
SOUTH AFRICAN REVENUE SERVICE

**Draft Guide to
Section 18A Approval for
Specific United Nations
Entities**

Another helpful guide brought to you by the
South African Revenue Service



Draft Guide to Section 18A Approval for Specific United Nations Entities

Preface

This guide considers the requirements for obtaining and retaining approval for purposes of section 18A of the Income Tax Act 58 of 1962 (the Act) by the eligible United Nations entities, namely, specialised agencies and the programmes, funds, High Commissioners, offices, entities or organisations listed in section 18A(1)(bA) of the Act.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 (TA Act) and accordingly does not create a practice generally prevailing under section 5 of that Act. It does not consider the technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference.

It is also not a binding general ruling (BGR) under section 89 of the TA Act. Taxpayers requiring an advance tax ruling (ATR) should visit the SARS website at **www.sars.gov.za** for details of the application procedure.¹

This guide is based on legislation as at time of issue. Information relating to taxes, duties, levies and contributions reflect the rates applicable as at the date of issue of this guide.²

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Service Centre (between 8am and 4.30pm South African time except on Wednesdays when the service centre can be called between 9am and 4.30pm) –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, preferably after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be e-mailed to **policycomments@sars.gov.za**.

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¹ For commentary, see the *Comprehensive Guide to Advanced Tax Rulings*.

² For historical rates of various taxes, duties and levies, see the *Guide for Tax Rates/Duties/Levies*.

Disclaimer

The mention of any specialised agencies or any programmes, funds, High Commissioners, offices, entities or organisations in this guide is not confirmation of their section 18A-approval status. Whether a specialised agency or programme, fund, High Commissioner, office, entity or organisation qualifies for approval under section 18A(1)(bA) of the Act will be confirmed by the Commissioner only on completion of the application process (see **6.5**).

While every precaution has been taken to ensure the accuracy of the information in this guide, SARS will not be liable to any person or entity for inaccurate information, omissions or opinions contained in this guide.

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Glossary

In this guide unless the context indicates otherwise –

- **“1946 Convention”** means the Convention on the Privileges and Immunities of the UN adopted on 13 February 1946, as may be applicable in South Africa in accordance with the reservations made by South Africa on its accession, which is set out in Schedule 3³ to the Diplomatic Immunities and Privileges Act;⁴
- **“1947 Convention”** means the Convention on the Privileges and Immunities of the Specialised Agencies adopted on 21 November 1947, as may be applicable in South Africa in accordance with the reservations made by South Africa on its accession, which is set out in Schedule 4⁵ to the Diplomatic Immunities and Privileges Act;⁶
- **“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;
- **“Diplomatic Immunities and Privileges Act”** means the Diplomatic Immunities and Privileges Act 37 of 2001;
- **“DIRCO”** means the Department of International Relations and Cooperation;⁷
- **“entity”** means the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women) listed in section 18A(1)(bA)(viii) (see 4.8);
- **“fund”** means the –
 - United Nations Children’s Fund (UNICEF) listed in section 18A(1)(bA)(iii) (see 4.3); and
 - United Nations Population Fund (UNFPA) listed in section 18A(1)(bA)(v) (see 4.5);
- **“High Commissioner”** means the –
 - United Nations High Commissioner for Refugees (UNHCR) listed in section 18A(1)(bA)(iv) (see 4.4); and
 - Office of the High Commissioner for Human Rights (OHCHR) listed in section 18A(1)(bA)(xi) (see 4.11);
- **“office”** means the –
 - United Nations Office on Drugs and Crime (UNODC) listed in section 18A(1)(bA)(vi) (see 4.6); and

³ Any reference to a paragraph or section in the 1946 Convention in this guide is also a reference to the corresponding paragraph or section in Schedule 3 of the Diplomatic Immunities and Privileges Act.

⁴ The term “the Convention on the Privileges and Immunities of the United Nations, 1946” is defined in section 1 of that Act.

⁵ Any reference to a paragraph or section in the 1947 Convention in this guide is also a reference to the corresponding paragraph or section in Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁶ The term “the Convention on the Privileges and Immunities of the Specialised Agencies, 1947” is defined in section 1 of that Act. The 1947 Convention is available online at www.unesco.org/en/legal-affairs/conv-agencies-privim#article-i---definitions-and-scope [Accessed 16 May 2025].

⁷ Formerly the Department of Foreign Affairs.

- United Nations Office for the Coordination of Humanitarian Affairs (OCHA) listed in section 18A(1)(bA)(xii) (see 4.12);
- **“organisation”** means the International Organisation for Migration (IOM) listed in section 18A(1)(bA)(ix) (see 4.9);
- **“PBA”** means a “public benefit activity” listed in Part I of the Ninth Schedule to the Act 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 in Part I”** means a PBA listed in Part I of the Ninth Schedule to the Act for purposes of approval as a public benefit organisation under section 30;
- **“PBA in Part II”** means a PBA listed in Part II of the Ninth Schedule to the Act for purposes of approval under section 18A;
- **“programme”** means the –
 - United Nations Development Programme (UNDP) listed in section 18A(1)(bA)(ii) (see 4.1);
 - United Nations Environmental Programme (UNEP) listed in section 18A(1)(bA)(vii) (see 4.6); and
 - Joint United Nations Programme on HIV/AIDS (UNAIDS) listed in section 18A(1)(bA)(x) (see 4.9);
- **“section”** means a section of the Act;
- **“section 18A”** means the section providing for the tax deductibility of *bona fide* donations made to any section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation;
- **“section 18A receipt”** means a receipt with mandatory information issued under section 18A(2) by a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation potentially entitling donor taxpayers to an income tax deduction for the sum of any *bona fide* donations actually paid or transferred during a year of assessment;
- **“section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation”** means a specialised agency, programme, fund, High Commissioner, office, entity or organisation carrying on in South Africa any PBA in Part II, or any other activity determined by the Minister of Finance by notice in the *Government Gazette* for the purposes of section 18A, which meets the requirements of section 18A(1)(bA)⁸ and approved by the Commissioner under section 18A(1)(bA)(dd);⁹
- **“South Africa”** means the Republic¹⁰ of South Africa;

⁸ Section 18A(2)(a)(i) was amended by section 35(1)(c) of the Taxation Laws Amendment Act 23 of 2018, which became effective from 17 January 2019.

⁹ Section 18A(1)(bA)(dd) was inserted by section 4(b) of the Tax Administration Laws Amendment Act 24 of 2020, which became effective from 20 January 2021.

¹⁰ The term “Republic” is defined in section 1(1).

- **“specialised agency”** means any specialised agency contemplated in the definition of “specialized agencies”¹¹ in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, contemplated in section 18A(1)(bA)(i) (see **Chapter 3**);
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“UN”** means the United Nations;
- **“UN Charter”** means the Charter of the UN, its founding document, which is considered an international treaty and as such is an instrument of international law;¹² and
- any other word or expression bears the meaning ascribed to it in the Act.

All amendment acts, explanatory memoranda, forms, interpretation notes, public notices and returns referred to in this guide are the latest versions unless the context indicates otherwise, which are available on the **SARS website** or via eFiling at **www.sarsefiling.co.za** (guides only).

¹¹ The term “specialized agency” as defined in section 1 of the Diplomatic Immunities and Privileges Act means any agency contemplated in paragraph (ii) of section 1 of Article I of the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, and which the Minister of International Relations and Cooperation has recognised for purposes of this Act.

¹² Available online at **www.un.org/en/about-us/un-charter** [Accessed 16 May 2025].

Chapter 1

Background on the United Nations

The UN is an international organisation founded in 1945. The purpose of the UN can briefly be summarised as –¹³

- maintaining international peace and security;
- developing friendly relations between nations based on respect for the principle of equal rights and self-determination of people;
- strengthening universal peace;
- achieving international co-operation in solving international problems of an economic, social, cultural, or humanitarian character;
- promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- a centre for harmonising the actions of nations in the attainment of these common goals.

The UN is part of the UN System¹⁴ comprising many funds, programmes and specialised agencies¹⁵ each having their own area of work, leadership and budget. The UN co-ordinates its work with these separate UN System entities to achieve its goals.¹⁶

Membership of the UN is in accordance with the UN Charter¹⁷ open to all peace-loving states¹⁸ accepting the obligations set out in the UN Charter, and in the judgment of the UN are able to carry out those obligations.¹⁹

The status of the UN, its assets, officials, and the privileges and immunities member states must grant them are set out in the 1946 Convention.²⁰ The 1946 Convention remains in force between the UN and a member state, which has deposited an instrument of accession, for as long as that member remains a member of the UN, or until a revised convention is approved by the General Assembly.²¹

¹³ www.un.org/en/about-us/history-of-the-un [Accessed 16 May 2025]. Also, see Article 1 of the UN Charter available at www.un.org/en/about-us/un-charter [Accessed 16 May 2025].

¹⁴ www.un.org/en/about-us/un-system [Accessed 16 May 2025].

¹⁵ Paragraph 2 in Article 57 of the UN Charter.

¹⁶ www.un.org/en/about-us/un-charter/full-text [Accessed 16 May 2025].

¹⁷ www.un.org/en/about-us [Accessed 16 May 2025].

¹⁸ The UN currently comprises of 193 member states, a list is available online at www.un.org/en/about-us/member-states [Accessed 16 May 2025].

¹⁹ Chapter II of the UN Charter.

²⁰ Article 105 of the UN Charter. Also, see the Preamble to Schedule 3 of the Diplomatic Immunities and Privileges Act.

²¹ Section 35 in the Final Article of the 1946 Convention. The General Assembly is the main deliberative, policymaking and representative organ of the UN. All UN members states are represented in the General Assembly, making it the only UN body with universal representation. It provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the UN Charter and also makes key decisions for the UN including appointing the Secretary-General on the recommendation of the Security Council, electing the non-permanent members of the Security Council and approving the UN budget. The General Assembly meets in regular sessions from September to December each year, and thereafter as required. See Chapter IV of the UN Charter. Also, see www.un.org/en/ga/ [Accessed 16 May 2025].

South Africa is one of the original founding members of the UN.²² South Africa's accession (with reservations) to the 1946 Convention took effect on 30 August 2002.²³ South Africa is required as a member state to give effect to the 1946 Convention under law²⁴ (see **Chapter 2**).²⁵

The co-ordination of the policies and activities of specialised agencies (see **Chapter 3**) are recommended by the UN in the 1947 Convention. South Africa's accession to the 1947 Convention was approved by Parliament on 27 June 2001.²⁶ South Africa is required to give effect to the terms of the 1947 Convention under law (see **Chapter 2**).²⁷

²² www.sahistory.org.za/dated-event/south-africa-becomes-charter-member-united-nations and <https://research.un.org/en/unmembers/founders> [Accessed 16 May 2025].

²³ <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002c211> [Accessed 16 May 2025].

²⁴ The term “law” as defined in section 2 of Interpretation Act 33 of 1957 means any law, proclamation, ordinance, Act of Parliament, or other enactment having the force of law.

²⁵ Section 34 in the Final Article of the 1946 Convention.

²⁶ www.dirco.gov.za/docs/2002/act37_0307.htm [Accessed 16 May 2025].

²⁷ Section 46 in Article XI of the 1947 Convention. Also, see the Preamble to Schedule 4 of the Diplomatic Immunities and Privileges Act.

Chapter 2

South Africa's foreign policy and international relations programmes

DIRCO is the foreign ministry of the South African government and is headed by the Minister²⁸ of International Relations and Cooperation.²⁹ DIRCO's mission³⁰ is to formulate, co-ordinate, implement and manage South Africa's foreign policy and international relations programmes, and promote South Africa's national interest and values and the African Renaissance.³¹

DIRCO is responsible for South Africa's relationships with foreign countries and international organisations and runs South Africa's diplomatic missions.³²

The importance of the UN in South Africa is described by DIRCO as follows:³³

"Multilateralism³⁴ remains a focal point of South Africa's foreign policy and engagements are premised on the need to advance the priorities reflected in the NDP³⁵ and the development priorities of developing countries. The UN remains the most important multilateral institution and the centre of global governance. Therefore, engagement with the UN and active participation in its processes, are of vital importance to South Africa and the advancement of the country's foreign policy priorities. A key priority in South Africa's engagement with the UN is to continue to advance the reform of the existing global governance architecture with a view to improving its responsiveness to the needs of, and challenges faced by, developing states."

(Footnotes added)

²⁸ The term "Minister" as defined in section 1 of the Diplomatic Immunities and Privileges Act currently refers to the Minister of Foreign Affairs.

²⁹ DIRCO Annual Report 2022/23 Financial Year available online at www.dirco.gov.za/ministry/ [Accessed 16 May 2025].

³⁰ www.dirco.gov.za/strategic-overview/ [Accessed 16 May 2025].

³¹ The African Renaissance and International Cooperation Fund Act 51 of 2001 establishes an African Renaissance and International Cooperation Fund to enhance co-operation between South Africa and other countries, in particular African countries. This is done through the promotion of democracy, the promotion of good governance principles, the prevention and resolution of conflict, socio-economic development and integration, humanitarian assistance and human resource development. See DIRCO Annual Report 2022/23 Financial Year in 7.2 available online at www.dirco.gov.za/2022-2023-annual-report-of-the-department-of-international-relations-and-cooperation/ [Accessed 16 May 2025].

³² A group of diplomats representing one country that lives in another country is called a diplomatic mission. A permanent diplomatic mission is called an embassy. An ambassador is the lead diplomat at an embassy. A large diplomatic mission may have representation besides a single embassy. Other places of representation are called consulates. See <https://education.nationalgeographic.org/resource/diplomacy/> [Accessed 16 May 2025].

³³ See the Report of the Accounting Officer in the DIRCO Annual Report 2022/23 Financial Year in 4 available online at www.dirco.gov.za/2022-2023-annual-report-of-the-department-of-international-relations-and-cooperation/ [Accessed 16 May 2025].

³⁴ The word "multilateralism" is described in the *Web's Largest Resource for Definitions & Translations* as "[u]nbiased trade between nations, in contrast to bilateralism" and "[a] system by which nations consult others in matters of foreign policy, by way of organisations such as the United Nations". See www.definitions.net/definition/multilateralism [Accessed 16 May 2025].

³⁵ The National Development Plan serves as an action plan for securing the future of South Africans as charted in the Constitution of the Republic of South Africa, 1996.

The Diplomatic Immunities and Privileges Act administered by DIRCO gives effect to South Africa's obligation to take the necessary steps to give legal effect to the provisions contained in the 1946 and 1947 Conventions, by enacting those Conventions in Schedule 3 and 4 of that Act, respectively (see **Chapter 1**).

The 1946 and 1947 Conventions therefore have the force of law in South Africa.³⁶ Accordingly, the 1946 Convention applies to the UN and its officials in South Africa³⁷ and the 1947 Convention applies to any specialised agency (see **Chapter 3**) and its officials in South Africa.³⁸

DIRCO's *Policy on the Management of Diplomatic Immunities and Privileges in the Republic of South Africa* states the following:³⁹

"The immunities and privileges granted to the UN, Specialised Agencies and other international organisations and their officials are specified in the Host Agreement which is concluded in accordance with the Diplomatic Immunities and Privileges Act as may be applicable and appropriate for a particular office, agency or organisation. In this regard the Act was specifically adopted to harmonise the regularisation of all international organisations in the Republic of South Africa,"

The Minister of International Relations and Cooperation must keep a register of the names of all the persons, amongst other things, who enjoy immunities and privileges in accordance with the 1946 and 1947 Conventions or under any agreement,⁴⁰ which confers such immunities and privileges on a person or organisation as may be specified by the Minister of International Relations and Cooperation by notice in the *Government Gazette*.⁴¹ The list must be made publicly available, published on DIRCO's website and updated as frequently as required.⁴²

If any uncertainty exists as to whether any person enjoys any immunity or privilege under the Diplomatic Immunities and Privileges Act, the 1946 Convention, or the 1947 Convention, a certificate issued under the authority of the Director-General⁴³ is *prima facie* evidence of that fact.⁴⁴

³⁶ Section 231(4) of the Constitution of the Republic of South Africa, 1996, provides that any international agreement becomes law in South Africa when it is enacted into law by national legislation.

³⁷ Section 5(1) of the Diplomatic Immunities and Privileges Act.

³⁸ Section 5(2) of the Diplomatic Immunities and Privileges Act.

³⁹ See 2.3.3 of this Policy, which is available online at <https://www.dirco.gov.za/diplomatic-immunities-and-privileges-diap/> [Accessed 16 May 2025].

⁴⁰ Section 9 of the Diplomatic Immunities and Privileges Act.

⁴¹ Section 9(1)(b) of the Diplomatic Immunities and Privileges Act.

⁴² Section 9(2) of the Diplomatic Immunities and Privileges Act.

⁴³ The term "Director-General" as defined in section 1 of that Act means the Director-General: Foreign Affairs.

⁴⁴ Section 9(3) of the Diplomatic Immunities and Privileges Act.

Chapter 3

Specialised agencies

3.1 Introduction

Section 18A(1)(bA)(i) provides for a potential deduction for any *bona fide* donations actually paid or transferred to any specialised agency contemplated in the definition of “specialized agencies” in section 1 of 1947 Convention, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, if the donation is supported by a section 18A receipt (see **Chapter 10**) issued by that section 18A-approved specialised agency.

The specialised agencies must meet the requirements of section 18A (see **Chapter 6**) to be approved by the Commissioner under section 18A(1)(bA)(i).

3.2 Definition of “specialized agencies”

Specialised agencies have wide international responsibilities in economic, social, cultural, educational, health, and related fields. These responsibilities are defined in their basic instruments. Specialised agencies are established by inter-governmental agreements and brought into relationship with the UN in accordance with the UN Charter.⁴⁵

The term “specialized agencies” as defined in the 1947 Convention and in Schedule 4 of the Diplomatic Immunities and Privileges Act mean the following:⁴⁶

- “(a) The International Labour Organization;
- (b) The Food and Agriculture Organization of the United Nations;
- (c) The United Nations Educational, Scientific and Cultural Organization;
- (d) The International Civil Aviation Organization;
- (e) The International Monetary Fund;
- (f) The International Bank for Reconstruction and Development;
- (g) The World Health Organization;
- (h) The Universal Postal Union;
- (i) The International Telecommunications Union; and
- (j) Any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.”

Having regard to the above definition, there are currently 17 specialised agencies comprising –⁴⁷

- the above nine specifically named specialised agencies in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act (see **3.5**);⁴⁸ and

⁴⁵ Paragraph 1 in Article 57 read together with Article 63 of the UN Charter.

⁴⁶ Paragraph (ii) in Section 1 in Article I of the 1947 Convention.

⁴⁷ <https://research.un.org/en/docs/unsystem/sa> [Accessed 16 May 2025].

⁴⁸ Paragraphs (a) to (i) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

- eight other specialised agencies not listed in the 1947 Convention, but that have been brought in relationship with the UN contemplated in paragraph (j) of the definition of “specialized agencies” in the 1947 Convention and in Schedule 4 of the Diplomatic Immunities and Privileges Act, which currently include –⁴⁹
 - International Fund for Agricultural Development (see **3.6.1**);
 - International Maritime Organisation (see **3.6.2**);
 - United Nations Industrial Development Organisation (see **3.6.3**);
 - World Intellectual Property Organisation (see **3.6.4**);
 - World Meteorological Organisation (see **3.6.5**);
 - World Tourism Organisation (see **3.6.6**);
 - International Development Association [see **3.6.7(a)**] with the World Bank Group (see **3.6.7**); and
 - International Finance Corporation [see **3.6.7(b)**] with the World Bank Group (see **3.6.7**).

Other inter-governmental organisations, colloquially referred to as Related Organisations by the UN, conclude co-operation agreements with the UN. Although the co-operation agreements are similar to the relationship agreements specialised agencies conclude with the UN in accordance with the UN Charter, the Related Organisations are not formally recognised as specialised agencies as defined in the 1947 Convention and in Schedule 4 of the Diplomatic Immunities and Privileges Act of the UN. The Related Organisations by the UN are not brought into relationship with the UN because they are not responsible for economic, social, cultural, educational, health, and related fields.⁵⁰ Currently, the Related Organisations of the UN, amongst other things, include the –⁵¹

- Preparatory Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO);⁵²
- International Atomic Energy Agency (IAEA);⁵³ and
- Organisation for the Prohibition of Chemical Weapons (OPCW).⁵⁴

Related Organisations of the UN will not qualify for approval under section 18A(1)(bA)(i).

The 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act recommend standard clauses,⁵⁵ which apply to specialised agencies.⁵⁶ The standard clauses must be interpreted in light of the functions entrusted by a particular specialised agency in accordance with its constitutional instrument.⁵⁷ Certain annexes are recommended for the specifically named specialised agencies in the Annexes to the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.⁵⁸

⁴⁹ www.un.org/en/about-us/un-system [Accessed 16 May 2025].

⁵⁰ www.ungm.org/Shared/KnowledgeCenter/Pages/VBS_UNSystem [Accessed 16 May 2025].

⁵¹ www.un.org/disarmament/about/related-links/international-organizations/ [Accessed 16 May 2025].

⁵² For further information, see www.ctbto.org [Accessed 16 May 2025].

⁵³ For further information, see www.iaea.org [Accessed 16 May 2025].

⁵⁴ For further information, see www.opcw.org [Accessed 16 May 2025].

⁵⁵ Paragraph (i) in Section 1 in Article I of the 1947 Convention describes the words “standard clauses” as a reference to the provisions set out in Articles II to IX of that Convention.

⁵⁶ Section 33 in Article X of the 1947 Convention.

⁵⁷ Section 34 Article X of the 1947 Convention.

⁵⁸ See Annexes I to XVII to the 1947 Convention.

3.3 Juridical personality of specialised agencies

Specialised agencies possess juridical personality and have the capacity to –⁵⁹

- contract;
- acquire and dispose of immovable and movable property; and
- institute legal proceedings.

3.4 Property, funds and assets of specialised agencies

The property and assets⁶⁰ of specialised agencies, wherever located and by whom held, will enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity (see 6.4). No waiver of immunity will extend to any measure of execution.⁶¹

The premises, archives and in general all documents belonging to, or held by any specialised agencies will be inviolable⁶² therefore immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

The specialised agencies, their assets, income and other property will be exempt, amongst other things, from all direct taxes excluding public utility services.⁶³

3.5 Specialised agencies in the 1947 Convention

A brief overview of each of the current nine specifically named specialised agencies in the definition of “specialized agency” in the 1947 Convention is provided below.

3.5.1 International Labour Organisation

The International Labour Organisation (ILO)⁶⁴ sets international labour standards, promotes rights at work and encourages decent employment opportunities, the enhancement of social protection and the strengthening of dialogue on work-related issues. The ILO brings together governments, employers’ and workers’ representatives.⁶⁵ The ILO is governed by a constitution⁶⁶ and was brought into relationship with the UN by 1 UN Treaty Series 183 on 14 December 1946.⁶⁷ South Africa⁶⁸ is a member state.⁶⁹

⁵⁹ Section 3 in Article II of the 1947 Convention.

⁶⁰ The words “property and assets” as defined in paragraph (iv) in section 1 in Article I of the 1947 Convention includes property and funds administered by a specialised agency in furtherance of its constitutional functions.

⁶¹ Section 4 in Article III of the 1947 Convention.

⁶² Sections 5 and 6 in Article III of the 1947 Convention.

⁶³ Section 9 in Article III of the 1947 Convention.

⁶⁴ Paragraph (a) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁶⁵ Further information is available online at www.ilo.org/global/lang-en/index.htm [Accessed 16 May 2025].

⁶⁶ The constitution is available online at www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO [Accessed 16 May 2025].

⁶⁷ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/ilo> [Accessed 16 May 2025].

⁶⁸ Information on the ILO in South Africa is available online at www.ilo.org/africa/countries-covered/south-africa/lang-en/index.htm [Accessed 16 May 2025].

⁶⁹ www.ilo.org/global/about-the-ilo/how-the-ilo-works/member-states/lang-en/index.htm [Accessed 16 May 2025].

3.5.2 Food and Agriculture Organisation of the United Nations

The Food and Agriculture Organisation (FAO)⁷⁰ is responsible for international efforts to achieve food security for all and ensure people have regular access to sufficient high-quality food to be able to lead active and healthy lives.⁷¹ The FAO is governed by a constitution⁷² and was brought into relationship with the UN by the UN Treaty Series 207 on 3 February 1946.⁷³ South Africa is a member state.⁷⁴

3.5.3 United Nations Educational, Scientific and Cultural Organisation

The UN Educational, Scientific and Cultural Organisation (UNESCO)⁷⁵ works to ensure that every child and every citizen has access to quality education, strengthening the bonds between nations by promoting cultural heritage and the equal dignity of all cultures. UNESCO helps countries adopt international standards and manages programmes that foster the free flow of ideas and the exchange of knowledge.⁷⁶ UNESCO is governed by a constitution⁷⁷ and was brought into relationship with the UN by 1 UN Treaty Series 233 during 1947.⁷⁸ South Africa is a member state.⁷⁹

3.5.4 International Civil Aviation Organisation

The primary aim of the International Civil Aviation Organisation (ICAO)⁸⁰ is to develop principles and techniques of international air navigation and to foster the planning and development of international air transport to ensure the safe and orderly growth of international civil aviation throughout the world.⁸¹ The ICAO is governed by a constitution⁸² and was brought into relationship with the UN by Treaty Series 8 UNTS 315 on 1 October 1947.⁸³ South Africa is a member state.⁸⁴

⁷⁰ Paragraph (b) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁷¹ www.fao.org/home/en [Accessed 16 May 2025].

⁷² The constitution is available online at www.fao.org/3/x5584e/x5584e0i.htm [Accessed 16 May 2025].

⁷³ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/fao> [Accessed 16 May 2025].

⁷⁴ www.fao.org/legal-services/membership-of-fao/en/ [Accessed 16 May 2025].

⁷⁵ Paragraph (c) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁷⁶ www.unesco.org/en/brief [Accessed 16 May 2025].

⁷⁷ The constitution is available online at www.unesco.org/en/legal-affairs/constitution [Accessed 16 May 2025].

⁷⁸ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/unesco> [Accessed 16 May 2025].

⁷⁹ <https://en.unesco.org/countries/s?page=1> [Accessed 16 May 2025].

⁸⁰ Paragraph (d) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁸¹ www.icao.int/about-icao/Pages/default.aspx [Accessed 16 May 2025].

⁸² The constitution is available online at www.icao.int/publications/Pages/doc7300.aspx [Accessed 16 May 2025].

⁸³ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/icao> [Accessed 16 May 2025].

⁸⁴ www.icao.int/about-icao/Pages/member-states.aspx [Accessed 16 May 2025].

3.5.5 International Monetary Fund

The International Monetary Fund (IMF)⁸⁵ works to foster global monetary co-operation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world. The IMF's primary mission is to ensure the stability of the international monetary system.⁸⁶ The articles of agreement of the IMF are its founding document.⁸⁷ The IMF was brought into relationship with the UN by 16 UN Treaty Series 323 during 1947.⁸⁸ South Africa⁸⁹ is a member country.⁹⁰

The receipts and accruals of the IMF are exempt from income tax under section 10(1)(bB)(iii).

3.5.6 International Bank for Reconstruction and Development

The International Bank for Reconstruction and Development (IBRD)⁹¹ is established as a co-operative owned by 189 member countries to lend to governments of middle-income and creditworthy low-income countries.⁹² The IBRD operates according to procedures established by its articles of agreement⁹³ and was brought into relationship with the UN by 16 UN Treaty Series 341.⁹⁴ South Africa is a member country.⁹⁵

The receipts and accruals of the IBRD are exempt from income tax under section 10(1)(bB)(ii).

⁸⁵ Paragraph (e) of the definition "specialized agency" in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁸⁶ IMF Annual Report 2021 available online at www.imf.org/external/pubs/ft/ar/2021/eng/downloads/. Further information is available online at www.imf.org/en/About/Factsheets/imf-capacity-development [Accessed 16 May 2025].

⁸⁷ The articles of agreement is available online at www.imf.org/external/pubs/ft/aa/index.htm [Accessed 16 May 2025].

⁸⁸ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/imf> [Accessed 16 May 2025].

⁸⁹ Information of the IMF in South Africa is available online at www.imf.org/en/Countries/ZAF [Accessed 16 May 2025].

⁹⁰ www.imf.org/en/Countries [Accessed 16 May 2025].

⁹¹ Paragraph (f) of the definition "specialized agency" in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁹² www.worldbank.org/en/about/history [Accessed 16 May 2025].

⁹³ The articles of agreement is available online at www.worldbank.org/en/about/articles-of-agreement [Accessed 16 May 2025].

⁹⁴ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/worldbank> [Accessed 16 May 2025].

⁹⁵ www.worldbank.org/en/where-we-work [Accessed 16 May 2025].

3.4.7 World Health Organisation

The World Health Organisation (WHO),⁹⁶ governed by a constitution,⁹⁷ leads global efforts to expand universal health coverage and co-ordinates the world's response to health emergencies.⁹⁸ The WHO was brought into relationship with the UN by 19 UN Treaty Series 193 during 1948.⁹⁹ South Africa was a founding member.¹⁰⁰

3.5.7 Universal Postal Union

The Universal Postal Union (UPU),¹⁰¹ governed by a constitution¹⁰² is the primary forum for co-operation between postal sector stakeholders to ensure an universal network of up-to-date products and services. It sets the rules for international mail exchanges and makes recommendations to stimulate growth in mail, parcel and financial services volumes and improve quality of service for customers.¹⁰³ The UPU was brought into relationship with the UN by 19 UN Treaty Series 219 during 1948.¹⁰⁴ South Africa is a member.¹⁰⁵

3.5.8 International Telecommunications Union

The International Telecommunications Union (ITU)¹⁰⁶ is governed by a constitution, called the International Telecommunication Convention (formerly the International Telegraph Convention) is the basic treaty establishing the legal basis for the ITU.¹⁰⁷ The ITU facilitates international connectivity in communications networks, allocates global radio spectrum and satellite orbits, develops the technical standards that ensure networks and technologies seamlessly interconnect, and strives to improve access to information and communications technology to underserved communities worldwide.¹⁰⁸ The ITU was brought into relationship with the UN by 30 UN Treaty Series 316 during 1949.¹⁰⁹

⁹⁶ Paragraph (g) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

⁹⁷ The constitution is available online at www.who.int/publications/m/item/constitution-of-the-world-health-organization [Accessed 16 May 2025]. Further information is available online at www.who.int/countries/#R [Accessed 16 May 2025].

⁹⁸ www.who.int/about [Accessed 16 May 2025].

⁹⁹ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/who> [Accessed 16 May 2025].

¹⁰⁰ www.dirco.gov.za/foreign/Multilateral/inter/who.htm [Accessed 16 May 2025]. Information on the WHO in South Africa is available online at www.afro.who.int/countries/south-africa [Accessed 16 May 2025].

¹⁰¹ Paragraph (h) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

¹⁰² The constitution is available online at www.jus.uio.no/english/services/library/treaties/07/7-05/postal-union.xml [Accessed 16 May 2025].

¹⁰³ www.upu.int/en/Universal-Postal-Union [Accessed 16 May 2025].

¹⁰⁴ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/upu> [Accessed 16 May 2025].

¹⁰⁵ Information of the UPU in South Africa is available online at www.upu.int/en/Universal-Postal-Union/About-UPU/Member-Countries?csid=-1&cid=275#mb--1 [Accessed 16 May 2025].

¹⁰⁶ Paragraph (i) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act.

¹⁰⁷ The constitution is available online at www.itu.int/en/history/Pages/ConstitutionAndConvention.aspx#:~:text=The%20International%20Telegraph%20%28later%20Telecommunication%29%20Convention%2C%20today%20the,1865%20established%20the%20basic%20principles%20for%20international%20telegraphy [Accessed 16 May 2025].

¹⁰⁸ www.itu.int/en/about/Pages/default.aspx [Accessed 16 May 2025].

¹⁰⁹ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/itu> [Accessed 16 May 2025].

3.6 Other agencies in relationship with the United Nations

The Economic and Social Council¹¹⁰ of the UN may enter into agreements with any agency established by inter-governmental agreement having international responsibilities in economic, social, cultural, educational, health and related fields. The agreement defines the terms on which the agency concerned will be brought into relationship with the UN.

The Secretary-General¹¹¹ of the UN will transmit in the case of any specialised agency not mentioned by name¹¹² in the 1947 Convention (see 3.5) a draft annex recommended¹¹³ by the Economic and Social Council.

A brief overview of the other specialised agencies not specifically named in the definition “specialized agencies” in the 1947 Convention and in Schedule 4 of the Diplomatic Immunities and Privileges Act but, which have been brought into relationship with the UN contemplated in paragraph (j) of the definition “specialized agency” in the 1947 Convention and Schedule 4 of the Diplomatic Immunities and Privileges Act are provided below.

3.6.1 International Fund for Agricultural Development

The International Fund for Agricultural Development (IFAD) is an international financial institution addressing poverty and hunger in rural areas of developing countries by working directly with the world’s poorest people living in the most remote regions of the world. Particular attention is given to the disenfranchised such as women, youth and indigenous people.¹¹⁴ The IFAD is established by an agreement.¹¹⁵ The IFAD was brought into relationship with the UN by 1080 UN Treaty Series 331 during 1977.¹¹⁶

3.6.2 International Maritime Organisation

The International Maritime Organisation (IMO) was established by the Convention on the International Maritime Organisation¹¹⁷ its founding document with the primary purpose to develop and maintain a comprehensive regulatory framework for shipping, which includes maritime safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping.¹¹⁸ The IMO was brought into relationship with the UN by 324 UN Treaty Series 273 during 1959.¹¹⁹

¹¹⁰ Serves as the central mechanism for activities of the UN system and its specialised agencies in the economic, social and environmental fields, supervising subsidiary and expert bodies. It is the UN’s central platform for reflection, debate, and innovative thinking on sustainable development. See Chapter X of the UN Charter. Further information can be obtained from www.un.org/ecosoc/en/ [Accessed 16 May 2025].

¹¹¹ The UN Secretariat comprises the Secretary-General and all the international UN staff members who carry out the day-to-day work of the UN. The Secretary-General is the Chief Administrative Officer of the UN, appointed by the General Assembly on the recommendation of the Security Council for a five-year, renewable term. See Chapter XV of the UN Charter. Further information can be obtained from www.un.org/en/about-us/secretariat [Accessed 16 May 2025].

¹¹² Paragraph (ii) in section 1 in Article I of the 1947 Convention.

¹¹³ Section 35 in Article X of the 1947 Convention.

¹¹⁴ www.ifad.org/en/approach [Accessed 16 May 2025].

¹¹⁵ The agreement is available online at www.ifad.org/en/legal-documents [Accessed 16 May 2025].

¹¹⁶ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/ifad> [Accessed 16 May 2025].

¹¹⁷ The founding document is available online at www.imo.org/en/About/Conventions/Pages/Convention-on-the-International-Maritime-Organization.aspx [Accessed 16 May 2025].

¹¹⁸ www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx [Accessed 16 May 2025].

¹¹⁹ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/imo> [Accessed 16 May 2025].

3.6.3 United Nations Industrial Development Organisation

The UN Industrial Development Organisation (UNIDO) was established to promote and accelerate the industrialisation of developing countries in accordance with its constitution.¹²⁰ The UNIDO's strategic priorities include creating shared prosperity, advancing economic competitiveness, safeguarding the environment, and strengthening knowledge and institutions.¹²¹ The UNIDO was brought into relationship with the UN by 1412 UN Treaty Series 305 during 1985.¹²²

3.6.4 World Intellectual Property Organisation

The World Intellectual Property Organisation (WIPO) is the global forum for intellectual property services, policy, information and co-operation. Its mission is to lead the development of a balanced and effective international intellectual property system enabling innovation and creativity for the benefit of all.¹²³ The WIPO is governed by the World Intellectual Property Organisation Convention.¹²⁴ The WIPO was brought into relationship with the UN by a resolution A/RES/3346 IXXIX adopted by the General Assembly during 1974.¹²⁵

3.6.5 World Meteorological Organisation

The mandate of the World Meteorological Organisation's (WMO) in accordance with the World Meteorological Convention,¹²⁶ which established it, is in the areas of meteorology (weather and climate), operational hydrology and related geophysical sciences. The WMO facilitates free and unrestricted exchange of data and information, products and services in real-or near-real time on matters relating to safety and security of society, economic welfare and the protection of the environment.¹²⁷ South Africa is a member state.¹²⁸ The WMO was brought into relationship with the UN by 123 UN Treaty Series 245 during 1951.¹²⁹

3.6.6 World Tourism Organisation

The World Tourism Organisation (UNWTO) promotes tourism as a driver of economic growth, inclusive development and environmental sustainability and offers leadership and support to the sector in advancing knowledge and tourism policies worldwide.¹³⁰ The WTO was brought into relationship with the UN by a resolution A/RES/58/232 adopted by the General Assembly during 2003.¹³¹

¹²⁰ The constitution is available online at www.unido.org/.../UNIDO_Constitution_0.pdf [Accessed 16 May 2025].

¹²¹ www.unido.org/who-we-are/unido-brief [Accessed 16 May 2025].

¹²² The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/unido> [Accessed 16 May 2025].

¹²³ <https://www.wipo.int/about-wipo/en/> [Accessed 16 May 2025].

¹²⁴ The convention is available online at <https://wipolex.wipo.int/en/text/283854> [Accessed 16 May 2025].

¹²⁵ The relationship agreement is available online at <https://research.un.org/c.php?g=756034&p=5435562> [Accessed 16 May 2025].

¹²⁶ The convention is available online at <https://public.wmo.int/en/resources/standards-technical-regulations> [Accessed 16 May 2025].

¹²⁷ <https://public.wmo.int/en/about-us/who-we-are> [Accessed 16 May 2025].

¹²⁸ <https://public.wmo.int/en/members/south-africa> [Accessed 16 May 2025].

¹²⁹ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/wmo> [Accessed 16 May 2025].

¹³⁰ www.unwto.org/who-we-are [Accessed 16 May 2025].

¹³¹ The relationship agreement is available online at <https://research.un.org/c.php?g=756034&p=5435557> [Accessed 16 May 2025].

3.6.7 World Bank Group

The World Bank comprises of the International Bank for Reconstruction and Development (see 3.5.6) and the International Development Association [see 3.6.7(a)].

The World Bank¹³² Group comprises the following development institutions:¹³³

- The International Finance Corporation (IFC) [see 3.6.7(b)].
- The Multilateral Investment Guarantee Agency (MIGA), which is not a specialised agency.¹³⁴
- The International Centre for Settlement of Investment Disputes (ICSID), which is not a specialised agency.¹³⁵

The development institutions comprising the World Bank Group work closely with each other, the public sector, and the private sector in developing countries to reduce poverty and build shared prosperity.

(a) International Development Association

The International Development Association (IDA) provides interest-free loans and grants to governments of the poorest countries. In addition to concessional loans and grants, the IDA provides significant levels of debt relief.¹³⁶ The IDA is established under articles of agreement.¹³⁷ The IDA was brought into relationship with the UN by 394 UN Treaty Series 221.¹³⁸

(b) International Finance Corporation

The International Finance Corporation (IFC) is the largest global development institution focused exclusively on the private sector by helping developing countries achieve sustainable growth by financing investment, mobilising capital in international financial markets, and providing advisory services to businesses and governments.¹³⁹ The IFC was brought into relationship with the UN by 265 UN Treaty Series 312.¹⁴⁰

¹³² The receipts and accruals of the World Bank are exempt from income tax under section 10(1)(bB)(ii).

¹³³ www.worldbank.org/en/about [Accessed 16 May 2025].

¹³⁴ Further information is available online at www.miga.org [Accessed 16 May 2025].

¹³⁵ Further information is available online at <https://icsid.worldbank.org> [Accessed 16 May 2025].

¹³⁶ <https://ida.worldbank.org/en/about> [Accessed 16 May 2025].

¹³⁷ The articles of agreement is available online at <https://thedocs.worldbank.org/en/doc/2a209939e876fdcd0d957036daebff6e-0410011960/ida-articles-of-agreement> [Accessed 16 May 2025].

¹³⁸ As above.

¹³⁹ www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/home [Accessed 16 May 2025].

¹⁴⁰ The relationship agreement is available online at <https://research.un.org/en/docs/unsystem/worldbank> [Accessed 16 May 2025].

Chapter 4

Specifically named programmes, funds, High Commissioners, offices, entities and organisations

4.1 Introduction

The programmes, funds, High Commissioners, offices, entities and organisation of the UN eligible for section 18A approval are specifically named in section 18A(1)(bA)(ii) to (xii).

A brief overview of each programme, fund, High Commission, office, entity and organisation is provided below.

4.2 United Nations Development Programme

The UN Development Programme (UNDP)¹⁴¹ works to eradicate poverty and reduce inequality by focusing on sustainable development, democratic governance, peace building and climate and disaster resilience. The UNDP administers and co-ordinates most of the technical assistance provided through the UN System with special attention given to the needs of the least developed countries.¹⁴² South Africa is a member. The UNDP has an office situated in Pretoria and its activities are co-ordinated through DIRCO.¹⁴³

4.3 United Nations Children's Fund

The UN Children's Fund, known as UNICEF,¹⁴⁴ is the UN agency devoted exclusively to the needs of the world's children. The UNICEF is mandated to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential.¹⁴⁵ The government signed a Basic Co-operation Agreement, which embodies the general terms and conditions under which the UNICEF co-operates with the government. The UNICEF has offices situated in Pretoria.¹⁴⁶

4.4 United Nations High Commissioner for Refugees

The work of the UN High Commissioner for Refugees (UNHCR)¹⁴⁷ is humanitarian and non-political. Its principal functions are to provide international protection to refugees, seek durable solutions to their plight and furnish them with material assistance. Protection involves preventing the forcible return of the refugee to a country where they may have reason to fear persecution. In seeking durable solutions to refugees' problems, the UNHCR attempts to help those who wish to go home to do so and tries to assist them to reintegrate into their home communities. Where this is not feasible, assistance may be given in countries of asylum or, failing that, to resettle them in other countries. Material assistance is provided in the form of food, shelter, medical aid, education and other social services.¹⁴⁸ The office of the UNHCR is situated in Pretoria.

¹⁴¹ Section 18A(1)(bA)(ii).

¹⁴² www.undp.org/about-us [Accessed 16 May 2025].

¹⁴³ www.dirco.gov.za/foreign/Multilateral/inter/undp.htm [Accessed 16 May 2025].

¹⁴⁴ Section 18A(1)(bA)(iii).

¹⁴⁵ www.unicef.org/what-we-do [Accessed 16 May 2025].

¹⁴⁶ www.dirco.gov.za/foreign/Multilateral/inter/unicef.htm [Accessed 16 May 2025].

¹⁴⁷ Section 18A(1)(bA)(iv).

¹⁴⁸ www.unhcr.org/afr/what-we-do.html [Accessed 16 May 2025].

4.5 United Nations Population Fund

The UN Population Fund (UNFPA)¹⁴⁹ extends assistance to developing countries, countries with economies in transition and other countries, at their request, to help them address reproductive health and population issues, and raises awareness of these issues in all countries.¹⁵⁰ The UNPF works closely with the Department of Social Development in providing advice, and with formulation and implementation of South Africa's population programme.

4.6 United Nations Office on Drugs and Crime

The UN Office on Drugs and Crime (UNODC)¹⁵¹ has been helping make the world safer from drugs, organised crime, corruption and terrorism. It does this through the integrated implementation of its drug and crime programme.¹⁵²

4.7 United Nations Environmental Programme

The United Nations Environment Programme (UNEP) is a global authority on the environment. UNEP's mission is to inspire, inform, and enable nations and people to improve their quality of life without compromising that of future generations. The UNEP works with governments, civil society, the private sector and UN entities to address humanity's most pressing environmental challenges, for example, from restoring the ozone layer to protecting the world's seas and promoting a green, inclusive economy. UNEP's work is focused on helping countries transition to low-carbon and resource-efficient economies, strengthening environmental governance and law, safeguarding ecosystems, and providing evidence-based data to inform policy decisions.¹⁵³

4.8 United Nations Entity for Gender, Equality and the Empowerment of Women

The UN Entity for Gender, Equality and the Empowerment of Women (UN Women)¹⁵⁴ is the UN entity dedicated to gender equality and the empowerment of women. and established to accelerate progress in meeting their needs worldwide.¹⁵⁵ UN Women supports UN member states to set global standards for achieving gender equality and works with governments and civil society to design laws, policies, programmes and services needed to ensure that the standards are effectively implemented and truly benefit women and girls worldwide.¹⁵⁶

4.9 International Organisation for Migration

The activities of the International Organisation for Migration (IOM)¹⁵⁷ include emergency assistance such as evacuation, resettlement or return to migrants affected by conflict situations as well as services during periods of post-conflict rehabilitation, reconstruction and development.¹⁵⁸ According to its constitution,¹⁵⁹ any state may join if such state has

¹⁴⁹ Section 18A(1)(bA)(v).

¹⁵⁰ www.unfpa.org [Accessed 16 May 2025].

¹⁵¹ Section 18A(1)(bA)(vi).

¹⁵² www.unodc.org/unodc/en/about-unodc/index.html [Accessed 16 May 2025].

¹⁵³ www.unep.org/who-we-are/about-us [Accessed 16 May 2025].

¹⁵⁴ Section 18A(1)(bA)(viii).

¹⁵⁵ <https://southafrica.un.org/en/about/un-entities-in-country> [Accessed 16 May 2025].

¹⁵⁶ www.unwomen.org/en/about-us/about-un-women [Accessed 16 May 2025].

¹⁵⁷ Section 18A(1)(bA)(ix).

¹⁵⁸ www.iom.int/who-we-are [Accessed 16 May 2025].

¹⁵⁹ The constitution is available online at <https://publications.iom.int/books/constitution-and-basic-texts> [Accessed 16 May 2025].

demonstrated interest in the principle of free movement of persons and undertakes to make a financial contribution at least to the administrative requirements of the organisation.

4.10 Joint United Nations Programme on HIV/AIDS

The Joint UN Programme on HIV/AIDS (UNAIDS)¹⁶⁰ is an innovative partnership that inspires the world in achieving universal access to HIV prevention, treatment, care and support.¹⁶¹ The UNAIDS generates strategic information and analysis that increases the understanding of the state of the AIDS epidemic and progress made at the local, national, regional and global levels. It is involved with extensive data collection on HIV epidemiology, programme coverage and finance and publishes the most authoritative and up-to-date information on the HIV epidemic, which is vital for an effective AIDS response.¹⁶² The UNAIDS founding manifesto is the UNAIDS: The Governance Handbook.¹⁶³

4.11 Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR)¹⁶⁴ mission is to work for the protection of human rights for all people,¹⁶⁵ to help empower people to realise their rights, and to assist those responsible for upholding such rights in ensuring that they are implemented.¹⁶⁶ The UN General Assembly established the OHCHR through its resolution 48/141,¹⁶⁷ which also sets out its mandate.¹⁶⁸

4.12 United Nations Office for the Co-ordination of Humanitarian Affairs

The UN Office for the Co-ordination of Humanitarian Affairs (OCHA)¹⁶⁹ co-ordinates international humanitarian responses, including contingency planning if appropriate, when a major complex crisis arises. Any UN member state is free to participate in the OCHA operations.¹⁷⁰ The UN General Assembly adopted resolution 46/182,¹⁷¹ which is the blueprint for the international humanitarian system and resulted in the creation of the OCHA.¹⁷²

¹⁶⁰ Section 18A(1)(bA)(x).

¹⁶¹ <https://southafrica.un.org/en/about/un-entities-in-country> [Accessed 16 May 2025].

¹⁶² www.unaids.org/en/whoweare/about [Accessed 16 May 2025].

¹⁶³ Available online at www.unaids.org/en/resources/documents/2020/UNAIDS-Governance-Handbook [Accessed 16 May 2025].

¹⁶⁴ Section 18A(1)(bA)(xi).

¹⁶⁵ www.ohchr.org/en/about-us/what-we-do [Accessed 16 May 2025].

¹⁶⁶ <https://southafrica.un.org/en/about/un-entities-in-country> and www.ohchr.org/en/countries/south-africa [Accessed 16 May 2025].

¹⁶⁷ Available online at www.securitycouncilreport.org/un-documents/document/ares48141.php [Accessed 16 May 2025].

¹⁶⁸ www.ohchr.org/en/about-us [Accessed 16 May 2025].

¹⁶⁹ Section 18A(1)(bA)(xii).

¹⁷⁰ www.unocha.org/about-ocha [Accessed 16 May 2025].

¹⁷¹ Available online at www.humanitarianresponse.info/en/coordination/clusters/document/general-assembly-resolution-46-182 [Accessed 16 May 2025].

¹⁷² www.unocha.org/story/resolution-46182-which-created-humanitarian-system-turns-twenty-five#:~:text=On%2019%20December%201991%2C%20the%20UN%20General%20Assembly,most%20vulnerable%20people%20when%20they%20need%20it%20most [Accessed 16 May 2025].

Chapter 5

Special dispensation for the specific UN entities

Section 18A(1)(a) and (b) provides for a deduction for *bona fide* donations actually paid or transferred by a taxpayer, amongst other things, to any public benefit organisation approved by the Commissioner under section 30, subject to certain requirements being met.

The UN,¹⁷³ its funds, programmes and specialised agencies are not approved by the Commissioner as public benefit organisations under section 30, since they are as a practical matter not established or registered as a non-profit company as defined in section 1 of the Companies Act¹⁷⁴ or a trust¹⁷⁵ or an association of persons¹⁷⁶ that has been incorporated, formed or established in South Africa¹⁷⁷ and therefore they do not qualify as public benefit organisations.¹⁷⁸ Furthermore, an exemption from income tax of the receipts and accruals under section 10(1)(cN) is not required because they enjoy diplomatic immunity status in South Africa and fiscal privileges under the Diplomatic Immunities and Privileges Act.¹⁷⁹

Section 18A(1)(bA) provides for the approval of specialised agencies, programmes, funds, High Commissioners, offices, entities or organisations. Approval under section 18A(1)(bA) is subject to the Commissioner's approval (see 6.5).

¹⁷³ The UN has a set of guidelines known as the UN Model Double Taxation Convention between Developed and Developing Countries (the UN Model) to prevent double taxation between countries as well as to avoid tax evasion. The UN Model is used by countries as a basis for negotiation of their bilateral tax treaties. Double tax treaties are agreements to prevent taxing income twice by allocating taxing rights over this income between two countries. See www.un.org/en/desa/united-nations-model-double-taxation-convention-between-developed-and-developing [Accessed 16 May 2025].

¹⁷⁴ Act 71 of 2008.

¹⁷⁵ The term "trust" as defined in section 1(1) means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person.

¹⁷⁶ LAWSA describes an "association" as founded on a basis of mutual agreement, which entails that it will come into being if the individuals who propose forming it have the serious intention to associate and are in agreement on the essential characteristics and objectives of the *universitas* or unincorporated association. The latter aspect is usually manifested by the approval and adoption of a constitution. See Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA) 2* (Third Edition Volume) in paragraph 155. My LexisNexis [online].

¹⁷⁷ See paragraph (a)(i) of the definition of "public benefit organisation" in section 30(1).

¹⁷⁸ The *Explanatory Memorandum on the Revenue Laws Amendment Bill, 2008*, at pages 87 and 88.

¹⁷⁹ Section 7 in Article II of the 1946 Convention and section 9 in Article II of the 1947 Convention.

Chapter 6

Section 18A approval requirements

6.1 Introduction

Section 18A(1)(bA) provides that a donor taxpayer may deduct (see **Chapter 11**) the sum of any *bona fide* donations (see **Chapter 9**) actually paid or transferred during the year of assessment (see **12.5.3**) to any specialised agency (see **Chapter 3**)¹⁸⁰ or any of the 11 specifically named programmes, funds, High Commissioners, offices, entities or organisations (see Error! Reference source not found.)¹⁸¹ if such specialised agency, programme, fund, High Commissioner, office, entity or organisation –

- carries on in South Africa any PBA in Part II, or any other activity determined from time to time by the Minister of Finance by notice in the *Government Gazette* for purposes of section 18A (see **6.2**);¹⁸²
- furnishes the Commissioner with a written undertaking confirming compliance with section 18A (see **6.3**);¹⁸³
- waives diplomatic immunity (see **6.4**) for the purposes of non-compliance penalties in case of any contravention of section 18A (see **Chapter 8**);¹⁸⁴ and
- has been approved by the Commissioner for purposes of section 18A (see **6.5**).¹⁸⁵

6.2 Carrying on public benefit activities in South Africa

An eligible specialised agency (see **Chapter 3**), programme, fund, High Commissioner, office, entity or organisation (see Error! Reference source not found.) under section 18A(1)(bA) must carry on in South Africa any PBA in Part II or any other PBA determined by the Minister of Finance by notice in the *Government Gazette* for purposes of section 18A (see **6.2**).¹⁸⁶

The PBAs are listed in the Ninth Schedule to the Act. The Ninth Schedule to the Act is divided into –

- Part I comprising a number of PBAs approved by the Minister of Finance for purposes of the approval as a PBO by the Commissioner under section 30;¹⁸⁷ and
- Part II comprising a limited number of PBAs¹⁸⁸ approved by the Minister of Finance for purposes of the approval under section 18A by the Commissioner.

The PBAs listed in Part II of the Ninth Schedule to the Act, for purposes of section 18A are categorised as follows:

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

¹⁸⁰ Section 18A(1)(bA)(i).

¹⁸¹ Section 18A(1)(bA)(ii) to (xii).

¹⁸² Section 18A(1)(bA)(aa).

¹⁸³ Section 18A(1)(bA)(bb).

¹⁸⁴ Section 18A(1)(bA)(cc).

¹⁸⁵ Section 18A(1)(bA)(dd).

¹⁸⁶ Section 18A(1)(bA)(aa).

¹⁸⁷ For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

¹⁸⁸ Not all PBAs listed in Part I are included in Part II of the Ninth Schedule to the Act.

- Conservation, Environment and Animal Welfare (paragraph 4)¹⁸⁹
- Land and Housing (paragraph 5)¹⁹⁰

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

The Minister of Finance may from time to time by notice in the *Government Gazette* approve additional PBAs.¹⁹¹

The Minister of Finance may also by regulation prescribe additional requirements that a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation carrying on any specific PBA identified by the Minister of Finance in the regulations, must comply with before any donation made to that section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation will be allowed as a deduction under section 18A.¹⁹² For example, the granting of loans to emerging micro enterprises to improve capacity to start and manage businesses referred to in PBA 1(p)(iii) in Part II as well as the provision of loans, for study, research and teaching contemplated in PBA 3(o) in Part II are subject to conditions the Minister of Finance may prescribe by way of regulation. The Minister of Finance has not yet published any conditions or requirements relating to those PBAs.

The Minister of Finance, however, has published conditions and requirements relating to the provision of scholarships, bursaries and awards for study, research, and teaching contemplated in PBA 3(o) in Part II in Government Notice Regulation 302 in *Government Gazette* 29491 of 28 February 2003 (see **Annexure C**).¹⁹³ However, no regulations setting out the conditions and requirements relating to the provision of loans for study, research, and teaching contemplated in PBA 3(o) in Part II have been published by the Minister of Finance.

Any additional PBAs or requirements prescribed by the Minister of Finance must be approved by Parliament and formally incorporated into the Ninth Schedule to the Act or the Act within 12 months after the date of publication by the Minister of Finance of those PBAs or requirements, as the case may be, in the *Government Gazette*.¹⁹⁴ The conditions prescribed by the Minister of Finance by way of regulation as they related to PBA 3(o) in Part II have, as yet, not been incorporated in the Ninth Schedule to the Act or the Act.

6.3 Written undertaking

An eligible specialised agency (see **Chapter 3**), programme, fund, High Commissioner, office, entity or organisation (see Error! Reference source not found.) under section 18A(1)(bA) must submit to the Commissioner a written undertaking that it will comply with section 18A.¹⁹⁵ The written undertaking must be submitted to the Commissioner as part of the application for section 18A approval (see **6.5**).

¹⁸⁹ Limited PBAs in Part I are included in this category in Part II.

¹⁹⁰ Limited PBAs in Part I are included in this category in Part II.

¹⁹¹ Section 18A(1)(a)(aa).

¹⁹² Section 18A(1A).

¹⁹³ The regulations relate specifically to PBA 4(o) in Part I. However, the Minister of Finance declared in Government Notice Regulation 333 in *Government Gazette* 24941 of 8 April 2005 that those regulations also apply to PBA 3(o) in Part II. For commentary, see the *Tax Exemption for Public Benefit Organisations in South Africa*.

¹⁹⁴ Section 18A(1B).

¹⁹⁵ Section 18A(1)(bA)(bb).

The term “written undertaking” is not defined in the Act. In the context of section 18A the written undertaking is regarded as a promise or commitment made by the person accepting fiduciary responsibility for the funds and assets of the eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation that the specialised agency, programme, fund, High Commissioner, office, entity or organisation will be administered in compliance with section 18A.

The Commissioner has not issued specific forms to be used for purposes of a written undertaking. A written undertaking may be in the form of a physical document, for example, a form, declaration or letter. SARS will not be prescriptive with regards to the appearance or format of such a document representative of the written undertaking. It, however, is suggested that the written undertaking should at least contain the following detail:

- The name and address of the eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation seeking approval under section 18A.
- Full name, designation, date and signature of the person responsible for issuing the written undertaking.
- An undertaking that the eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation, as appropriate, –
 - will carry on PBAs in Part II in South Africa (see **6.2**);
 - waives diplomatic immunity (see **6.4**) for the purposes of non-compliance with section 18A requirements (see **Chapter 8**);¹⁹⁶ and
 - will issue section 18A receipts (see **Chapter 10**) only for any *bona fide* donations (see **9.1**) in cash (see **9.2.1**) or in property made in kind (see **9.2.2**), which were actually paid or transferred by a donor taxpayer during the year of assessment to that eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation to be used solely in carrying on any PBA in Part II in South Africa.

The written undertaking must be prepared on behalf of the eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation and signed by its head¹⁹⁷ or by any person who performs the functions of the head.¹⁹⁸ See **Annexure D** for an example of a written undertaking.

The written undertaking will be a permanent measure and binding on the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation. Non-compliance with the terms set out in the written undertaking will result in penalties and actions being invoked by the Commissioner (see **Chapter 8**).

¹⁹⁶ Section 18A(5)(i).

¹⁹⁷ The term “head” is not defined in the Diplomatic Immunities or Privileges Act. However, the term “executive head” as described in paragraph (vii) in Article I of the 1947 Convention means the principal executive official of the specialised agency in question, whether designated “Director-General” or otherwise.

¹⁹⁸ Section 8(2) of the Diplomatic Immunities and Privileges Act.

6.4 Waiving of diplomatic immunity

An eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation under section 18A(1)(bA) must waive diplomatic immunity for purposes of section 18A(5)(i), which provides for liability for income tax due to non-compliance with section 18A (see **Chapter 8**).¹⁹⁹

Any specialised agency, programme, fund, High Commissioner, office, entity or organisation is allowed to waive any immunity or privilege if it enjoys any immunity or privilege under the Diplomatic Immunities and Privileges Act (see **Chapter 2**).²⁰⁰

The waiver must be done on behalf of the specialised agency, programme, fund, High Commissioner, office, entity or organisation by the head or by any person who performs the functions of its head.

6.5 Approval by the Commissioner

An eligible specialised agency (see **Chapter 3**), programme, fund, High Commissioner, office, entity or organisation (see Error! Reference source not found.) seeking approval under section 18A must submit to the Commissioner the required application EI 1 form together with the relevant supporting documentation and written undertaking (see **6.3**). Information on the application process is available on the **SARS website**.

The Commissioner will confirm approval only if the conditions and requirements of section 18A(1)(bA) as detailed in this guide (see **Chapter 6**) are met by the relevant applicant.

The applicant bears the onus of proving²⁰¹ that the requirements relative to the approval under section 18A are met and the necessary supporting evidence must be retained (see **12.4**).

The notification of approval under section 18A is issued by the Commissioner by letter. The section 18A approval is effective from the date of the notice of approval issued by the Commissioner. The Act does not make provision for the approval under section 18A to be granted with retrospective effect. The date of approval under section 18A in the notice of approval granted by the Commissioner is therefore significant. Section 18A receipts may be issued for *bona fide* donations received only on or after the date of the notice of approval issued by the Commissioner confirming approval for purposes of section 18A.

The Commissioner on confirmation of the approval issues a specific reference number for purposes of section 18A, which must appear on section 18A receipts (see **Chapter 10**) for such receipts to be valid and to enable donor taxpayers to claim a tax deduction in the determination of their taxable income (see **Chapter 11**). This is a different reference number to the taxpayer reference number (see **12.5.1**) allocated to the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation on completion of registration for income tax purposes. The approval letter must be kept as part of the record keeping obligation (see **12.4**).

A written notification will also be issued by the Commissioner if the approval is not granted together with reasons why the specialised agency, programme, fund, High Commissioner, office, entity or organisation failed to meet the requirements of section 18A. The decision of non-approval for purposes of section 18A is subject to objection and appeal (see **Chapter 13**).

¹⁹⁹ Section 18A(1)(bA)(cc).

²⁰⁰ Section 8(1) of that Act.

²⁰¹ Section 102 of the TA Act.

Chapter 7

Section 18A control measures

A section 18A receipt may be issued only for a *bona fide* donation (see **Chapter 9**), which will be used solely in carrying on PBAs listed in Part II in South Africa (see **6.2**).²⁰² Donations received must therefore be controlled in such a manner that their usage is restricted to only those PBAs in Part II in South Africa. Since the activities of a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation are restricted to PBAs in Part II carried on in South Africa they are excluded from the requirement to obtain and retain an audit certificate.²⁰³

It is essential to maintain proper control over the application and spending of donations received for which section 18A receipts (see **Chapter 10**) are issued. The records (see **12.4**) must clearly identify the donations received for PBAs in Part II and the use to which those donations were applied.

Information regarding the section 18A receipts issued for *bona fide* donations is requested on the Income Tax Return for Exempt Organisations (IT12EI) (see **12.5.2**) and is required for third data reporting purposes (see **Chapter 10**). The Commissioner may request any documentation and additional information deemed necessary (see **12.2**) to verify that aspect of the IT12EI return.

²⁰² Section 18A(2A)(c).

²⁰³ Section 18A(2B) and (2C). For further commentary, see Interpretation Note 112 “Section 18A: Audit Certificate”.

Chapter 8

Non-compliance with section 18A

A section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation is required to waive diplomatic immunity (see **6.4**) to enable the Commissioner to impose income tax for non-compliance with section 18A.²⁰⁴ The Commissioner must consider each case on its own facts and circumstances.

There will be adverse consequences if the Commissioner has reasonable grounds for believing that the person who is in a fiduciary capacity responsible for the management or control of the income or assets of that section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation has —²⁰⁵

- materially failed to ensure that the objects for which it was established are carried out;
- expended the monies for purposes not covered by their objects;
- issued or allowed a section 18A receipt (see **Chapter 10**) to be issued for fees or other emoluments payable to it; or
- used a donation for which a receipt was issued for any purpose other than for any PBAs in Part II in South Africa (see **6.2**).

The Commissioner must give notice to the transgressing section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation that any donation for which a section 18A receipt was issued during any year of assessment specified in the notice, will be deemed to be taxable income in that year of assessment. The Commissioner must also specify in the notice a period within which corrective steps must be taken by the transgressor.²⁰⁶

A transgressing section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation will under section 18A(5) be subject to income tax on the deemed taxable income. Although these entities are not approved as a public benefit organisation (see **Chapter 5**), they will for purposes of section 18A(5) be treated similar to an approved public benefit organisation and taxed at the same applicable tax rate. The current tax rate for public benefit organisations is 27%.²⁰⁷ The Minister of Finance may announce different rates in the national annual budget. The rates are published annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.²⁰⁸

The term “taxable income” as defined means —²⁰⁹

“the aggregate of —

- (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and
- (b) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act”.

²⁰⁴ Section 18A(1)(bA)(cc).

²⁰⁵ Section 18A(5).

²⁰⁶ Section 18A(5)(i).

²⁰⁷ The 2023/2024 tax rates fixed by Parliament for PBOs is set out in section 4 in Schedule I Rates of Normal Tax (Section 2).

²⁰⁸ Section 5(2)(a).

²⁰⁹ Section 1(1).

To enable the Commissioner to raise an assessment to tax the deemed taxable income the transgressing section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation must be registered for income tax purposes and allocated a taxpayer reference number (see **12.5.1**).

Any assessment issued as a result of the penalties and actions invoked by the Commissioner is subject to objection and appeal (see **Chapter 13**).²¹⁰

If corrective steps are not taken within the period stated by the Commissioner in the notice, any receipt issued by that section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation for any donation made on or after the date specified will not qualify as a valid section 18A receipt under section 18A(2) (see **Chapter 10**). Those section 18A receipts will therefore not be allowed to be claimed as a deduction in determining the taxable income of a donor taxpayer (see **Chapter 11**).²¹¹ This, however, will not apply to years of assessment of donor taxpayers that have become prescribed.²¹²

²¹⁰ Section 3(4)(b).

²¹¹ Section 18A(5)(ii).

²¹² Section 99 of the TA Act.

Chapter 9

Donations

9.1 *Bona fide* donations

Although the term “donation” is not defined in section 18A it is defined for purposes of donations tax and means —²¹³

“any gratuitous disposal of property including any gratuitous waiver or renunciation of a right”.

Since the definition of “donation” for donations tax and the reference to donations for purposes of section 18A, traverse the same terrain it is submitted that the definition of “donation” is relevant and applicable as guidance of what is envisaged of a donation for purposes of section 18A.

Trollip JA summed up the common law meaning of a donation in *Ovenstone v SIR* when he stated the following:²¹⁴

“In a donation the donor disposes of the property gratuitously out of liberality or generosity, the donee being thereby enriched and the donor correspondingly impoverished, so much so that, if the donee gives any consideration at all therefor, it is not a donation . . .”.

In *Welch’s Estate v C: SARS* Marais JA stated the following on the meaning of a donation:²¹⁵

“The test to be applied at common law to determine whether the disposition of an asset amounts to a donation properly so called (as opposed to a remuneratory donation) is so well-settled that it hardly needs repetition. The test is of course that the disposition must have been motivated by ‘pure liberality’ or ‘disinterested benevolence’.

In my opinion the legislature has not eliminated from the statutory definition the element which the common law regards as essential to a donation, namely, that the disposition be motivated by pure liberality or disinterested benevolence and not by self-interest or the expectation of a *quid pro quo* of some kind from whatever source it may come.

If one were to scour the dictionaries to find a single word apt to convey that the disposition should be motivated by pure liberality and not in expectation of any *quid pro quo* of whatever kind, one would not find a better or more appropriate word than ‘gratuitous’.

The shorter OED gives the following meaning to the word:

- ‘1. Freely bestowed or obtained; granted without claim or merit; costing nothing to the recipient; free.
2. Done, made, adopted or assumed without any good ground or reason; uncalled for; unjustifiable.’ ”

In *Estate Sayle v CIR* the court stated the following:²¹⁶

“In short, liberality at the expense of another is not a ‘donatio’; to be a ‘donatio’ the gift must be liberality at the expense of the donor, an act whereby the donee is enriched and the donor correspondingly impoverished.”

In *The Master v Thompson’s Estate*, the court confirmed that a transaction would not be a donation when something is received in return or when there is some consideration.²¹⁷

²¹³ Section 55(1).

²¹⁴ 1980 (2) SA 721 (A), 42 SATC 55 at 73.

²¹⁵ 2005 (4) SA 173 (SCA), 66 SATC 303 at 312 and 314.

²¹⁶ 1945 AD 388, 13 SATC 170 at 173.

²¹⁷ 1961 (2) SA 20 (FC), 24 SATC 157 at 165.

A donation is therefore a gratuitous disposal by the donor out of liberality or generosity, under which the donee²¹⁸ is enriched and the donor impoverished. It is a voluntary gift freely given to the donee. There must be no *quid pro quo*, no reciprocal obligations and no benefit for the donor. If the donee gives any consideration, at all, it is not a donation and the amount paid by the donor will not qualify for a deduction under section 18A.

9.2 Types of donations

A donation can be in the form of cash or of property in kind, which was actually paid or transferred by the donor taxpayer to the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation in a year of assessment.

The words “actually”, “paid” or “transferred” are not defined in the Act and should therefore be interpreted according to their ordinary meaning as applied to the subject matter relating to which it is used²¹⁹ unless the ordinary meaning creates an absurdity or ambiguity. It is important when giving words and expressions their ordinary meaning, to consider the context in which such words or expressions are used.

The *Free Dictionary* describes the words as follows:

- “Actually” as “as an actual fact, really”.²²⁰
- “Paid” as “to discharge or settle (a debt, obligation, etc.), as by transferring money or goods, or by doing something, to give over (money) in exchange for something”.²²¹
- “Transferred” as “to convey or cause to pass from one place, person, or thing to another”.²²²

Donations can be made –

- directly to a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation; or
- through a payroll-giving programme operated by an employer²²³ enabling employees to donate from their salaries on a monthly basis to any section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation. A section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation must issue a section 18A receipt to the employer for the total amount of donations paid by the employer on behalf of the employees. Section 18A receipts may be issued to the employer on a monthly basis or for a period that either coincides with the interim (1 March to 31 August) or annual (1 March to 28 / 29 February) period for which the employer is required to submit a reconciliation declaration to SARS for employees’ tax purposes.

²¹⁸ The term “donee” as defined in section 55(1) generally means any beneficiary under a donation and includes property that has been disposed of under a donation to any trustee to be administered by the trustee for the benefit of any beneficiary.

²¹⁹ See Kellaway, E. A. (1995). *Principles of legal interpretation of statutes, contracts and wills* at paragraph 224. Butterworths Durban. Also, see *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

²²⁰ www.freedictionary.com/actually [Accessed 16 May 2025].

²²¹ www.freedictionary.com/paid [Accessed 16 May 2025].

²²² www.freedictionary.com/transferred [Accessed 16 May 2025].

²²³ The term “employer” is defined in paragraph 1 of the Fourth Schedule to the Act.

9.2.1 Cash donation

A donation may be made in cash (money), which may include payments by electronic fund transfer (EFT), credit or debit card, or domestic postal order.

Example 2 – Payments or transfers not qualifying as tax-deductible donations

The following are non-exhaustive examples of payments or transfers not qualifying as tax-deductible donations:

- The value of free rent, water and electricity provided by a lessor to a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation.
- Payments of debt owed by a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation, for example, the cost of vehicle repairs paid directly to the service station or panel beaters by a donor taxpayer on behalf of that specialised agency, programme, fund, High Commissioner, office, entity or organisation.
- Prizes and sponsorships donated for fundraising events.
- Promissory notes.
- Pledges.
- Payments made in future instalments.

9.2.2 Donation of property in kind

A donation of property in kind is made in a form other than cash. Donations of property made in kind may include the following:²²⁴

- A financial instrument provided it is –
 - a share in listed company; or
 - issued by an “eligible financial institution”²²⁵ as defined in section 1 of the Financial Sector Regulation Act 9 of 2017.²²⁶
- Trading stock forming part of the business undertaking or trading activity conducted by the donor taxpayer. Such trading stock may include livestock or produce donated by a farmer or goods such as computers, foodstuffs, furniture medical supplies and motor vehicles.
- An asset other than trading stock used by the donor taxpayer in conducting the donor taxpayer’s trade. Examples of such assets include cash registers, computers, crockery, delivery vehicles, furniture, garden equipment, kitchen utensils and office equipment.

²²⁴ Section 18A(3).

²²⁵ This definition includes a financial institution licensed or required to be licensed as a bank under the Banks Act 94 of 1990, a financial institution registered as a long-term insurer under the Long-term Insurance Act 52 of 1998 or a short-term insurer under the Short-term Insurance Act 53 of 1998 or licensed or required to be licensed under the Insurance Act 18 of 2017, a market infrastructure, and a financial institution prescribed in Regulations for the purposes of this definition.

²²⁶ Section 18A(3B)(b) was amended by section 35(1)(e) of the Taxation Laws Amendment Act 23 of 2018 and deemed to have come into operation on 1 April 2018.

- An asset, which is not trading stock and is not used in the business of the donor taxpayer. Example of such assets include personal assets or assets bought by the taxpayer such as computers, furniture, sport equipment and vehicles.
- Property purchased, manufactured, erected, installed or constructed by or on behalf of the donor taxpayer. Examples of such property include carpets or cupboards installed, security fencing and buildings such as classrooms erected by or on behalf of the donor taxpayer for purposes of conducting any PBAs in Part II.

A donation of property in kind for which a section 18A receipt has been issued must be used by a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation solely in carrying on PBAs in Part II in South Africa (see **6.2**).

No deduction will be allowed for any donation of any property in kind which –²²⁷

- creates or is subject to any fiduciary right, usufruct or other similar rights; or
- constitutes an intangible asset or financial instrument, unless the financial instrument meets the requirements described above.

The donation of a service such as time, skill or effort is not a donation of property made in kind. Any professional person, such as an accountant, auditor, artist (which may include a singer, musician or entertainer), electrician, lawyer, medical doctor or plumber who renders a service free of charge to a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation, will not be entitled to a tax deduction for the value of the service.

9.3 Value of a donation of property in kind

The amount deductible by any donor taxpayer for any donation of property in kind, other than immovable property of a capital nature for which the lower of market value or municipal value exceeds cost, is deemed to be as follows:²²⁸

- A financial instrument which is trading stock of the donor taxpayer the –
 - lower of fair market value on the date of the donation; or
 - amount taken into account for that year of assessment for the value of that trading stock under section 22(8)(C).²²⁹
- Any other trading stock of the donor taxpayer (including any livestock or produce of a farmer), the amount taken into account for that year of assessment for the value of that trading stock forming part of trading stock of the donor taxpayer under section 22(8)(C) or paragraph 11 of the First Schedule to the Act, as appropriate.
- An asset used in the donor taxpayer's trade the –
 - lower of the fair market value on the date of donation of the property; or
 - cost to the donor taxpayer of such property less any allowance (other than an investment allowance) deducted from the income of that donor taxpayer for that asset.

²²⁷ Section 18A(3B).

²²⁸ Section 18A(3).

²²⁹ For commentary, see Interpretation Note 65 "Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade".

- Property not trading stock of the donor taxpayer and not a business asset the –
 - lower of the fair market value on the date of the donation; or
 - cost to the donor taxpayer of such asset less depreciation using the 20% reducing balance method in the case of deterioration of movable property.²³⁰
- Property purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the donor taxpayer to form the subject of the donation the –
 - lower of the fair market value on the date of the donation; or
 - cost to the donor taxpayer of such property.

Any deduction claimed by any donor taxpayer for any donation of immovable property of a capital nature when the lower of market value or municipal value exceeds cost must be determined using the following formula:²³¹

$$A = B + (C \times D)$$

In which formula –

- “A” = the amount deductible contemplated in section 18A(1);
- “B” = the cost of the immovable property being donated;
- “C” = the amount of capital gain (if any), that would have been determined under the Eighth Schedule to the Act had the immovable property been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and
- “D” = 60% in the case of a natural person or special trust or 20% in any other case.

²³⁰ See section 8(5)(bB)(i).

²³¹ Section 18A(3A).

Chapter 10

Section 18A receipts

A section 18A receipt may be issued by a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation only for an eligible donation (see **Chapter 9**) used solely for carrying on PBAs in Part II in South Africa (see 6.2).

A section 18A receipt will be valid if it contains the following detail:²³²

- The reference number issued to the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation by the Commissioner for purposes of section 18A (see 6.5).
- The date the donation is received.
- The name and address of the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation issuing the section 18A receipt to which enquiries may be directed.
- The amount of the donation or the nature of the donation, if not in cash.
- A certification to the effect that the section 18A receipt is issued for purposes of section 18A and that the donation has or will be used in carrying on PBAs listed in Part II.
- The unique receipt number.
- The following donor taxpayer information:²³³
 - Name and address.
 - Nature of the donor taxpayer, for example, a natural person, company or trust.
 - Donor identification type if a natural person, for example, the donor's South African identification number or passport number and country of issue.
 - Identification or registration number if the donor is a juristic person, for example, the company registration number issued by the Companies and Intellectual Property Commission or the trust registration number issued by the Master of the High Court.
 - Trade name if the donor is a juristic person, and if the trade name is different from the registered name of the donor.
 - Income tax reference number, if available.
 - Contact number.
 - E-mail address.

²³² Section 18A(2)(a).

²³³ Section 18A(2)(a)(vii). The Commissioner prescribed by Public Notice 3082 in *Government Gazette* 48104 of 24 February 2023, which came into effect on 1 March 2023, the further information required to appear on section 18A receipts issued on or after 1 March 2023.

The information on the section 18A receipts is required for third-party reporting (see **12.6**).²³⁴ The purpose of third-party reporting is to ensure donor taxpayers claim a deduction for donations made only to section 18A-approved agencies, programmes, funds, High Commissioners, offices, entity's or organisations, and also to ensure the section 18A receipt claimed matches information provided by the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation issuing such receipts on submission of the Income Tax Return for Exempt Organisations (IT12EI) (see **12.5.2**).²³⁵

SARS does not make section 18A receipts available. A section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation must create their own receipts ensuring that all the above details appear on the receipt. See **Annexure E** for an example of a section 18A receipt.

²³⁴ For commentary on how third-party information relating to section 18A receipts issued by section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation must be submitted to SARS, see the *Business Requirement Specification: IT 3 Data Submission*.

²³⁵ For further commentary, see the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2021*, in paragraph 2.2.

Chapter 11

Allowable deductions of a donor taxpayer

11.1 Introduction

A donor taxpayer, which may include an individual, trust or company, making a donation in cash (see **9.2.1**) or of property in kind (see **9.2.2**) is entitled to a deduction in determining that donor taxpayer's taxable income provided the donation is actually paid or transferred during the year of assessment to a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation or a payroll-giving programme operated by an employer.²³⁶

Any claim for a deduction in determining the taxable income of a donor taxpayer will be allowed only if supported by –²³⁷

- a section 18A receipt (see **Chapter 10**) issued by a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation; or
- an employees' tax certificate (IRP 5 certificate)²³⁸ issued by an employer operating a payroll-giving programme.

Donor taxpayers receiving section 18A receipts issued by a specialised agency, programme, fund, High Commissioner, office, entity or organisation not approved by the Commissioner for purposes of section 18A are not entitled to a deduction in determining their taxable income. Any claim for a deduction by donor taxpayers will therefore be disallowed in the determination of their taxable income.

11.2 Portfolio of a collective investment scheme

The allowable deduction from the taxable income of a donor taxpayer that is a portfolio of a collective investment scheme,²³⁹ other than a real estate investment trust (REIT) (see **11.3**), for all eligible donations paid or transferred during the year of assessment is determined according to the following formula:²⁴⁰

$$A = B \times 0,005$$

In which formula –

- “A” = the amount to be determined; and
- “B” = the average value of the aggregate of all participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all the participatory interests in the portfolio at the end of each day during that year.

²³⁶ Section 18A(1).

²³⁷ Section 18A(2).

²³⁸ The term “employees’ tax certificate” is defined in paragraph 1 of the Fourth Schedule to the Act.

²³⁹ The term “portfolio of a collective investment scheme” as defined in section 1(1) means (a) any portfolio of a collective investment scheme in participation bonds as defined, (b) any portfolio of a collective investment scheme in property as defined, (c) any portfolio of a collective investment scheme in securities as defined, or (d) any portfolio of a declared collective investment scheme as defined.

²⁴⁰ Section 18A(1)(A).

11.3 Real estate investment trust

The allowable deduction for a donor taxpayer that is a portfolio of a collective investment scheme in property qualifying as a REIT or a resident-controlled company is allowed under section 25BB(2A)(c).²⁴¹

11.4 Other donor taxpayers

For all other donor taxpayers, the allowable deduction from the taxable income may not exceed 10% of the taxable income excluding any retirement fund lump sum benefit,²⁴² retirement fund lump sum withdrawal benefit²⁴³ and severance benefit²⁴⁴ of the donor taxpayer as calculated before allowing any deduction for donations under section 18A or a deduction for certain foreign tax credits under section 6quat(1C).²⁴⁵

11.5 Treatment for excess deductible donations

Any excess amount of a donation made, which is disallowed solely for the reason that it exceeds the amount of the deduction allowable for a year of assessment may be carried forward for purposes of section 18A.

The excess amount carried forward will be deemed a donation actually paid or transferred in the next succeeding year of assessment subject to the 10% limitation.²⁴⁶ Any excess remaining can be further rolled over but always subject to the 10% limitation.

Example 3 – Carry-forward treatment for excess deductible donations

	Year 1: R	Year 2: R
Taxable income	1 000 000	1 500 000
Donation made	150 000	0
Maximum amount potentially allowable as deduction (10% of taxable income)	100 000	150 000
Deduction claimed	100 000	50 000 (amount carried forward)
Amount carried forward	50 000	0

²⁴¹ For commentary, see Interpretation Note 97 “Taxation of REITs and Controlled Companies”.

²⁴² The term “retirement fund lump sum benefit” as defined in section 1(1) means an amount determined under paragraph 2(1)(a) or (c) of the Second Schedule to the Act.

²⁴³ The term “retirement fund lump sum withdrawal benefit” as defined in section 1(1) means an amount determined under paragraph 2(1)(b) of the Second Schedule to the Act.

²⁴⁴ The term “severance benefit” is defined in section 1(1).

²⁴⁵ Section 18A(1)(B).

²⁴⁶ Proviso to section 18A(1)(B).

Chapter 12

Administrative provisions

12.1 Introduction

The TA Act deals with tax administration and seeks, amongst other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.²⁴⁷

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act imposing that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.²⁴⁸ If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.²⁴⁹

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **12.4**), returns (see **12.5**), assessments, and dispute resolution (see **Chapter 13**) therefore apply to a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation.

12.2 Furnishing of information

The Commissioner may, to assist in enforcing the Act, submit a written request to any person to furnish information about any section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation and may require that person to –²⁵⁰

- answer any questions relating to the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation;
- make books of account, records or other documents relating to the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation; or
- meet with the Commissioner's representative and produce for examination any documents relating to the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions posed by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁵¹

²⁴⁷ For commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

²⁴⁸ Section 4(2) of the TA Act.

²⁴⁹ Section 4(3) of the TA Act.

²⁵⁰ Section 46(1) of the TA Act.

²⁵¹ Sections 234(2)(c)(i), (f) and (h) of the TA Act.

12.3 Changes in registered particulars

Any section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. Any section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation must communicate to SARS within 21 business days, any change of postal, physical or electronic addresses and representative taxpayer.²⁵²

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁵³

12.4 Record-keeping

A section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation is required to keep records, such as section 18A receipts issued (see **Chapter 10**), for five years from the date of the submission of a return.²⁵⁴

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained for longer periods.²⁵⁵ For example, if a –

- person is notified of or is aware of an audit or investigation by SARS the records, books of account or documents relevant to that audit or investigation must be retained until it is concluded, or the applicable five-year period has elapsed, whichever is the later;²⁵⁶ and
- document is relevant for future years of assessment it must be retained indefinitely, such as the –
 - prescribed application form EI 1 and the required supplementary information and documentation, on which the Commissioner based the decision to approve or not section 18A (see **6.5**);
 - written undertaking (see **6.3**); and
 - waiver of diplomatic immunity (see **6.4**).

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

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, any sphere of government is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.²⁵⁷

²⁵² Section 23 of the TA Act.

²⁵³ Section 234(2)(a) of the TA Act.

²⁵⁴ Section 29(3) of the TA Act.

²⁵⁵ Section 32 of the TA Act.

²⁵⁶ Section 32(a) of the TA Act.

²⁵⁷ Section 30 of the TA Act.

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.²⁵⁸ The rules require that electronic records must be kept in their original form,²⁵⁹ and should within a reasonable time, be accessible to and readable by SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups and conversions.²⁶⁰

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁶¹

12.5 Income tax returns

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.²⁶² Generally, the persons who are required to submit returns include every –

- company and trust or juristic person, which are a resident during that particular year of assessment, subject to specific conditions and requirements set out in the relevant public notice;
- company, trust or juristic person, which was not a resident during that particular year of assessment but derived income from a source in South Africa; or
- person issued with an income tax return or who is requested by the Commissioner in writing to furnish a return, irrespective of the amount of income or nature of receipts or accruals of the person.

The *Claassen's Dictionary of Legal Words and Phrases* describes “juristic person” as follows:²⁶³

“From cases such as *Webb & Co Ltd v Northern Rifles* 1908 TS 462; *Madrassa Anjuman Islamia v Johannesburg Municipality* 1919 AD 449; *Morrison v Standard Building Society* 1932 AD 229 and many others, it follows that a juristic person exists in the contemplation of law and the law confers a personality on it so that it can normally sue and be sued in its own name, because it is capable of acquiring rights and incurring liabilities; it can own property and has perpetual succession, until liquidated. See Hahlo and Kahn SA Legal System 107; Wille's Principles of South African Law 6ed 153.”

(Footnotes omitted)

²⁵⁸ See Government Notice 787 *Government Gazette* 35733 of 1 October 2012.

²⁵⁹ A document under section 14 of the Electronic Communications and Transactions Act 25 of 2002 will be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

²⁶⁰ For commentary, see the *Electronic Communications Guide*.

²⁶¹ Section 234(2)(e) of the TA Act.

²⁶² Section 25 of the TA Act read with section 66(1).

²⁶³ Claassen, R.C. (June 2024). *Claassen's dictionary of legal words and phrases*. My LexisNexis [online].

The *Bill of Rights Compendium* provides the following regarding juristic persons:²⁶⁴

“The Constitution does not define juristic persons. In principle, section 8(4) applies to all entities recognised as juristic persons by South African law. In the first instance, it applies to all private juristic persons. In South African law, the state itself is also regarded as a juristic person, and various types of public juristic persons are recognised, such as city councils, universities and state enterprises that have been accorded juristic personality by legislation.”

(Footnotes omitted)

A specialised agency, programme, fund, High Commissioner, office entity or organisation is a juristic person (see **3.3**) and must in accordance with the annual public notice published by the Commissioner submit income tax returns to report annually on section 18A receipts (see **Chapter 10**) issued and the usage of such donations (see **Chapter 9**) and to enable the Commissioner to invoke non-compliance penalties, if necessary (see **Chapter 8**).

The prescribed Income Tax Return for Exempt Organisations (IT12EI) is applicable to a section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation and must be submitted on an annual basis even though such a section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation has no tax liability (see **3.4**). The IT12EI may be obtained from –

- the **eFiling website**;
- any SARS branch office; or
- the SARS National Contact Centre.

A return must be a full and true return²⁶⁵ contain the information prescribed by a tax Act or the Commissioner and must be signed by the duly authorised representative of the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation. The person signing the return will be regarded as being cognisant of the statements made in the return.²⁶⁶

Non-receipt of an income tax return by a section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation does not affect the obligation to submit an income tax return.²⁶⁷

A person who wilfully and without cause refuses or neglects to submit a return or document to SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁶⁸

²⁶⁴ Rautenbach, I. M. Introduction to the Bill of Rights. *Bill of Rights Compendium* in § 1A21. My LexisNexis [online].

²⁶⁵ Section 25(2) of the TA Act.

²⁶⁶ Section 25(3) of the TA Act.

²⁶⁷ Section 25(4) of the TA Act.

²⁶⁸ Section 234(2)(d) of the TA Act.

12.5.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of the registration for income tax purposes.²⁶⁹

A section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation will be treated and registered for income tax similarly to an approved public benefit organisation, namely, as a “company”,²⁷⁰ to enable such section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation to be able to annually submit an income tax return on section 18A receipts issued during that year of assessment, comply with third-party reporting (see **12.6**) and to enable the Commissioner if non-compliant with the requirements of section 18A to raise an assessment to tax the deemed taxable income (see **Chapter 8**).

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

12.5.2 Filing an income tax return

The public notice issued annually by the Commissioner also prescribes the period within which returns must be submitted for the years of assessment specified in that notice.

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

An appropriate penalty²⁷¹ will be imposed by SARS if satisfied that the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation failed to comply with the obligation to submit an income tax return under the Act and public notice issued by the Commissioner.²⁷² The appropriate penalty for non-compliance will be imposed according to a fixed amount penalty table.²⁷³

12.5.3 Year of assessment

A section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation that is an association of persons established under a constitution, or any other written instrument will have a year of assessment ending on the date that coincides with its financial year-end. If the financial year-end is, for example, 30 June, its year of assessment will run from 1 July to 30 June of the following year. The Commissioner may exercise discretion to accept financial accounts for a period ending on a day differing from the last day of the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation financial year.²⁷⁴

²⁶⁹ The term “taxpayer reference number” is defined in section 1 of the TA Act and means the number referred to in section 24 of the same Act.

²⁷⁰ The term “company” is defined in section 1(1).

²⁷¹ The terms “administrative non-compliance penalty” and “penalty” are defined in section 208 of the TA Act and mean a penalty imposed by SARS in accordance with Chapter 15 of the TA Act or a tax Act other than this Act and excludes an understatement penalty referred to in Chapter 16 of the TA Act.

²⁷² Section 210 of the TA Act. For commentary, see the *Guide to Understatement Penalties*.

²⁷³ Section 211 of the TA Act.

²⁷⁴ For commentary, see Interpretation Note 90 “Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company’s Financial Year”.

12.5.4 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return. The section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation will be notified if supporting documentation is required to substantiate any aspect of the income tax return to the extent that it relates only to section 18A (see 12.1).

12.6 Third-party returns

SARS is responsible for the administration of the TA Act under the control or direction of the Commissioner.²⁷⁵ The Commissioner may to administer a tax Act, obtain full information relating to anything that may affect the liability of a person for tax for any tax period,²⁷⁶ tax event,²⁷⁷ or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.²⁷⁸ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.²⁷⁹

To give effect to the above responsibility, the Commissioner may by public notice,²⁸⁰ at the time and place and by the due date specified, require a person who employs, pays amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a third-party return by the date specified in the notice.²⁸¹ A person required to submit a third-party return must do so in the prescribed form and manner and the third-party return, amongst other things, must contain the information prescribed by the Commissioner.²⁸²

The purpose of third-party reporting is to ensure donor taxpayers claim a deduction (see **Chapter 11**) for donations made only to a section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation, and to ensure that the information provided to SARS by the section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation issuing section 18A receipts (see **Chapter 10**) matches the donor taxpayer's claim for a tax deduction.²⁸³

A section 18A-approved specialised agency, programme, fund, High Commissioner, office entity or organisation that issued a section 18A receipt from 1 March 2024 must submit to SARS a return²⁸⁴ of any amount²⁸⁵ donated for which such a receipt has been issued.²⁸⁶ It is a requirement²⁸⁷ that a section 18A-approved specialised agency, programme, fund, High

²⁷⁵ Section 3(1) of the TA Act.

²⁷⁶ Section 3(2)(a)(i) of the TA Act.

²⁷⁷ Section 3(2)(a)(ii) of the TA Act.

²⁷⁸ Section 3(2)(a)(iii) of the TA Act.

²⁷⁹ Section 3(2)(h) of the TA Act.

²⁸⁰ Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023.

²⁸¹ Section 26(1) of the TA Act.

²⁸² Section 26(2)(a) of the TA Act.

²⁸³ For commentary, see the *Business Requirement Specification: IT 3 Data Submission*.

²⁸⁴ The return to be submitted is an IT3(d) – Section 18A Deductions of Donations. See Column 3: Form in paragraph 3 of the Public Notice.

²⁸⁵ See Column 2: Information concerning in paragraph 3 of the Public Notice. Any “amount” need not be an actual amount of money but may be every form of property whether corporeal or incorporeal, which has a money value. See *C: SARS v Brummeria Renaissance (Pty) Ltd and others* 69 SATC 205 at 215.

²⁸⁶ See paragraph 2.14 of the Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023.

²⁸⁷ For commentary, see *SARS External Guide – Manage Submission of Third-Party Data*.

Commissioner, office entity or organisation must submit a nil return²⁸⁸ if no section 18A receipts were issued.

The third-party return containing all the prescribed information for the period from —²⁸⁹

- 1 March to 31 August, must be submitted by 31 October of each year; and
- 1 March to the end of February, must be submitted by 31 May of each year.

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²⁸⁸ See Column 3: Form in paragraph 3 of the Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023, which provides for the submission of data compiled in accordance with the *Business Requirement Specification: IT 3 Data Submission*.

²⁸⁹ See paragraph 4.1.1 of the Public Notice.

Chapter 13

Objection and appeal

Any decision in the exercise of the Commissioner's discretion under section 18A(1)(bA) is subject to objection and appeal.²⁹⁰ The Commissioner's discretion under section 18A(1)(bA) will be exercised to determine whether any specialised agency, programme, fund, High Commissioner, office, entity or organisation may be approved for purposes of that section. Such a decision may be objected to and appealed against in the same manner as an assessment.²⁹¹

Objection may be lodged against the decision not to approve for purposes of section 18A or an assessment issued to invoke the remedies for non-compliance by a section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation.

A section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation aggrieved by an assessment may before lodging an objection, request SARS to provide reasons for the assessment to enable it to formulate an objection.²⁹² The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days²⁹³ from the date of the assessment.

Any section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation may object to an assessment²⁹⁴ in accordance with Chapter 9 of the TA Act read with the "rules" as published in the *Government Gazette*²⁹⁵ within 80²⁹⁶ business days²⁹⁷ after the —²⁹⁸

- delivery of the notice providing reasons requested for an assessment, if applicable;²⁹⁹
- notice issue by SARS notifying it that the reasons required to enable it to formulate an objection have been provided;³⁰⁰ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including —³⁰¹

- specifying the part or specific amount of the disputed assessment objected to;

²⁹⁰ Section 3(4)(b).

²⁹¹ Section 104(2)(c) of the TA Act. For commentary, see the *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and the *Alternative Dispute Resolution: Quick Guide*.

²⁹² Rule 6 deals with reasons for an assessment.

²⁹³ The term "day" in Rule 1 means a "business day" as defined in section 1 of the TA Act.

²⁹⁴ For commentary, see the Interpretation Note 15 "Exercise of Discretion in case of Late Objection or Appeal".

²⁹⁵ The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Regulation Notice 3146 in *Government Gazette* 48188 of 10 March 2023.

²⁹⁶ Rule 7(1) was amended from 30 to 80 days, with effect from 10 March 2023.

²⁹⁷ The term "business day" is defined in section 1 of the TA Act.

²⁹⁸ Rule 7 deals with objections.

²⁹⁹ Rule 7(1)(a) read with Rule 6.

³⁰⁰ Rule 7(1)(a) read with Rule 6(4).

³⁰¹ Rule 7(2).

- specifying which of the grounds of assessment³⁰² are disputed; and
- submitting the documents required to substantiate the grounds of objection that the section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation 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 section 18A-approved specialised agency, programme, fund, High Commissioner, office, entity or organisation is dissatisfied with SARS's decision, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.³⁰³

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³⁰² 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).

³⁰³ Rule 10.

Annexure A – Section 18A

18A. Deduction of donations to certain organisations.—(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted in the determination of the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to—

- (a) any—
 - (i) public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30; or
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i),which—
 - (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;
 - (bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A); and
 - (cc) has been approved by the Commissioner for the purposes of this section;
- (b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a), or any department contemplated in paragraph (c) and which has been approved by the Commissioner for the purposes of this section; or
- (bA)
 - (i) any agency contemplated in the definition of “specialized agencies” in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);
 - (ii) the United Nations Development Programme (UNDP);
 - (iii) the United Nations Children’s Fund (UNICEF);
 - (iv) the United Nations High Commissioner for Refugees (UNHCR);
 - (v) the United Nations Population Fund (UNFPA);
 - (vi) the United Nations Office on Drugs and Crime (UNODC);
 - (vii) the United Nations Environmental Programme (UNEP);
 - (viii) the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women);
 - (ix) the International Organisation for Migration (IOM);
 - (x) the Joint United Nations Programme on HIV/AIDS (UNAIDS);
 - (xi) the Office of the High Commissioner for Human Rights (OHCHR); or
 - (xii) the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),

if that agency, programme, fund, High Commissioner, office, entity or organisation—

- (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;
 - (bb) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section;
 - (cc) waives diplomatic immunity for the purposes of subsection (5)(i); and
 - (dd) has been approved by the Commissioner for the purposes of this section; or
- (c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

- (A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$$A = B \times 0,005$$

in which formula:

- (AA) “A” represents the amount to be determined;
- (BB) “B” represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or
- (B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6quat (1C):

Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the department carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the department shall be allowed as a deduction under subsection (1).

(1B) Any activity determined by the Minister in terms of subsection (1)(a) or any requirements prescribed by the Minister in terms of subsection (1A), must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those requirements, as the case may be, in the *Gazette*, for incorporation into this Act.

(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4(d) of Part II of the Ninth Schedule, must expressly provide that the organisation—

- (a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—
 - (i) that donation is made by that person on or after 1 August 2002; and
 - (ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;

- (b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and
- (c) must utilise the amount of—
 - (i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and
 - (ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by—

- (a) a receipt issued by the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department concerned, containing—
 - (i) the reference number of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department issued by the Commissioner for the purposes of this section;
 - (ii) the date of the receipt of the donation;
 - (iii) the name of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department which received the donation, together with an address to which enquiries may be directed in connection therewith;
 - (iv) the name and address of the donor;
 - (v) the amount of the donation or the nature of the donation (if not made in cash);
 - (vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation concerned or, in the case of a department in carrying on the relevant public benefit activity; and
 - (vii) such further information as the Commissioner may prescribe by public notice; or
- (b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given.

(2A) A public benefit organisation, institution, board, body or department may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—

- (a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)(a) which carries on activities contemplated in Parts I and II of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule;

- (b) in the case of a public benefit organisation contemplated in subsection (1)(b)—
 - (i) that organisation will within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 50 per cent of all funds received by way of donation during that year in respect of which receipts were issued: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds; and
 - (ii) which provides funds or assets to public benefit organisations, institutions, boards or bodies or any department that carry on public benefit activities contemplated in Parts I and II of the Ninth Schedule, that donation will be utilised solely to provide funds or assets to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds or assets solely in carrying on activities contemplated in Part II of the Ninth Schedule or to any department contemplated in subsection (1)(c) which will utilise those funds or assets solely for the purpose of any activity contemplated in Part II of the Ninth Schedule; or
- (c) in the case of a department, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must obtain and retain an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).

(2C) The accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for the department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).

(2D) Any public benefit organisation contemplated in subsection (1)(b), in respect of any amount that is not distributed as required by subsection (2A)(b)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, institution, board or body contemplated in subsection (1)(a) or to any department contemplated in subsection (1)(c), no later than six months after—

- (a) every five years from the date on which the Commissioner issued a reference number referred to in subsection (2)(a)(i) to that public benefit organisation referred to in subsection (1)(b), if that public benefit organisation is incorporated, formed or established on or after 1 March 2015; or
- (b) every five years from 1 March 2015, if that public benefit organisation referred to in subsection (1)(b) was incorporated, formed or established and issued with a reference number referred to in subsection (2)(a)(i) prior to 1 March 2015.

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, other than immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be deemed to be an amount equal to—

- (a) where such property constitutes—
 - (i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8)(C); or

- (ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8)(C) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or
- (b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of—
 - (i) the fair market value of that property on the date of that donation; or
 - (ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or
- (c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of—
 - (i) the fair market value of that property on the date of that donation; or
 - (ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or
- (d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—
 - (i) the fair market value of that property on the date of that donation; or
 - (ii) the cost to the taxpayer of such property.

(3A) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be determined in accordance with the formula:

$$A = B + (C \times D)$$

in which formula:

- (a) “A” represents the amount deductible in respect of subsection (1);
- (b) “B” represents the cost of the immovable property being donated;
- (c) “C” represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the immovable property been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and
- (d) “D” represents 60 per cent in the case of a natural person or special trust or 20 per cent in any other case.

(3B) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is—

- (a) a share in a listed company; or
- (b) issued by an eligible financial institution as defined in section 1 of the Financial Sector Regulation Act.

(4) The provisions of section 30(10) shall apply mutatis mutandis in respect of any institution, board or body contemplated in subsection (1)(a).

(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation (other than an institution, board or body in respect of which subsection (5B) applies) has—

- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation for purposes not covered by such objects;
- (b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to that organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation by that taxpayer;
- (c) issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection;
- (d) failed to obtain and retain an audit certificate as contemplated in subsection (2B); or
- (e) failed to submit an audit certificate as contemplated in subsection (2C),

the Commissioner may by notice in writing addressed to that person direct that—

- (i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation in that year; and
- (ii) if corrective steps are not taken by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5A) If the Commissioner has reasonable grounds for believing that any regulating or co-ordinating body of a group of public benefit organisations, institutions, boards or bodies contemplated in section 30(3A) or subsection (6) fails to—

- (a) take any steps contemplated in section 30 (3A) or subsection (6), to exercise control over any public benefit organisation, institution, board or body in that group; or
- (b) notify the Commissioner where it becomes aware of any material failure by any public benefit organisation, institution, board or body over which it exercises control to comply with any provision of this section,

the Commissioner may by notice in writing addressed to that regulating or co-ordinating body direct that if corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice, any receipt issued by public benefit organisations, institutions, boards or bodies in that group in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5B) If the Commissioner has reasonable grounds for believing that any accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner—

- (a) must notify the National Treasury and the Provincial Treasury (if applicable) of the contravention; and
- (b) may by notice in writing addressed to that accounting officer or accounting authority direct that, if corrective steps are not taken by that accounting officer or accounting authority within a period stated by the Commissioner in that notice, any receipt issued by that institution in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5C) If any public benefit organisation contemplated in subsection (1)(b), has not distributed amounts as contemplated in subsection (2D), or has not incurred the obligation to distribute those amounts received in respect of investment assets held by it, those amounts shall be deemed to be taxable income of that public benefit organisation in that year of assessment.

(6) The Commissioner may, for the purposes of this section, approve a group of institutions, boards or bodies contemplated in subsection (1)(a)(ii), 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 institutions, boards or bodies in order to ensure that they comply with the provisions of this section.

(7) Any person who is—

- (i) in a fiduciary capacity responsible for the management or control of the income and assets of any public benefit organisation, institution, board or body contemplated in this section; or
- (ii) the accounting officer or accounting authority contemplated in the Public Finance Management Act or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies,

who intentionally fails to comply with any provisions of this section, or a provision 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.

Annexure B – Public benefit activities list in Part II of the Ninth Schedule to the Act

NINTH SCHEDULE

PART II

WELFARE AND HUMANITARIAN

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

HEALTH CARE

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

EDUCATION AND DEVELOPMENT

- 3.
- (a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
 - (b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
 - (c) "Adult education and training", as defined in the Adult Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.
 - (d) "Continuing education and training" provided by a "private college" as defined in the Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.
 - (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
 - (f) The training or education of persons with a severe physical or mental disability.
 - (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
 - (h) The provision of educare or early childhood development services for pre-school children.
 - (i) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
 - (j) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
 - (k) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
 - (l) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
 - (m) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
 - (n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10 (1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).

- (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

- 4.
 - (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
 - (b) The care of animals, including the rehabilitation or prevention of the ill-treatment of animals.
 - (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.
 - (d) The establishment and management of a transfrontier area, involving two or more countries, which—
 - (i) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and
 - (ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries of the peace park, and the building of peace and understanding between the nations concerned.

LAND AND HOUSING

- 5.
 - (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.
 - (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
 - (c) Building and equipping of clinics or crèches for the benefit of the poor and needy.
 - (d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
 - (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

Annexure C – Regulations issued under paragraph 3(o) in Part II of the Ninth Schedule to the Act

GNR.302

28 FEBRUARY 2003

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

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

SCHEDULE

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

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

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

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

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

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


GNR.333

8 APRIL 2005

REGULATIONS ISSUED IN TERMS OF PARAGRAPH 3(o) OF PART II OF THE NINTH SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS FOR THE PROVISION OF SCHOLARSHIPS, BURSARIES AND AWARDS FOR STUDY, RESEARCH AND TEACHING

By virtue of the power vested in me by paragraph 3(o) of Part II of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby determine that the regulations issued in terms of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, and published under Government Notice No. R. 302 in *Gazette* No. 24941 of 28 February 2003, and any amendments thereto, apply *mutatis mutandis* for purposes of paragraph 3(o) of Part II of the Ninth Schedule to that Act.

Annexure D – Example of a written undertaking

	
Name of the specialised agency, programme, fund, high commissioner, office, entity or organisation	
Physical address	
<p>The written undertaking is furnished to the Commissioner of the South African Revenue Service (the Commissioner) in accordance with section 18A(1)(bA)(bb) of the Income Tax Act 58 of 1962 (the Act) to confirm that –</p> <ul style="list-style-type: none"> • public benefit activities in Part II of the Ninth Schedule to the Act are carried on in South Africa; • section 18A receipts will be issued only for any <i>bona fide</i> donations in cash or in property made in kind, which were actually paid or transferred by a donor taxpayer; • <i>bona fide</i> donations for which section 18A receipts were issued will be used solely in carrying on public benefit activities in Part II of the Ninth Schedule to the Act, in South Africa; • diplomatic immunity is waived to enable the Commissioner to invoke section 18A(5)(i) of the Act should non-compliance with the provisions of section 18A of the Act occur, which will result in any donation for which section 18A receipts were issued to be deemed taxable income in the relevant year of assessment in which non-compliance with the provisions of section 18A occurred. 	
Name of the person issuing the written undertaking	
Designation of the person issuing the written undertaking	
E-mail address	
Contact number	
Date	
Signature	

Annexure E – Example of section 18A receipt

 <p>Specialised Agency Pretoria 2000 Telephone: (000) 000 0000 Email: un@org.za Website: www.un.com</p>			
Receipt Number		0001	
Reference Number		930000000	
DONOR INFORMATION			
Name			
Physical Address			
E-mail address			
Contact number			
Nature	Individual	RSA identification number	
		Passport number	
		Country issued	
	Company/ Trust	Registered name	
		Trade name	
		Registration number	
Income tax reference number			
DONATION INFORMATION			
Amount of donation (if cash)		R	
Nature and value of donation (if property in kind)			
Date donation received			
CERTIFICATION			
<p>The receipt is issued for the purposes of section 18A of the Income Tax Act 58 of 1962 (the Act). The donation received has been or will be used solely in carrying on public benefit activities listed in Part II of the Ninth Schedule to the Act.</p>			
INFORMATION OF PERSON ISSUING SECTION 18A RECEIPT			
Name			
Designation			
E-mail address			
Contact number			
Date receipt issued			
Signature			