

INTERPRETATION NOTE 98 (Issue 2)

DATE: 5 August 2024

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 30(1), 30(3)(f) AND PUBLIC BENEFIT ACTIVITY 10(iii) IN PART I OF THE NINTH SCHEDULE
SUBJECT : PUBLIC BENEFIT ORGANISATIONS: THE PROVISION OF FUNDS, ASSETS OR OTHER RESOURCES TO ANY ASSOCIATION OF PERSONS

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Preamble

In this Note unless the context indicates otherwise –

- **“association of persons”** means an association of persons referred to in PBA 10(iii) in Part I carrying on one or more PBAs in Part I in South Africa, with the exception of PBA 10 in Part I;
- **“conduit PBO”** means a “public benefit organisation” as defined in section 30(1) approved by the Commissioner under section 30(3), which has as its sole or principal object the provision of funds, assets, or other resources contemplated in PBA 10 in Part I;
- **“founding document”** means the written instrument such as the constitution, memorandum of incorporation, trust deed or will under which a conduit PBO is established and governed;
- **“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);
- “**section**” means a section of the Act;
- “**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.

The guides referred to in this Note are the latest versions, unless the context indicates otherwise, which are available on the SARS website at www.sars.gov.za.

1. Purpose

This Note provides guidance on –

- a conduit¹ PBO providing funds, assets or other resources to an association of persons carrying on PBA 10(iii) in Part I, in South Africa;
- the requirement imposed under section 30(3)(f) on a conduit PBO providing funds to an association of persons; and
- the meaning of “association of persons”.

2. Background

The Ninth Schedule to the Act lists the PBAs, which is divided into –

- Part I comprising a number of PBAs approved by the Minister for purposes of the approval as a PBO under section 30; and
- Part II comprising a limited number of PBAs approved by the Minister for purposes of the approval under section 18A (see **5**).

A PBO may itself conduct the PBAs or it may provide funds, assets or other resources to enable other approved PBOs,² institutions, boards or bodies exempt under section 10(1)(cA)(i)³ or the national, provincial or local sphere of government contemplated in section 10(1)(a)⁴ to carry on these PBAs.

¹ The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/conduit> [Accessed 5 August 2024] describes “conduit” as “someone or something that provides a way of passing something such as information or payments from one person to another”.

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

³ For further commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies*.

⁴ For further commentary, see the *Guide to Section 18A Approval for a Department in the National, Provincial and Local Sphere of Government*.

Subparagraph (iii) was included in PBA 10 to enable informal community projects⁵ to receive funding.⁶ A conduit organisation approved by the Commissioner as a PBO may therefore provide funds, assets or other resources in the manner contemplated in PBA 10 in Part I (see **4.1**) to any association of persons (see **4.3**) carrying on one or more PBAs, with the exception of PBA 10 in Part I, in South Africa.

This Note focuses on the provision of funds, assets or other resources to an association of persons carrying on PBA 10(iii) in Part I, in South Africa.

3. The law

Section 30 and PBA 10 in Part I are quoted in the **Annexure**.

4. Application of the law

4.1 A conduit public benefit organisation

A conduit PBO may provide –⁷

- funds, assets, services or other resources by way of donation;⁸
- assets or other resources by way of sale for a consideration not exceeding the direct cost to the conduit PBO providing the assets or resources;⁹
- funds by way of loan at no charge;¹⁰ or
- assets by way of lease for an annual consideration not exceeding the direct cost to the conduit PBO providing the asset divided by the total useful life of the asset.¹¹

A conduit PBO may provide any of the above only to any –

- PBO;¹²
- institution, board or body contemplated in section 10(1)(cA)(i) conducting one or more PBAs in Part I, other than PBA 10;¹³
- association of persons (see **4.3**) carrying on one or more PBAs in Part I, other than PBA 10, in South Africa;¹⁴ or

⁵ Before 2001 conduit funds, which were exempt under the repealed section 10(1)(fA) were allowed to make funds available to organisations only providing residential accommodation to retired persons and religious, charitable and educational institutions of a public character that were formally constituted and exempt from income tax under the repealed sections 10(1)(cF) and (f), respectively. This restricted exemption resulted in many informal community projects not qualifying to benefit from such funding.

⁶ Section 41 of the Taxation Laws Amendment Act 30 of 2002.

⁷ PBA 10 in Part I.

⁸ PBA 10(a) in Part I.

⁹ PBA 10(b) in Part I.

¹⁰ PBA 10(c) in Part I.

¹¹ PBA 10(d) in Part I.

¹² PBA 10(i) in Part I.

¹³ PBA 10(ii) in Part I.

¹⁴ PBA 10(iii) in Part I.

- department of state or administration in the national, provincial or local sphere of government in South Africa contemplated in section 10(1)(a).¹⁵

A conduit PBO must carry on PBA 10 in Part I as its sole or principal object – ¹⁶

- in a non-profit manner with an altruistic or philanthropic intent;¹⁷
- without directly or indirectly promoting the economic self-interest of any fiduciary or employee of the conduit PBO otherwise than by reasonable remuneration;¹⁸ and
- for the benefit of, or be widely accessible to, the general public at large, this may include any sector of the general public but may not be for the benefit of a small and exclusive group.¹⁹

Paragraph (b) of the definition of “public benefit organisation” in section 30(1) requires that the organisation “is carrying on” one or more PBAs. The expression “is carrying on” is in the present tense. This expression is 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.²⁰ In *C: SARS v Dunblane (Transkei) (Pty) Ltd*²¹ 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.

The expression “carry on (something)” is described in the *Cambridge Dictionary* as – ²²

“to continue doing something, or to cause something to continue; to continue to do or be involved in something”.

Based on the above the conduit PBO must continue doing, pursuing, be involved in, or operating its sole or principal object, which is to carry on PBA 10 in Part I to qualify and retain approval as a PBO. If the conduit PBO is not carrying on its sole or principal object, by for instance accumulating and not distributing its funds, it might forfeit approval as a PBO.²³

A conduit PBO must in addition to the above also comply, amongst other things, with the requirement of section 30(3)(f), which is considered below.²⁴

¹⁵ PBA 10(iv) in Part I.

¹⁶ Paragraph (b) of the definition of “public benefit organisation” in section 30(1).

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

¹⁸ Paragraph (b)(ii) of the definition of “public benefit organisation” in section 30(1).

¹⁹ Paragraph (c)(i) of the definition of “public benefit organisation” in section 30(1).

²⁰ *Chetty t/a Nationwide Electrical v Hart & another* 2015 (6) SA 424 (SCA), 4 All SA 401.

²¹ 2002 (1) SA 38 (SCA), 64 SATC 51 at 57.

²² <https://dictionary.cambridge.org/dictionary/english/carry-on> [Accessed 5 August 2024].

²³ Section 30(5).

²⁴ A conduit PBO must also comply with the requirements set out in section 30(3)(b), (c), (d) and (e).

Example 1 – Provision of funds, assets or other resources by a conduit PBO to an association of persons

Facts:

Organisation XYZ has committed its support to a group of unemployed women in the local rural community who have identified an urgent need for daily day care and basic early childhood development services for pre-school children who are left unattended. The organisation will donate monthly food supplies as well as basic stationery and equipment such as tables, chairs and mattresses to the group of women.

Result:

Organisation XYZ is regarded as a conduit PBO providing funds, assets or other resources contemplated in PBA 10 in Part I to an association of persons, namely, the group of unemployed women, whose sole or principal object may be regarded as carrying on PBA 4(h)²⁵ in Part I in South Africa, as contemplated in PBA 10(iii) in Part I.

The Commissioner will approve Organisation XYZ as a PBO if satisfied that it complies with all the requirements of section 30 including section 30(3)(f) (see **4.2**), which requires the organisation to take reasonable steps to ensure that the funds are used for the purpose for which those funds have been provided, namely, for the carrying on of PBA 4(h) in Part I in South Africa.

4.2 Section 30(3)(f) requirement

The Commissioner will approve an organisation carrying on PBA 10(iii) in Part I as a PBO if satisfied that the organisation has taken reasonable steps to ensure that the funds are used by the association of persons for the purpose for which those funds have been provided, which is to carry on one or more PBAs in Part I in South Africa, with the exception of PBA 10 in Part I. The funds may not be used to promote the economic self-interest of any individual person.

The words “reasonable steps” are not defined in the Act. The words are described separately in the *Cambridge Dictionary* as follows:

- “Reasonable” is “based on or using good judgement and therefore fair and practical; acceptable; and sensible and fair.”²⁶
- “Steps” are “an action in a series of actions taken for a particular purpose.”²⁷

Reasonable steps can be described as a degree of caution and concern an ordinarily prudent and rational person would use in the same circumstances. No list of approved reasonable steps can be provided. The measures, steps or actions taken by a conduit PBO will vary depending on the circumstances and facts relating to a particular case. Each case will therefore be considered and evaluated on its own merits.

²⁵ This PBA is described as “the provision of educare or early childhood development services for pre-school children”.

²⁶ <https://dictionary.cambridge.org/dictionary/english/reasonable> [Accessed 5 August 2024].

²⁷ <https://dictionary.cambridge.org/dictionary/english/step> [Accessed 5 August 2024].

Example 2 – Reasonable steps taken by a conduit PBO

The following are non-exhaustive examples of what may be regarded as being reasonable steps taken by a conduit PBO to ensure funds to an association of persons are used for the purpose for which those funds have been provided:

- Facilitate workshops or brainstorming sessions to help develop a business plan, timeframe and cost analysis for the association of persons.
- Implement relevant monitoring and evaluation tools to track challenges and outcomes.
- Regular on-site visits at agreed specific phases during the implementation of PBAs in Part I carried on by the association of persons.

An organisation failing to take reasonable steps and ensure funds are used by an association of persons for the purpose for which they are provided may result in the Commissioner not granting approval as a PBO.

A conduit PBO failing to take reasonable steps to ensure funds are used by an association of persons for the purpose for which they were provided after obtaining approval as a PBO may result in the Commissioner withdrawing the approval after notice is given. This requirement may be verified annually on assessment. The approval may be withdrawn from the beginning of the relevant year of assessment during which non-compliance with section 30(3)(f) occurred unless the conduit PBO has taken corrective steps within a period specified in the notice of withdrawal.²⁸

4.3 Association of persons

The “association of persons” referred to in the definition of “public benefit organisation”²⁹ and an “association of persons” referred to in PBA 10(iii) in Part I are listed in PBA 10 in Part I separately as beneficiaries (see 4.1) that may benefit from the funds, assets or other resources provided by a conduit PBO.

The separate identification of a PBO and an association of persons in PBA 10 in Part I implies that the respective associations of persons differ, the former being a formal association of persons established by adopting a legal founding document, which may qualify for approval as a PBO and the latter a voluntary informal association or group of persons carrying on one or more PBAs in Part I in South Africa. Such an association or group of individuals will not qualify for approval as a PBO because they do not have a founding document.³⁰

An association of persons contemplated in PBA 10(iii) in Part I must carry on one or more PBAs in Part I in South Africa, other than the provision of funds, assets or other resources contemplated in PBA 10 in Part I. The words “carrying on” in the present context means that the association of persons must itself conduct and use its funds, assets or other resources received from any conduit PBO to carry on PBAs in Part I in South Africa. An association of persons may therefore not pass on any of its funds,

²⁸ Section 30(5). For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

²⁹ 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, G. J. Associations. *The Law of South Africa (LAWSA)* in 155. (Third Edition) (Volume 2) My LexisNexis: Online.

³⁰ Section 30(3)(b).

assets or other resources received from any conduit PBO to any other organisation or association of persons.

Example 3 – Associations of persons

The following are non-exhaustive examples of associations of persons contemplated in PBA 10(iii) in Part I:

- A rural community in a remote village does not have running water. The leaders in the community are committed to embarking on a project to provide their community members with running water. A PBO has undertaken to help by overseeing the project at no cost and also to provide funds for the cost of the installation of pipes and a water pump accessible to all community members. The community leaders are regarded as the “association of persons” contemplated in PBA 10(iii) in Part I, who may be regarded as carrying on PBA 1(p)³¹ in Part I.
- A group of women in a remote rural community have formed an informal association to provide home-based care to terminally ill community members. The informal association does not have a constitution and can therefore not be approved as a PBO. A PBO has undertaken to provide the informal association with the relevant training, supplying nutritional food parcels as well as donating a vehicle to enable the women to reach remote patients in need of care. The informal association of women is regarded as the “association of persons” contemplated in PBA 10(iii) in Part I, who may be regarded as carrying on PBA 2(a)³² in Part I.

5. Tax-deductible donations

The PBAs approved by the Minister for purposes of section 18A are listed in Part II. Not all of the PBAs listed in Part I are included in Part II. Section 18A approval is granted for PBAs listed only in Part II. Section 18A is the section providing for the tax-deductibility of *bona fide* donations made to certain organisations³³ approved by the Commissioner, carrying on PBAs in Part II in South Africa.

PBA 10 is listed only in Part I and not included in Part II and therefore donations received by a conduit PBO to carry on PBA 10 in Part I may not issue section 18A receipts for such donations.

The approval of a conduit PBO for purposes of section 18A is specifically limited to the provision of funds or assets and has its own conditions and requirements.³⁴

³¹ This PBA is generally described as “community development for poor and needy persons and anti-poverty initiatives”.

³² This PBA is described as “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.

³³ See sections 18A(1)(a), (b), (bA) and (c).

³⁴ Section 18A(1)(b).

6. Conclusion

A conduit PBO may provide funds, assets or other resources to an informal voluntary association of persons contemplated in PBA 10(iii) in Part I. The Commissioner must be satisfied, in the case of any conduit PBO providing funds to any such association of persons, that such conduit PBO has taken reasonable steps to ensure that the funds are used for the purpose for which those funds have been provided, which is to carry on one or more PBAs in Part I (other than PBA 10 in Part I) in South Africa.

A conduit PBO not carrying on its sole or principal object, which is to provide funds, assets or other resources as contemplated in PBA 10(iii) in Part I, may forfeit approval as a PBO under section 30(5).

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Annexure – The law

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 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)(f)(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 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which those funds have been provided; and
- (g)

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

PBA 10 of Part I

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

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).