

DRAFT INTERPRETATION NOTE

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 9 IN PART I IN THE NINTH SCHEDULE
SUBJECT : PUBLIC BENEFIT ORGANISATIONS: NON-PROFESSIONAL SPORT AND RECREATION

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Preamble

In this Note unless the context indicates otherwise –

- **“Commissioner”** means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“Minister”** means the “Minister responsible for Sport and Recreation in South Africa” as defined in section 1 of the National Sport and Recreation Act;¹
- **“National Sport and Recreation Act”** means the National Sport and Recreation Act 110 of 1998;
- **“Ninth Schedule”** means the Ninth Schedule to the Act;
- **“Part I”** and **“Part II”** means Part I and Part II of the Ninth Schedule;
- **“PBA”** means a “public benefit activity” listed in Part I of the Ninth Schedule, and any other activity determined by the Minister of Finance 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;
- **“PBA 9”** means the PBA contemplated in paragraph 9 in Part I, which is described as the administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime;
- **“PBO”** means a public benefit organisation contemplated in the definition of “public benefit organisation” in section 30(1) and approved by the Commissioner under section 30(3);
- **“Regulations”** mean the Recognition of Sport and Recreation Bodies Regulations, 2011 published in Government Notice R 641 in *Government Gazette* 34506 of 8 August 2011 in accordance with section 14(jE) of the National Sport and Recreation Act;
- **“section 18A”** means the section providing for the tax-deductibility of donations made to any PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1), approved by the Commissioner under section 30(3) and 18A(1)(a)(i), carrying on in South Africa any PBA in Part II of the Ninth Schedule;
- **“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;
- **“the Constitution”** means the Constitution of the Republic of South Africa, 1996; and
- any other word or expression bears the meaning ascribed to it in the Act.

¹ Currently, the Minister of Sport, Arts and Culture.

All guides, interpretation notes and returns 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 or available on request via eFiling at www.sarsefiling.co.za, whichever is applicable.

1. Purpose

This Note provides guidance on the interpretation and application of PBA 9 that provides for the administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.

2. Background

The National Sport and Recreation Act was promulgated² to provide for the promotion and development of sport and recreation and the co-ordination of the relationships between —³

- Sport and Recreation South Africa;⁴
- Sports Confederation (see 7.1.1);⁵
- national federations (see 7.1.3); and
- other agencies (see 7.1.2 and 7.1.4).

The National Sport and Recreation Act also provides for measures aimed at correcting imbalances in sport and recreation, to promote equity and democracy in sport and recreation and to provide for dispute resolution mechanisms in sport and recreation. The Minister is empowered by that Act to make regulations, and to provide for matters connected with sport and recreation.⁶

The *National Sport and Recreation Plan*⁷ assists in the implementation of policies and specifies programmes, projects, and activities to be undertaken by the various role-players within the sport and recreation sector in South Africa.

² That Act came into effect on 10 September 1999.

³ The *Preamble* to the National Sport and Recreation Act.

⁴ The term “Sport and Recreation South Africa” as defined in section 1 of the National Sport and Recreation Act means the National Department of Sport and Recreation, now referred to as the Department of Sport, Arts and Culture. For more information, see www.dsac.gov.za.

⁵ The term “Sports Confederation” as defined in section 1 of the National Sport and Recreation Act read with section 2 of that Act is the representative of sport or recreation bodies including Olympic national federations.

⁶ The long title of the National Sport and Recreation Act.

⁷ Monitored annually to identify any problems negatively impacting on its implementation. Available online at www.gov.za/ss/documents/other/national-sport-and-recreation-plan-draft-20-08-nov-2011 [Accessed 30 September 2024].

The Constitution provides that sport is a provincial and local competence.⁸ However, the three spheres of government,⁹ namely, the national, provincial and local sphere,¹⁰ must plan and deliver services in an integrated manner.¹¹

Provincial sport and recreation entities (see 7.1.4) are very important to the promotion and development of sport and recreation because they are closest to their communities, and therefore provide ideal platforms to encourage greater participation in sport and recreation in general. The focus of sport and recreation at provincial level is generally on provincial teams comprised largely of non-elite athletes, to ensure the highest number of athletes competing in intra-provincial competition from which inter-provincial teams can be chosen.¹²

The local sphere of government, comprising municipalities,¹³ has the right to govern on its own initiative the affairs of its community such as local amenities, sports facilities and municipal parks and recreation¹⁴ subject to national and provincial legislation.¹⁵

Sport and Recreation South Africa is required to encourage the provincial sport and recreation departments and municipalities to form partnerships,¹⁶ with other related organisations having an interest in sport and recreation to procure financial assistance and exchange ideas.¹⁷

From the above it is clear that the roles and responsibilities of government in sport and recreation in South Africa is reliant on many diverse levels, namely, national, provincial, local levels, and several types of organisations on those levels. This consolidated approach has justified the inclusion of PBA 9 for purposes of an exemption from income tax for qualifying organisations.

3. The law

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

⁸ Schedule 5 to the Constitution.

⁹ For further commentary, see the *Guide to Section 18A Approval of a Department in the National, Provincial and Local Sphere of Government*.

¹⁰ Section 40 of the Constitution.

¹¹ Section 41(1)(h) of the Constitution and the Intergovernmental Relations Framework Act 13 of 2005.

¹² The *White Paper on Sport and Recreation for the Republic of South Africa* available online at www.gov.za/documents/white-papers/white-paper-sport-and-recreation-01-jun-2011 [Accessed 30 September 2024].

¹³ Section 151(1) of the Constitution.

¹⁴ Part B of Schedule 5 to the Constitution. See Freedman, D W (2019) Constitutional Law: Structures of Government. In *The Law of South Africa (LAWSA)* (Third Edition) (Volume 7(2)) in 301. My LexisNexis: Online.

¹⁵ Section 151(3) of the Constitution.

¹⁶ A list of current related entities is available in the Notes to the Department of Sport, Arts and Culture Annual Financial Statements for the year ended 31 March 2023, which is available at www.dsac.gov.za/index.php/annual-reports [Accessed 30 September 2024].

¹⁷ Section 9(2)(b) of the National Sport and Recreation Act.

4. Application of the law

4.1 Introduction

Sporting associations qualifying for approval and exemption from income tax can be divided into the following two categories:

- Recreational clubs formed for the mutual benefit of members who contribute to share the cost of providing a collective benefit, namely, the social or recreational facility. This category is beyond the scope of this Note.¹⁸
- Organisations formed to carry on PBA 9 as their sole or principal object, colloquially referred to as amateur sporting associations (see 4.2).

The two categories qualify for approval under different sections of the Act, each section having its own requirements and conditions. Organisations carrying on PBA 9 may qualify for approval as a PBO under section 30, and partial exemption from the payment of income tax on certain of their receipts and accruals under section 10(1)(cN),¹⁹ while recreational clubs qualify for approval under section 30A, and partial exemption under section 10(1)(cO).

An organisation approved by the Commissioner as a PBO carrying on PBA 9 as its sole or principal object will not qualify for approval under section 18A and may therefore not issue section 18A receipts for donations received (see 9).

A PBO is not exempted from the obligation to deduct or withhold employees' and other related taxes²⁰ if the PBO qualifies as an employer.²¹ The PBO must register as an employer for employees' tax purposes within 21 business days of becoming an employer and submit monthly EMP201s.

4.2 Amateur sporting association

Generally, there is no requirement in South African law that sporting associations must take any particular legal form. They are subject to the obligations and enjoy the benefits of the particular legal form they have selected. For example, a company incorporated under the Companies Act or a voluntary association established and governed under a constitution or other written instrument.²²

However, for an amateur sporting association to qualify as a PBO, its sole or principal object must be the carrying on of one or more PBAs, in this case PBA 9. Such a sporting association must be constituted either as –²³

- a “non-profit company” as defined in section 1 of the Companies Act incorporated in South Africa;
- a trust formed in South Africa;

¹⁸ For further commentary, see the *Tax Exemption Guide for Recreational Clubs*.

¹⁹ For further commentary, see Interpretation Note 24 “Public Benefit Organisations: Partial Taxation”

²⁰ For example, unemployment insurance fund contributions and skills development levies.

²¹ See definition of “employer” in paragraph 1 of the Fourth Schedule to the Act.

²² Razano, F (2022) Sports Law (Commercial Transactions). In *Forms and Precedents* in 1. My LexisNexis: Online.

²³ See definition of “public benefit organisation” in section 30(1).

- an association of persons²⁴ established in South Africa; or
- a branch within South Africa of any company, association or trust incorporated, formed or established in any country other than South Africa that is exempt from tax on income in that other country.

An amateur sporting association constituted as described above, carrying on PBA 9 as its sole or principal object, may be granted preferential tax treatment as a PBO provided it applies, is granted such approval by the Commissioner, and continues to comply with the relevant prescribed requirements of section 30.²⁵

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)(cN)(ii) (see 8). In addition to being exempt from the payment of income tax on certain receipts and accruals, PBOs will also enjoy the benefit of being exempt from certain other taxes and duties, which include, amongst other things, donations tax, estate duty, transfer duty,²⁶ dividends tax, and capital gains tax.²⁷

4.3 Professional sporting association

An organisation carrying on as its sole or principal object professional sport or recreational activities²⁸ does not carry on PBA 9 and therefore cannot qualify for the preferential tax treatment as either a recreational club or as a PBO (see 8).

5. Meaning of sport contemplated in public benefit activity 9

The word “sport” 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.²⁹

The *CollinsDictionary.com* describes “sport” as –³⁰

“games such as football and basketball and other competitive leisure activities which need physical effort and skill”.

²⁴ 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 (2015) Formation. In *The Law of South Africa (LAWSA)* (Third Edition) (Volume 2) in 155. My LexisNexis: Online.

²⁵ For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

²⁶ For further commentary, see Interpretation Note 22 “Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies”.

²⁷ For further commentary, see Interpretation Note 44 “Public Benefit Organisations: Capital Gains Tax”.

²⁸ For further commentary, see the *Guide on the Taxation of Professional Sports Clubs and Players*.

²⁹ *Chetty t/a Nationwide Electrical v Hart & another* 2015 (6) SA 424 (SCA).

³⁰ www.collinsdictionary.com/dictionary/english/sport [Accessed 30 September 2024].

The word “sport” is described in the *Cambridge Dictionary* as –³¹

- “1. a game, competition, or activity needing physical effort and skill that is played or done according to rules, for enjoyment and/or as a job.
2. all types of physical activity that people do to keep healthy or for enjoyment”.

The global and local significance of sport is described in the *Preliminary Note on Sports Law* as follows:³²

“Sport is a global phenomenon and is part of the social structure of countries worldwide. Whether it be a pure recreational pastime or whether it be participated in competitively, either at amateur level or in the more intense sphere of professionalism, or whether it be merely for the enjoyment of spectators, it is an enormously significant factor in society throughout the world. More people actively participate in sport in all its various forms today than ever before. Sport is also part of the daily lives of many people, whether they are participants or not.

It is without a doubt the same in South Africa. South Africans have been described as a ‘sports-mad’ nation and one in which sport is virtually regarded as a religion. It enjoys vast significance in and thus forms an integral part of South African society.”

(Footnotes omitted)

Sport, according to the *National Sport and Recreation Plan*, amongst other things, has the following non-exhaustive qualities:³³

- Rule bound
- Element of competition (club³⁴ to international)
- Physical and mental benefits, for example, improved health, psychological well-being and improved productivity
- Contributes to social cohesion³⁵ such as nation building
- Helps in the prevention of conflict, reduces crime and violence, promotes social inclusion, volunteerism, reduces health care costs
- Casual or organised
- Facility dependent

³¹ <https://dictionary.cambridge.org/dictionary/english/sport> [Accessed 30 September 2024].

³² Razano, F (2022) Sport Law (Commercial Transactions). In *Forms and Precedents* in 1. My LexisNexis: Online.

³³ At 18.

³⁴ The term “club” is described in the Glossary of Terms in the *White Paper on Sport and Recreation* as an association of two or more people united by a common interest, in this case sport and recreation. In the sports sector a club provides a structured, constituted base for participation in sport and serves as a vehicle for long-term participant development as well as mentorship programmes to cater for high performance.

³⁵ The term “social cohesion” is described in the Glossary of Terms in the *White Paper on Sport and Recreation* as the process by which efforts are made to ensure equal opportunities that everyone, regardless of their background, can achieve their full potential in life. Such efforts include policies and actions that promote equal access to (public) services as well as enable citizen’s participation in the decision-making processes that affect their lives.

- Economic benefits, for example, sports goods and services, employment, household expenditure on sport, sport sponsorship, sport tourism, economic impact of sports events

Sporting codes in South Africa, amongst other things, include aquatics, athletics, badminton, baseball, basketball, boxing, canoeing, cricket, cycling, equestrian, fencing, football, gymnastics, handball, hockey, judo, karate, netball, rugby, sailing, shooting, table tennis, tennis, triathlon, volleyball, weightlifting, and wrestling.³⁶

Sport is therefore regulated, formalised and structured activities with an element of competition.³⁷

Sport carried on by participants (see 7.2) only on a non-professional basis as a pastime (see 7.3), falls within the scope of PBA 9.

6. Meaning of recreation contemplated in public benefit activity 9

The word “recreation” is not defined in the Act. The *CollinsDictionary.com* describes “recreation” as –³⁸

“consists of things that you do in your spare time to relax”.

The *Cambridge Dictionary* describes “recreation” as –³⁹

“(a way of) enjoying yourself when you are not working”.

Recreation can thus be described as something an individual would voluntarily engage in during his or her free time to achieve a satisfying experience.

Recreation, according to the *National Sport and Recreation Plan*, is divided into the following categories:

- Passive recreation, which incorporates diverse experiences usually overlapping with arts and culture, which are generally undertaken in leisure time purely for fun and enjoyment. Thus, non-competitive and not rule bound.⁴⁰ Non-exhaustive examples of passive recreation include knitting, sewing, birdwatching, listening to music, watching movies, and playing computer games as a pastime.
- Active recreation, which incorporates physical activities undertaken for the purpose of fitness and fun with flexible rules, in which participants generally compete against themselves or nature. Non-exhaustive examples of active recreation include walking, jogging, hopscotch, and skipping.

³⁶ For a complete list of all sporting codes, see www.teamsa.co.za/sports/ [Accessed 30 September 2024].

³⁷ *The National Sport and Recreation Plan*.

³⁸ www.collinsdictionary.com/dictionary/english/recreation [Accessed 30 September 2024].

³⁹ <https://dictionary.cambridge.org/dictionary/english/recreation> [Accessed 30 September 2024].

⁴⁰ Any activity, which is rule bound and carried on by a participant in a competitive manner will not be of a recreational nature, since the activity has qualities relating to sport. Each case will be assessed on its own merits.

The benefits of participation in recreational activities are described in the *National Sport and Recreation Plan* as follows:

“Recreation plays a pivotal role in improving health and well-being of an individual, creating liveable communities and promoting social cohesion.

Recreational opportunities provide personal benefits such as self-fulfilment [sic] and developing personal relationships, as well as social benefits such as improving social integration, developing community and cultural identity.

Regular and structured recreational activities can assist in addressing social changes of delinquency, crime, alcohol and substance abuse, domestic violence as well as health issues such as cardiac diseases, diabetes, obesity and HIV and AIDS.”

Recreation therefore consists of activities voluntarily chosen by an individual to do during their spare time normally with the aim of having fun, relaxation or improving their general fitness.⁴¹

Similarly, as with sport, it is recreation which is carried on by participants (see 7.2) only on a non-professional basis as a pastime (see 7.3) that falls within the scope of PBA 9.

7. Requirements of public benefit activity 9

An organisation must administer, develop, co-ordinate or promote (see 7) sport (see 5) or recreation (see 6) in which participants (see 7.2) take part on a non-professional basis as a pastime (see 7.3) to qualify as a PBO carrying on PBA 9 as its sole or principal object. All the requirements of PBA 9 must be met.

7.1 Administration, development, co-ordination or promotion of sport or recreation

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

The Act does not define the words “administration”, “development”, “co-ordination” or “promotion”. The *Cambridge Dictionary* provides the following descriptions:

- “Administration” is “the arrangements and tasks needed to control the operation of a plan or organisation.”⁴²
- “Development” is “the process in which someone or something grows or changes and becomes more advanced.”⁴³
- “Co-ordination” is “the act of making all the people involved in a plan or activity work together in an organized way.”⁴⁴
- “Promotion” is “the act of encouraging something to happen or develop.”⁴⁵

⁴¹ *The National Sport and Recreation Plan*.

⁴² <https://dictionary.cambridge.org/dictionary/english/administration> [Accessed 30 September 2024].

⁴³ <https://dictionary.cambridge.org/dictionary/english/development> [Accessed 30 September 2024].

⁴⁴ <https://dictionary.cambridge.org/dictionary/english/coordination?q=co-ordination> [Accessed 30 September 2024].

⁴⁵ <https://dictionary.cambridge.org/dictionary/english/promotion> [Accessed 30 September 2024].

The words are separated by the word “or” indicating that they are in the alternative. The use of the disjunctive word “or” means that the organisation may either carry on one or a combination of the above prescribed activities. Furthermore, either sport or recreation or a combination of the two may be administered, developed, co-ordinated or promoted by an organisation.

The administration, development, co-ordination and promotion of sport or recreation is the responsibility of certain entities specified in the National Sport and Recreation Act such as the South African Sports Confederation and Olympic Committee (see 7.1.1), recognised sport or recreation bodies (see 7.1.2), as well as national (see 7.1.3) and provincial federations (see 7.1.4). Sport and Recreation South Africa provides financial and non-financial support to these entities⁴⁶ and they potentially also receive funding from the provincial sphere of government as well as from other sources such as the National Lottery Distribution Trust Fund,⁴⁷ broadcasting income and sponsorships from the private sector, and funds from international donors.

The roles and responsibilities of these entities, amongst other things, are set out in the *National Sport and Recreation Plan*, and may include the administration, development, co-ordination or promotion of sport or recreation in which the participants take part on an amateur basis or on a professional basis. An overview of the roles and responsibility of these entities are considered below.

7.1.1 The South African Sports Confederation and Olympic Committee

The South African Sports Confederation and Olympic Committee is the national co-ordinating macro body recognised by the Minister for the promotion and development of high-performance sport (see 7.2.1) in South Africa.⁴⁸ The South African Sports Confederation and Olympic Committee is recognised as the only multi-sport organisation in the country.

The South African Sports Confederation and Olympic Committee also acts as the controlling body for sport in South Africa and is responsible for the preparation and delivery of Team South Africa at all multi-sport international games, including but not limited to the Olympic Games, Paralympic Games, Commonwealth Games, World Games and All Africa Games.⁴⁹

7.1.2 Sport or recreation bodies

The term “sport or recreation body” as defined in the National Sport and Recreation Act means –⁵⁰

⁴⁶ Section 10 of the National Sport and Recreation Act.

⁴⁷ A sum paid into the fund may under section 26(3)(c) and 29(1) of the Lotteries Act 57 of 1997 be allocated as a grant for expenditure on or connected with the development of sport and recreation to recipients meeting the prescribed requirements set out in Government Notice Regulation 645 in *Government Gazette* 33398 of 20 July 2010.

⁴⁸ Section 2(1) of the National Sport and Recreation Act.

⁴⁹ Clause 2.2. of the constitution of the South African Sports Confederation and Olympic Committee available online at www.teamsa.co.za/constitution/ [Accessed 30 September 2024].

⁵⁰ Section 1 of that Act.

“any national federation, agency or body, including a trust or registered company of such a national federation, agency or body, involved in the **administration of sport or recreation at national level**”.

(Emphasis added)

The Minister published regulations on the criteria for the recognition of sport or recreation bodies,⁵¹ the application for recognition,⁵² the appeals process,⁵³ the duties of recognised sport and recreation bodies,⁵⁴ and other aspects related to the recognition of sports bodies.

A sport or recreation body will be recognised if, amongst other things, it –⁵⁵

- is properly constituted and operates on democratic principles;
- has a formal written constitution;
- has an acceptable democratically elected committee operating in a transparent, accountable and responsible manner;
- has affiliates or members within five provinces functioning within the principles of good governance; and
- is recognised by a relevant international controlling body.

⁵¹ Paragraph 3 in the Regulations.

⁵² Paragraph 4 and Annexure A (Application for Registration by Sport and Recreation Body) in the Regulations.

⁵³ Paragraph 12 in the Regulations.

⁵⁴ Paragraph 6 in the Regulations.

⁵⁵ Paragraph 3 in the Regulations.

A certificate of recognition⁵⁶ and registration number are issued to a recognised sport or recreation body, and its name is entered in the register of recognised sport or recreation bodies.⁵⁷ The certificate of recognition of a sport or recreation body is sufficient proof that the sport or recreation body has met all the criteria for recognition, and has been registered under the Regulations. All rights, benefits and allowances will terminate on the date on which the certification of recognition is cancelled.⁵⁸ After the end of each financial year, the names of all sport or recreation bodies that have been recognised, recognitions cancelled, and those that have voluntarily deregistered must be published in the *Government Gazette*.⁵⁹

Sports federations or associations, which are multi-sport and cater for special needs and interests of their members, whose sport is practiced by a national federation, may also be recognised as a sport or recreation body under the National Sport and Recreation Act. Such sports federations or association may, for example, include –⁶⁰

- Deaf Sport South Africa;⁶¹
- South African Sports Association for Intellectually Impaired;⁶² and
- South African Association for Physically Disabled.⁶³

7.1.3 National federations

The term “national federation” as defined in the National Sport and Recreation Act means –⁶⁴

“a national governing body of a code of sport or recreational activity in the Republic recognised by the relevant international controlling body as the only authority for the **administration and control of the relative code of sport or recreational activity** in the Republic”.

(Emphasis added)

The autonomy of national federations with regards to the administration of sport and recreation in South Africa is recognised by Sport and Recreation South Africa. National federations are recognised by Sport and Recreation South Africa as being at the centre of the sport system, and are the main custodians for the development of their sport. The primary focus of the national federation’s must be the welfare and performance of their athletes.⁶⁵

⁵⁶ Annexure B (Certificate of Recognition of Sport or Recreation Body) in the Regulations.

⁵⁷ Paragraphs 2(b), 3(a) and 10 in the Regulations.

⁵⁸ Paragraphs 9(2) and (3) in the Regulations.

⁵⁹ Paragraph 10 and Annexure C (Register of Sport or Recreation Bodies) in the Regulations.

⁶⁰ Clause 8.3. in the constitution of the South African Sport Confederation and Olympic Committee available online at www.teamsa.co.za/constitution/ [Accessed 30 September 2024].

⁶¹ For further information, see www.deafsportsa.org.za/ [Accessed 30 September 2024].

⁶² For further information, see www.teamsa.co.za/intellectually-impaired-south-africa/ [Accessed 30 September 2024].

⁶³ For further information, see www.sasapd.org.za/ [Accessed 30 September 2024].

⁶⁴ Section 1 of that Act.

⁶⁵ *The White Paper on Sport and Recreation for the Republic of South Africa*.

The *National Sport and Recreation Plan* describes the roles and responsibilities of confederations and federations as follows:

“Act as an umbrella body for all components of the sports sector including national federations, university sport, sport for people with a disability, etc. Federations and associations are responsible for the delivery of a development system, the delivery of national, provincial and local teams, and to ensure that technical rules and regulations, the system of competitions and clubs in various communities are in place and accessible.”

Sport and Recreation South Africa may enter into service level agreements⁶⁶ with national federations to oversee and monitor the implementation of policies by the federations in South Africa. Each national federation must develop its sports or recreational activity at club level in accordance with the service level agreement, the development programmes, and the guidelines issued by the Minister, and submit the progress on such development to Sport and Recreation South Africa, and Parliament on an annual basis.⁶⁷

A national federation must apply to the South African Sports Confederation and Olympic Committee for recognition as the sole governing body of a code of sport in South Africa.⁶⁸ National federations govern their own sporting codes (see 5). For example –⁶⁹

- athletics is governed by Athletics South Africa;
- badminton is governed by Badminton South Africa;
- bodybuilding is governed by Bodybuilding South Africa;
- canoeing is governed by Canoeing South Africa;
- football is governed by the South African Football Association;
- netball is governed by Netball South Africa; and
- swimming is governed by Swimming South Africa.

7.1.4 Provincial sports confederations

Provincial sports confederations are structures recognised by the South African Sports Confederation and Olympic Committee (see 7.1.1) as the co-ordinating bodies of sport in each province of South Africa.⁷⁰ Provincial sporting entities must affiliate to the relevant provincial sports confederation, which are the –⁷¹

- Eastern Cape Sports Confederation;

⁶⁶ Sections 2(5)(a) and 3A of the National Sport and Recreation Act.

⁶⁷ Section 2(5) of the National Sport and Recreation Act.

⁶⁸ See clause 4.38. in the constitution of the South African Sports Confederation and Olympic Committee.

⁶⁹ The South African Sports Confederation and Olympic Committee will according to clause 8.1.6. of its constitution only recognise one national federation for each sport governed by an International Federation. See www.teamssa.co.za/national-federations/ and www.gov.za/links/sport-and-recreation for a list of national federations governing sporting codes in South Africa [Accessed 30 September 2024].

⁷⁰ See clause 8.6. in the constitution of the South African Sports Confederation and Olympic Committee.

⁷¹ See www.teamssa.co.za/national-federations/ and www.gov.za/links/sport-and-recreation [Accessed 30 September 2024].

- Free State Sports Confederation;
- Gauteng Sports Confederation;
- KwaZulu-Natal Sports Confederation;
- Limpopo Sports Confederation;
- Mpumalanga Sports Confederation;
- North West Sports Confederation;
- Northern Cape Sports Confederation; and
- Western Cape Sports Confederation.

This structure is generally cascaded down to district (district sport councils), regional (regional sport councils), and local (municipal sport councils) levels.

7.2 Participants

The word “participants” is not defined in the Act. The description in the *Cambridge Dictionary* is –⁷²

“a person who takes part in or becomes involved in a particular activity”.

Participation may vary depending on the level at which the participant takes part in sport or recreation. Elite or high-performance sport is the highest level of sport on the sports development continuum while mass participation and grassroots sport are on the lower level of the continuum.

7.2.1 Elite or high-performance sport

The term “elite sport”⁷³ is used interchangeably by Sport and Recreation South Africa with the term “high-performance sport”. The term “high-performance sport” as defined in the National Sport and Recreation Act means –⁷⁴

“the high-level [sic] participation in major international sporting events including by not limited to world championships and other international multi-sport events such as the Olympic Games, Commonwealth Games, Paralympic Games and All Africa Games”.

Elite or high-performance sport is therefore participation in sport at the highest level of competition. An elite or high-performance athlete is a person who has met a qualifying standard and is therefore able to represent South Africa at international sporting events such as the Olympic Games, Commonwealth Games, or All Africa Games. Many student athletes, especially in university sports, are often high-performance athletes despite their amateur status.

In view of the above, a participant who participates in sport at an elite or high-performance level may not necessarily be regarded as a professional sportsperson (see 7.3). The question as to whether a participant is a professional sportsperson is a factual question and must be determined having regard to all the facts and circumstances on a case-by-case basis.

⁷² <https://dictionary.cambridge.org/dictionary/english/participant?q=participants> [Accessed 30 September 2024].

⁷³ Elite sport is described in the Glossary of Terms in the *White Paper on Sport and Recreation* as highly organised and competitive and represents the top level of the sports development continuum.

⁷⁴ Section 1 of that Act.

7.2.2 Mass participation

Mass participation represents the lower level of the sports development continuum and includes efforts and initiatives to introduce and improve participation opportunities in a wide range of sport and recreation activities to as many people as possible. Such efforts and initiatives, amongst other things, include –

- modified sport the aim of which is to introduce new participants to sport in a simplified, fun and enjoyable manner, for example, the dimensions of the playing field, equipment, rules and conditions of play are modified; and
- grassroots sport, which focuses on the “poorest of the poor” in predominately disadvantaged⁷⁵ and rural⁷⁶ areas.

Generally, the focus of mass participation is on fun and enjoyment rather than rules and competition. National sport and recreation participation programmes include, for example, the Move for Health Day, Nelson Mandela Sport and Culture Day, Big Walk, which takes place annually in October, the annual National Recreation Day, and the National Indigenous Games, which forms part of the annual heritage celebrations.⁷⁷

7.3 Non-professional basis as a pastime

Public benefit activity 9 applies if the administration, development, co-ordination or promotion (see 7.1) of sport (see 5) or recreation (see 6) is done only on a non-professional basis as a pastime. It is therefore critical to determine the meaning of “non-professional basis as a pastime”.

The phrase “non-professional basis as a pastime” is not defined in the Act. The phrase will be considered separately below.

The *Cambridge Dictionary* describes “non-professional” as –⁷⁸

“someone who does something not as their job but because they are interested in it”.

From the dictionary meaning it is concluded that a non-professional person is not paid on a regular basis as a day job, is an amateur and does the activity out of interest or as a hobby.

In contrast to a non-professional sportsperson the *Guide on the Taxation of Professional Sports Clubs and Players* provides the following relating to professional sportspersons:

“The professional sports industry is one of the fastest growing industries internationally.

⁷⁵ The term “disadvantaged communities” according to the *National Sport and Recreation Plan* refers to communities who have been subjected to the historical application of practices, policies and programmes that only meet the needs of certain groups in specific areas. These communities have little access to resources and services resulting in a perpetuation of the gap between privileged and underprivileged.

⁷⁶ The term “rural” according to the *National Sport and Recreation Plan* means large and isolated areas of an open country with a low population density.

⁷⁷ Department of Sport, Arts and Culture Annual Report 2022/2023 at 14, which is available at www.dsac.gov.za/index.php/annual-reports [Accessed 30 September 2024].

⁷⁸ <https://dictionary.cambridge.org/dictionary/english/non-professional> [Accessed 30 September 2024].

A growing number of sports players now earn their livelihood from a diverse range of income sources, sometimes from a number of different countries. Consequently, depending on the nature of the income derived, different tax rules will apply. The tax treatment will also depend on whether players are employed by clubs or are considered to be independent contractors.

The majority of sportspersons participating in team sports enter into contracts with clubs, franchises or unions. Sports players who are retained on a contract will normally be employees of the club and therefore subject to the tax provisions relating to employment income.

Non-contracted sports players, for example golf or tennis players, are not employees of a club, but are self-employed. These non-contracted players, or independent contractors as they are colloquially referred to, have full control of their involvement in the relevant sport and get to decide which events or games they will enter and also the frequency of entering events.”

It is concluded from the above that a professional participant is a person who actively engages in sport as a profession in the pursuit of income.

The word “basis” is described in the *Cambridge Dictionary* as –⁷⁹

“the reason why someone does something or why something happens”.

The *Cambridge Dictionary* describes “pastime” as –⁸⁰

“an activity that is done for enjoyment”.

From the above dictionary meanings, it is concluded that a person who participates in sport or recreation as a pastime does it for enjoyment and in their spare time as a hobby, opposed to a professional participant who participates in such activities as work to earn a living. The facts of each case will determine whether the requirement of “non-professional basis as a pastime” of PBA 9 is met.

The requirement of “non-professional” and “pastime basis” does, however, not prohibit a participant in any type of sport or recreation, for example, from receiving –

- a prize as a token of recognition of excellence, for example, a monetary reward for being the best player of a match or tournament;
- a monetary award for obtaining a podium position;
- a medal or trophy;
- payment to cover costs such as travel, food and accommodation to participate in events and games on behalf of the sport or recreational entity;
- sport kit, which may, for example, include tracksuits, socks, vests and shoes;
- equipment to be able to participate in the relevant code of sport on behalf of the sport or recreational entity; or
- an honorarium for participating in an event on behalf of the sport or recreational entity.

⁷⁹ <https://dictionary.cambridge.org/dictionary/english/basis> [Accessed 30 September 2024].

⁸⁰ <https://dictionary.cambridge.org/dictionary/english/pastime> [Accessed 30 September 2024].

8 Business undertakings or trading activities

Before the introduction in 2001 of the tax dispensation for PBOs, the receipts and accruals of amateur sporting associations were fully exempt,⁸¹ and the exemption was not subject to the approval or discretion of the Commissioner.

After 2001, a PBO was under section 30 up until 1 April 2006 not permitted to engage in any business undertaking or trading activity.⁸² Some sporting bodies also engaging in professional sport (see 4.3 and 7.3) could therefore no longer qualify for an exemption because their commercial activities meant they could not fully comply with the requirements for approval as a PBO since they did not solely carry on PBA 9. The income derived from professional sport activities was regarded as derived from a business undertaking or trading activity, resulting in some sporting bodies separating their professional sport activities from their amateur activities to enable the entity carrying on non-professional sport to qualify as a PBO.

The professional sporting entities were regarded as the income providers or sponsors of the amateur sporting activities, and the separation of sporting bodies into two separate entities therefore proved to be to the disadvantage of professional sporting entities since monies expended on promoting amateur sport was prohibited as a deduction from their taxable income under section 11(a).⁸³

In 2006, section 30⁸⁴ and 10(1)(cN)⁸⁵ were amended to provide a partial taxation for PBOs conducting business undertakings or trading activities, which allowed PBOs to retain their business undertakings or trading activities while being taxed on such income without losing their approval as a PBO provided their sole or principal object remained the carrying on any PBA.

An organisation carrying on PBA 9 as its sole or principal object, and which also derives receipts and accruals as a result of undertaking some professional sport or recreation activities, may therefore still qualify for approval as a PBO. However, any income derived from professional sport or recreation activities will be exempt only if it falls within one of the four categories of exemption included in section 10(1)(cN),⁸⁶ and is not the PBOs sole or principal object. Income such as sponsorships and media rights derived from professional activities may therefore be taxable. Since the facts and

⁸¹ Amateur sporting associations were previously exempt under section 10(1)(cD), which was repealed by section 21(1)(a) of the Taxation Laws Amendment Act 30 of 2000.

⁸² Section 30(3)(b)(iv) was repealed by section 36(1)(a) of the Revenue Laws Amendment Act 31 of 2005 with effect from 1 April 2006 and applicable to any year of assessment commencing on or after that date.

⁸³ For commentary, see Interpretation Note 46 "Income Tax: Amalgamation of Amateur and Professional Sporting Bodies" which has been archived.

⁸⁴ Paragraph (b) of the definition of "public benefit organisation" in section 30(1) was amended by section 24(1)(b) of the Revenue Laws Amendment Act 20 of 2006 and deemed to have come into operation on 2 November 2006 and applicable to any year of assessment commencing on or after that date.

⁸⁵ Section 10(1)(cN) was amended by section 16(1)(b) of the Revenue Laws Amendment Act 31 of 2005 with effect from 1 April 2006 and applicable to any year of assessment commencing on or after that date.

⁸⁶ For further commentary and a step-by-step guide to calculating the taxable income of PBOs, see the Interpretation Note 24 "Income Tax: Public Benefit Organisations: Partial Taxation".

circumstances pertaining to each organisation differ, each case will be considered on its own merits.

9 Tax-deductible donations

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 approval as a PBO for purposes of section 18A. Section 18A is the section providing for the tax-deductibility of *bona fide* donations made to certain organisations⁸⁷ approved by the Commissioner, carrying on PBAs in Part II, in South Africa.⁸⁸

Public benefit activity⁹ is listed only in Part I and not included in Part II. A PBO carrying on PBA 9 may therefore not issue section 18A receipts to donor taxpayers for any donations received.

Any section 18A receipts issued by a PBO carrying on PBA 9 will therefore not be valid receipts and any claims for deductions by donor taxpayers will be disallowed in determining their taxable income.⁸⁹

10 Objection and appeal

A decision made by a SARS official⁹⁰ or a notice to a specific person issued by SARS under a tax Act,⁹¹ excluding a decision given effect to in an assessment or a notice of assessment that is subject to objection and appeal, may in the discretion of a SARS official mentioned below or at the request of the relevant person, be withdrawn or amended by—⁹²

- the SARS official;⁹³
- a SARS official to whom the SARS official reports;⁹⁴ or
- a senior SARS⁹⁵ official.⁹⁶

⁸⁷ See section 18A(1)(a), (b), (bA) and (c).

⁸⁸ See *Basic Guide to Tax-Deductible Donations* for the basic requirements for obtaining and retaining approval under section 18A as well as the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

⁸⁹ For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and the *Basic Guide to Section 18A Approval*.

⁹⁰ The term “SARS official” as defined in section 1 of the TA Act means (a) the Commissioner, (b) an employee of SARS, or (c) a person contracted or engaged by SARS, other than an external legal representative, for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction, or supervision of the Commissioner.

⁹¹ 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 34 of 1997.

⁹² Section 9(1) of the TA Act.

⁹³ Section 9(1)(a) of the TA Act.

⁹⁴ Section 9(1)(b) of the TA Act.

⁹⁵ The term “senior SARS official” as defined in section 1 and read with section 6(3) of the TA Act refers to persons exercising the powers and duties required under the TA Act to be exercised by (a) the Commissioner, (b) a SARS official who has specific written authority from the Commissioner, or (c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.

⁹⁶ Section 9(1)(c) of the TA Act.

If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to above may not be withdrawn or amended with retrospective effect, after three years from the later of the date of –⁹⁷

- the written notice of that decision;⁹⁸ or
- assessment of the notice of assessment giving effect to the decision (if applicable).⁹⁹

A decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act is regarded as made by a SARS official authorised to do so or duly issued by SARS, until proven to the contrary.¹⁰⁰

Any decision of SARS in the exercise of its discretion under section 30 is subject to objection and appeal.¹⁰¹ Such a decision may be objected to and appealed against in the same manner as an assessment.¹⁰²

A PBO aggrieved by an assessment may before lodging an objection, request SARS to provide reasons for the assessment to enable the PBO to formulate an objection.¹⁰³ The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days¹⁰⁴ from the date of the assessment.

Any PBO may object to an assessment¹⁰⁵ in accordance with Chapter 9 of the TA Act read with the “rules”¹⁰⁶ as published in the *Government Gazette* within 80¹⁰⁷-business days¹⁰⁸ after the –¹⁰⁹

- delivery of the notice providing reasons requested for an assessment, if applicable;¹¹⁰
- notice issued by SARS notifying the PBO that the reasons requested to enable it to formulate an objection have been provided;¹¹¹ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –¹¹²

⁹⁷ Section 9(2) of the TA Act.

⁹⁸ Section 9(2)(a) of the TA Act.

⁹⁹ Section 9(2)(b) of the TA Act.

¹⁰⁰ Section 9(3) of the TA Act.

¹⁰¹ Section 3(4)(b). Section 9(1) of the TA Act applies only to decisions or notices made by SARS, which are not subject to objection and appeal under section 3(4).

¹⁰² Section 104(2)(c) of the TA Act.

¹⁰³ Rule 6 deals with reasons for an assessment.

¹⁰⁴ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

¹⁰⁵ For further commentary, see Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

¹⁰⁶ The rules for objections and appeals are formulated under section 103 of the TA Act.

¹⁰⁷ Rule 7(1) was amended from 30 to 80 days. The amendment is effective from 10 March 2023.

¹⁰⁸ The term “business day” is defined in section 1 of the TA Act.

¹⁰⁹ Rule 7 deals with objections.

¹¹⁰ Rule 7(1)(a) read with Rule 6.

¹¹¹ Rule 7(1)(a) read with Rule 6(4).

¹¹² Rule 7(2).

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment¹¹³ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the PBO has not previously delivered to SARS for purposes of the disputed assessment.

SARS will consider the objection and may disallow the objection or allow the objection completely or in part.

If on disallowance of the objection the PBO is dissatisfied with the decision by SARS, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.¹¹⁴

11 Record-keeping

A PBO must adhere to all applicable compliance obligations under the TA Act, for example, record-keeping, registering for the necessary tax types and the submission of returns.

All PBOs are required to keep records for five years¹¹⁵ from the date of the submission of a return¹¹⁶ under the TA Act.

A person must keep records, books of account or documents that –¹¹⁷

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

The records, books of account or documents must be kept or retained in –¹¹⁸

- their original form in an orderly fashion and in a safe place;
- the form, including electronic form, as may be prescribed by the Commissioner in a public notice;¹¹⁹ or
- a form specifically authorised by a senior SARS official.

¹¹³ The term “grounds of assessment” as defined in Rule 1, for purposes of the rules, include, amongst other things, 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).

¹¹⁴ Rule 10.

¹¹⁵ Section 29(3) of the TA Act.

¹¹⁶ The term “return” is defined in section 1 of the TA Act and includes any form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS.

¹¹⁷ Section 29(1) of the TA Act.

¹¹⁸ Section 30(1) of the TA Act.

¹¹⁹ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

These records should be available for inspection purposes by a SARS official to verify compliance with the requirements as explained above, or for purposes of an inspection, audit or investigation.¹²⁰

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).¹²¹

12 Conclusion

An organisation carrying on PBA 9 must be approved by the Commissioner as a PBO and must on application,¹²² and after obtaining such approval on submission of its annual income tax return (IT12EI), satisfy the Commissioner that –¹²³

- its sole or principal object is the carrying on of the administration, development, co-ordination or promotion (see 7.1.1) of sport (see 5) or recreation (see 6) in which the participants (see 7.2) take part on a non-professional basis as a pastime (see 7.3); and
- the receipts and accruals derived by the organisation carrying on PBA 9 meet the requirements of section 10(1)(cN) (see 8).

An organisation bears the onus of proving that it complies with the requirements relative to the approval as a PBO carrying on PBA 9 as discussed in this Note,¹²⁴ and must retain the necessary evidence to support the view taken.¹²⁵ The burden may be discharged by way of supporting evidence submitted by the organisation, provided such evidence is reasonable.¹²⁶

Whether an organisation complies with the requirements of PBA 9 will be a factual enquiry, and since the facts and circumstances pertaining to each organisation may differ, each case will be considered on its own merits.

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¹²⁰ Section 31 of the TA Act.

¹²¹ Section 32 of the TA Act.

¹²² Information on the application process is available on the **SARS website**.

¹²³ Section 30(10), and section 46(1) of the TA Act.

¹²⁴ Section 102 of the TA Act.

¹²⁵ Section 29 of the TA Act.

¹²⁶ See ITC 1872 (2014) 76 SATC 225 (WC) at paragraphs 29 to 31. Although the income tax case does not create precedent, it may be used as a guide.

Annexure A – 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 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)(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.

Annexure B – Public benefit activity 9

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

SPORT

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

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