means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act;
- **“fiduciary”** means a person who holds a position of trust or responsibility including decision-making powers over the affairs of an organisation;
- **“founding document”** means the written instrument such as the constitution, memorandum of incorporation, trust deed or will under which an organisation is established and governed;
- **“Minister”** means the Minister of Finance;
- **“Ninth Schedule”** means the Ninth Schedule to the Act;
- **“NPC”** means a “non-profit company” as defined in section 1 of the Companies Act 71 of 2008;
- **“NPO”** means a “non-profit organisation” as defined in section 1 of the Nonprofit Organisations Act 71 of 1997;
- **“Part I”** means Part I of the Ninth Schedule;
- **“partial taxation”** means the method of taxing the receipts and accruals derived from business undertakings or trading activities falling outside the permissible business undertaking or trading activity categories including the basic exemption as set out in section 10(1)(cN)(ii);
- **“PBA”** means a public benefit activity listed in Part I;
- **“PBO”** means a public benefit organisation approved by the Commissioner;
- **“prescribed requirements”** mean the formal conditions and requirements set out in section 30 that an organisation must comply with to qualify for approval as a PBO;
- **“section”** means a section of the Act;
- **“section 10(1)(cN)”** means the section that provides for the exemption from income tax of certain receipts and accruals of PBOs and the taxation of receipts and accruals falling outside the permissible business undertaking or trading activity categories provided in that section;
- **“section 30”** means the section setting out the prescribed requirements an organisation must comply with to obtain and retain approval as a PBO;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“testamentary trust”** means a trust established under the will of a deceased person;
- **“TEU”** means the Tax Exemption Unit, a dedicated unit within SARS established to consider, amongst other things, applications by organisations for approval as a PBO. The TEU also monitors compliance by approved PBOs with the legislative requirements, and investigates, verifies and, if necessary, raises assessments on PBOs;

- **“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.

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1. Introduction

An organisation that has a non-profit motive, or is established or registered as an NPO under the NPO Act, or is incorporated as an NPC, does not automatically qualify for preferential tax treatment or approval as a PBO. An organisation will enjoy preferential tax treatment only after it has been granted approval as a PBO by the Commissioner (see 4), and continues to comply with the relevant prescribed requirements and conditions (see 4.3) set out in the Act. An organisation approved by the Commissioner as a PBO could be subject to partial taxation (see 9).

The terms “public benefit activity” and “public benefit organisation” are defined in section 30(1) and form the basis for the preferential tax treatment of a PBO.

2. Public benefit activities

The definition of “public benefit activity” means any –

- activity listed in Part I; and
- any other activity determined by the Minister from time to time 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.

The PBAs approved by the Minister for purposes of section 30 are listed in Part I and are categorised as follows:

- Welfare and Humanitarian (paragraph 1)
- Health Care (paragraph 2)
- Land and Housing (paragraph 3)
- Education and Development (paragraph 4)
- Religion, Belief or Philosophy (paragraph 5)
- Cultural (paragraph 6)
- Conservation, Environment and Animal Welfare (paragraph 7)
- Research and Consumer Rights (paragraph 8)
- Sport (paragraph 9)
- Providing of Funds, Assets and Other Resources (paragraph 10)
- General (paragraph 11)

See **Annexure D** for a complete list of PBAs falling under each of the above categories.

A PBO may itself conduct the PBAs or it may provide funds, assets or other resources to enable other approved PBOs or organisations such as institutions, boards or bodies, or the national, provincial or local sphere of government, or associations of persons (see 4.7) to carry on these activities.

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

3. Public benefit organisation

The definition of “public benefit organisation” has certain requirements that must all be met to qualify for approval as a PBO (See **Annexure C**).

3.1 Type of organisation qualifying for approval

An organisation must be constituted in one of the following ways to be approved as a PBO:

- An NPC incorporated in South Africa.
- A trust established in South Africa.
- An association of persons formed or established in South Africa. This association of persons is a formal association of persons established by adopting a legal founding document (see **4.2**).
- A branch of a foreign tax-exempt organisation.

3.2 Object of the organisation

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

It is insufficient to make a general statement in the founding document that the object of the organisation is to carry on one or more PBAs, or to simply list the PBAs as they appear in the Ninth Schedule. Specific activities, including projects and programmes carried on by the organisation, must be set out in its founding document.

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

3.3 Manner in which public benefit activities must be carried on

The PBAs must be carried on in a non-profit manner and with an altruistic or philanthropic intent.

The intention of an organisation in carrying on any PBA may not be to generate a profit or financial return. An organisation carrying on a PBA as part of a profit-making venture will not qualify for approval as a PBO. An organisation carrying on a business undertaking or trading activity as part of a PBA may, however, qualify as a PBO provided it meets all the business or trading requirements discussed in **10.2**.

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. The word “philanthropic” is the same as “charitable” and is 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 intention of an organisation is a subjective test and is not always an easy task to establish. However, an objective review of an organisation’s activities considered together with the relevant facts and circumstances may provide an indication of an organisations stated intention.

3.4. No self-interest of any fiduciary or employee

A PBA may not directly or indirectly promote the economic self-interest of any fiduciary or employee. The word “self-interest” refers to actions that cause the greatest personal benefit. This means a PBA may not be carried on in pursuit of economic gains for the personal advantage or well-being of any fiduciary or employee. The payment of reasonable remuneration to office bearers or employees for conducting the affairs of a PBO to enable it to achieve its objectives is allowed (see 4.5).

3.5. Benefit of the general public

The PBAs must be carried on for the benefit of, or be widely accessible to, the general public. The general public refers to members of the community at large, in the sense of natural persons. The general public may include a specific sector but may not be for the benefit of a small and exclusive group.

4. Approval by the Commissioner

The Commissioner will approve an organisation as a PBO only if –

- it 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 (see 4.1);
- it has submitted a copy of its founding document (see 4.2) under which it is established and complies with all the prescribed requirements (see 4.3);
- satisfied that the organisation did not knowingly participate in any tax-avoidance scheme (see 4.4);
- it pays reasonable remuneration and does not unduly benefit any person (see 4.5);
- it complies with reporting requirements (see 4.6);
- satisfied, in the case of any PBO providing funds to any association of persons contemplated in PBA 10(iii) in Part I, that it has taken reasonable steps to ensure the correct usage of those funds (see 4.7); and
- it does not use its resources for the benefit of any political party (see 4.8).

An organisation seeking formal approval as a PBO must complete the prescribed application form EI 1. The completed form with the required registration information together with all requested supporting documentation must be submitted to the TEU or to the nearest SARS branch office.

The notification of approval as a PBO is issued by the TEU by letter. The letter contains a unique reference number generally referred to as a PBO or exemption reference number, which is a different reference number to the taxpayer reference number (see 15.1). The organisation is required to keep this letter confirming approval as part of its records (see 14).

The approval by the Commissioner of an organisation as a PBO is generally effective from the date of the notice of approval, that is, it is prospective, unless it is granted with retrospective effect. A PBO may on written request apply for the approval to be applied to years of assessment before the approval date. 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.

The Commissioner, however, may not extend retrospective PBO approval to an organisation that has complied with all its obligations under Chapter 4 (returns and records), Chapter 10 (tax liability and payment) and Chapter 11 (recovery of tax) of the TA Act to years of assessment that have prescribed. An assessment may not be made three years after the date of assessment of an original assessment by SARS. If an organisation complied with the above chapters of the TA Act, it would have submitted its returns when due, and the three-year period will encompass the earliest year of assessment for which an assessment was issued during that period. For example, if the PBO applied for approval as a PBO on 31 March 2021, the three-year period would begin on 1 April 2018. If the organisation has a February year-end and its first assessment after 1 April 2018 was for the 2018 year of assessment, the retrospective approval can be made for the 2018 to 2021 years of assessment.

If an organisation has not complied with the above chapters of the TA Act, the Commissioner may not extend retrospective approval to years of assessment that would have prescribed if the income tax returns relating to those years had been submitted in accordance with section 25(1) of the TA Act. It will therefore be necessary to determine when it would have been assessed had it complied with the return submission requirements under that section of the TA Act. This determination will require the organisation to establish when its returns should have been submitted under the public notice issued annually by the Commissioner (see **15**). For example, the 2017 notice required that a company lodge its return for the 2017 year of assessment within 12 months of its financial year-end. Thus, a company with a February year-end would have had to submit its 2017 return of income on or before 28 February 2018, and it is the latter date that must fall within the three years preceding the date of application for retrospective approval.

A written notification will also be issued by the TEU to the organisation if the approval is not granted together with reasons why the organisation failed to meet the conditions and requirements of section 30. An organisation not approved as a PBO by the Commissioner or which has had its approval withdrawn (see **8**) will be liable for income tax and other taxes and duties as a normal taxpayer.

4.1 Conditions prescribed by the Minister by way of regulation

A requirement for the Commissioner to approve an organisation as a PBO is that it must meet, if applicable, any conditions the Minister may prescribe by way of regulation to ensure the activities and resources of that PBO are directed in the furtherance of its object.

The carrying on of PBAs listed in the Ninth Schedule such as PBAs 1(p)(iii), 3(f) and 4(o) in Part I are subject to conditions as may be prescribed by the Minister by way of regulation. The Minister has, as yet, not issued regulations for the carrying on by an organisation of PBAs 1(p)(iii) and 3(f) in Part I.

The Minister has issued conditions in Government Notice Regulation 302 in *Government Gazette* 29491 of 28 February 2003 that an organisation carrying on the provision of scholarships, bursaries and awards for study, research and teaching contemplated in PBA 4(o) in Part I must comply with (see **Annexure E**). After the regulations were issued, PBO 4(o) in Part I was amended by the Minister to allow a PBO carrying on the activity to also provide loans in addition to scholarships, bursaries or awards for study, research and teaching.

The Minister has, however not as yet, issued or amended those regulations to prescribe conditions relating specifically to the provision of loans.

To ensure the activities and resources of a PBO carrying on PBA 4(o) in Part I are directed in the furtherance of that object the founding document must expressly provide for the following conditions to the extent that they relate to the provision of scholarships, bursaries and awards:

- All scholarships, bursaries or awards granted must be *bona fide* and be granted to an individual on grounds of objective merit or need.
- No scholarship, bursary or award granted may be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award.
- No scholarship, bursary or award granted may be subject to conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary or award.
- No scholarship, bursary or award may be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or that organisation (or any associated institution in relation to that donor or organisation) or any relative of that person, unless circumstances indicate that the scholarship, bursary or award would have been granted to that person or his or her relative, even if that person had not been an employee of that donor, organisation or associated institution.
- All decisions regarding the granting of scholarships, bursaries and awards must be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.
- All scholarships, bursaries and awards granted for overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
 - to apply the knowledge obtained from the study, research or teaching immediately after completion overseas in South Africa for a period of at least the period that the study, research or training was funded by the organisation; or
 - to refund the full amount of the scholarship, bursary or award if the person decides not to apply the knowledge obtained overseas in South Africa.

4.2. Founding document

An organisation applying for approval as a PBO must have a founding document. The founding document will depend on the type of organisation incorporated, formed or established:

- An NPC will have a memorandum of incorporation.
- A trust will have a trust deed.
- A testamentary trust will have a will of a deceased person.
- An association of persons will have a constitution adopted by its members.
- A branch of a foreign tax-exempt organisation will have the founding document of the foreign tax-exempt organisation.

The founding document must be submitted to the Commissioner as part of the application for approval as a PBO.

4.3. Prescribed requirements

The prescribed requirements set out in **4.3.1** to **4.3.5** must be included in the founding document, except in the case of a branch of a foreign tax-exempt organisation or a testamentary trust (see **7**). The founding document as a whole will be examined to ensure that the prescribed requirements are included.

4.3.1 Fiduciary responsibility

A PBO, except a testamentary trust, is required to have at least three persons who are not connected persons in relation to one another to accept fiduciary responsibility for the PBO. No single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of the PBO.

Natural persons are considered to be connected if they are relatives in relation to one another. A relative includes a person's spouse and anyone related to the person or the person's spouse within the third degree of consanguinity. For more information on the interpretation and application of the definition of "connected person" see Interpretation Note 67 "Connected Persons".

A person who is in a fiduciary capacity responsible for the management or control of the income and assets of a PBO and who intentionally fails to comply with any provision of section 30 or any provision of the founding document under which the PBO has been established to the extent that it relates to section 30, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

4.3.2 Prohibition from distribution

A PBO may not distribute its funds directly or indirectly to any person unless the distribution occurs when a PBA is carried on. The funds must be used solely for the sole or principal object for which the PBO was established, which must be to carry on one or more PBAs, as set out in its founding document. The prohibition on distributions is an absolute prohibition. This requirement is not subject to the discretion of the Commissioner and cannot in general or in a particular instance be waived, deferred or reduced. Even if a minimal amount is distributed or a distribution occurs as an isolated or once-off event, the PBO may be subject to the withdrawal of the approval (see **8**).

Surplus funds may be accumulated or invested by a PBO for future use in carrying on its sole or principal object. The surplus funds may be invested as chosen provided such investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that fiduciaries should act with prudence, integrity and reasonable care.

4.3.3 Dissolution

On dissolution, a PBO (excluding any branch of a foreign tax-exempt organisation) must transfer its remaining assets to one or more of the following organisations:

- another PBO;
- any institution, board or body exempt under section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any PBA;
- any sphere of government in South Africa; or

- the National Finance Housing Corporation contemplated in section 10(1)(t)(xvii).

Any of the above organisations benefitting from the dissolution of a PBO are required to use those assets solely for purposes of carrying on one or more PBAs. A PBO may choose to whom it will distribute its remaining assets on dissolution, without prior approval from the Commissioner, provided the recipient meets the dissolution requirement.

This requirement will apply to a branch of a foreign tax-exempt organisation only if more than 15% of its receipts and accruals are derived from a source within South Africa during the period of three years preceding the termination of its activities in South Africa.

Failure to transfer or take reasonable steps to transfer the assets of a PBO on dissolution will result in an amount equal to the market value of those assets not transferred less an amount equal to the *bona fide* liabilities of the PBO being deemed to be taxable income accruing to the PBO during the year of assessment (see **15.3**) in which dissolution or the termination of activities took place.

4.3.4 Non-revocable donations

A donation is a voluntary gift given freely by the donor out of liberality or generosity to a donee. Through the giving of a donation the donor (the person giving the donation) is impoverished and the donee (the person receiving the donation) enriched. A PBO, having regard to the meaning of a donation, may not accept any donation that may be withdrawn by the donor for reasons other than the PBO failing to meet the purposes and conditions of the donation. A donor may also not impose conditions which will allow the donor or a connected person in relation to the donor to get some direct or indirect benefit from the use of the donation.

This requirement will not apply if the donor is another PBO or an institution, board or body exempt under section 10(1)(cA)(i), that has as its sole or principal object the carrying on of any PBAs.

4.3.5 Amendments to the founding document

A PBO must submit a copy of any amendment to its founding document to the Commissioner as soon as it has been affected. This allows the Commissioner to ensure that any amendment is not contrary to the prescribed requirements.

It will be unacceptable for an organisation to submit a founding document that complies with the Act at the time of applying for approval and then, after obtaining PBO approval, to amend the founding document to include non-qualifying provisions.

4.4 Participation in tax-avoidance schemes

A PBO may not be 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. 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 such as income tax, capital gains tax, value-added tax, transfer duty or employees' tax.

4.5. Remuneration

Employees, office bearers, members and other persons may receive remuneration from a PBO for services actually rendered to that PBO provided the remuneration –

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

Remuneration may, amongst other things, include amounts of income paid or payable by way of any salary, fee, bonus, wage, gratuity, pension, leave encashment, emolument, voluntary award, commission, annuity, stipend, overtime, superannuation allowance, retirement allowance, lump sum benefit payment and director's remuneration.

There must be a causal connection between the remuneration paid, in relation to the service rendered by that person and the amount generally charged for such a service in that sector. The determination whether remuneration paid to any person is excessive will be a question of fact and since the facts and circumstances pertaining to each PBO may differ, each case will be considered on its own merits. The ultimate test remains whether the remuneration is reasonable in the sector in relation to the service rendered and the burden is on the PBO to motivate that the remuneration is not excessive.

4.6. Reporting

A PBO must submit income tax returns (see 15) even if its approval or exemption results in no tax liability. The income tax return enables the Commissioner to annually assess whether the PBO is operating within the prescribed limits of its approval and to determine whether the partial taxation principles have been applied to receipts and accruals derived from a business undertaking or trading activity which does not qualify for exemption (see 9).

4.7. Provision of funds to associations of persons

A PBO providing funds to any association of persons referred to in PBA 10(iii) in Part I is responsible to satisfy the Commissioner that reasonable steps have been taken to ensure that the funds, assets, services or other resources provided to an association of persons, have been used for the purpose for which they have been given, which must be to carry on any PBAs, and not used to benefit any individual person.

The association of persons referred to in this PBA is a voluntary informal association or group of persons collectively carrying on one or more PBA but do not have a founding document and cannot be approved by the Commissioner as a PBO.

For further information see Interpretation Note 98 “Public Benefit Organisations: The Provision of Funds, Assets or Other Resources to Any Association of Persons”.

4.8. Payments to political parties

A PBO may not use its resources directly or indirectly to support, advance or oppose any political party.

5. Group registration

The Commissioner may grant approval to a group of organisations falling directly under the direction and supervision of a co-ordinating body provided certain conditions and requirements are complied with, such as that the PBOs within the group must share a common purpose, carry on the same PBAs, and prepare consolidated annual financial statements. The co-ordinating body must take responsibility to ensure that all the organisations within the group comply with section 30.

The Commissioner may withdraw the approval as a PBO of the group if the co-ordinating body intentionally or negligently fails to exercise the required control over any PBO in the group, or fails to notify the Commissioner of any material failure of any PBO within the group to comply with any provision of section 30.

The Commissioner will give notice to the co-ordinating body of the intention to withdraw the approval as a PBO of the group and also specify a period within which corrective steps must be taken. If no corrective steps are taken by the co-ordinating body within the period stated in the notice, the approval will be withdrawn from the beginning of the year of assessment in which the non-compliance or failure by the co-ordinating body occurred. See **8** for the consequences of the withdrawal of the approval as a PBO of the group.

6. Registration as a non-profit organisation

Registration as an NPO is not a condition for approval as a PBO since it is a voluntary registration lodged with the Director of NPOs. Information on such registration can be obtained from the Department of Social Development's website at www.dsd.gov.za.

The Director of NPOs may request the Commissioner to withdraw the approval of any PBO convicted of an offence under the NPO Act.

7. Written undertaking

A branch of a foreign tax-exempt organisation governed under the founding document of that foreign tax-exempt organisation, and a testamentary trust, which comes into existence after the death of the testator, must submit a written undertaking to the Commissioner since their founding documents are legally incapable of being amended to comply with the prescribed requirements for approval as a PBO.

The written undertaking must be submitted by the persons responsible in a fiduciary capacity for the funds and assets of such a branch or testamentary trust, as part of the application for approval as a PBO, to confirm that the branch or testamentary trust will be administered in accordance with the prescribed requirements.

In such instances the founding documents will be deemed to comply with the prescribed requirements. The written undertaking will be a permanent measure and binding on the branch of a foreign tax-exempt organisation or testamentary trust. Non-compliance with its terms will result in the same penalties and actions as if the prescribed requirements were contained in the founding document (see **8**).

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

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

All other types of organisations (see **3.1**) must provide for the prescribed requirements in their founding documents before the Commissioner can grant approval as a PBO.

8. Withdrawal of approval

8.1 Circumstances under which approval may be withdrawn

The Commissioner may withdraw the approval as a PBO if that PBO has, in any year of assessment in any material respect or on a continuous or repetitive basis, failed to comply with section 30 or with its founding document as it relates to section 30.

The Act does not specify what constitutes a “material, continuous, or repetitive” failure by a PBO to comply with section 30 or with the founding document as it relates to that section. The Commissioner must decide each case on its own facts and circumstances. A failure to comply with section 30 in any material respect may include a significant, relevant, and important failure, a failure on a continuous basis may be prolonged without interruption, while a failure on a repetitive basis may be done many times in the same manner by the PBO.

The Commissioner may withdraw the approval in any of the above circumstances. However, notice must be given to the transgressing PBO of the intention to withdraw the approval as a PBO and also specify a period within which corrective steps must be taken.

If no corrective steps are taken by the PBO within the period stated in the notice, the approval will be withdrawn from the beginning of the year of assessment in which the non-compliance or failure by the PBO occurred.

The decision of the Commissioner to withdraw the PBO approval is subject to objection and appeal (see **16**).

8.2 Consequences of withdrawal

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

- another PBO;
- any institution, board or body exempt under section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any PBA; or
- any sphere of government in South Africa.

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

8.3 Reapplication after withdrawal

An organisation may reapply for approval as PBO in the year of assessment following the year of assessment in which approval was withdrawn. The Commissioner may grant the approval in that subsequent year if satisfied that the non-compliance giving rise to the withdrawal of approval has been rectified. Under these circumstances an organisation may not be approved with retrospective effect since the organisation was non-compliant with the provisions of section 30 before reapplication for PBO approval.

9. Partial taxation

A PBO is allowed to carry on a business undertaking or trading activity provided its sole or principal object remains the carrying on of PBAs. Receipts and accruals from a business undertaking or trading activity will be exempt from income tax only if they fall within one of the four categories of exemption included in section 10(1)(cN) (see **Annexure B**). These four categories are dealt with in **9.2**. Each category has its own conditions and requirements and is applied separately.

There is no limit on the amount of receipts and accruals which are exempt from income tax under the exemptions in **9.2.1**, **9.2.2** and **9.2.3**. There is, however, a limitation on the amount of the exemption of the basic exemption discussed in **9.3**.

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

9.1 Exemption of receipts and accruals

Section 10(1)(cN) exempts from income tax the “receipts and accruals” of a PBO to the extent that they are derived in the manner specified (see **9.2**). The type of receipt or accrual envisaged is one which is included in the definition of “gross income”. The receipts or accruals of a capital nature that are not deemed to be included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cN) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain which is included directly in taxable income. While a taxable capital gain is potentially subject to income tax, the exemptions in section 10 do not apply to it because a taxable capital gain is not a receipt or accrual. Paragraph 63A of the Eighth Schedule contains the rules for disregarding capital gains and losses of a PBO (see **10.1.7**).

9.2 Categories of permissible business undertakings or trading activities

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

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

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

9.2.1 Integral and directly related trade

To qualify for exemption under this category, the business undertaking or trading activity –

- must be integral and directly related to the sole or principal object for which the PBO is established, namely, to carry on one or more PBAs;
- must be carried out or conducted on the basis substantially the whole of which is directed towards the cost-recovery basis; and
- does not result in unfair competition in relation to taxable entities.

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

In the strict sense the expression “substantially the whole” is regarded by SARS to mean 90% or more. However, since PBOs operate in an uncertain environment making proper planning difficult, SARS will accept a percentage of not less than 85%. This percentage must be determined using a method appropriate to the circumstances and may be motivated by taking into account time or cost. For further information see Binding General Ruling 20 “Interpretation of the Expression ‘Substantially the Whole’”.

It is not always possible to base trading activities on a 100% cost-recovery basis and it is for this reason that legislation requires that substantially the whole, not less than 85%, of the business undertaking or trading activity must be based on recovery of cost. This requirement will be met when substantially the whole of the business undertaking or trading activity is carried out to recover direct and reasonable indirect costs.

The business undertaking or trading activity should not result in unfair competition with other taxable entities. A PBO should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity. A PBO has an advantage in that it is not required to sacrifice a portion of its profit in the form of tax. Each case will be considered on its own merits to determine whether a PBO has an unfair advantage.

9.2.2 Occasional trade

The business undertaking or trading activity will qualify under this category if it is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation. The absence of compensation does not exclude the repayment of reasonable and necessary out-of-pocket expenditure.

A business undertaking or trading activity of an occasional nature is one conducted on an irregular, infrequent basis or as a special event. A business undertaking or trading activity of an occasional nature may include –

- annual jumble sales at which donated second-hand clothing is sold;
- annual fundraising events such as fêtes, cake sales or the sale of raffle tickets involving prizes that have been donated;

- charity golf days involving donated or sponsored prizes; or
- a gala dinner held to raise funds.

9.2.3 Ministerial approval

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

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

Any request in this regard must be addressed to the Commissioner and must comprehensively address each of the above bullet points, clearly demonstrate the benefits of the business undertaking or trading activity for the general public, and motivate why it will not result in unfair competition with other taxpayers, or erode the tax base. The Commissioner will, if the request has merit, draft a submission based on the information provided for the Minister's consideration and possible approval.

9.3 Practical application of the basic exemption

The receipts and accruals of a PBO carrying on a business undertaking or trading activity not falling within the ambit of the permissible business or trading activity categories in **9.2.1**, **9.2.2** or **9.2.3**, are taxable subject to the basic exemption. The basic exemption is determined as a threshold and applies to the total receipts and accruals derived from all non-qualifying business undertakings or trading activities. The basic exemption is calculated as an amount equal to the greater of 5% of the total receipts and accruals of the PBO derived during the relevant year of assessment or R200 000. The receipts and accruals referred to in the calculation of the threshold amount include amounts of a capital nature.

The total receipts and accruals of all the individual PBOs forming part of a group registration (see **5**) will be taken into account in calculating the threshold of 5% of the total receipts and accruals. The amount of R200 000 is not increased by the number of individual organisations within the group, since this amount applies to a PBO, which in this instance is the co-ordinating body of the group of PBOs.

9.4 Rate of tax

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

10. Other taxes and duties

10.1 Exemption from other taxes and duties

In addition to being exempt from the payment of income tax on certain receipts and accruals, PBOs will also enjoy the benefit of being exempt from certain other taxes and duties. For more information on any of these taxes and duties see *Taxation in South Africa*.

10.1.1 Donations tax

Donations made by or to a PBO are exempt from the payment of donations tax.

10.1.2 Estate duty

Any property bequeathed to a PBO is excluded from the value of the estate and not subject to estate duty levied under the Estate Duty Act 45 of 1955.

10.1.3 Transfer duty

A PBO is exempt from the payment of transfer duty on any property acquired provided that the whole or substantially the whole of the property is used for the purpose of carrying on one or more PBAs. The transfer of property by a PBO to a separate entity controlled by that PBO may also qualify for an exemption from transfer duty. For guidance on the interpretation and application of transfer duty exemption relating to PBOs see Interpretation Note 22 "Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies".

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction. Each transaction is therefore considered on its own merits. For further information on transfer duty in general and the processing of transactions on eFiling, see External Guide – *Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

10.1.4 Dividends tax

Any PBO that is the beneficial owner of a dividend is exempt from dividends tax provided the required declaration confirming that it is tax-exempt is submitted to the company that declared and paid the dividend or to the regulated intermediary that paid the dividend. A PBO is also required to submit a written undertaking to the company or regulated intermediary that it will inform such company or regulated intermediary in writing should it cease to be the beneficial owner of the shares or if the circumstances affecting the exemption change. For further information, see *Comprehensive Guide to Dividends Tax* and *A Guide to the Declaration of Dividends Tax via e@syFile™*.

10.1.5 Securities transfer tax

Securities transfer tax (STT) is not payable if a security (any share or depository receipt in a company, or any member's interest in a close corporation) is transferred to a PBO if that PBO would have been liable to pay the STT. The exemption is, however, subject to a declaration being submitted by any person to a participant who holds and administers that security. For more information on STT and the electronic submission of STT declarations and payments on the e-STT system via eFiling see *Taxation in South Africa* and *External Reference Guide – Securities Transfer Tax*.

10.1.6 Skills development levy

A PBO is exempt from the payment of skills development levy if it –

- is registered as an employer and its annual payroll will not exceed R500 000 in the following 12 months;
- solely carries on PBAs 1, 2(a), 2(b), 2(c), 2(d) and 5 (see **Annexure D**); or
- solely provides funds to a PBO that solely carries on the above PBAs.

For more information, see the *External Guide – Guide for Employers in respect of Skills Development Levy* and Interpretation Note 10 "Skills Development Levy Exemption: Public Benefit Organisations".

10.1.7 Capital gains tax

Capital gains and losses may under specified circumstances be disregarded. As from the first day of their first year of assessment commencing on or after 1 April 2006 (as from the introduction of partial taxation discussed in **10**) any capital gain or capital loss made by a PBO on the disposal of an asset which has been used for a business undertaking or trading activity or substantially the whole of which has been used in such an undertaking will not be disregarded. The following publications on capital gains tax are available:

- Interpretation Note 44 “Public Benefit Organisations: Capital Gains Tax”
- *Comprehensive Guide to Capital Gains Tax*
- *Guide on Valuation of Assets for Capital Gains Tax Purposes*
- *The ABC of Capital Gains Tax for Companies*

10.2 Compliance with other taxes and duties

10.2.1 Provisional tax payments

PBOs are excluded from the definition of “provisional taxpayer” in the Fourth Schedule to the Act and are not required to submit provisional tax payments. Any liability to income tax on taxable income will become payable on assessment. For comprehensive information on provisional tax see *Taxation in South Africa* and *Guide for Provisional Tax*.

10.2.2 Employees’ tax

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

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

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

10.2.3. Value-added tax

The terms “public benefit organisation” and “public benefit activity” used for income tax purposes are not used in the Value-Added Tax Act 89 of 1991. Instead reference is made to an “association not for gain” and a “welfare organisation”. Both types of entity qualify for special value-added tax (VAT) treatment provided they qualify to be registered for VAT. The benefits available to each type of entity differ depending on whether certain criteria are met. For further information, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and *VAT 414 – Guide for Associations not for Gain and Welfare Organisations* for information on the VAT implications of transactions relating to PBOs.

Should a ruling request be required on a specific VAT issue, a ruling application may be submitted by e-mail to **VATRulings@sars.gov.za**. For information on the VAT ruling process see *VAT Ruling Process Quick Reference Guide*.

10.2.4. Unemployment insurance fund

A PBO that pays remuneration to its employees will also be liable for unemployment insurance fund (UIF) contributions unless it qualifies for certain exemptions. These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch office where the PBO is also liable for employees' tax or skills development levy within seven days after the end of the month during which the amount was deducted.

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

11. Administrative provisions – Tax Administration Act

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

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

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **14**), returns (see **15**), assessments, dispute resolution (see **16**), interest, refunds and anti-avoidance will therefore also apply to PBOs.

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

12. Furnishing of information

The Commissioner may submit a written request to any person to furnish information about any PBO and may require that person to –

- answer any questions relating to the PBO;
- make books of account, records or other documents relating to the PBO available for inspection; or
- meet with the Commissioner's representative and produce for examination any documents relating to the PBO.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions requested by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

13. Changes in registered particulars

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

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

14. Record-keeping

All PBOs are required to keep records for five years from the date of the submission of a return. A return includes any form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS. This return includes the prescribed application form EI 1 for approval or exemption from income tax, the required supplementary information and documentation and the relevant written undertaking (if applicable) on which the Commissioner based the decision to grant approval or not to grant approval as a PBO.

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained for longer periods. The following are examples of circumstances in which records must be retained for longer periods:

- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.
- If an objection or appeal (see 16) against an assessment or decision is lodged, the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.
- A person notified of, or who is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded or the applicable five-year period has elapsed, whichever is the later.

The records, books of account, or documents which must be kept and retained may include anything that contains a written, sound or pictorial record or other record of information whether in physical or electronic form.

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a PBO is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

15. Income tax returns

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

- the eFiling website www.sarsefiling.co.za;
- the TEU;
- any SARS branch office; or
- the SARS National Contact Centre.

A return must be a full and true return and be signed by the PBO or by the PBO's duly authorised representative. The persons signing the return will be regarded as being cognisant of the statements made in the return. For assistance on how to complete the income tax return, see *How to Complete the Return of Income: Exempt Organisations (IT12EI return)*.

Non-receipt of a return does not affect the obligation to submit an income tax return. A person who wilfully fails or neglects to submit a return is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.

15.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of the registration for income tax purposes. For a group registration a taxpayer reference number will be allocated to the co-ordinating body and not to each individual PBO within the group.

The taxpayer reference number must be included when filing a return or any document with SARS.

15.2 Filing an income tax return

The Commissioner annually gives public notice in the *Gazette* of the persons that must furnish an income tax return and also prescribes the period within which returns must be submitted for the years of assessment specified in that notice.

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

15.3 Year of assessment

A PBO that is a trust or a testamentary trust will have a year of assessment ending on the last day of February. A trust can apply for permission to draw up its financial statements to a different closing date if it would be more convenient for it to do so. See Interpretation Note 19 "Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February".

A PBO that is an NPC or an association of persons established under a constitution or any other written instrument will have a year of assessment ending on the date that coincides with its financial year-end. If the financial year-end is 30 June, its year of assessment will run from 1 July to 30 June of the following year. The Commissioner may exercise discretion to accept financial accounts of a company for a period ending on a day differing from the last day of the company's financial year. See Interpretation Note 90 "Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company's Financial Year".

15.4 Supporting documentation

It is not a requirement for supporting documents, such as financial statements or any other documents necessary to support the information contained in the income tax return, to be submitted together with the income tax return. The PBO will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

15.5 Financial statements

A PBO that is an NPC may be required to be audited or independently reviewed under the Companies Act 71 of 2008 taking into account, for example, the category of the company and its public interest score.

16. Objection and appeal

Any decision or assessment resulting in the Commissioner exercising discretion under section 30 is subject to objection and appeal.

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

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

Chapter 9 of the TA Act provides the legal framework for these disputes which must be read together with the rules for objections and appeals published in GN 550 GG 37819 of 11 July 2014. For more information on the resolution of tax disputes, see *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and *Alternative Dispute Resolution: Quick Guide*.

Annexure A – Frequently asked questions

Q1: What is a public benefit organisation (PBO)?

A1: A PBO is an organisation that meets the requirements prescribed in section 30, and which may apply for approval to the Commissioner, to enjoy the benefit of certain tax concessions.

Q2: What are the requirements to qualify for PBO approval?

A2: The qualifying requirements for PBO approval are the following:

- The organisation must be established in South Africa as either an NPC, trust, an association of persons or branch of a foreign-exempt organisation.
- The sole or principal object of the organisation must be to carry on one or more PBAs in a non-profit manner and with an altruistic or philanthropic intent.
- The PBAs carried on by the organisation must be for the benefit of the general public.
- The organisation must meet the requirements set out in section 30(3).

Q3: How does SARS confirm PBO approval?

A3: The notification of approval as a PBO is issued by the TEU by way of a letter, which contains a unique reference number allocated to the organisation. The original letter must be kept for the organisations own records and only certified copies should be provided to other entities or organisations requesting proof of the tax status of the approved PBO.

NOTE: SARS does not issue a certificate.

Q4: Does a registered NPO or an NPC automatically qualify for PBO approval?

A4: No, a NPO registered under the Nonprofit Organisations Act 71 of 1997 with the Department of Social Development or an NPC registered with the Companies and Intellectual Property Commission does not automatically qualify for PBO approval. These organisations will qualify only if approved by the Commissioner for this purpose and only if they comply with the relevant requirements and conditions as set out in the Act.

Q5: What does “persons who are not connected” mean?

A5: In relation to natural persons, spouses and close relatives to one another and any one related to a person or his spouse within the third degree of consanguinity are considered to be connected persons.

Q6: What does “fiduciary responsibility” mean?

A6: “Fiduciary” means a person who holds a position of trust or responsibility including decision-making powers relating to the affairs of an organisation. The persons accepting fiduciary responsibility are determined by the type of organisation seeking approval as a PBO, for example, the persons acting in a fiduciary capacity of –

- an NPC are its directors;
- a trust are its trustees; and

- an association of persons are its office bearers.

NOTE: No single person may directly or indirectly control the decision-making powers of an organisation.

Q7: How does an organisation apply for PBO approval?

A7: An application form EI 1, available on the SARS website, must be completed. The purpose of the application form EI 1 is to consolidate essential information required by the TEU to consider and to determine whether an organisation applying for PBO approval, qualifies and meets the required provisions and requirements of the Act. The TEU may request further information or documentation to provide clarity or assist in the consideration of the application for PBO approval. It is essential that all information provided is correct and complete to avoid unnecessary delays.

Q8: What is a written undertaking?

A8: The written undertaking is a commitment made by the person accepting fiduciary responsibility for the funds and assets of a branch of a foreign tax-exempt organisation or a testamentary trust. Although the founding document does not include the requirements of section 30 necessary to obtain PBO approval, the branch or testamentary trust will be administered in compliance with the written undertaking which covers those requirements.

Q9: When is the written undertaking submitted?

A9: The written undertaking must be submitted together with the application for approval as a PBO by a branch of a foreign tax-exempt organisation or a testamentary trust.

Q10: What are the requirements that must be complied with after an organisation has obtained approval as a PBO?

A10: The requirements of an organisation approved by the Commissioner as a PBO include the duties to –

- File annual income tax returns.
- Submit a copy of all amendments to its founding document to the Commissioner, as soon as they have been affected.
- Inform the Commissioner of any address change for correspondence within 60 days after the address change takes place.
- Inform the Commissioner of any change in persons accepting fiduciary responsibility for the organisation or office bearers (resignations or new appointments).
- Inform the Commissioner if the PBO is no longer carrying on approved PBAs or ceases to exist.
- Retain all books of account, records and other documents for a period of five years and if requested by SARS submit copies of such documents.
- Ensure that at all times the PBO complies with the requirements relative to the PBO approval.

Annexure B – Section 10(1)(cN)

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

- (cN) the receipts and accruals of any public benefit organisation approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—
 - (i) otherwise than from any business undertaking or trading activity; or
 - (ii) from any business undertaking or trading activity—
 - (aa) if the undertaking or activity—
 - (A) is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of “public benefit organisation” in section 30;
 - (B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
 - (C) does not result in unfair competition in relation to taxable entities;
 - (bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;
 - (cc) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—
 - (A) the scope and benevolent nature of the undertaking or activity;
 - (B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;
 - (C) the profitability of the undertaking or activity; and
 - (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or
 - (dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—
 - (i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
 - (ii) R200 000;

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

“public benefit activity” means—

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

“public benefit organisation” means any organisation—

- (a) which is—
 - (i) a non-profit company as defined in section 1 of the Companies Act or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
 - (ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;
- (b) of which the sole or principal object is carrying on one or more public benefit activities, where—
 - (i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;
 - (ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and
 - (iii)
- (c) where—
 - (i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
 - (ii)
 - (iii)

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

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

- (a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;
- (b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is—
 - (i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person;

- (ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;
- (iii) in the case of a public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in subsection (1), required on dissolution to transfer its assets to—
 - (aa) any public benefit organisation which has been approved in terms of this section;
 - (bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity;
 - (cc) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a); or
 - (dd) the National Finance Housing Corporation contemplated in section 10(1)(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)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- (vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- (c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (d) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;
- (e) complies with such reporting requirements as may be determined by the Commissioner;

- (f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part I of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which those funds have been provided; and
- (g)
- (h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

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

(3B) (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.

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

(6A) As part of—

- (a) the dissolution of an organisation contemplated in paragraph (a)(i) of the definition of “public benefit organization” in subsection (1); or
- (b) the termination of the activities of a branch contemplated in paragraph (a)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic,

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

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

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

(9)

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

- (a) to answer any questions relating to such organisation; or
- (b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or
- (c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

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

(12)

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).

GNR.302

28 FEBRUARY 2003

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

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

SCHEDULE

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning assigned thereto.

2. For purposes of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, an organisation which provides any scholarships, bursaries and awards for study, research or teaching must comply with the conditions prescribed in these regulations.

3. Subject to regulation 4, the founding document of the organisation contemplated in regulation 2, must expressly provide that—

- (a) all scholarships, bursaries or awards granted by that organisation must be *bona fide* and be granted to an individual on grounds of objective merit or need;
- (b) no scholarship, bursary or award granted by that organisation may—
 - (i) be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;
 - (ii) be subject to conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary or award; or
 - (iii) be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or that organisation (or any associated institution in relation to that donor or organisation) or any relative of that person, unless circumstances indicate that that scholarship, bursary or award would have been granted to that person or his or her relative, even if that person had not been an employee of that donor, organisation or associated institution;
- (c) all decisions regarding the granting of scholarships, bursaries and awards must be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted; and
- (d) all scholarships, bursaries and awards granted by that organisation in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted—
 - (i) to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
 - (ii) to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in subparagraph (i).

4. Where the founding document of an organisation which was established before 1 January 2003 does not expressly provide for the conditions contemplated in regulation 3, the organisation will be deemed to comply with regulation 3 until 31 December 2007, if the person responsible in a fiduciary capacity for the funds and assets of that organisation submits a written undertaking to the Commissioner that all scholarships, bursaries and awards granted by that organisation comply with the provisions of these regulations.

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

ARCHIVED