South African Revenue Service

INTERPRETATION NOTE 124 (Issue 2)

DATE: 11 November 2026

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

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Preamble

In this Note unless the context indicates otherwise –

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

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

1. Purpose

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

2. Background

Retired persons who have the financial means may choose to reside in housing schemes designed to cater specifically for their needs, enabling them to retain a degree of independence while maintaining a comfortable quality of life. Such housing schemes typically comprise various forms of accommodation, including, free-standing houses, apartments, or flats, or a combination thereof. They are generally situated within secure villages or complexes and may provide communal amenities such as gyms, tennis courts, swimming pools, bowling greens, community centres, dining facilities and laundry services.

3. The law

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

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[1] For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

4. Application of the law

4.1 Organisations qualifying for approval as public benefit organisations

Housing schemes for retired persons may be established using various legal structures that differ from scheme to scheme.[2] These may include sectional title schemes, share block schemes,[3] club schemes, long-lease agreements and life-right schemes.[4] Certain housing schemes for retired persons offer healthcare facilities, while others do not.

The Act does not prescribe the specific type of housing scheme that must be used to satisfy the requirements of PBA 3(*c*). However, to qualify for approval as a PBO, an organisation must be incorporated, formed or established in South Africa[5] as either a non-profit company,[6] a trust, or an association of persons.[7] Any organisation constituted in one of these recognised legal forms and whose sole or principal object (see **4.1.1**) is the provision of residential care for retired persons will qualify for preferential tax treatment only after it has been approved as a PBO by the Commissioner and continues to comply with the relevant prescribed requirements of section 30(3).

Preferential tax treatment includes the benefit of partial taxation, which is a method of taxing the receipts and accruals of PBOs derived from business undertakings or trading activities falling outside the permissible business undertaking or trading activity categories including the basic exemption set out in section 10(1)(*c*N)(ii) (see **5**). In addition, PBOs may qualify for exemption from certain other taxes and duties, which include capital gains tax,[8] dividends tax,[9] donations tax, estate duty, and transfer duty.[10]

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2 Kilbourn, L (September 2008). Retirement villages: an introduction to their legal nature, applicable legislation and the risks faced by investors in such schemes. In *Property/Property Law Digest* (2). My LexisNexis: [online].

3 For commentary on sectional titles and share block schemes, see Interpretation Note 64 "Income Tax Exemption: Bodies Corporate, Share Block Companies, and Associations of Persons Managing the Collective Interests Common to all Members".

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

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

6 The term "non-profit company" is defined in section 1 of the Companies Act 71 of 2008.

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

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

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

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

4.1.1 Sole or principal object

The sole or principal object of a PBO must be the carrying on of one or more PBAs.[11] The words "sole", "principal" and "object" are not defined in the Act. The method of attributing meaning to the words used in legislation involves, as a point of departure, examining the language of the provision at issue, the language and design of the statute as a whole and its statutory purpose.[12] In *C: SARS v Dunblane (Transkei) (Pty) Ltd*[13] the court held that words in a section of an Act of Parliament must not be looked at in isolation but in the context in which they are found, both in the immediate context of the sub-section in which they occur and in the general context of the Act. Furthermore, in *C: SARS v Terraplas South Africa (Pty) Ltd*[14] the court confirmed that a dictionary meaning of a word cannot govern the interpretation it can only be used as a guide. The question is, therefore, what is the meaning applicable to the words in the context of the specific document, or section under consideration.

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

- "Sole" as "being the only one; only."[15]
- "Principal" as "first or highest in rank, importance, value, chief."[16]
- "Objective" as "something that one's efforts or actions are intended to attain, accomplish, purpose, goal, target."[17]

In ITC 1569[18] the judge referred to the following two meanings of "principal" in the *Oxford English Dictionary*:

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

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

4.1.2 Manner in which public benefit activities must be carried on

All PBAs carried on by a PBO must be carried on in a non-profit manner and with an altruistic or philanthropic intent.[19] The words "non-profit", "manner", "altruistic", "philanthropic" and "intent" are not defined in the Act.

The word "non-profit" is described in the *Cambridge Dictionary* as –[20]

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

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11 Paragraph (*b*) of the definition of "public benefit organisation" in section 30(1).
12 *Chetty t/a Nationwide Electrical v Hart NO & another* 2015 (6) SA 424 (SCA), 4 All SA 401.
13 2002 (1) SA 38 (SCA), 64 SATC 51 at 57.
14 [2014] 3 All SA 11 (SCA), 76 SATC 377.
15 **www.dictionary.com/browse/sole** [Accessed 11 November 2026].
16 **www.dictionary.com/browse/principal?s=t** [Accessed 11 November 2026].
17 **www.dictionary.com/browse/objective** [Accessed 11 November 2026].
18 (1993) 56 SATC 86 (C) at 90.
19 Paragraph (*b*)(i) of the definition of "public benefit organisation" in section 30(1).
20 **https://dictionary.cambridge.org/dictionary/english/non-profit** [Accessed 11 November 2026].

Investopedia describes “not for profit” as follows:[21]

> “Not-for-profit organizations don’t earn profits for their owners. All the money earned by or donated to a not-for-profit organization is used in pursuing the organization’s objectives and keeping it running. Income is not distributed to the group’s members, directors, or officers.”

The word “manner” is described in the *Dictionary.com* as –[22]

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

An organisation carrying on a PBA must not do so with the intention of generating a profit or financial return. A PBO may not conduct PBAs aimed at creating a distributable profit, and it is unacceptable for profit-making activities to constitute its sole or principal object, even if such profits are intended to fund its operations. Instead, the PBO’s PBAs should be directed at recovering direct and reasonable indirect costs[23] rather than maximising profits. An organisation carrying on a PBA as part of a profit-making venture will not qualify for approval as a PBO. However, an organisation carrying on a business undertaking or trading activity as part of a PBA may qualify as a PBO provided it complies with all the permissible business undertaking or trading activity requirements (see **5**).

Altruistic motives or behaviour is described in the *Dictionary.com* as –[24]

> “unselfishly concerned for or devoted to the welfare of others”.

Altruism generally refers to a concern for the well-being of others without regard to personal benefit and stands in contrast to self-interest. Accordingly, an organisation must not carry on any PBA with the intention of securing personal profit, benefit or advantage for itself at the expense of, or without due regard to, the well-being of the general public.

In *Ex Parte Henderson & another, NNO* Miller J provided the following explanation of philanthropy:[25]

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

The words “philanthropic” and “charitable” are used to describe goodwill towards people in general and an active effort to promote the happiness and well-being of others.

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21 **www.investopedia.com/terms/n/not-for-profit.asp** [Accessed 11 November 2026].

22 **https://dictionary.cambridge.org/dictionary/english/manner** [Accessed 11 November 2026].

23 Indirect costs, include administrative costs, salaries, utilities, insurance, cleaning material, repairs and maintenance, etc.

24 **www.dictionary.com/browse/altruistic** [Accessed 11 November 2026].

25 1971 (4) SA 549 (D) at 556.

The *Dictionary.com* describes "intent" as –[26]

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

An organisation's intent is inherently subjective and may be difficult to determine. Initial consideration must therefore be given to the organisation's stated purpose as set out in its founding document, with its activities generally serving as an indication of that stated intent.

Altruistic or philanthropic intent implies practical benevolence towards others and an active effort to promoting their happiness and well-being. Accordingly, there must be no *quid pro quo*, reciprocal obligation, or direct or indirect personal benefit or return resulting from the PBAs carried on by the PBO.

An organisation whose sole or principal object is the carrying on of PBA 3(*c*) will satisfy this requirement if its primary intent is not the generation of profit or financial return from the provision of residential care (see **4.2.1**) or nursing services (see **4.2.4**). Profit- making must therefore not be the focus of carrying on PBA 3(*c*).

4.2 Requirements of public benefit activity 3(c) in Part I

PBA 3(*c*) relates to the provision of residential care (see **4.2.1**) for retired persons (see **4.2.2**). It has two requirements contained in separate subparagraphs, that an organisation must satisfy when providing such care. These requirements are cumulative and connected by the word "and" indicating that both must be met. The requirements are that –

- more than 90% of the retired persons to whom residential care is provided, by that organisation, must be over the age of 60 (see **4.2.3**) and nursing services must be provided by that organisation (see **4.2.4**);[27] and
- residential care for poor and needy retired persons must actively be provided by that organisation without full recovery of cost (see **4.2.5**).[28]

4.2.1 Provision of residential care

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

The *Dictionary.com* describes "provision" as –[29]

> "the providing or supplying of something, especially of food or other necessities; arrangement or preparation beforehand, as for the doing of something, the meeting of needs, the supplying of means, etc.".

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26 **www.dictionary.com/browse/intent** [Accessed 11 November 2026].

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

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

29 **www.dictionary.com/browse/provision** [Accessed 11 November 2026].

An organisation must itself be involved in making residential care available for retired persons through its own actions or efforts. Merely providing funding to another organisation is insufficient.[30]

The *Cambridge Dictionary* describes "residential care" separately as follows:

- "Residential" as "of or relating to houses where people live rather than to places where they work."[31]
- "Care" as "the process of protecting someone or something and providing what that person or thing needs."[32]

Having regard to the dictionary meanings, "residential" in PBA 3(*c*) should be interpreted as the provision of a building in which retired persons reside, while "care" should be interpreted more broadly to include accommodation as well as the general health, welfare, safety and protection of retired persons. Care may therefore extend to activities that promote the physical or mental well-being of retired persons, such as recreational, cultural, social activities or physical exercise. Residential care does not, however, include nursing services (see **4.2.4**), since this form of care is mentioned separately in PBA 3(*c*).

The meaning of "building" has been considered in a few court cases from which several general principles have emerged, namely, that a building is generally a substantial and relatively permanent structure comprising walls, a roof and the necessary appurtenances (accessories).[33] PBA 3(*c*) does not require the organisation providing the residential care to own the building used to provide such care, nor does it prescribe the number of units, whether the units must be furnished, or whether residential care may be provided on one or more premises (see **Example 5**). The building used for the provision of the residential care also does not have to be used exclusively for this purpose, and an organisation is not required to provide meals.

Based on the presumption that references in statutes to conduct are references to valid or permissible conduct,[34] the residential care referred to in PBA 3(*c*) contemplates that it complies with all relevant legislative or regulatory requirements.

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30 A separate PBA provides for the distribution of funds by a PBO under PBA 10 in Part I, which is described as the provision of funds, assets or other resources to PBOs, institutions, boards, or bodies exempt under section 10(1)(cA)(i) carrying on one or more PBA, associations of persons carrying on any PBA except PBA 10, or the national, provincial, or local sphere of government contemplated in section 10(1)(*a*). For commentary, see Interpretation Note 98 "Public Benefit Organisations: The Provision of Funds, Assets or Other Resources to any Association of Persons".

31 **https://dictionary.cambridge.org/dictionary/english/residential** [Accessed 11 November 2026].

32 **https://dictionary.cambridge.org/dictionary/english/care** [Accessed 11 November 2026].

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

34 du Plessis, LM (31 March 2011). Statute Law and Interpretation. In *Law of South Africa* (*LAWSA*) 25(1) (Second Edition Volume) in paragraph 343. My LexisNexis: [online].

Example 1 – Conduit and operating non-profit companies

Facts:

Conduit Blissful Retreat Funding NPC

Blissful Retreat Funding NPC was incorporated to provide funds to Blissful Retreat NPC, its sole beneficiary.

Operating Blissful Retreat NPC

Blissful Retreat NPC is a separate operating company incorporated to provide residential care and nursing services using the funds received from Blissful Retreat Funding NPC to subsidise residential care for poor and needy retired persons.

Result:

Conduit Blissful Retreat Funding NPC

The sole or principal object of Blissful Retreat Funding NPC is the provision of funds to its sole beneficiary, Blissful Retreat NPC. Blissful Retreat Funding NPC qualifies for approval as a PBO carrying on solely PBA 10, provided that Blissful Retreat NPC is itself a PBO.

Operating Blissful Retreat NPC

Blissful Retreat NPC may be approved as a PBO carrying on PBA 3(*c*) if it can satisfy the Commissioner that it meets the following requirements:

- Its sole or principal object (see **4.1.1**) is the provision of residential care (see **4.2.1**) for retired persons (see **4.2.2**).
- More than 90% of the retired person including poor and needy retired persons to whom residential care is provided are over the age of 60 (see **4.2.3**).
- Nursing services are provided to retired persons, including poor and needy retired persons (see **4.2.4**).
- Residential care is actively provided for poor and needy retired persons (see **4.2.5**).
- The full cost of providing residential care for poor and needy retired persons is not recovered [see **4.2.5 (c)**].

Example 2 – Property holding and operating non-profit companies

Facts:

Property holding Sunset Paradise NPC

Sunset Paradise NPC owns land and buildings and has as its sole or principal object the sale of life rights through the operation of a life-right scheme as contemplated in the Housing Schemes for Retired Persons Act.[35] These life rights are not sold for profit, but substantially to recover costs incurred in relation to the land and buildings owned by Sunset Paradise NPC. The receipts and accruals derived from the sale of life rights are used to fund the operating activities of its sole beneficiary, Dignity Haven NPC. Sunset Paradise NPC does not itself provide residential care or nursing services.

35 Act 65 of 1988.

Operating Dignity Haven NPC

Dignity Haven NPC is a separate operating company incorporated to provide residential care and nursing services from the land and buildings owned by Sunset Paradise NPC. Funds received from Sunset Paradise NPC is used to subsidise residential care for poor and needy retired persons.

Result:

Property holding Sunset Paradise NPC

The sole or principal object of Sunset Paradise NPC is the sale of life rights under a life-right scheme. This constitutes a commercial business undertaking or trading activity and does not fall within the ambit of any approved PBA. The fact that the proceeds are provided to Dignity Haven NPC does not change the nature of Sunset Paradise NPC's sole or principal object. As a result, it is not regarded as carrying on PBA 10. Furthermore, it is also not carrying on PBA 3(*c*), since it does not itself provide the required residential care and nursing services. Consequently, Sunset Paradise NPC does not qualify for approval as a PBO because its sole or principal object is not the carrying on any approved PBA.

Operating Dignity Haven NPC

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

- its sole or principal object (see **4.1.1**) is the provision of residential care (see **4.2.1**) for retired persons (see **4.2.2**);
- more than 90% of the retired persons to whom residential care is provided, including poor and needy retired persons, are over the age of 60 (see **4.2.3**);
- nursing services are provided to retired persons, including poor and needy retired persons (see **4.2.4**);
- residential care is actively provided for poor and needy retired persons (see **4.2.5**); and
- the full cost of providing residential care for poor and needy retired persons is not recovered [see **4.2.5 (c)**].

4.2.2 Retired persons

The opening sentence of PBA 3(*c*) requires that an organisation must provide residential care for retired persons. The expression "retired persons" is not defined in the Act. For purposes of interpreting PBA 3(*c*), the word "retired" must be given its ordinary meaning, which is described in the *Dictionary.com* as –[36]

> "withdrawn from or no longer occupied with one's business or profession".

Having regard to the above, the word "retired" refers to persons who have brought their working life, career, occupation, business, or profession to an end, whether because of reaching the relevant retirement age, ill-health, infirmity, retrenchment, or any other reason. Retirement may also occur for reasons unrelated to age, for example, eligibility for retirement benefits or social assistance in the form of old-age grants. PBA 3(*c*) does not prescribe the specific reason for retirement.

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[36] **www.dictionary.com/browse/retired** [Accessed 11 November 2026].

By contrast, a person who has never been employed, or who was not engaged in any occupation or career before retirement, does not fall within the meaning of "retired person", since such a person did not withdraw from working life, or an occupation or a career at the point of retirement. Whether a person is regarded as retired is therefore a factual determination, dependent on the circumstances of each case.

To satisfy the requirements of PBA 3(*c*), all persons to whom an organisation provides residential care must be retired persons. However, if residential care is provided to both retired persons and persons who do not meet the definition of "retired", such as spouses of retired persons, the provision of residential care to retired persons must be the organisation's principal object (see **4.1.1**). Therefore, the organisation must predominantly provide residential care to persons who qualify as retired persons.

The reference to "persons" in this context is limited to natural persons. Consequently, if residential care is provided to a retired person together with that person's spouse, the organisation is regarded as providing residential care to two persons and not solely to the retired person (see **Example 3**).

It will be acceptable for retired persons to whom residential care is provided to engage in casual or temporary work to supplement their income.

4.2.3 Age and percentage of persons receiving residential care

PBA 3(*c*)(i) requires that an organisation provides residential care for retired persons, of whom more than 90% must be older than 60. This requirement applies to all persons receiving residential care from the organisation, including spouses of retired persons and poor and needy retired persons [see **4.2.5 (a)**]. Accordingly, persons under the age of 60 must constitute less than 10% of the total number of persons to whom residential care is provided by that organisation.

The requirements relating to age and percentage in PBA 3(*c*)(i) are not subject to the Commissioner's discretion. The Commissioner therefore has no authority to relax or waive those requirements, either generally or in individual cases.

Example 3 – Age and percentage requirement

Facts:

Hope Eternal Retirement Village provides residential care to ten retired persons, all of whom have retired from their respective occupations. Their ages are as follows:

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

Result:

All residents have retired from an occupation and therefore meet the retired requirement. However, only six of the ten retired residents to whom residential care is provided are older than 60 years. Consequently, Hope Eternal Retirement Village provides residential care for retired persons of whom only 60% are over the age of 60 and does not meet the age and percentage requirement of PBA 3(*c*)(i). It therefore does not qualify for approval as a PBO since it does not provide residential care for retired persons of whom more than 90% are over the age of 60.

4.2.4 Provision of nursing services

PBA 3(*c*)(i) requires that the organisation providing residential care for retired persons must also provide nursing services.

The use of the expression "provided by that organisation" indicates that the organisation is required to ensure access to nursing services for retired persons to whom it provides residential care, if such services are needed or desired.

The expression "nursing services" is not defined in the Act. The words are described separately in the *Dictionary.com* as –

- "nursing" is "the practice or profession of caring for the sick and injured";[37] and
- "services" is "work done for others as an occupation or business".[38]

In the absence of a definition in the Act, SARS does not prescribe the specific nature, scope or extent of the nursing services that must be provided, nor whether such services be rendered on the same premises as the residential care. Nursing services may therefore take various forms, for example, an on-site infirmary for residents who do not require hospitalisation, a frail-care facility for residents whose physical or mental abilities have declined to the extent that they require assistance, basic medical rooms, or *ad hoc* nursing services provided by nursing staff when needed.[39]

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

While PBA 3(*c*)(ii) requires that residential care for poor and needy retired persons be provided without full recovery of cost [see **4.2.5 (c)**], PBA 3(*c*)(i) does not impose a similar requirement for nursing services.

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37 **www.dictionary.com/browse/nursing** [Accessed 11 November 2026].

38 **www.dictionary.com/browse/services** [Accessed 11 November 2026].

39 Kilbourn, L (June 2008). Retirement villages: an introduction to their legal nature, applicable legislation and the risks faced by investors in such schemes. In *Property/Property Law Digest* (1). My LexisNexis: [online].

Any income derived from the provision of nursing services to persons other than retired persons to whom residential care is provided by the organisation will be treated as receipts and accruals from a business undertaking or trading activity not qualifying as a permissible business undertaking or trading activity (see **5**) and will be taxable, subject to the basic exemption.[40]

4.2.5 Residential care for poor and needy retired persons

PBA 3(*c*)(ii) requires an organisation providing residential care for retired persons to also actively provide such care to poor and needy retired persons without full recovery of cost. This requirement is considered in more detail below.

(a) Poor and needy retired persons

Poverty is a complex concept and cannot be defined in a single, fixed term. Although the Act does not define the expression "poor and needy", SARS interprets it, in the context of PBOs, to refer to persons who are impoverished, having limited means and few possessions, and therefore require basic necessities and assistance.[41] Such basic necessities may include adequate housing, health care, sufficient food and water, social security or social assistance, and education.[42]

Retired persons with little or no income, declining health, a disability, low levels of education, or limited access to necessities are generally more vulnerable to poverty. The determining factor is whether such persons can meet their basic needs without assistance or support. While income is an important indicator of well-being, it should not be the sole measure of poverty.[43] An organisation carrying on PBA 3(*c*) should therefore apply some form of means testing to evaluate the income, assets and overall circumstances of retired persons to determine whether they may be regarded as poor and needy and therefore in need of residential care and nursing services.

Since the requirements under PBA 3(*c*)(i) and (ii) are cumulative, the age and percentage requirements also apply to poor and needy retired persons.

(b) Meaning of actively

PBA 3(*c*) does not specify the degree to which residential care must be provided to poor and needy retired persons, nor does it indicate how many of the organisation's residents or housing units must be allocated for that purpose. It does, however, prescribe that such residential care be actively provided.

The word "actively" is not defined in the Act, the *Dictionary.com* describes it as –[44]

> "in a way that involves deliberate and vigorous engagement or effort".

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40 Section 10(1)(*c*N)(ii)(*dd*) provides a basic exemption threshold that applies to the total receipts and accruals derived from all non-qualifying business undertakings or trading activities. For commentary, see Interpretation Note 24 "Public Benefit Organisations: Partial Taxation".

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

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

43 Friedman, I & Bhengu, L (April 2008). Fifteen year review of income poverty alleviation programmes in the social and related sectors. *Health Systems Trust*. Available online at **www.hst.org.za/publications/HST%20Publications/Fifteen%20Year%20Review%20of%20Income%20Poverty%20Alleviation%20Programmes%20in%20the%20Social%20and%20Related%20Sectors.pdf** [Accessed 11 November 2026].

44 **www.dictionary.com/browse/actively** [Accessed 11 November 2026].

The word “actively” should not be interpreted in isolation and must be read in context. The organisation itself is required under PBA 3(*c*)(ii) to actively provide residential care for poor and needy retired persons, without full recovery of cost. Therefore, the organisation must itself directly and consistently on a regular, ongoing and continuous basis make such care available to poor and needy retired persons throughout its existence. In addition, it must also provide nursing services to these poor and needy retired persons [see **4.2.5 (a)**].

(c) Meaning of recovery of cost

PBA 3(*c*)(ii) does not specify the level to which the cost of providing residential care must be recovered, it merely requires that the full cost not be recovered. In general, cost-recovery involves recovering the expenses incurred in providing residential care. This requirement will be satisfied if residential care is provided to poor and needy retired persons without recovering all direct costs and reasonable indirect costs.

This requirement does not apply to the provision of nursing services (see **4.2.4**) for poor and needy retired persons [see **4.2.5 (a)**].

Organisations deriving income from providing residential care to retired persons who can pay market-related rates, or from the sale of life rights, may use such income to subsidise residential care for poor and needy retired persons who cannot afford market-related or cost-recovery rates.

Example 4 – Recovery of cost

Facts:

The estimated monthly cost for an organisation to provide residential care for poor and needy retired persons is based on the following:

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

The organisation charges a monthly fee of R10 000 for residential care provided to poor and needy retired persons, with the resulting shortfall of R9 000 being funded through accumulated reserves, income from the provision of residential care to other retired persons by the sale of life rights and market-related lease agreements, monthly grants from the Department of Social Development, and annual fundraising initiatives.

Result:

The organisation provides residential care to poor and needy retired persons without recovering the full cost, therefore satisfying the requirement of PBA 3(*c*)(ii).

5. Business undertakings or trading activities

A PBO may carry on a business undertaking or trading activity, such as the sale of life rights or the provision of residential accommodation for retired persons,[45] provided that its sole or principal object (see **4.1.1**) is the carrying on of PBAs. The receipts and accruals derived from such undertakings or activities will be exempt from income tax if they fall within one of the four categories of permissible business undertakings or trading activities in section 10(1)(*c*N)(ii).[46] These receipts and accruals may qualify for exemption as an integral and directly related permissible business undertaking or trading activity under section 10(1)(*c*N)(i)(*aa*), provided that the business undertaking or trading activity –

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

A PBO may not knowingly be a party to, or knowingly permit 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 that, but for that transaction, operation or scheme, would have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner.[51] This prohibition applies regardless of whether the PBO itself or any other person benefits from such reduction, postponement or avoidance.

Example 5 – Provision of residential care for retired persons

Facts:

Golden Years Retirement Village is an approved PBO that provides residential care to retired persons on two properties, of whom more than 90% are older than 60.

Property 1

The principal object and activity of Golden Years Retirement Village is carried out on this property. The facilities include –

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

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

46 For commentary, see Interpretation Note 24 "Public Benefit Organisations: Partial Taxation".

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

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

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

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

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

The rentals charged for residential care to residents reliant solely on an older-persons' grant are below market-related rates and do not achieve full cost-recovery.

Income from the sale of life rights complies with the requirements of the integral and directly related permissible business undertaking or trading activity under section 10(1)(*c*N)(ii)(*aa*) and is used to subsidise residential care to poor and needy retired persons.

Property 2

The residential units on this property are sold under the life-right scheme at a profit. However, this activity does not constitute the principal object of the Golden Years Retirement Village and is conducted on a limited scale. No cross-subsidisation of poor and needy retired persons takes place on this property.

Result:

Property 1

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

Property 2

The units on this property are sold under a life-right scheme and the required residential care for poor and needy retired persons is not provided. As a result, Golden Years Retirement Village is not regarded as carrying on PBA 3(*c*) on this property.[52] The income derived from the sale of life rights constitutes receipts and accruals from a business undertaking or trading activity and is therefore taxable subject to the basic exemption in section 10(1)(*c*N)(ii)(*dd*).

The PBO approval granted to Golden Years Retirement Village may be at risk if this activity becomes its sole or principal object, or if cross-subsidisation is not undertaken on any of its properties.

6. Tax-deductible donations

Section 18A provides for tax deductions for *bona fide* donations that are actually paid or transferred during a year of assessment to section 18A-approved organisations[53] carrying on PBAs in Part II, in South Africa.[54]

Part I lists a variety of activities recognised as PBAs for approval as a PBO for purposes of section 30. Part II lists some, but not all, of the PBAs listed in Part I for the purposes of section 18A. PBA 3(*c*) is listed only in Part I and not included in Part II.

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

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

54 For commentary, see the *Basic Guide to Tax-Deductible Donations*.

Consequently, a PBO whose sole or principal object is the carrying on of PBA 3(*c*) does not qualify for section 18A approval[55] and may not issue section 18A receipts.[56] Donations made to such a PBO are not deductible under section 18A(1), and if any deduction is claimed by a donor taxpayer using an invalid receipt it will be disallowed.

7. Objection and appeal

A decision made by a SARS official,[57] or a notice issued by SARS to a specific person under a tax Act,[58] excluding a decision given effect to in an assessment or a notice of assessment that is subject to objection and appeal, may, at the discretion of the relevant SARS official or at the request of the affected person,[59] be withdrawn or amended by the SARS official concerned,[60] a SARS official to whom that official reports,[61] or a senior SARS official.[62]

If all the material facts were known to the SARS official at the time the decision was made, such decision or notice may not be withdrawn or amended with retrospective effect after a period of three years from the later of the date of the written notice of that decision[63] or date of the assessment giving effect to the decision,[64] if applicable.

A decision made by a SARS official, or a notice issued by SARS under a tax Act to a specific person, is regarded as having been made or issued by a duly authorised SARS official until the contrary is proven.[65]

Any decision taken by SARS in the exercise of its discretion under section 30, for example, a decision not to approve an organisation as a PBO carrying on PBA 3(*c*), is subject to objection and appeal[66] and may be objected to and appealed against in the same manner as an assessment, for example, an assessment issued under section 10(1)(*c*N).[67] Before lodging an objection, the organisation may request SARS to provide reasons for the assessment to formulate an objection.[68] Such request must be made in the prescribed form and manner and delivered to SARS within 30 days[69] from the date of the assessment.

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55 Section 18A(1)(*a*)(ii).

56 A section 18A receipt is issued by a section 18A-approved organisation that may entitle a donor taxpayer to an income tax deduction for *bona fide donations* actually paid or transferred during a year of assessment.

57 The term "SARS official" as defined in section 1 of the TA Act, includes the Commissioner, a SARS employee, or a person contracted or engaged by SARS to administer a tax Act under the Commissioner's control, direction, or supervision, but excludes an external legal representative.

58 The term "tax Act" as defined in section 1 of the TA Act means the TA Act, or an Act, or portion of Act referred to in section 4 of the South African Revenue Service Act.

59 Section 9(1) of the TA Act.

60 Section 9(1)(*a*) of the TA Act.

61 Section 9(1)(*b*) of the TA Act.

62 Section 9(1)(*c*) of the TA Act.

63 Section 9(2)(*a*) of the TA Act.

64 Section 9(2)(*b*) of the TA Act.

65 Section 9(3) of the TA Act.

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

67 Section 104(2)(*c*) of the TA Act.

68 Rule 6 deals with reasons for an assessment.

69 The term "day" in Rule 1 means a "business day" as defined in section 1 of the TA Act.

Any PBO may object to an assessment[70] in accordance with Chapter 9 of the TA Act, read with the "rules"[71] published in the *Government Gazette*, within 80 business days[72] after the later of the delivery of the notice providing the requested reasons for the assessment,[73] the notice issued by SARS confirming that the reasons have been provided,[74] or the date of the assessment.[75]

The objection must be submitted on the prescribed form and must clearly set out the grounds of the objection, including the specific part or amount of the assessment being disputed, the grounds of assessment[76] that are disputed, and the supporting documents required to substantiate the objection that have not previously been submitted to SARS.[77]

SARS will consider the objection and may either disallow it or allow it in whole or in part. If the objection is disallowed and the organisation is dissatisfied with SARS' decision, it may appeal against the disallowance in writing within the prescribed period.[78]

8. Record-keeping

A person must keep records, books of account, or documents that enable the person to observe the requirements of a tax Act, that are specifically required under a tax Act or by the Commissioner by public notice, and that enable SARS to be satisfied that the person has observed these requirements.[79] The records, books of account or documents must be kept or retained in their original form in an orderly fashion and in a safe place, in the form, including electronic form, as may be prescribed by the Commissioner in a public notice,[80] or a form specifically authorised by a senior SARS official.[81]

These records, books of account and documents must be open for inspection by a SARS official at all reasonable times during the periods for which they are required to be retained,[82] for the purpose of determining compliance with the requirements as explained above, or for purposes of an inspection, audit or investigation.[83]

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70 For commentary, see Interpretation Note 15 "Exercise of Discretion in case of Late Objection or Appeal".
71 The rules for objections and appeals are formulated under section 103 of the TA Act.
72 The term "business day" is defined in section 1 of the TA Act.
73 Rule 7(1)(*a*) read with Rule 6.
74 Rule 7(1)(*a*) read with Rule 6(4).
75 Rule 7 deals with objections.
76 The term "grounds of assessment" as defined in Rule 1, for purposes of the rules include any grounds for a decision referred to in section 104(2) of the TA Act, and reasons for assessment provided by SARS contemplated in Rule 6(5).
77 Rule 7(2).
78 Rule 10.
79 Section 29(1) of the TA Act
80 See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.
81 Section 30(1) of the TA Act.
82 Section 29(3) of the TA Act.
83 Section 31 of the TA Act.

Records that are relevant to an audit or investigation or an objection or appeal must be retained until the audit, or investigation is concluded or until the assessment or the decision becomes final in the event of an objection or appeal (in case the five-year retention period is exceeded).[84]

9. Conclusion

To be approved as a PBO carrying on PBA 3(*c*), an organisation must, on application and after obtaining such approval on submission of its annual income tax return, satisfy the Commissioner that –[85]

- its sole or principal object is the provision of residential care for retired persons;
- more than 90% of the retired persons to whom residential care is provided, including poor and needy retired persons, are over the age of 60;
- nursing services are provided by the organisation;
- nursing services are also provided to poor and needy retired persons although not necessarily at a reduced cost;
- residential care for poor and needy retired persons is actively provided by the organisation;
- the full cost of providing residential care for poor and needy retired persons is not recovered; and
- the receipts and accruals derived from providing residential care comply with the requirements of section 10(1)(*c*N)(ii).

An organisation bears the burden of proving[86] compliance with these requirements as discussed in this Note and must retain the necessary supporting evidence.[87] This burden may be discharged by submitting reasonable substantiating documentation.[88]

Whether an organisation meets the requirements of PBA 3(*c*) is a question of fact and must be determined with reference to the specific facts and circumstances of each case.

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84 Section 32 of the TA Act.
85 Section 30(10), and section 46(1) of the TA Act.
86 Section 102 of the TA Act.
87 Section 29 of the TA Act.
88 ITC 1872 (2014) 76 SATC 225 (WC) in 29 to 31. Although the income tax case does not create precedent, it may be used as a guide.

Annexure – The law

Section 10(1)(*c*N)

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

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

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

(ii) from any business undertaking or trading activity—

(*aa*) if the undertaking or activity—

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

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

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

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

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

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

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

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

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

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

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

(ii) R200 000;

Section 30

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

"public benefit activity" means—

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

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

"public benefit organisation" means any organisation—

(*a*) which is—

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

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

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

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

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

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

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

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

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

(iv) . . . . . .

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

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

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

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

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

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

(*g*) . . . . . .

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

(*i*) the Commissioner is satisfied, does not have a person acting in a fiduciary capacity, who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act;

(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.

(11A) A person may not act in a fiduciary capacity if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(11B) A person who fails to comply with the provisions of subsection (11A) shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.

(12) . . . . . .

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

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

3. (*c*) The provision of residential care for retired persons, where—

(i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and

(ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.