

Tax Exemption Guide for Public Benefit Organisations in South Africa

Issue 7



Income Tax

Tax Exemption Guide for Public Benefit Organisations in South Africa

Preface

This guide provides general guidance on the –

- approval by the Commissioner (see **Chapter 13**) of an organisation as a public benefit organisation (PBO) under section 30 of the Income Tax Act 58 of 1962 (the Act) (see **Chapter 3**);
- partial taxation of PBOs under section 10(1)(cN) of the Act (see **Chapter 7**); and
- approval by the Commissioner (see **Chapter 13**) of a PBO under section 18A(1)(a)(i) of the Act (see **Chapter 8**) to issue section 18A receipts (see **Chapter 10**) potentially entitling donor taxpayers to an income tax deduction (see **Chapter 11**) for *bona fide* donations (see **Chapter 9**) actually paid or transferred during a year of assessment.

The guide deals with the following taxes and duties that may affect PBOs:

- Capital gains tax (see **14.1.7**)
- Dividends tax (see **14.1.4**)
- Donations tax (see **14.1.1**)
- Employees' tax (see **14.2.3**)
- Estate duty (see **14.1.2**)
- Securities transfer tax (see **14.1.5**)
- Skills development levy (see **14.1.6**)
- Transfer duty (see **14.1.3**)
- Unemployment insurance fund contributions (see **14.2.4**)
- Value-added tax (see **14.2.2**)

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 (the 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 should visit the SARS website at www.sars.gov.za for details of the application procedure.¹

This guide is based on the 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

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*.

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, 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**.

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
18 March 2025

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Glossary

In this guide unless the context indicates otherwise –

- **“basic exemption”** means the amount determined as a threshold contemplated in section 10(1)(cN)(ii)(dd) and applied to the total receipts and accruals from business undertakings or trading activities of a PBO to the extent that such receipts and accruals are not derived from permissible business undertakings or trading activities;
- **“branch of a foreign tax-exempt organisation”** means any branch established in South Africa by any company, association or trust incorporated, formed, or established in a country outside South Africa and is itself exempt from income tax in that other country;
- **“CGT”** means capital gains tax, being the portion of income tax payable by a taxpayer on a taxable capital gain arising from the disposal of assets determined under the Eighth Schedule;
- **“CIPC”** means the Companies and Intellectual Property Commission established under section 185 of the Companies Act;
- **“Close Corporations Act”** means the Close Corporations Act 69 of 1984;
- **“Commissioner”** means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“co-ordinating body”** means the regulating or controlling body of a group of related organisations sharing a common purpose, carrying on the same PBAs under the supervision and direction of that regulating or controlling body contemplated in section 30(3A);
- **“fiduciary”** means a person who holds a position of trust or responsibility including decision-making powers over the affairs of an organisation;
- **“Financial Markets Act”** means the Financial Markets Act 19 of 2012;
- **“founding document”** means the written instrument such as the constitution, memorandum of incorporation, trust deed or will under which an organisation is established and governed;
- **“Master”** means the Master of the High Court;
- **“Minister”** means the Minister of Finance;
- **“NPC”** means a “non-profit company” as defined in section 1 of the Companies Act;
- **“NPO”** means a “non-profit organisation” as defined in section 1 of the NPO Act;
- **“NPO Act”** means the Nonprofit Organisations Act 71 of 1997;
- **“Part I”** and **“Part II”** mean Part I and Part II of the Ninth Schedule;
- **“partial taxation”** means the method of taxing the receipts and accruals derived from business undertakings or trading activities falling outside the permissible business undertakings or trading activities exceeding the basic exemption;

- **“PBA”** means any public benefit activity listed in Part I and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public as defined in section 30(1);
- **“PBO”** means an organisation falling within the definition of “public benefit organisation” in section 30(1) and approved by the Commissioner under section 30(3);
- **“permissible business undertakings or trading activities”** mean limited qualifying business undertakings or trading activities a PBO may conduct, which are integral and directly related, occasional or approved by the Minister, the receipts and accruals of which are exempt from income tax under section 10(1)(cN)(ii);
- **“poor and needy”** means impoverished, having little means and few possessions and therefore in need of basic necessities and assistance;
- **“prescribed requirements”** mean the formal conditions and requirements set out in section 30(3)(b), which an organisation must comply with to qualify for approval as a PBO;
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“section 10(1)(cN)”** means the section providing for the exemption from income tax of the receipts and accruals of PBOs derived from carrying on its PBAs, permissible business undertakings or trading activities and partial taxation;
- **“section 18A”** means the section providing for the tax-deductibility of *bona fide* donations actually paid or transferred to section 18A-approved doer PBOs and section 18A-approved conduit PBOs during a year of assessment;
- **“section 18A-approved conduit PBO”** means any PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1), approved by the Commissioner under sections 30(3) and 18A(1)(b), providing funds or assets to any –
 - section 18A-approved doer PBO;
 - institution, board or body approved by the Commissioner under section 18A(1)(a)(ii);³ or
 - department of government approved by the Commissioner under section 18A(1)(c);⁴
- **“section 18A-approved doer PBO”** means any PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1), approved by the Commissioner under sections 30(3) and 18A(1)(a)(i), carrying on in South Africa any PBA listed in Part II;
- **“section 18A receipt”** means a receipt with mandatory information issued under section 18A(2) by section 18A-approved doer PBOs or section 18A-approved conduit PBOs potentially entitling donor taxpayers to an income tax deduction for *bona fide* donations actually paid or transferred during a year of assessment;
- **“section 30”** means the section setting out the prescribed requirements an organisation must comply with to qualify for and retain approval as a PBO;

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

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

- **“South Africa”** means the “Republic” as defined in section 1(1);
- **“STT”** means securities transfer tax;
- **“STT Act”** means the Securities Transfer Tax Act 25 of 2007;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“testamentary trust”** means a trust established under the will of a deceased person;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“Trust Property Control Act”** means the Trust Property Control Act 57 of 1988;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991;
- **“Wills Act”** means the Wills Act 7 of 1953; and
- any other word or expression bears the meaning ascribed to it in the Act.

All amendment acts, BGRs, calculators, declarations, explanatory memoranda, forms, guides, *Government Gazettes* relating to income tax, interpretation notes, returns, tables and written undertakings referred to in this guide are the latest versions, unless otherwise indicated, which are available on the **SARS website** or via eFiling at **www.sarsefiling.co.za** (guides only).

Chapter 1

Introduction

Non-profit organisations, non-governmental organisations and other organisations with worthy causes are internationally granted some degree of preferential tax treatment, including donor incentives. Although the eligibility criteria, the benefits available, and the fiscal methodology differ in many instances there, however, is broad consensus in the international community on the justification for such beneficial treatment. Factors most frequently cited include that such organisations –⁵

- as civil society initiatives, are seen to promote important values in society, including voluntarism, self-responsibility, and participative democracy;
- play a significant role in society by undertaking shared responsibility for the social and developmental needs of a country on a relatively cost-effective manner;
- relieve the financial burden that would otherwise fall on the state; and
- represent an important mechanism for encouraging philanthropy and promoting greater equity and redistributive policies especially in societies such as South Africa where gross disparities of income and wealth exist.

Preferential tax treatment for organisations approved as PBOs may include the benefit of a partial exemption from the payment of income tax (see **Chapter 7**). In addition to being partially exempt from income tax on certain receipts and accruals, eligible organisations may also enjoy the benefit of being exempt from certain other taxes and duties (see **14.1**). These tax benefits are designed to assist PBOs by augmenting their financial resources and providing them with an enabling environment in which to achieve their objectives.

The terms “public benefit activity” (see **Chapter 2**) and “public benefit organisation” (see **Chapter 3**) are defined in section 30(1) and form the basis for the preferential tax treatment of a PBO. An organisation having a non-profit motive or established or registered as an NPO under the NPO Act (see **Chapter 17**) or incorporated as an NPC under the Companies Act (see **3.1.1**) does not automatically qualify for preferential tax treatment or approval as a PBO. An organisation will enjoy preferential tax treatment only if it complies with the relevant prescribed requirements set out in the Act (see **4.4**) and has been granted approval as a PBO by the Commissioner (see **Chapter 13**). These requirements must continuously be met to retain the approval status.

Government has recognised that organisations are dependent on the generosity of the public, and, to encourage that generosity, has provided an income tax deduction (see **Chapter 11**) for certain *bona fide*⁶ donations (see **Chapter 9**) made by donor taxpayers. Donations made by donor taxpayers represent expenditure of a private and philanthropic nature and therefore as a general matter are not deductible, unless such *bona fide* donations fall within the special dispensation provided for in section 18A. This limitation stems from revenue collection and anti-avoidance concerns.⁷

⁵ Katz, M. M. *et al.* (1999). Motivation for beneficial tax treatment of NPOs in paragraph 2.4. *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa*. Available online at www.treasury.gov.za/publications [Accessed 18 March 2025].

⁶ The ordinary meaning of “*bona fide*” in the *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/bona%20fide [Accessed 18 March 2025] is “made with earnest intent, sincere, made in good faith without fraud or deceit”.

⁷ The *Explanatory Memorandum on the Revenue Laws Amendment Bill, 2008*, at page 87 and 88.

The eligibility to issue section 18A receipts is therefore restricted to PBOs approved by the Commissioner (see **Chapter 13**) that use the *bona fide* donations (see **Chapter 9**) for which they issue section 18A receipts (see **Chapter 10**) to carry on (see 8.2) or fund (see **8.3**) specific PBAs (see **Chapter 2**) listed in Part II in South Africa (see **Annexure E**).

Chapter 2

Public benefit activities

The term “public benefit activity” as defined in section 30(1) is fundamental to the preferential tax treatment of a PBO and is considered in detail below.

2.1 Definition of “public benefit activity”

The term “public benefit activity” as defined means –⁸

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

2.2 The Ninth Schedule

The PBAs listed in the Ninth Schedule are divided into Part I and Part II.

Part I contains a number of PBAs approved by the Minister for purposes of the approval as a PBO under section 30 (see **Annexure D**) These PBAs are categorised as –

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

Part II contains a limited number of PBAs⁹ (see **Annexure E**) approved by the Minister for purposes of the approval under section 18A (see **Chapter 8**). These PBAs are categorised as –

- Welfare and Humanitarian (paragraph 1);
- Health Care (paragraph 2);
- Education and Development (paragraph 3);
- Conservation, Environment and Animal Welfare (paragraph 4);¹⁰ and
- Land and Housing (paragraph 5).¹¹

⁸ Section 30(1).

⁹ Not all PBAs listed in Part I are included in Part II.

¹⁰ Limited PBAs in Part I are included in this category in Part II.

¹¹ Limited PBAs in Part I are included in this category in Part II.

For a complete list of PBAs in Part I and Part II falling under each of the above categories, see **Annexure D** and **Annexure E**.

A PBO, for purposes of section 30, may itself –

- carry on one or more PBA, colloquially referred to as a “doer PBO”; or
- provide funds, assets or other resources¹² to enable other doer PBOs, institutions, boards or bodies exempt under section 10(1)(cA)(i), associations of persons (see **4.8**)¹³ or the national, provincial or local sphere of government contemplated in section 10(1)(a) to carry on PBAs in Part I, which is colloquially referred to as a “conduit¹⁴ PBO”.

A PBO, for purposes of section 18A (see **Chapter 8**), may itself –

- carry on a combination of PBAs in Part I and PBAs in Part II, however, in this situation, section 18A receipts (see **Chapter 10**) can be issued by a section 18A-approved doer PBO (see **8.2**) only for *bona fide* donations that will be exclusively used for purposes of carrying on PBAs in Part II in South Africa; or
- provide funds or assets (see **8.3**) to enable section 18A-approved doer PBOs, institutions, boards, or bodies approved by the Commissioner under section 18A(1)(a)(ii) (see **8.2**), or any department of government approved by the Commissioner under section 18A(1)(c), to use such funds or assets exclusively to carry on PBAs in Part II in South Africa.

2.3 Additional public benefit activities

The Minister may determine additional PBAs from time to time for purposes of section 30¹⁵ and 18A¹⁶ by notice in the *Government Gazette*, provided such activities are considered to be of a benevolent¹⁷ nature considering the needs, interests and well-being of the general public (see **3.5**).

Any additional PBAs prescribed by the Minister must be approved by Parliament and formally incorporated into the Ninth Schedule or the Act within 12 months after the date of publication by the Minister of that activity in the *Government Gazette*.¹⁸

There, currently, are no additional PBAs determined by the Minister.

¹² PBA 10 in Part I.

¹³ An association of persons must carry on any PBA in Part I except PBA 10 in Part I. The association of persons must use the funds, assets and resources received from a conduit PBO to carry on PBAs in Part I, it must therefore be the doer PBO, and may not pass on such funds, assets, and resources on to another conduit association of persons.

¹⁴ The *Oxford Learner's Dictionaries* available online at www.oxfordlearnersdictionaries.com/us/definition/english/conduit [Accessed 18 March 2025] describes “conduit” as “a person, an organization or a country that is used to pass things or information to other people or places”.

¹⁵ Paragraph (b) of the definition of “public benefit activity” in section 30(1).

¹⁶ Section 18A(1)(a)(aa).

¹⁷ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/benevolent [Accessed 18 March 2025] describes “benevolent” as “marked by or disposed to doing good, organized for the purpose of doing good, marked by or suggestive of goodwill”.

¹⁸ Section 30(2) and 18A(1B).

2.4 Additional requirements by regulation

The Minister may by regulation prescribe –

- conditions to ensure that the activities and resources of an organisation are directed in the furtherance of its object;¹⁹ and
- additional requirements that a PBO carrying on any specific PBA identified by the Minister in the regulations, must comply with before any donation made to that PBO will be allowed as an income tax deduction.²⁰

Any conditions or additional requirements prescribed by the Minister must be approved by Parliament and formally incorporated into the Ninth Schedule or the Act, within 12 months after the date of publication by the Minister of those conditions or additional requirements in the *Government Gazette*.²¹

The following PBAs are subject to conditions that may be prescribed by the Minister by regulation:

- The granting of loans to emerging micro enterprises to improve capacity to start and manage businesses contemplated in PBA 1(p)(iii) in Part I.
- The granting of loans contemplated in PBA 3(f) in Part I for purposes of 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;²² or
 - development, servicing, upgrading or procurement of stands or the provision of building materials for the purposes of the activities contemplated above;²³ and
 - provision of security or guarantees of such loans.
- The provision of scholarships, bursaries, awards and loans for study, research and teaching contemplated in PBA 4(o)²⁴ in Part I.

The Minister has not yet prescribed conditions by regulation for PBAs 1(p)(iii) and 3(f) in Part I.

The Minister has prescribed conditions by regulation for PBA 4(o) in Part I and its equivalent, PBA 3(o) in Part II. After the prescribed conditions were issued by regulation the Minister amended the relevant PBAs to allow a PBO carrying on that activity to also provide loans in addition to scholarships, bursaries, or awards for study, research, and teaching. The regulations currently therefore relate only to the provision of scholarships, bursaries, and awards (see 2.4.1). The Minister has not yet issued or amended those regulations to prescribe conditions relating specifically to the provision of loans for study, research, and teaching.

2.4.1 The provision of scholarships, bursaries, awards, and loans

The Minister published conditions by regulation,²⁵ which an organisation carrying on as its sole or principal object the provision of scholarships, bursaries and awards contemplated in

¹⁹ Section 30(3)(a).

²⁰ Section 18A(1A).

²¹ Section 30(2) and 18A(1B).

²² PBA 3(a) in Part I.

²³ PBA 3(b) in Part I.

²⁴ PBA 3(o) in Part II.

²⁵ Government Notice Regulation 302 in *Government Gazette* 24941 of 28 February 2003.

PBA 4(o) in Part I must comply with. The Minister, after publishing the conditions by regulation, declared that those regulations also apply to PBA 3(o) in Part II (see **Annexure F**).²⁶

To ensure the activities and resources of a PBO carrying on PBA 4(o) in Part I are directed in the furtherance of that object, the founding document must, according to the regulation, expressly provide for the following conditions:

- All scholarships, bursaries, or awards²⁷ granted must be *bona fide* and be granted to an individual on grounds of objective merit or need.
- No scholarship, bursary or award granted may be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary, or award.
- No scholarship, bursary or award granted may be subject to conditions that would enable the donor of the funds of that scholarship, bursary or award or any connected person²⁸ in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary, or award.
- No scholarship, bursary or award may be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or that organisation (or any associated institution²⁹ in relation to that donor or organisation) or any relative of that person, unless circumstances indicate that the scholarship, bursary or award would have been granted to that person or his or her relative, even if that person had not been an employee of that donor, organisation or associated institution.
- 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 must make all decisions regarding the granting of scholarships, bursaries, and awards.
- All scholarships, bursaries and awards granted for overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
 - to apply the knowledge obtained from the study, research or teaching immediately after completion overseas in South Africa for a period of at least the period that the study, research or training was funded by the organisation; or
 - to refund the full amount of the scholarship, bursary, or award if the person decides not to apply the knowledge obtained overseas in South Africa.

The conditions prescribed by the Minister by way of regulation have not yet been incorporated in the Ninth Schedule or the Act.

²⁶ Government Notice Regulation 333 in *Government Gazette* 27455 of 8 April 2005.

²⁷ For commentary on the tax implications of any *bona fide* scholarship or award granted to enable or assist any person to study at a recognised educational or research institution, see Interpretation Note 66 “Scholarships or Bursaries”.

²⁸ The term “connected person” is defined in section 1(1). For commentary, see Interpretation Note 67 “Connected Persons”.

²⁹ The term “associated institution” is not defined in the Regulations. The term is defined in section 8C(7) for purposes of the taxation of directors and employees on vesting of equity instruments. It is also defined in section 12H(1) for purposes of learnership agreements. Both these definitions derive their meaning from the definition of “associated institution” in paragraph 1 of the Seventh Schedule. A similar meaning should therefore be afforded to the term as used in the Regulations.

2.4.2 The establishment and management of a transfrontier area

The Minister issued conditions and requirements that an organisation carrying on as its sole or principal object the establishment and management of a transfrontier area³⁰ contemplated in PBA 4(d) in Part II must comply with before any *bona fide* donation made to such organisation will be allowed as a tax deduction (see **Chapter 11**).³¹ The founding document (see **4.3**) of a PBO carrying on PBA 4(d) in Part II must expressly provide that the PBO –

- may not issue a section 18A receipt (see **Chapter 10**) for any donation made by a person to that PBO unless –
 - that donation is made by that person on or after 1 August 2002; and
 - that person (in the case of a company, together with any other company in the same group of companies³² as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that PBO;
- must ensure that every donation contemplated above for which a section 18A receipt has been issued, will be matched by a donation to that PBO of the same amount made by a person who is not a resident and made from funds generated and held outside South Africa;
- must use all donations received –
 - for which a section 18A receipt is issued, and all income derived from those donations, in carrying on PBA 4(d) in Part II in South Africa; and
 - from persons who are not residents, either in carrying on PBA 4(d) in Part II in South Africa, or for a transfrontier conservation area of which South Africa forms part.

³⁰ The concept “transfrontier conservation area” is not defined in the Act. It generally refers to a cross-border region whose different component areas have different forms of conservation status such as national parks, private game reserves, communal natural resource management areas. Although fences, major highways, railway lines or other forms of barriers may separate the various parts, these areas border each other and are jointly managed for long-term sustainable use of natural resources. See www.dffe.gov.za/transfrontier-conservation-areas [Accessed 18 March 2025].

³¹ Section 18A(1C).

³² The term “group of companies” as defined in section 1(1) means two or more companies in which one company (controlling group company) directly or indirectly holds shares in at least one other company (controlled group company), to the extent that (a) at least 70% of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof, and (b) the controlling group company directly holds at least 70% of the equity shares in at least one controlled group company.

Chapter 3

Public benefit organisations

The term “public benefit organisation” as defined in section 30(1) is fundamental to the preferential tax treatment of such organisations and is considered in detail below.

3.1 Definition of “public benefit organisation”

The term “public benefit organisation” as defined means any organisation that —³³

- has been incorporated, formed, or established in South Africa as —³⁴
 - a “non-profit company” as defined in section 1 of the Companies Act (see **3.1.1**);³⁵
 - a trust (see **3.1.2**);³⁶
 - an association of persons (see **3.1.3**);³⁷ or
 - a branch of any company, association or trust incorporated, formed, or established in any country except South Africa and is exempt from tax on income in that other country (see **3.1.4**);³⁸
- has as its sole or principal object (see **3.2**) the carrying on of one or more PBAs (see **Chapter 2**), of which all PBAs are —³⁹
 - carried on in a non-profit manner and with an altruistic or philanthropic intent (see **3.3**);⁴⁰
 - not intended to direct or indirectly promote the economic self-interest of any fiduciary or employee of the organisation except by way of reasonable remuneration payable to that fiduciary or employee (see **3.4**);⁴¹ and
- carries on each PBA for the benefit of, or is widely accessible to, the general public at large, including any sector thereof except small and exclusive groups (see **3.5**).⁴²

An organisation must meet the requirements listed in the definition of “public benefit organisation” in section 30(1) to be considered by the Commissioner for approval under section 30(3). The listed requirements should not be read in isolation because they are joined together by the conjunctive word “and”, which means that all the requirements of the definition of “public benefit organisation” must be met to qualify for approval as a PBO.

In addition to meeting the requirements of the definition of “public benefit organisation”, an organisation must also comply with the prescribed requirements (see **4.4**) that must be included in the organisation’s founding document (see **4.3**). An organisation contravening the prescribed requirements may be subject to non-compliance penalties (see **12.1**).

³³ Section 30(1).

³⁴ Paragraph (a) of the definition of “public benefit organisation” in section 30(1).

³⁵ Paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1).

³⁶ As above.

³⁷ As above.

³⁸ Paragraph (a)(ii) of the definition of “public benefit organisation” in section 30(1).

³⁹ Paragraph (b) of the definition of “public benefit organisation” in section 30(1).

⁴⁰ Paragraph (b)(i) of the definition of “public benefit organisation” in section 30(1).

⁴¹ Paragraph (b)(ii) of the definition of “public benefit organisation” in section 30(1).

⁴² Paragraph (c)(i) of the definition of “public benefit organisation” in section 30(1).

A PBO approved by the Commissioner under section 30 carrying on (see **8.2**)⁴³ or funding (see **8.3**)⁴⁴ specific organisations carrying on PBAs in Part II (see **2.2**) in South Africa may potentially qualify for approval under section 18A, which approval is subject to additional conditions and requirements that must be met (see **Chapter 8**).

3.2 Type of organisation qualifying for approval as a public benefit organisation

An organisation must be constituted in one of the following ways to be eligible for approval as a PBO:⁴⁵

- An NPC incorporated in South Africa (see **3.1.1**).⁴⁶
- A trust established in South Africa (see **3.1.2**).
- An association of persons formed or established in South Africa (see **3.1.3**).
- A branch of a foreign tax-exempt company, association, or trust (see **3.1.4**).

3.1.1 Non-profit company

The term “non-profit company” as defined in the Companies Act means a company –⁴⁷

- “(a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1;⁴⁸ and
- “(b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3)⁴⁹ of Schedule 1”.

(Footnotes added)

An NPC does not automatically qualify for exemption from income tax⁵⁰ and must satisfy the statutory requirements of the Income Tax Act to be eligible for approval as a PBO and for certain of its receipts and accruals to be exempt from income tax.

The primary difference between an NPC and a for-profit company is that an NPC does not have shares or shareholders, and the members of an NPC are not entitled to receive distributions of profits or gains from the operations of an NPC. Profits and gains generated by an NPC approved as a PBO must be used to carry on its PBAs, which must be the sole or principal object (see **3.2**) for which it is established.

⁴³ Section 18A(1)(a)(i).

⁴⁴ Section 18A(1)(b).

⁴⁵ Paragraph (a) of the definition of “public benefit organisation” in section 30(1).

⁴⁶ Pre-existing companies incorporated or deemed to be incorporated under section 21 of the repealed Companies Act 61 of 1973 continue to exist under the Companies Act and will qualify for approval as a PBO provided all the prescribed requirements are complied with.

⁴⁷ Section 1 of that Act.

⁴⁸ The reference to an “other object” in item 1(1) of Schedule 1 to the Companies Act is to an object relating to one or more cultural or social activities or communal or group interests.

⁴⁹ An NPC under item 1(3) of Schedule 1 to the Companies Act, for example, may pay reasonable remuneration for goods or services rendered, pay, or reimburse expenses incurred to advance a stated object of the company, or make payments in accordance with any legal obligation binding on the company.

⁵⁰ Item 1(6) of Schedule 1 of the Companies Act.

3.1.2 Trust

The term “trust” as defined in the Act means —⁵¹

“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”.

A trust is created when a founder (also referred to as the donor) transfers property⁵² to be administered by trustees on behalf of one or more beneficiaries, in accordance with the trust instrument, which could be a trust deed (see 4.3.2) or a will (see 4.3.3). The founder can be a natural person or a legal person. There is no limitation on the maximum number of founders needed to create a trust.⁵³

The term “beneficiary” as defined in the Act in relation to a trust means —⁵⁴

“a person who has a vested⁵⁵ or contingent⁵⁶ interest in all or a portion of the receipts or accruals or the assets of that trust”.

(Footnotes added)

The following methods of creating a trust are recognised in South Africa:⁵⁷

- Trusts created in wills, namely, trusts *mortis causa*, also referred to as testamentary trusts are created during the testator’s lifetime, but because they are created in a will, they become effective only on the death of the testator. The reference to this type of trust as *mortis causa* means that although the act of creation, namely, the execution of the will, takes place *inter vivos*, the trust is established and becomes irrevocable only once the testator dies. The testator’s intentions are usually clearly defined and normally concerned with a specific property, such as money, a farm, a building or similar asset, to be administered in trust to provide for the maintenance of the beneficiaries. The testator’s wishes, as reflected in the will, are aimed at specific rather than general orders that must be carried out.
- An *inter vivos* trust is established during the founder’s lifetime. The general view in South African law is that it emanates from a contract. The contract on which such a trust is based is usually a contract contained in an antenuptial contract,⁵⁸ or a contract between the founder and trustee.
- Trusts can also be created by way of legislation, treaties, and orders of court.

⁵¹ Section 1(1).

⁵² May consist of movable or immovable, corporeal, or incorporeal property, for example, assets of a business, claims against another, copyright, a dwelling, a farm, furniture, money, or shares. In general, anything that can be held in ownership and can be converted into money if liquidated can be deemed trust property.

⁵³ For commentary, see the *Guide to the Taxation of Special Trusts* and the *Comprehensive Guide to Capital Gains Tax*.

⁵⁴ Section 1(1).

⁵⁵ A vesting trust is one in which the trust beneficiaries have an unconditional entitlement to the income or capital of the trust.

⁵⁶ A discretionary trust is one in which the trust beneficiaries have only contingent rights to the income or capital of the trust. Typically, the trustees are given the discretion over how much of the trust income or capital to distribute to the beneficiaries.

⁵⁷ Olivier, P. A., Strydom, S., & Van den Berg, G. P. J. (November 2024). *Trust Law and Practice* in § 2.4 [electronic version].

⁵⁸ Antenuptial contracts commonly contain provisions relating to donations between the intended spouses. See Harms, L. T. C. (31 January 2017). Donations. In *Law of South Africa (LAWSA)* 16 (Third Edition Volume) in paragraph 42. My LexisNexis [online].

3.1.3 Association of persons

The words “association of persons”⁵⁹ are not defined in the Act and should therefore be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used.⁶⁰

LAWSA describes an “association” as follows:⁶¹

“It is today accepted that an association is founded on a basis of mutual agreement. This 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.”

(Footnotes omitted)

3.1.4 Branch of a foreign tax-exempt organisation

For a branch of a foreign tax-exempt organisation to be approved as a PBO, it must be –

- a company incorporated in any country except South Africa;
- an association established in any country except South Africa; or
- a trust formed in any country except South Africa.

A company, association or trust incorporated, formed, or established in any country except South Africa establishing a branch in South Africa for purposes of conducting PBAs may qualify for approval as a PBO provided the foreign organisation is exempt from income tax in its country of origin. The branch will be required to submit confirmation of the exemption from foreign income tax of the foreign organisation together with a copy of its founding document when the application is submitted to the Commissioner (see **Chapter 13**).

A branch governed by the founding document of the foreign tax-exempt organisation must submit a written undertaking to confirm compliance with the prescribed requirements (see **4.4**), insofar as the governance, funding and activities of the branch are concerned (see **Chapter 6**).⁶²

A branch will not qualify for purposes of approval under section 18A (see **Chapter 8**). A branch approved by the Commissioner as a PBO under section 30 may not issue section 18A receipts for *bona fide* donations received, even if it carries on PBAs in Part II in South Africa (see **8.4.1**).⁶³

⁵⁹ Colloquially referred to as a voluntary association.

⁶⁰ Kellaway, E. A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills*. Butterworths. Also, see Steyn, L. C. (1981). *Die Uitleg van Wette* 5th ed (paragraph 4 to 7). Juta and Company (Pty) Ltd.

⁶¹ Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA) 2* (Third Edition Volume) in paragraph 155. My LexisNexis [online].

⁶² Section 30(4).

⁶³ PBOs qualifying for approval under section 18A(1)(a)(i) are limited to PBOs incorporated, formed, or established in South Africa contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1).

Although it is not a requirement for approval as a PBO for a company incorporated in any country other than South Africa to be registered with the CIPC it is a requirement under the Companies Act. Any foreign company⁶⁴ incorporated outside South Africa must register as an external company⁶⁵ with the CIPC within 20 business days after it first begins to conduct business⁶⁶ in South Africa. An external NPC will be registered by the CIPC if it meets the legislative or definitional requirements comparable to those of an NPC incorporated under the Companies Act.⁶⁷

3.2 Sole or principal object

A PBO must have as its sole or principal object the carrying on of one or more PBAs.⁶⁸ The sole or principal object of a PBO set out in its founding document (see **4.3**) should be determined by interpreting its founding document in accordance with the ordinary rules of construction of a document.⁶⁹

The words “sole”, “principal” and “object” are not defined in the Act. They are described in the *Dictionary.com* as follows:

- “Sole” is “being the only one; only.”⁷⁰
- “Principal” is “first or highest in rank, importance, value, chief.”⁷¹
- “Objective” is “something that one’s efforts or actions are intended to attain, accomplish, purpose, goal, target.”⁷²

In ITC 1569⁷³ the judge referred to the following two meanings of “principal” in the *Oxford English Dictionary*:

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

The word “principal” is used in conjunction with “sole” and this concept therefore implies that the PBO must have as the only, or predominant, or foremost aim to carry on one or more PBAs. The word “sole” equates to 100%. The word “principal” as a percentage within this context is interpreted and concluded to mean not less than 90%, having regard to the

⁶⁴ The term “foreign company” as defined in section 1 of the Companies Act, amongst other things, means a non-profit entity incorporated outside South Africa carrying on non-profit activities in South Africa.

⁶⁵ The term “external company” as defined in section 1 of the Companies Act means a foreign company carrying on, amongst other things, non-profit activities within South Africa.

⁶⁶ A foreign company under section 23(2) of the Companies Act will be regarded as conducting non-profit activities within South Africa if that foreign company (a) is a party to one or more employment contracts within South Africa, or (b) is engaging in a course of conduct, or has engaged in a course or pattern of activities within South Africa over a period of at least six months to reasonably conclude that the foreign company intends to continually engage in non-profit activities within South Africa.

⁶⁷ Section 23(1)(a) of that Act.

⁶⁸ Paragraph (b) of the definition of “public benefit organisation” in section 30(1).

⁶⁹ *Capitec Bank Holdings Ltd and another v Coral Lagoon Investments 194 (Pty) Ltd and others* [2021] 3 All SA 647 (SCA).

⁷⁰ www.dictionary.com/browse/sole [Accessed 18 March 2025].

⁷¹ www.dictionary.com/browse/principal?s=t [Accessed 18 March 2025].

⁷² www.dictionary.com/browse/objective [Accessed 18 March 2025].

⁷³ (1993) 56 SATC 86 (C) at 90.

expression “substantially the whole”,⁷⁴ which in the strict sense is interpreted by SARS as 90% but not less than 85% [see **7.4.1(b)**].⁷⁵

The “object” of a PBO is not the subjective goals of its controllers but the activities that it is mandated by its founding document (see **4.3**) to perform and is the aim, intention, purpose, or thing required to be accomplished and the goal to be obtained.

The sole or principal object of a PBO must equate to the activities it physically and actively carries on, which must be to carry on one or more PBAs (see **Chapter 2**). It is therefore insufficient to make a general statement in the founding document that the object of the organisation is to carry on one or more PBAs, or to simply list the PBAs as they appear in the Ninth Schedule. An accurate description of the specific activities including projects and programmes carried on by the organisation must be set out in its founding document.

The sole or principal object of a PBO must not be to conduct a business undertaking or trading activity (see **7.3.1**) to use profits derived from the business undertaking or trading activity to fund a PBA.⁷⁶

The expression “sole or principal” must be considered strictly, having regard to the facts of each case⁷⁷ because a PBO approved by the Commissioner under section 30 receives tax privileges.

Example 1 – Sole or principal object

Facts:

A supermarket sells a wide variety of food, beverages, and household products seven days a week but uses some of the stock-in-trade to provide free meals to homeless people near the supermarket on a regular basis.

Result:

The sole or principal object of the supermarket, which is an intermediary between various supplier companies and individual customers, is to undertake a commercial trading activity and is not to provide meals to homeless people.

3.3 Manner in which public benefit activities must be carried on

All PBAs carried on by a PBO must be carried on in a non-profit manner and with an altruistic or philanthropic intent.⁷⁸ The words “non-profit”, “manner”, “altruistic”, “philanthropic” and “intent” are not defined in the Act.

⁷⁴ The expression “substantially the whole” was introduced in the revised tax system for PBOs in 2000 to achieve a more supportive fiscal environment and to give effect to the proposals and recommendations of the Katz Commission set out in the Ninth Interim Report. See the Katz, M. M., *et al.* (1999). . *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa* in paragraph 5.6.6.

⁷⁵ For commentary, see Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’ ”.

⁷⁶ Depending on the facts applicable there may be additional considerations to be considered in determining whether a commercial business undertaking or trading activity is being conducted. All relevant facts and circumstances must be examined on a case-by-case basis. For commentary, see Interpretation Note 24 “Public Benefit Organisations: Partial Taxation”.

⁷⁷ *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at 182.

⁷⁸ Paragraph (b)(i) of the definition of “public benefit organisation” in section 30(1).

The word “non-profit” is described in the *Cambridge Dictionary* as –⁷⁹

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

Investopedia describes “not for profit” as –⁸⁰

“Not-for-profit organizations do not earn profits for their owners. All of the money earned by or donated to a not-for-profit organization is used in pursuing the organization's objectives and keeping it running”.

The word “manner” is described in the *Dictionary.com* as –⁸¹

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

The intent of an organisation carrying on any PBA must not be to generate a profit or financial return. A PBO must not conduct activities for purposes of making a distributable profit. It will be unacceptable for a PBO to conduct profit-making activities (see 7.3.1) as its sole or principal object to fund the cost of running the PBO. The activities carried on by a PBO should not be to maximise profits but rather to recover direct and reasonable indirect costs. An organisation carrying on a PBA as part of a profit-making venture will not qualify for approval as a PBO. However, an organisation carrying on a business undertaking or trading activity as part of a PBA may qualify as a PBO provided it meets all the permissible business undertaking or trading activity requirements (see 7.4).

The word “altruistic” is described in the *CollinsDictionary.com* as –⁸²

“concern for the happiness and welfare of other people rather than for yourself”.

Altruism generally means a concern for the well-being of others with no thought about oneself. Altruism is the opposite of self-interest (see 3.4). The intention of an organisation must not be to carry on any PBA for personal profit or the benefit or advantage of the organisation to the exclusion or regard of the well-being of the general public (see 3.5).

In *Ex Parte Henderson & another*, NNO Miller J provided the following explanation of philanthropy:⁸³

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

The words “philanthropic” and “charitable” are used to describe goodwill towards men in general and the active effort to promote the happiness and well-being of one’s fellow men.

The *Dictionary.com* describes “intent” as –⁸⁴

“something that is planned, proposed, or intended, purpose, design, intention, the act or fact or intending, as to do something”.

⁷⁹ <https://dictionary.cambridge.org/dictionary/english/non-profit> [Accessed 18 March 2025].

⁸⁰ www.investopedia.com/terms/n/not-for-profit.asp [Accessed 18 March 2025].

⁸¹ www.dictionary.com/browse/manner [Accessed 18 March 2025].

⁸² www.collinsdictionary.com/dictionary/english/altruistic [Accessed 18 March 2025].

⁸³ 1971 (4) SA 549 (D) at 556.

⁸⁴ www.dictionary.com/browse/intent [Accessed 18 March 2025].

The intent of an organisation is a subjective test, and it is not always an easy task to establish. The court will in the first instance consider the organisation's purpose, that is, what the organisation states its intent to be in its founding document (see 4.3). An objective review of an organisation's activities considered together with the relevant facts and circumstances may provide an indication of an organisations stated intent.

Altruistic or philanthropic intent can therefore be described as the purpose or object of a charitable gift or bequest. The intent of such a charitable gift or bequest is often expressed in restrictions, terms or conditions between the donor and donee but may also be expressed in the words, actions, beliefs and giving practices of a donor. Thus, there must be no *quid pro quo*, reciprocal obligations and no direct or indirect personal benefit or return resulting from the PBAs carried on by the PBO.

3.4 No self-interest of any fiduciary or employee

The intent of the PBO in carrying on one or more PBAs may not be to directly or indirectly promote the economic self-interest of any fiduciary (see 4.4.1) or employee.⁸⁵ The payment of reasonable remuneration to fiduciaries or employees conducting the affairs of a PBO to enable it to achieve its objectives is permitted (see 4.6).⁸⁶

The words "directly", "indirectly", "economic" and "self-interest" are not defined in the Act. The words are described in the *Cambridge Dictionary* as follows:

- "Directly" is "without anything else being involved or in between."⁸⁷
- "Indirectly" is "in a way that is complicated or not obvious" and "in a way that is not direct or not connected in a simple way."⁸⁸
- "Economic" is "relating to trade, industry, or money."⁸⁹
- "Self-interest" is "the act of considering the advantage to yourself when making decisions, and deciding to do what is best for you."⁹⁰

An organisation may not carry on any PBAs with the intent of directly or indirectly advancing or creating a personal or private advantage for any fiduciary or employee of that organisation. Fiduciaries or employees must always put the interests of the organisation ahead of their own economic self-interest and prohibited from profiting when dealing on behalf of the organisation. Organisations operating for the financial gain of any fiduciary, office bearer, employee or any other person will not qualify for approval as a PBO.

This requirement, however, does not restrict an organisation from entering into transactions with any fiduciary or employee of that organisation in the course of undertaking any PBAs, provided such transactions are concluded at arm's length. An arm's length transaction refers to a transaction in which the parties act independently without one party influencing the other. Both parties act in their own self-interest and are not subject to pressure from the other. The determination of "dealing at arm's length" will be a factual inquiry and must be decided on the facts and circumstances of each case. To determine whether the transactions are

⁸⁵ The term "employee" is defined in paragraph 1 of the Fourth Schedule.

⁸⁶ Paragraph (b)(ii) of the definition of "public benefit organisation" in section 30(1).

⁸⁷ <https://dictionary.cambridge.org/dictionary/english/directly> [Accessed 18 March 2025].

⁸⁸ <https://dictionary.cambridge.org/dictionary/english/indirectly> [Accessed 18 March 2025].

⁸⁹ <https://dictionary.cambridge.org/dictionary/english/economic> [Accessed 18 March 2025].

⁹⁰ <https://dictionary.cambridge.org/dictionary/english/self-interest> [Accessed 18 March 2025].

conducted at "arm's length", the relationship between the parties, the substance and nature of the transactions and the surrounding circumstances should be examined.⁹¹

LAWSA provides the following on transactions not conducted at arm's-length:⁹²

"A transaction is not an arm's length, voluntary sale if either of the parties has acted under compulsion, or if the transaction was entered into on extraordinary terms and conditions, or if both parties have not realised the existing advantages and potentialities of the property, or where any abnormal circumstances pertain to the transaction. Simulated transactions are not at arm's length, and should be disregarded. The same applies to family transactions, unless they were concluded under open market conditions."

(Footnotes omitted)

The "arm's-length principle" requires that the amount charged and the terms and conditions for a given transaction must be the same as if the parties acted in their own self-interest and not subject to pressure from the other.⁹³

3.5 Benefit of the general public

The PBAs carried on by a PBO must be for the benefit of, or be widely accessible to, the general public at large. This may include a specific sector of the general public but may not be for the benefit of a small and exclusive group.⁹⁴

The expressions "general public at large" or "general public" are not defined in the Act. The *CollinsDictionary.com* describes "general public" as –⁹⁵

"you can refer to the people in a society as the general public, especially when you are contrasting people in general with a small group".

The words "general public" usually refer to the general population as a whole,⁹⁶ which may include all the people in a geographic area or the country, rather than people who belong to a small and exclusive group. The words may also refer to a particular part of a community or population, but this will depend on the context and wording used, for example, the provision of legal services for poor and needy persons,⁹⁷ the training or education of persons with a severe physical or mental disability,⁹⁸ and the provision of youth leadership or development programmes.⁹⁹

The words "general public" are not new to the Act and were used in repealed legislation.¹⁰⁰ Section 30, however, replaced the words "public character" with "general public at large". There is no case law on the meaning of "general public at large" and therefore reliance is placed on case law relating to "public character", which has been commented on in many decisions.

⁹¹ *Philip Claasen t/a Mostly Media v Andre Delport t/a AD Industrial Chemicals* [2009] JOL 23885 (WCC) in [4].

⁹² Gildenhuys, A. (31 January 2022). Valuations. In *Law of South Africa (LAWSA)* 43 (Third Edition Volume) in paragraph 315. My LexisNexis [online].

⁹³ www.ustransferpricing.com/arms_length_principle.html [Accessed 18 March 2025].

⁹⁴ Paragraph (c)(i) of the definition of "public benefit organisation" in section 30(1).

⁹⁵ www.collinsdictionary.com/dictionary/english/general-public [Accessed 18 March 2025].

⁹⁶ *CIR v Plascon Holdings Ltd* 1964 (2) SA 464 (A), 26 SATC 101 at 109.

⁹⁷ PBA 1(m) in Part I.

⁹⁸ PBA 4(f) in Part I.

⁹⁹ PBA 6(c) in Part I.

¹⁰⁰ The repealed section 10(1)(f), which provided for the tax exemption of the receipts and accruals of religious, charitable, and educational institutions of a public character.

In ITC 69¹⁰¹ the following was concluded based on examples of cases in which the meaning of “public nature” or “character” was commented on:

“The word ‘public’ does not necessarily mean the general community; it includes sections of the public where the benefit to that section is universal, and not individual to certain members of that section. In this case the testator had pointed out no particular individuals; his charity was directed to a class or section of the community, to wit, aged European ladies and gentlemen who could not provide for themselves.

Accordingly, the necessary public character may be found to exist where the benefit is not a mere private or family benefaction, but belongs to the public at large, or a sufficiently substantial section of the public, or an appreciably important section or class of the community, and provided the benefit is universal and not individual to certain members of that section or class.”

In *CIR v Plascon Holdings Ltd* the court held that –¹⁰²

“... the words ‘general public’, in their ordinary connotation, mean the members of the community at large, in the sense of natural persons”.

In *The Endeavour Foundation and UDC Ltd v COT*¹⁰³ the court had to decide whether the Foundation was a trust of a public character. The court held that –¹⁰⁴

“a first enquiry must be whether it is public – whether it is for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants, may, for instance, be the objects of such a gift, but private individuals or a fluctuating body of private individuals, cannot”.

Whether an organisation complies with this requirement must firstly be determined from the wording in the founding document (see 4.3) establishing and governing such an organisation seeking approval as a PBO. Secondly, from the manner in which its income is derived and expended.

This requirement does not preclude certain individuals from benefitting from any activity carried on by a PBO if it does not exclude the general public at large. If any benefit is provided on grounds of a personal or employment relationship it potentially excludes the general public at large, for example, a select group, such as an organisation providing bursaries to family members and employees employed at a specific business.

The critical issue is therefore that the beneficial interest of the activities carried on by an organisation must not vest in any private person but must belong inalienably to the public. The benefit of the activities must be given in a public manner and not for the private benefaction of individuals from a select qualifying group that is dependent on a relationship to a particular individual or organisation. There must be an element of embracing the public or community, including any sector, other than small and exclusive groups. The majority of the Lordship’s judgement in *Oppenheim v Tobacco Securities Trust Co Ltd & others*¹⁰⁵ was quoted in *The Endeavour Foundation and UDC Ltd v COT* in, which it was held that –¹⁰⁶

“... to constitute a section of the public the possible beneficiaries must not be numerically negligible, and the quality that distinguishes them from other members of the public, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual. It must be essentially impersonal and not personal”.

¹⁰¹ (1927) 2 SATC 264 (U) at 269.

¹⁰² 1964 (2) SA 464 (A), 26 SATC 101 at 109.

¹⁰³ (1995) 57 SATC 297 (ZS).

¹⁰⁴ At 304.

¹⁰⁵ [1951] 1 All ER 31 (HL).

¹⁰⁶ (1995) 57 SATC 297 at 304.

The following examples of sections of the general public were provided in the above court case:¹⁰⁷

“Accordingly, the necessary public character may be found to exist where the benefit is not a mere private or family benefaction, but belongs to the public at large, or a sufficiently substantial section of the public, or an appreciably important section or class of the community, and provided the benefit is universal and not individual to certain members of that section or class. Examples of such sections of the community that have been held broad enough to benefit are: whites in certain categories (see *In re Denton’s Estate* 1951(4) SA 582(NPD)); boys of the Jewish faith under twenty-five years (see *Standard Bank of SA Ltd NO v Betts Brown and Ors* 1958(3) SA 713(NPD)); aged ladies and gentlemen of white descent (see ITC 69 *supra*); South African soldiers who have been incapacitated during the Second World War (see *Ex parte Marriott NO* 1960(1) SA 814(D)); destitute children of British parentage (see *Ex parte Rattray* 1963(1) SA 556(D)); descendants of the Mohammedan community resident in South Africa (see ITC 59 *supra*).”

Example 2 – PBAs carried on for the benefit of a section of the general public

The following are non-exhaustive examples of organisations qualifying as PBOs carrying on a PBA for the benefit of sections of the general public:

- The provision of education by an independent school established for persons of the Hindu, Muslim, Judaism or Christian faith.¹⁰⁸
- The provision of home-based care to persons afflicted with HIV/AIDS in a particular community.¹⁰⁹
- Rehabilitative care or counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.¹¹⁰
- The provision of training, support, or assistance to emerging farmers to improve capacity to start and manage agricultural operations.¹¹¹

The carrying on of any PBA by an organisation must be for the benefit of, or accessible for all people within South Africa, regardless of their nationality or legal status.¹¹² The benefit or accessibility of the carrying on of any PBA by an organisation is therefore not limited to persons who are South African citizens¹¹³ but, for example, may include foreigners,¹¹⁴ asylum seekers¹¹⁵ or refugees.¹¹⁶

¹⁰⁷ At 304.

¹⁰⁸ PBA 4(a) in Part I.

¹⁰⁹ PBA 2(d) in Part I.

¹¹⁰ PBA 1(g) in Part I.

¹¹¹ PBA 3(h) in Part I.

¹¹² The benefit of PBAs is not limited to only South African citizens. PBA 1(o) in Part I is limited to the benefit of asylum seekers and refugees and is described as “the promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees”.

¹¹³ South African citizenship may be obtained by birth, descent, or naturalisation. See section 2, 3 and 4 of the South African Citizenship Act 88 of 1995, respectively.

¹¹⁴ The term “foreigner” as defined in section 1 of the South African Citizenship Act, 1995, means a person who is not a South African citizen.

¹¹⁵ The term “asylum seeker” as defined in section 1 of the Refugee Act 130 of 1998 means a person who is seeking recognition as a refugee in South Africa.

¹¹⁶ The term “refugee” as defined in section 1 of the Refugee Act, 1998, means any person who has been granted asylum under that Act. A refugee under section 27 of the Refugee Act, 1998, enjoys the rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996.

Example 3 – PBAs carried on for the benefit of the general public of South Africa

Facts:

An organisation incorporated as an NPC in South Africa has been established with the sole object to perform open-heart surgery, particularly on children. The recipients of such surgery may include foreign nationals. The surgeries are performed in South Africa by South African surgeons.

Result:

The NPC meets the requirement of paragraph (c)(i) of the definition of “public benefit organisation”, since the activity is carried on for the benefit of and is widely accessible to the general public at large in South Africa, particularly children in need of open-heart surgery.

Chapter 4

Section 30 approval

4.1 Approval as a public benefit organisation

The Commissioner may approve an organisation as a PBO only if –¹¹⁷

- it complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object (see 4.2);
- it has submitted a copy of its founding document (see 4.3) under which it is established and complies with all the prescribed requirements (see 4.4);
- satisfied that the organisation did not knowingly participate in any tax-avoidance scheme (see 4.5);
- it pays reasonable remuneration and does not unduly benefit any person (see 4.6);
- it complies with reporting requirements (see 4.7);
- in the case of any PBO providing funds to any association of persons contemplated in PBA 10(iii) in Part I is satisfied reasonable steps have been taken to ensure the correct usage of those funds (see 4.8);
- it does not use its resources for the benefit of any political party (see 4.9); and
- satisfied that a person acting in a fiduciary capacity (see 4.4.1) is not disqualified under the Trust Property Control Act, the NPO Act, or the Companies Act (see 4.4.2).

4.2 Conditions prescribed by the Minister by way of regulation

A requirement for the Commissioner to approve an organisation as a PBO is that it must meet, if applicable, any conditions the Minister may prescribe by way of regulation to ensure the activities and resources of that PBO are directed in the furtherance of its object.¹¹⁸ The conditions the Minister has to date prescribed by way of regulation are considered in 2.4.

4.3 Founding document

An organisation applying for approval as a PBO must have a founding document.¹¹⁹ The founding document will depend on the type of organisation incorporated, formed, or established. The founding document establishing and governing –

- an NPC (see 3.1.1) is a memorandum of incorporation (see 4.3.1);
- a trust (see 3.1.2) is a trust deed (see 4.3.2);
- a testamentary trust (see 3.1.2) is a will (see 4.3.3) of a deceased person;
- an association of persons (see 3.1.3) is a constitution (see 4.3.4) adopted by its members; and
- a branch of a foreign tax-exempt organisation (see 3.1.4) is the founding document of the foreign tax-exempt organisation, which is a replication of the foreign “parent” company, association, or trust therefore the founding document of the branch of a foreign tax-exempt organisation and the foreign “parent” are the same.

¹¹⁷ Section 30(3).

¹¹⁸ Section 30(3)(a).

¹¹⁹ Section 30(3)(b).

The founding document must be submitted to the Commissioner as part of the application for approval as a PBO (see **Chapter 13**).¹²⁰

4.3.1 Memorandum of incorporation

The memorandum of incorporation is the document by which an NPC is incorporated and sets out the rights, duties, and responsibilities of members, directors, and others within and in relation to a company. The Companies Act provides for the simplest possible form of incorporation by the use of a standard form of the memorandum of incorporation. The registration of a company is confirmed by the CIPC¹²¹ through the issuing and delivery to the company of a registration certificate¹²² after it has filed a completed and signed the memorandum of incorporation¹²³ and notice of incorporation.¹²⁴

LAWSA provides the following on the registration of a company:¹²⁵

“From the date and time that the incorporation of a company is registered, as stated in its registration certificate, the company is a juristic person which exists continuously until its name is removed from the companies register in accordance with the Companies Act. A duly issued registration certificate is conclusive evidence that all the requirements for the incorporation of the company have been complied with and that the company is incorporated under the Act as from the date, and the time, if any, stated in the certificate.”

(Footnotes omitted)

4.3.2 Trust deed

A verbal or oral trust is valid in law, however, such a verbal or oral trust is not administered under the Trust Property Control Act.¹²⁶ The term “trust instrument” as defined in the Trust Property Control Act means —¹²⁷

“a written agreement or a testamentary writing or a court order according to which a trust was created”.

A copy of the trust instrument must under the Trust Property Control Act be lodged with the Master.¹²⁸ Any person appointed as trustee under a trust instrument, may act in that capacity only if authorised to do so in writing by the Master.¹²⁹

¹²⁰ Section 30(3)(b).

¹²¹ Section 14(1) of the Companies Act.

¹²² Section 14(1)(b)(iii) and (4) of the Companies Act. Also, see Form CoR 14.3, Registration Certificate, included in the Regulations.

¹²³ Section 13(1)(a) of the Companies Act and paragraph 15 in Government Notice Regulation 351 in *Government Gazette* 34239 of 26 April 2011 and Form CoR 15.1C.

¹²⁴ Section 13(1)(b) and 13(2) of the Companies Act, read with the Regulations in Government Notice Regulation 351 in *Government Gazette* 34239 of 26 April 2011. Also, see Form CoR 14.1, Notice of Incorporation, included in the Regulations.

¹²⁵ Stoop, H. H. (30 April 2022) Companies Part 1. In *Law of South Africa (LAWSA)* 6(1) (Third Edition Volume) in paragraph 29. My LexisNexis [online].

¹²⁶ Palmer, G. C. (31 January 2022) Trusts. In *Law of South Africa (LAWSA)* 43 (Third Edition Volume) in paragraph 178. My LexisNexis [online].

¹²⁷ Section 1 of that Act.

¹²⁸ Section 4(1) of the Trust Property Control Act.

¹²⁹ Section 6 of the Trust Property Control Act.

LAWSA provides the following on the formation requirement of trusts:¹³⁰

“The founder must intend to create a trust and his or her intention must be concluded in a form which obliges him or her or his or her executor to effect transfer of the prospective trust assets to the trustee, or which obliges the trustee to administer the property for the trust object”.

(Footnotes omitted)

To qualify as a PBO a trust must have a written instrument, which must be administered under the Trust Property Control Act.

4.3.3 Will

The word “will” is not defined in the Act. The Wills Act defines the term “will”¹³¹ to include a codicil¹³² and any other testamentary writing.¹³³ A will can be described as a written document setting out instructions as to how assets of a person are to devolve when that person dies.

There is no form prescribed by law for a will. However, to be valid it must comply with the formalities in the execution of a will under the Wills Act, which, amongst other things, requires it to be in writing, and signed¹³⁴ by the testator in the presence of witnesses.¹³⁵

On the death of a person various formalities must be complied with under the Administration of Estates Act.¹³⁶ For example, the lodging of a death notice, the lodging of the will to the Master, the delivery of a preliminary inventory to the Master, and the custody of the deceased estate.¹³⁷ The Master on receipt of such a will or similar testamentary writing may register such a document in a register of estates.¹³⁸

4.3.4 Constitution

LAWSA provides the following on the constitution of an association:¹³⁹

“The constitution of an association together with all its rules or regulations collectively constitute the agreement which is entered into by its members. This agreement is the crucial factor in the existence of an association. It not only determines the nature and scope of the association’s existence and activities but also, where necessary, prescribes and demarcates the powers of, *inter alia*, the executive committee, the secretary and the members of the association in general

¹³⁰ Palmer, G. C. (31 January 2022) Trusts. In *Law of South Africa (LAWSA)* 43 (Third Edition (Volume) in paragraph 182. My LexisNexis [online].

¹³¹ Section 1 of that Act.

¹³² A codicil is a second or later will, either annexed to the original will or in a separate document, and is usually a supplement to, or changes to the original will.

¹³³ Any other testamentary writing can be described as any document clearly identifying the testator’s intention relating to the property bequeathed, the extent of the interest bequeathed, and the beneficiary. Gildenhuys, A. (31 December 2023) Wills and Succession. In *Law of South Africa (LAWSA)* 44 (Third Edition Volume) in paragraph 271. My LexisNexis [online]. Also, see *Ex Parte Estate Davies* 1957 3 All SA 468 (N); 1957 3 SA 471 (N) 474 and *Oosthuizen v Die Weesheer* 1974 2 All SA 512 (O); 1974 2 SA 434 (O).

¹³⁴ Section 2(1)(a)(i) of the Wills Act.

¹³⁵ A court under section 2(3) of that Act can under certain specific circumstances declare an unsigned will to be acceptable.

¹³⁶ Act 66 of 1965. See section 8 of that Act.

¹³⁷ Pugsley, S. (31 December 2023). Administration of Deceased Estates. In *Law of South Africa (LAWSA)* 44 (Third Edition Volume) in paragraph 443. My LexisNexis [online].

¹³⁸ Section 8(1) and 8(3) of the Administration of Estates Act, 1965.

¹³⁹ Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraph 156. My LexisNexis [online].

meeting. In addition, it expresses and regulates the rights of members and provides for certain procedural aspects.”

(Footnotes omitted)

4.4 Prescribed requirements

The prescribed requirements, considered below, must be included in the founding document (see 4.3),¹⁴⁰ except in the case of a branch of a foreign tax-exempt organisation (see 3.1.4) or a testamentary trust (see Chapter 6).

The founding document as a whole will be examined to ensure that the prescribed requirements are included.

There are adverse consequences (see 12.3), which may include a fine or imprisonment, for persons in a fiduciary capacity (see 4.4.1) responsible for the management or control of the income and assets of a PBO who intentionally fail to comply with the prescribed requirements.

4.4.1 Fiduciary responsibility

An organisation, except a testamentary trust,¹⁴¹ is required to have at least three natural¹⁴² persons who are not connected persons in relation to one another to accept fiduciary responsibility.¹⁴³

The expression “fiduciary responsibility” is not defined in the Act. The *Cambridge Dictionary* describes the words separately as follows:

- “Fiduciary” is “relating to the responsibilities of a person or organization that manages property or money belonging to another person or organization.”¹⁴⁴
- “Responsibility” is “something that it is your job or duty to deal with.”¹⁴⁵

The *BusinessDictionary.com* describes “fiduciary duty” as follows:¹⁴⁶

“A legal obligation of one party to act in the best interest of another. The obligated party is typically a fiduciary, that is, someone entrusted with the care of money or property. Also called fiduciary obligation.”

The persons accepting fiduciary responsibility for a PBO are required to always act in the best interest of the PBO and put the interests of the PBO ahead of their own self-interest and prohibited from profiting when dealing on behalf of the PBO.

¹⁴⁰ Section 30(3)(b).

¹⁴¹ Proviso to section 30(3)(b)(i).

¹⁴² Section 30(3)(b)(i) was amended by section 6(a) of the Tax Administration Laws Amendment Act 18 of 2023, which came into operation on 22 December 2023, the date of promulgation of that Act.

¹⁴³ Section 30(3)(b)(i).

¹⁴⁴ <https://dictionary.cambridge.org/dictionary/english/fiduciary> [Accessed 18 March 2025].

¹⁴⁵ <https://dictionary.cambridge.org/dictionary/english/responsibility> [Accessed 18 March 2025].

¹⁴⁶ www.businessdictionary.com/definition/fiduciary-duty.html [Accessed 18 March 2025].

It is a further requirement that the three natural persons accepting fiduciary responsibility for the PBO may not be connected persons¹⁴⁷ in relation to each other. The term “connected person” in relation to a natural person is defined as –¹⁴⁸

“any relative; and any trust (other than a portfolio of a collective investment scheme) of which such natural person or such relative is a beneficiary”.

The term “relative” in relation to any person is defined as –¹⁴⁹

“the spouse of that person or anybody related to that person or that person’s spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of ‘child’ in this section and any other person, that child shall be deemed to be related to the adoptive parent of that child within the first degree of consanguinity”.

Natural persons are therefore connected persons in relation to one another if they are relatives in relation to one another. A relative includes a person’s spouse and anyone related to the person or the person’s spouse within the third degree of consanguinity.¹⁵⁰

Natural persons are also connected persons in relation to one another, for example, if they are beneficiaries of the same trust.

(a) Persons accepting fiduciary responsibility for a non-profit company

A PBO incorporated as an NPC is required under the Companies Act to have a minimum of three persons to incorporate the NPC¹⁵¹ and to appoint at least three directors.¹⁵²

A director of a company must –¹⁵³

- not use the position of director, or any information obtained while acting in the capacity of a director –
 - to gain an advantage for the director, or for another person other than the company or a wholly owned subsidiary¹⁵⁴ of the company; or
 - to knowingly cause harm to the company or a subsidiary of the company; and
- communicate to the board at the earliest practicable opportunity any information that comes to the director’s attention, unless the director –
 - reasonably believes that the information is immaterial to the company, or generally available to the public, or known to the other directors; or
 - is bound not to disclose that information by a legal or ethical obligation of confidentiality.

¹⁴⁷ For commentary, see Interpretation Note 67 “Connected Persons”.

¹⁴⁸ Section 1(1).

¹⁴⁹ Section 1(1).

¹⁵⁰ The word “consanguinity” is described in the *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/consanguinity> [Accessed 18 March 2025] as “the condition of being blood relations (= related to someone by birth, not marriage)”.

¹⁵¹ Section 13(1) of the Companies Act.

¹⁵² Section 66(2)(b) of the Companies Act. The term “director” as defined in section 1 of the Companies Act means a member of the board of a company, as contemplated in section 66 of that Act, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated.

¹⁵³ Section 76(2) of the Companies Act.

¹⁵⁴ The term “subsidiary” is defined in section 1(1) and the meaning is determined in accordance with section 3.

A director's standard of conduct is incorporated in the Companies Act and provides that all powers and functions arising from the capacity of a director must be exercised –¹⁵⁵

- in good faith;
- for a proper purpose;
- in the best interest of the company; and
- with a degree of care, skill and diligence reasonably expected of a person –
 - carrying out the same functions in relation to the company as those carried out by that director; and
 - having the general knowledge, skill, and experience of that director.

LAWSA explains a director's fiduciary duty relating to a company as follows:¹⁵⁶

"The Companies Act defines 'director' as a member of the board of a company or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated.

In addition to the duties imposed on them by the Companies Act and the wide-ranging power similarly given them to manage its business and affairs (save as otherwise provided by the memorandum of incorporation), the memorandum of incorporation often gives explicit power to directors of companies to manage the company's business, to transact on its behalf, and to delegate their powers and functions. They exercise their powers collectively, by majority vote, as a board. A director therefore stands in a fiduciary relationship to the company and is subject to essentially the same fiduciary duties as are imposed on other fiduciaries who stand in a similar relationship of confidence and trust to another."

(Footnotes omitted)

In view of the above, any person who is appointed as a director or alternative director,¹⁵⁷ may accept fiduciary responsibility for a PBO.

(b) Persons accepting fiduciary responsibility for a trust

The Act defines "trustee" as –¹⁵⁸

"in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of court or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, fideicommissum or other limited interest or acting in any fiduciary capacity or having, either in a private or in an official capacity, the possession, direction, control or management of any property of any person under legal disability".

The Trust Property Control Act provides that a trustee must in the performance of his or her duties and in the exercise of his or her powers act with the care, diligence, and skill, which can reasonably be expected of a person who manages the affairs of another.¹⁵⁹

¹⁵⁵ Section 76(3) of the Companies Act.

¹⁵⁶ Stoop, H. H. (30 June 2022). Companies Part 2. In *Law of South Africa (LAWSA)* 6(2) (Third Edition Volume) in paragraphs 1 and 3. My LexisNexis [online].

¹⁵⁷ The term "alternate director" as defined in section 1 of the Companies Act means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company.

¹⁵⁸ Section 1(1).

¹⁵⁹ Section 9(1) of that Act.

The *Trust Law and Practice* provides the following on trustees accepting fiduciary responsibility for a trust:¹⁶⁰

“The source from which the trustee’s duties are derived is connected to his trusteeship. The duties attach legally to the office of trustee. In addition, Act 57 of 1988¹⁶¹ makes provision for a number of duties, so that it can be said that these duties are based on legislation.”

(Footnote added)

In view of the above, any person who is a trustee, executor or administrator, tutor or curator of a trust, may accept fiduciary responsibility for a PBO.

(c) Persons accepting fiduciary responsibility for an association of persons

The following explanation is provided by *LAWSA* on the fiduciaries of an association:¹⁶²

“Members of an association can be elected to office. The word ‘office’ ordinarily has a fairly wide connotation, meaning a position or post to which prescribed duties are attached. Where an association’s constitution prescribes the duties of the president, vice-president, treasurer, trustees and secretary, these posts are all ‘offices’. Certain persons holding office may be required to fulfil managerial functions.

The proper functioning of an association requires the appointment of a group of persons with executive powers. The constitution of the association usually regulates the matter by entrusting the management of the association’s affairs to a management (executive) committee. The election of persons to serve on the management committee takes place in accordance with the constitutional provisions. When a person is elected to serve on a management committee, he or she obtains certain rights and undertakes certain obligations in relation to the conduct of the affairs of the association. Members of the management committee may resign or be removed from office in conformity with the terms of the constitution. A duly elected management committee holds office until it is dismissed or retires of its own accord.”

(Footnotes omitted)

In view of the above, any person elected to office in an association of persons, such as the chairperson, vice-chairperson, treasurer, secretary, or any person appointed to the management or executive committee may accept fiduciary responsibility for a PBO.

(d) Persons accepting fiduciary responsibility for a branch of a foreign tax-exempt organisation

The persons accepting fiduciary responsibility for a branch of a foreign tax-exempt organisation, depending on how such a branch is constituted (see **3.1.4**), will either be its directors, any persons elected to office, or any persons appointed to the management or executive committee of an association, or its trustees.

The directors of an external company (see **3.1.4**) will be the same directors of the foreign “parent” company.

¹⁶⁰ Olivier, P. A., Strydom, S., & Van den Berg, G. P. J. (2023) Wills and Administration. *Trust Law and Practice* in § 3.4.2 [electronic version].

¹⁶¹ Trust Property Control Act.

¹⁶² Pienaar, G. J. (28 February 2015). Associations. In *Law of South Africa (LAWSA) 2* (Third Edition Volume) in paragraphs 166 and 178. My LexisNexis [online].

The provisions of the Trust Property Control Act will apply to a person who is appointed outside South Africa as trustee to administer or dispose of trust property in South Africa.¹⁶³ However, the person may act in that capacity only if authorised in writing by the Master.¹⁶⁴

4.4.2 Persons disqualified to act as a fiduciary

The Commissioner must be satisfied that a person acting in a fiduciary capacity (see 4.4.1) is not disqualified¹⁶⁵ under either –¹⁶⁶

- section 6 of the Trust Property Control Act;
- section 25A of the NPO Act; or
- section 69 of the Companies Act.

The use of the disjunctive word “or” means that a person will be disqualified from acting in a fiduciary capacity if that person has been disqualified under either one or a combination of the of the Trust Property Control Act, NPO Act (see **Chapter 17**) or the Companies Act. A disqualified person may not act in a fiduciary capacity for a PBO.¹⁶⁷ A disqualified person who acts in a fiduciary capacity will be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.¹⁶⁸

The grounds of disqualification of a person authorised as a trustee [see 4.4.1(b)] under the Trust Property Control Act,¹⁶⁹ the grounds of disqualification of a person from being appointed or elected as an officer-bearer [see 4.4.1(c)] under the NPO Act,¹⁷⁰ as well as the grounds of disqualification of a person as a director [see 4.4.1(a)] of a company under the Companies Act¹⁷¹ are similar and have therefore been summarised and considered below.

A person will be disqualified under the Trust Property Control Act, the NPO Act and the Companies Act if that person –

- is an unrehabilitated¹⁷² insolvent;¹⁷³
- has been prohibited by a court to be a director of a company, or declared by a court to be delinquent¹⁷⁴ under the Companies Act or the Close Corporations Act;¹⁷⁵

¹⁶³ Section 8 of the Trust Property Control Act.

¹⁶⁴ Section 6 of the Trust Property Control Act.

¹⁶⁵ The requirement relating to the grounds for disqualification was inserted to align with the National Strategy on Anti Money Laundering Countering, Terrorism Financing and Countering the Financing of Proliferation and to achieve consistency with the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022. See, the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2023*, in paragraph 2.3.

¹⁶⁶ Section 30(3)(i), which was added by section 6(d) of the Tax Administration Laws Amendment Act 18 of 2023 and came into operation on 22 December 2023, the date of promulgation of that Act.

¹⁶⁷ Section 30(11A) was inserted by section 6(e) and came into operation on 22 December 2023.

¹⁶⁸ Section 30(11B) was inserted by section 6(e) and came into operation on 22 December 2023.

¹⁶⁹ Section 6 of that Act.

¹⁷⁰ Section 25 of that Act.

¹⁷¹ Section 69 of that Act.

¹⁷² Section 69(11) of the Companies Act empowers the court to exempt a person from the grounds of disqualification set out in section 69(8)(b) of that Act.

¹⁷³ Section 6(1A)(a) of the Trust Property Control Act, section 25A(1)(a) of the NPO Act and section 69(8)(b)(i) of the Companies Act.

¹⁷⁴ A declaration of delinquency may be made under section 162 of the Companies Act or under section 47 of the Close Corporations Act.

¹⁷⁵ Section 6(1A)(b) of the Trust Property Control Act, section 25A(1)(b) of the NPO Act and section 69(8)(a) of the Companies Act.

- is prohibited under any law or any public regulation to be a director of a company;¹⁷⁶
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty;¹⁷⁷
- has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount under the Companies Act¹⁷⁸ for theft, fraud, forgery, perjury or an offence –¹⁷⁹
 - involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities;¹⁸⁰
 - in connection with the promotion, formation, or management of a company,¹⁸¹ or in connection with consenting to act or acting as a director when ineligible or disqualified;¹⁸² or
 - under the Trust Property Control Act, the NPO Act, the Companies Act, the Insolvency Act,¹⁸³ the Close Corporations Act, the Competition Act,¹⁸⁴ the Financial Intelligence Centre Act,¹⁸⁵ the Financial Markets Act, the Prevention and Combating of Corrupt Activities Act,¹⁸⁶ the Protection of Constitutional Democracy Against Terrorist and Related Activities Act,¹⁸⁷ or the TA Act;¹⁸⁸
- is subject to a resolution adopted¹⁸⁹ by the Security Council of the United Nations;¹⁹⁰ or
- is an unemancipated minor or is under a similar legal disability.¹⁹¹

¹⁷⁶ Section 6(1A)(c) of the Trust Property Control Act, section 25A(1)(c) of the NPO Act and section 69(8)(b)(ii) of the Companies Act.

¹⁷⁷ Section 6(1A)(d) of the Trust Property Control Act, section 25A(1)(d) of the NPO Act and section 69(8)(b)(iii) of the Companies Act.

¹⁷⁸ Section 69 of the Companies Act.

¹⁷⁹ Section 6(1A)(e) of the Trust Property Control Act, section 25A(1)(e) of the NPO Act and section 69(8)(b)(iv) of the Companies Act.

¹⁸⁰ Section 6(1A)(e)(i) of the Trust Property Control Act, section 25A(1)(e)(i) of the NPO Act and section 69(8)(b)(iv)(aa) of the Companies Act. See section 1 of the Financial Intelligence Centre Act 38 of 2001 for definition of those terms.

¹⁸¹ Section 69(2) or (5) of the Companies Act.

¹⁸² Section 6(1A)(e)(ii) of the Trust Property Control Act, section 25A(1)(e)(ii) of the NPO Act and section 69(8)(b)(iv)(bb) of the Companies Act.

¹⁸³ Act 24 of 1936.

¹⁸⁴ Act 89 of 1998.

¹⁸⁵ Act 38 of 2001.

¹⁸⁶ Act 12 of 2004.

¹⁸⁷ Act 33 of 2004.

¹⁸⁸ Section 6(1A)(e)(iii) of the Trust Property Control Act, section 25A(1)(e)(iii) of the NPO Act and section 69(8)(b)(iv)(cc) of the Companies Act.

¹⁸⁹ Chapter VII of the Charter of the United Nations, which provides for financial sanctions entailing the identification of persons or entities against whom member states of the United Nations must act specified in the resolution.

¹⁹⁰ Section 6(1A)(f) of the Trust Property Control Act, section 25A(1)(f) of the NPO Act and section 69(8)(v) of the Companies Act.

¹⁹¹ Section 6(1A)(g) of the Trust Property Control Act, section 25A(1)(g) of the NPO Act and section 69(7)(b) of the Companies Act.

Public registers have been established and maintained by the –

- Master of persons disqualified from serving as trustees, under an order of a court pursuant to the Trust Property Control Act or any other law;¹⁹²
- NPO Directorate of persons disqualified from serving as office-bearers, under an order of a court pursuant to the NPO Act or any other law;¹⁹³ and
- CIPC of persons disqualified from serving as directors, or who are subject to an order of probation as a director, under an order of a court pursuant to the Companies Act or any other law.¹⁹⁴

4.4.3 Decision-making powers

No single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of an organisation.¹⁹⁵

The expression “decision-making powers” is not defined in the Act. The words are described separately in the *Britannica Dictionary* as follows:

- “Decision-making” is “the act or process of deciding something with a group of people.”¹⁹⁶
- “Power” is “the ability or right to control people or things”.¹⁹⁷

The organisational and managerial activities of a PBO are determined by decisions taken by persons given such authority in accordance with the founding document (see **4.3**). No individual person, however, is permitted to control the decision-making powers of a PBO directly or indirectly.

The *Claassen’s Dictionary of Legal Words and Phrases* describes “control” as follows:¹⁹⁸

“The ordinary meaning of control is that the person who has the control of a thing has the possession of it, and that he has the management (to a limited extent, it may be) of it (per WESSELS, J in *R v Harvey* 1913 TPD 605). See *Chatwin v Central South African Railways* 1909 TH 50.”

(Footnotes omitted)

Direct control of the decision-making powers by an individual person means that any decision can be inextricably linked to that person. The indirect control of the decision-making powers means that any decision may not be clearly linked to an individual person since decisions are made by others on behalf of, under the influence of, and in the interests of another person. The facts and circumstances of each case are critical in determining who is controlling a PBO because the presence and influence of controlling individuals can have a significant impact any may be contrary to this prescribed requirement.

¹⁹² Section 6(1H) of the Trust Property Control Act.

¹⁹³ Section 25A(9)(a) of the NPO Act.

¹⁹⁴ Section 69(13) of the Companies Act.

¹⁹⁵ Section 30(3)(b)(i).

¹⁹⁶ www.britannica.com/dictionary/decision-making [Accessed 18 March 2025].

¹⁹⁷ www.britannica.com/dictionary/power [Accessed 18 March 2025].

¹⁹⁸ Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

Example 4 – Decision-making powers

Facts:

An organisation has applied for approval as a PBO and submitted a copy of its constitution. The constitution provides that an Honorary Member by virtue of that membership obtains, amongst other things, the following rights:

- Special voting rights (whether direct or indirect).
- Veto voting rights, 51% of the total votes that may be cast.
- Appointment of three individuals to the board of governors.

The constitution of the organisation also provides that the board of governors will –

- comprise of five members, two members who will be elected by the voting members of the organisation at a general meeting and the remaining three members who will be appointed by the Honorary Member; and
- have a quorum of three members of which at least two of the members must be appointees of the Honorary Member.

Result:

The constitution permits the Honorary Member to obtain rights and be empowered to control the decision-making powers of the organisation, namely, –

- directly through veto voting rights; and
- indirectly through the appointment of the majority persons on the board of governors.

The above provisions contained in the constitution are contrary to the prescribed requirement that no single person may have the ability or authority, either directly or indirectly, to control the decision-making powers of a PBO. The organisation therefore does not meet the prescribed requirement and will not be approved by the Commissioner as a PBO.

4.4.4 Prohibition on distributions

A PBO may not distribute any of its funds directly or indirectly (see **3.4**) to any person unless this occurs in the course of undertaking a PBA (see **Chapter 2**). It must use its funds solely for its sole or principal object (see **3.2**) for which it was established, which must be to carry on one or more PBAs, as set out in its founding document (see **4.3**).¹⁹⁹

The words “distribute”, and “funding” are not defined in the Act.

The *Cambridge Dictionary* describes “distribute” as –²⁰⁰

“to give something out to several people, or to spread or supply something.”

Investopedia provides the following explanation regarding distributions:²⁰¹

“The word ‘distribution’ has several meanings in the financial world, most of them pertaining to the payment of assets from a fund, account, or individual security to an investor or beneficiary.

¹⁹⁹ Section 30(3)(b)(ii).

²⁰⁰ <https://dictionary.cambridge.org/dictionary/english/distribute> [Accessed 18 March 2025].

²⁰¹ www.investopedia.com/terms/d/distribution.asp [Accessed 18 March 2025].

Distributions come from several different financial products. However, whatever the source, the distribution payment usually goes directly to the beneficiary, either electronically or by check.”

A distribution is generally the giving of funds or assets by an organisation to a beneficiary without the expectation or obligation of repayment by that beneficiary.

The *Dictionary.com* describes “funding” as –²⁰²

“funds, money immediately available; pecuniary resources.”

The word “funds” is described in the *Cambridge Dictionary* as follows:²⁰³

“money needed or available to spend on something.”

Having regard to the above, “funds” refer to money available to finance an organisation’s activities and investments. The prohibition on distributions is an absolute prohibition. Thus, the requirement is not subject to the discretion of the Commissioner and cannot in general or in a particular instance be waived, deferred, or reduced. Even if a minimal amount is distributed or a distribution occurs as an isolated or once-off event, the PBO may be subject to the transgression penalties (see 12.1).

A PBO must use its funds to carry on its sole or principal object (see 3.2). Any funds not used for this purpose, however, may not be distributed in any way to any person unless this happens because of the carrying on of a PBA (see **Chapter 2**). A person for purposes of this prohibition requirement is not limited to only a natural person, since the definition of “person” does not exclude companies, other incorporated entities, associations of persons, or statutory bodies.²⁰⁴

It will be acceptable for a PBO to accumulate or invest surplus²⁰⁵ funds for future use in carrying on its sole or principal object. Any surplus funds may be invested as chosen provided such investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that the fiduciaries (see 4.4.1) should act with prudence, integrity, reasonable care and in the best interest of the PBO.

Non-exhaustive examples of a distribution of funds to any person may exclude –

- any expenditure such as the purchasing of assets;
- the paying of the PBO debts;
- any funds expended in the operations of the PBO;
- investments;
- loans to beneficiaries;
- any *bona fide* donations made by the PBO (see 14.1.1); or
- the transfer of any remaining assets on dissolution (see 4.4.5).

²⁰² www.dictionary.com/browse/funding [Accessed 18 March 2025].

²⁰³ <https://dictionary.cambridge.org/dictionary/english/funds> [Accessed 18 March 2025].

²⁰⁴ See the definition of “person” in section 2 of the Interpretation Act 33 of 1957.

²⁰⁵ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/surplus [Accessed 18 March 2025] describes “surplus” as the amount that remains when use or need is satisfied and an excess of receipts over disbursements.

4.4.5 Dissolution

The formal dissolution process is usually preceded by a process referred to as “winding-up”. During the winding-up process all the assets of the PBO are recovered and realised. The proceeds of such realisation are applied firstly to discharge the costs of liquidation, and then to pay claims of creditors in accordance with the relevant provisions of the law relating to insolvency. On dissolution of a PBO, all its assets, or the proceeds of realised assets should have been realised and transferred.

The transfer of remaining assets of a PBO constituted as –

- an NPC (see 3.1.1), a trust (see 3.1.2) or an association of persons (see 3.1.3) on dissolution is considered in 4.4.5(a); and
- a branch of a foreign tax-exempt organisation (see 3.1.4) on termination of its activities in South Africa is considered in 4.4.5(b).

A PBO on dissolution or a branch on termination of its activities may choose to whom it will distribute its remaining assets, without prior approval from the Commissioner, provided the recipient meets the dissolution requirement. A PBO on dissolution or a branch on termination of its activities may not distribute any of its funds or assets to individuals or other tax-paying entities and in so doing enable the recipients to share in the tax concession it has enjoyed.

Failure to transfer, or to take reasonable steps to transfer the remaining assets of a PBO on dissolution or a branch on termination of its activities will result in an amount equal to the market value of those assets not transferred less the amount equal to the *bona fide* liabilities of the PBO or branch, being deemed to be taxable income accruing to the PBO or branch during the year of assessment²⁰⁶ in which dissolution of the PBO or the termination of the activities of the branch took place.²⁰⁷

The term “taxable income” as defined means –²⁰⁸

“the aggregate of –

- (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II²⁰⁹ 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”.

(Footnote added)

A PBO or a branch of a foreign tax-exempt organisation guilty of such a transgression will therefore not be allowed to deduct any further tax allowances or deductions from its net revenue since its net revenue is deemed to be taxable income, that is, after allowances and deductions.

²⁰⁶ The term “year of assessment” is defined in section 1(1).

²⁰⁷ Section 30(6A) read with section 30(7).

²⁰⁸ Section 1(1).

²⁰⁹ Deals with normal tax, which includes section 5 to 37G.

(a) Dissolution of a public benefit organisation constituted as a non-profit company, a trust or an association of persons

On dissolution, a PBO constituted as an NPC (see 3.1.1), a trust (see 3.1.2) or an association of persons (see 3.1.3), is required, to transfer any of its remaining assets to –²¹⁰

- another PBO;
- any institution, board or body whose sole or principal object is the carrying on of any PBA;²¹¹ or
- the government of South Africa in the national, provincial, or local sphere.²¹²

Any of the above recipient organisations benefitting from the dissolution of a PBO are required to use those assets solely for purposes of carrying on one or more PBAs (see **Chapter 2**).

The winding-up of a solvent company may occur voluntarily or compulsorily by the court.²¹³ A winding-up by the court is initiated by an application to court, while a voluntary winding-up²¹⁴ is initiated by a resolution of the company.²¹⁵ A company remains a juristic person and retains all of its powers during winding-up.²¹⁶ From the beginning of the company's winding-up, it must stop carrying on its business except to the extent required for its beneficial winding-up.²¹⁷ A company is dissolved as from the date that its name is removed from the companies register.²¹⁸

The Trust Property Control Act does not provide for any formalities or specific control measures to be complied with when a trust is terminated. Generally, a trust terminates when the object for which it was formed is fulfilled or the trust property is destroyed. Usually trust deeds clearly deal with the termination of the trust. On termination of a trust the remaining trust assets are distributed to the persons entitled to them.²¹⁹

The dissolution of an association is described by *LAWSA* as follows:²²⁰

“If an association ceases or is unable to carry on with the main object and purpose for which it was formed, it may be validly dissolved. It may also be dissolved in accordance with the terms of its constitution or with the consent of all its members. An association cannot simply disregard the provisions of its constitution and ‘by silent and unexpressed individual concurrence of members dissolve into thin air’. Upon its dissolution, the assets of an association will, after debts have been satisfied, devolve in accordance with the provisions of the constitution.”

(Footnotes omitted)

²¹⁰ Section 30(3)(b)(iii).

²¹¹ The receipts and accruals of qualifying institutions, boards or bodies are exempt from income tax under section 10(1)(cA)(i).

²¹² The receipts and accruals are automatically exempt from income tax under section 10(1)(a).

²¹³ Section 79 of the Companies Act.

²¹⁴ Section 80 of the Companies Act.

²¹⁵ Section 80(6) of the Companies Act.

²¹⁶ Section 19 of the Companies Act.

²¹⁷ Section 80(8) of the Companies Act.

²¹⁸ Section 83(1) of the Companies Act.

²¹⁹ Pace, R. P. (August 2020). Trusts and Trustees. In *Forms and Precedents* (Estates Preliminary Note) at page 13.3. My LexisNexis [online].

²²⁰ Pienaar, G. P. (28 February 2015) Associations. In *Law of South Africa (LAWSA) 2* (Third Edition Volume) in paragraphs 192 and 195. My LexisNexis [online].

(b) Dissolution of a branch of a foreign tax-exempt organisation

A branch of a foreign-tax organisation (see 3.1.4) that derived more than 15% of its receipts and accruals from a source within South Africa during the three years before the termination of its activities in South Africa is required to transfer its assets on termination of its activities in South Africa to any –²²¹

- another PBO;
- any institution, board or body whose sole or principal object is the carrying on of any PBA; or
- the government of South Africa in the national, provincial, or local sphere contemplated in section 10(1)(a).

Example 5 – Dissolution of a branch of a foreign tax-exempt organisation

Facts:

A company, incorporated in a foreign country, has established a branch in South Africa for purposes of conducting PBAs. The foreign company is exempt from income tax in its country of origin. The branch has obtained PBO approval from the Commissioner. The foreign company intends to convert from a tax-exempt company to a for-profit company and as a result it will be dissolved, and all activities terminated in South Africa.

Result:

The change of tax-exempt status of the foreign company in its country of origin will result in the change in the tax-exempt status of the branch in South Africa since the branch will no longer comply with the requirements of paragraph (a)(ii) of the definition of “public benefit organisation” in section 30(1). The branch will have to comply with the dissolution requirement or alternatively the penalty provisions of section 30(7) will apply.

4.4.6 Non-revocable donations

A PBO may not accept any donation (see **Chapter 9**) that may be revoked²²² by the donor for reasons other than the PBO failing to abide by the designated purposes and conditions²²³ of the donation.²²⁴

A donation may be revoked if the PBO misrepresents the tax-deductibility of the donation under section 18A and such tax deduction (see **Chapter 11**) was a condition of the donation.

In addition, a donor may also not impose conditions that will entitle the donor or a connected person in relation to the donor to obtain some direct or indirect benefit²²⁵ from the application of the donation. If the donor is another PBO, this prohibition on the derivation of a benefit does not apply.

²²¹ Section 30(3)(b)(iiiA).

²²² The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/revoke?q=revoked> [Accessed 18 March 2025] describes “revoked” as “to say officially that an agreement, permission, a law, etc. is no longer in effect”.

²²³ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/condition [Accessed 18 March 2025] describes “condition” as “a premise upon which the fulfillment of an agreement depends”.

²²⁴ Section 30(3)(b)(v).

²²⁵ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/benefit [Accessed 18 March 2025] describes “benefit” as “to receive help or an advantage”.

To determine whether a donation is revocable or non-revocable will depend on the facts and circumstances of each case.

Example 6 – Revocable and non-revocable donations

The following are non-exhaustive examples of donations that are revocable and non-revocable:

- A PBO may not accept a donation made subject to the condition that it may be revoked should the donor require funds to cover future private expenses.
- A donor may revoke a donation given to an independent school approved as a PBO on the condition that the funds must be used to build an extra classroom, and the independent school is unable to fulfil the condition.
- A donor may revoke a donation to a PBO given on the pretext that a section 18A receipt (see **Chapter 10**) will be issued for the donation and it subsequently transpires that the PBO is not approved under section 18A (see **Chapter 8**) by the Commissioner to issue such receipts.
- An educational institution approved as a PBO may not accept a donation made on condition that the donation is to be used to cover the cost of additional tuition fees for the donor's child.

4.4.7 Amendments to the founding document

A PBO must submit a copy of any amendment to its founding document (see **4.3**) to the Commissioner as soon as it has been effected.²²⁶ This requirement will enable the Commissioner to ensure that any amendment is not contrary to the prescribed requirements (see **4.4**).

It will be unacceptable for an organisation to submit a founding document complying with the prescribed requirements at the time of applying for approval (see **Chapter 13**) and then, after obtaining such approval, to amend the founding document to include non-qualifying provisions.

(a) Amendments to the memorandum of incorporation

The following is provided by *LAWSA* on the amendment of the memorandum of incorporation:²²⁷

“The amendment of the memorandum of incorporation may take the form of a new memorandum of incorporation in substitution for the existing one, or one or more alterations by changing the name of the company, deleting, altering, or replacing any of its provisions, or inserting new provisions or any combination of these.

An amendment to a company's memorandum of incorporation takes effect, in the case of an amendment that changes the name of the company, on the date set out in the amended registration certificate issued by the Companies and Intellectual Property Commission or, in any other case, on the later of the date on and time at which the notice of amendment is filed or the date, if any, set out in the notice of amendment. An amendment can therefore not have retrospective effect and thus serve indirectly to ratify prior breaches or misconduct of the board or board members.”

(Footnotes omitted)

²²⁶ Section 30(3)(b)(vi).

²²⁷ Stoop, H. H. (30 April 2022). Companies: Part I. In *Law of South Africa (LAWSA)* 6(1) (Third Edition Volume) in paragraph 37. My LexisNexis [online].

Pre-existing companies²²⁸ approved as PBO's that may have amended their memoranda and articles of association or replaced the latter with a memorandum of incorporation under the Companies Act must ensure that the prescribed requirements (see 4.4) remain included in the amended or replacement founding documents. A copy of the amended or replacement founding documents must be submitted to the Commissioner.

(b) Amendments to the trust deed

The Trust Property Control Act provides that if a trust instrument lodged with the Master is varied, the trustee must lodge the amendment or a certified copy thereof with the Master.²²⁹

LAWSA provides the following on the variation of a trust instrument:²³⁰

"The term 'variation' denotes the alteration of the terms of a trust by the court, trustees, the founder or beneficiaries. The Act provides for the variation of a trust instrument by the court in certain circumstances, and for the tutor or curator of a trust beneficiary to agree to an amendment on behalf of that beneficiary. The Act provides that where a trust instrument which has been lodged with the master is varied, the trustee must lodge the amendment or a copy thereof so certified with the master. The failure to lodge the amendment with the master does not invalidate the amendment. Furthermore, there is no time frame for lodging an amendment or a requirement for the lodgement of a complete, amended trust instrument after the amendment. All that is required is the lodgement of the document amending the trust instrument."

(Footnotes omitted)

(c) Amendments to the constitution

LAWSA provides the following on amendments to a constitution:²³¹

"Where a constitution does not provide for its amendment by majority (or special majority) vote, the amendment can be effected only by the unanimous vote of the members concerned. But even where the constitution empowers a majority of members to amend it, there are other factors which must be taken into account. So, for instance, the proposed amendment must be passed in the *bona fide* belief that it is to the benefit of the association and in accordance with the procedure prescribed by the constitution. Whether or not the majority can alter a fundamental object depends on the nature and character of the association, as well as its constitution and objects. A rule in the constitution which provides for the alteration of the constitution may itself be amended in the prescribed way."

(Footnotes omitted)

²²⁸ The term "pre-existing company" is defined in section 1 of the Companies Act.

²²⁹ Section 4(2) of the Trust Property Control Act.

²³⁰ Palmer, G. C. (31 January 2022). Trusts. In *Law of South Africa (LAWSA)* 43 (Third Edition Volume) in paragraph 187. My LexisNexis [online].

²³¹ Pienaar, G. P. (28 February 2015). Associations. In *Law of South Africa (LAWSA)* 2 (Third Edition Volume) in paragraph 158. My LexisNexis [online].

4.5 Participation in tax avoidance schemes

A PBO may not be a party to or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone, or avoid any tax, duty or levy²³² that would otherwise have been or would have become payable by any person under the Act, or under any other Act administered by the Commissioner.²³³ This rule will apply irrespective of whether the PBO itself or any other person benefitted from the reduction, postponement or avoidance of any applicable tax, duty or levy.

In *Smith v CIR* the court noted that the ordinary meaning of avoiding a liability for a tax is —²³⁴ “to get out of the way of, escape or prevent an anticipated liability”.

The Act contains anti-avoidance provisions the Commissioner may use when taxpayers and their advisers enter into schemes with the sole purpose of avoiding tax.²³⁵ In these circumstances, the Commissioner is entitled to determine the taxpayer’s liability for any tax, duty or levy imposed by the Act, as if the transaction, operation, or scheme had not been entered into.

4.6 Remuneration

Employees, office bearers, members or other persons may receive remuneration from a PBO for services actually rendered to that PBO provided the remuneration —²³⁶

- is not excessive considering the particular service rendered and what is considered to be reasonable in the particular sector; and
- does not economically benefit any person in a manner inconsistent with the object (see **3.2**) of the PBO.

The term “remuneration”²³⁷ is defined widely for purposes of employees’ tax to include any amount of income paid or payable to any person whether in cash or otherwise, for example, a fringe benefit, and whether or not for services rendered. Remuneration, amongst other things, may include amounts of income paid or payable by way of any salary, fee, bonus, wage, gratuity, pension, leave encashment, emolument, voluntary award, commission, annuity, stipend, overtime, superannuation allowance, retirement allowance, lump sum benefit payment, or director’s remuneration. The normal employees’ tax rules will apply to any remuneration received by or accrued to any employees of a PBO (see **14.2.3**).

The *Claassen’s Dictionary of Legal Words and Phrases* describes “services rendered” as follows:²³⁸

“The ordinary meaning of ‘for *services rendered*’ is that something has been done for the benefit or some person, eg, supplying of a particular need. When one speaks of a fee for *services rendered* one means the payment of a sum of money as compensation for an act which has been performed or need which has been provided.”

²³² The Acts administered by the Commissioner involving tax, duties or levies are set out in Schedule 1 of the South African Revenue Service Act, 1997. These taxes, duties, or levies, amongst other things, may include income tax (including CGT), VAT, transfer duty, or employees’ tax.

²³³ Section 30(3)(c).

²³⁴ 1964 (1) SA 324 (A), 26 SATC 1 at 12.

²³⁵ Sections 80A to 80L and 103.

²³⁶ Section 30(3)(d).

²³⁷ Paragraph 1 of the Fourth Schedule.

²³⁸ Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

The word “reasonable” is not defined in the Act. The word is described in the *Cambridge Dictionary* as —²³⁹

“based on or using good judgement and therefore fair and practical”.

There must be a causal connection between the remuneration paid, in relation to the service rendered by that person and the amount generally charged for such a service in that sector. The determination whether remuneration paid to any person is excessive will be a question of fact, and, since the facts and circumstances, pertaining to each PBO may differ, each case will be considered on its own merits.

The ultimate test remains whether the remuneration is reasonable in the sector in relation to the service rendered and the burden²⁴⁰ is on the PBO to motivate that the remuneration is not excessive.

4.7 Reporting

A PBO must comply with any reporting requirements determined by the Commissioner²⁴¹ under the Act and TA Act (see **15.6**). The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.²⁴² The persons required to submit returns, amongst other things, include –

- every company and trust, which are a resident during that particular year of assessment, subject to specific conditions and requirements set out in the relevant public notice; and
- every company, trust, or other juristic person, which was not a resident during that particular year of assessment, but derived income from a source in South Africa.

The term “company” as defined,²⁴³ amongst other things, includes –

- any association, corporation or company incorporated or deemed to be incorporated by or under any law in force or previously in force in South Africa or in any part thereof, or any body corporate formed, established, or deemed to be formed or established by or under any such law;²⁴⁴
- any association, corporation or company incorporated under the law of any country other than South Africa, or any body corporate formed or established under such law;²⁴⁵ or
- any association formed in South Africa to serve a specified purpose, beneficial to the public or a section of the public.²⁴⁶

A PBO constituted as an NPC (see **3.1.1**), an association of persons (see **3.1.3**), or a branch of a foreign tax-exempt organisation (see **3.1.4**) falls within the above definition of “company”.

A PBO must submit income tax returns even if its approval or exemption results in no tax liability. The income tax return enables the Commissioner to annually assess whether the PBO is operating within the prescribed limits of its approval and to determine whether the partial

²³⁹ <https://dictionary.cambridge.org/dictionary/english/reasonable> [Accessed 18 March 2025].

²⁴⁰ Section 102 of the TA Act.

²⁴¹ Section 30(3)(e).

²⁴² Section 25 of the TA Act read with section 66(1).

²⁴³ Section 1(1).

²⁴⁴ Paragraph (a) of the definition of “company” in section 1(1).

²⁴⁵ Paragraph (b) of the definition of “company” in section 1(1).

²⁴⁶ Paragraph (d) of the definition of “company” in section 1(1).

taxation principles have been applied to receipts and accruals derived from a business undertaking or trading activity not qualifying for exemption (see **Chapter 7**).

A PBO approved by the Commissioner for purposes of section 18A (see **Chapter 8**) must comply with the third-party reporting (see **15.7**).²⁴⁷

4.8 Funds provided to an association of persons

A PBO providing funds either by way of donation (see **Chapter 9**)²⁴⁸ or loan²⁴⁹ at no charge²⁵⁰ to an association of persons referred to in PBA 10(iii) in Part I is responsible to satisfy the Commissioner that reasonable steps have been taken to ensure that the funds²⁵¹ have been used for the purposes for which they have been given, which must be to carry on any PBAs (see **Chapter 2**), and are not used to economically benefit any individual person (see **3.4**).²⁵²

The association of persons referred to in this PBA is a voluntary informal association or group of persons typically at grassroots or community level collectively carrying on one or more PBAs (see **Chapter 2**) but do not have a founding document (see **4.3**) and cannot be approved as a PBO by the Commissioner.²⁵³ The reference to “association of persons” in this PBA does not relate to an association of persons (see **3.1.3**) as referred to in the definition of “public benefit organisation”,²⁵⁴ since the latter is a formal association of persons established by adopting a legal founding document, which may qualify for approval as a PBO, provided its founding document and objects comply with the prescribed requirements (see **4.4**).²⁵⁵

Example 7 – Funds provided to an association of persons

Facts:

A rural community in a remote area does not have running water available in its village. The leaders in the community have formed an informal association committed to embark on a project to provide their community members with running water. The informal association does not have a constitution (see **4.3.4**) and cannot be approved as a PBO.

A PBO, Water 4 All, has undertaken to help by overseeing the project at no cost and also to provide funds for the cost of the installation of pipes and a water pump to ensure that water is accessible to all community members.

²⁴⁷ For commentary, see the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2021*, in paragraph 2.2.

²⁴⁸ PBA 10(a) in Part I, which is described as the provision of funds by way of donation.

²⁴⁹ The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/loan> [Accessed 18 March 2025] describes “loan” as “to lend something, esp. money”.

²⁵⁰ PBA 10(c) in Part I, which is described as the provision of funds by way of loan at no charge.

²⁵¹ The reference to “funds” therefore excludes the provision of assets, services or other resources by way of donation contemplated in PBA 10(a) in Part I, the provision of assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources contemplated in PBA 10(b) in Part I, and the provision of assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset contemplated in PBA 10(d) in Part I.

²⁵² Section 30(3)(f).

²⁵³ The association of persons must carry on any PBAs except the provision of funds, assets or other resources contemplated in PBA 10 in Part I.

²⁵⁴ See paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1).

²⁵⁵ For commentary, see Interpretation Note 98 “Public Benefit Organisations: The Provision of Funds, Assets or Other Resources to Any Association of Persons”.

Result:

The community leaders are regarded as an association of persons for purposes of PBA 10(iii) in Part I, who are carrying on PBA 1(p)(i) in Part I.²⁵⁶

The PBO, Water 4 All, is regarded as carrying on PBA 10(iii) in Part I and must take reasonable steps to ensure that the community leaders use the funds for the purpose for which they were provided, which is to provide their community members with running water.

4.9 Resources for political parties

A PBO may not use its resources directly or indirectly to support, advance or oppose any political party.²⁵⁷

The word “resources” is a wide concept and includes money, time, materials, staff, and other assets that can be drawn on by a person or organisation to function effectively.²⁵⁸

The words “support”, “advance” and “oppose” are not defined in the Act. The *Cambridge Dictionary* provides the following descriptions:

- “Support” is “to agree with and give encouragement to someone or something because you want him, her, or it to succeed.”²⁵⁹
- “Advance” is “to go or move something forward, or to develop or improve something.”²⁶⁰
- “Oppose” is “to disagree with something or someone, often by speaking or fighting against it, him or her.”²⁶¹

The expression “political party” is described in *Collins English Dictionary* as –²⁶²

“an organization of people who share the same views about the way power should be used in a country or society (through government, policy-making, etc)”.

The prohibition of the use of a PBO’s resources is an absolute prohibition. Thus, the requirement is not subject to the discretion of the Commissioner and cannot in general or in a particular instance be waived, deferred, or reduced. Even if a PBO uses negligible resources or uses its resources as an isolated or once-off event, the PBO may be subject to the transgression penalties (see **12.1**).

²⁵⁶ This PBA is described as community development for poor and needy persons and anti-poverty initiatives, including the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development, or anti-poverty.

²⁵⁷ Section 30(3)(h).

²⁵⁸ www.collinsdictionary.com/dictionary/english/resource [Accessed 18 March 2025].

²⁵⁹ <https://dictionary.cambridge.org/dictionary/english/support> [Accessed 18 March 2025].

²⁶⁰ <https://dictionary.cambridge.org/dictionary/english/advance> [Accessed 18 March 2025].

²⁶¹ <https://dictionary.cambridge.org/dictionary/english/oppose> [Accessed 18 March 2025].

²⁶² www.collinsdictionary.com/dictionary/english/political-party [Accessed 18 March 2025].

Chapter 5

Group registration

The Commissioner may grant approval as a PBO to a co-ordinating body of a group of organisations falling directly under the direction and supervision of that co-ordinating body provided the following conditions and requirements are complied with:²⁶³

- All the organisations within the group must share a common object (see **3.2**) and carry on the same PBAs (see **Chapter 2**).
- The group of organisations must all fall directly under the direction and supervision of a co-ordinating body.
- The founding document (see **4.3**) of the co-ordinating body and the organisations within the group must be common²⁶⁴ or similar²⁶⁵ and, must be amended, if applicable, to comply with the prescribed requirements (see **4.4**).
- A copy of any amendments to the founding document of the co-ordinating body and of the organisations within the group must be submitted to the Commissioner as soon as they are effected (see **4.4.7**).
- The co-ordinating body must take responsibility to ensure that all the organisations within the group comply with section 30 (see **Chapter 4**).
- The co-ordinating body must report any organisations within the group acting contrary to section 30.
- Consolidated annual financial statements (see **15.6.5**) must be prepared for all the organisations within the group and must contain a certified report that all the organisations within the group complied with section 30.

The co-ordinating body must submit a list of the names and addresses of all the organisations within the group when submitting its application for approval to the Commissioner (see **Chapter 13**).

Non-compliance by the co-ordinating body in taking the steps set out above or failing to notify the Commissioner when it becomes aware of any material failure to comply with section 30 may, after due notice, result in the withdrawal of the approval (see **Chapter 12**).

The Commissioner may withdraw the approval as a PBO of the group if the co-ordinating body —²⁶⁶

- intentionally or negligently fails to exercise the required control over any organisation in the group; or
- fails to notify the Commissioner of any material failure of any organisation within the group to comply with section 30.

²⁶³ Section 30(3A).

²⁶⁴ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/common [Accessed 18 March 2025] describes “common” as “belonging to or shared by two or more individuals or things or by all members of a group”.

²⁶⁵ The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/similar> [Accessed 18 March 2025] describes “similar” as “looking or being almost, but not exactly, the same.”

²⁶⁶ Section 30(5A).

The words “intentionally” and “negligently” are not defined in the Act. They are described in the *Merriam-Webster Dictionary* as follows:

- “Intentionally” is “in an intentional manner: with awareness of what one is doing: purposely.”²⁶⁷
- “Negligently” is “marked by or given to neglect especially habitually or culpably” and “failing to exercise the care expected of a reasonably prudent person in like circumstances.”²⁶⁸

The *Claassen’s Dictionary of Legal Words and Phrases* describes “negligence” as follows:²⁶⁹

“The term *negligence* as used in our courts, simply means a failure to exercise that degree of diligence which the law requires under the circumstances of each case. ‘*Negligence* is the failure or the omission to take proper care, and proper care is the care with which, according to our law, a *diligens paterfamilias* or, as it is expressed in the English law, a prudent and reasonable man, would take under the circumstances of such a case. The law presumes that a person who exercises any calling or who does any particular act, will exercise that calling or do that act with skill, with knowledge, and with the requisite experience; and if there are any dangers connected with that calling or act, that he will take all reasonable precautions to guard others against danger’ (per DE VILLIERS, JP in *Hammerstrand v Pretoria Municipality* 1913 TPD 377). See also *Farmer v Robinson GM Co Ltd* 1917 AD 521; *Cape Town Municipality v Paine* 1923 AD 207; *Herschel v Mrupe* 1954 3 SA 464 (A); *Silver’s Fishing Corp’n (Pty) Ltd v Maweza* 1957 2 SA 263–264 (A).”

The Commissioner will give notice to the co-ordinating body of the intention to withdraw the approval as a PBO of the group and specify a period within which corrective steps must be taken. If the co-ordinating body takes no corrective steps within the period stated in the notice, the approval will be withdrawn from the beginning of the year of assessment in which corrective steps are not taken to rectify the non-compliance or failure by the co-ordinating body. The consequences of the withdrawal of the approval as a PBO, which is applicable to a group registration, is considered in **12.1**.

²⁶⁷ www.merriam-webster.com/dictionary/intentionally [Accessed 18 March 2025].

²⁶⁸ www.merriam-webster.com/dictionary/negligently [Accessed 18 March 2025].

²⁶⁹ Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

Chapter 6

Written undertaking

A branch of a foreign tax-exempt organisation (see **3.1.4**) governed by the founding document of that foreign tax-exempt organisation and a testamentary trust (see **3.1.2**), which comes into existence after the death of the testator, must submit a written undertaking to the Commissioner,²⁷⁰ since their founding documents (see **4.3**) are legally incapable of being amended to comply with the prescribed requirements (see **4.4**) for approval as a PBO.

The written undertaking must be submitted by the persons responsible in a fiduciary capacity for the funds and assets of such a branch [see **4.4.1(d)**] or testamentary trust [see **4.4.1(b)**], as part of the application for approval as a PBO (see **Chapter 13**), to confirm that the branch or testamentary trust will be administered in accordance with the prescribed requirements.

In such instances, the founding documents will be deemed to comply with the prescribed requirements. The written undertaking will be a permanent measure and binding on the branch of a foreign tax-exempt organisation or testamentary trust. Non-compliance with its terms will result in the same penalties and actions as if the prescribed requirements are contained in the founding document (see **12.1**).

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

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

All other organisations constituted as an NPC (see **3.1.1**), a trust (see **3.1.2**) or an association of persons (see **3.1.3**) must provide for the prescribed requirements (see **4.4**) in their founding documents (see **4.3.1**, **4.3.2** and **4.3.4**) before the Commissioner can grant approval as a PBO.²⁷¹

²⁷⁰ Section 30(4).

²⁷¹ For commentary, see clause 48 of the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2014*.

Chapter 7

Partial taxation

7.1 Introduction

Section 10(1)(cN) provides for the exemption from income tax of the receipts and accruals of organisations approved by the Commissioner as PBOs, to the extent that the receipts and accruals are derived from –

- the carrying on of its PBAs (see **Chapter 2**);²⁷²
- permissible business undertakings or trading activities (see **7.4**);²⁷³ and
- any business undertaking or trading activity (see **7.3**) other than permissible business undertakings or trading activities not exceeding the basic exemption (see **7.5**).²⁷⁴

A PBO is permitted to carry on permissible business undertakings or trading activities (see **7.4**) provided its sole or principal object (see **3.2**) remains the carrying on of one or more PBA (see **Chapter 2**). The receipts and accruals derived by a PBO from conducting permissible business undertakings or trading activities may qualify for exemption from income tax provided the prescribed conditions and requirements are met (see **7.4.1**, **7.4.2** and **7.4.3**).²⁷⁵

The receipts and accruals derived by a PBO from conducting business undertakings or trading activities falling outside the permissible business undertakings or trading activities, are taxable (see **7.6**), if such receipts and accruals exceed the basic exemption (see **7.5**).

7.2 Receipts and accruals exempt from income tax under section 10(1)(cN)

The receipts and accruals envisaged in section 10(1)(cN) are those included in the definition of “gross income”.²⁷⁶

Gross income in relation to any year of assessment²⁷⁷ (see **15.6.3**) is the total amount of income (worldwide), in cash or otherwise, received by or accrued to or in favour of any person who is a resident. Receipts or accruals of a capital nature are generally excluded from gross income, such as *bona fide* donations (see **Chapter 9**). Certain other receipts and accruals specified within the definition of “gross income” are included regardless of their nature.²⁷⁸

In *CIR v Genn & Co (Pty) Ltd*²⁷⁹ it was held that not every obtaining of physical control over money and money’s worth constitutes a receipt for purposes of the definition of gross income. The words “received” and “accrued” are not defined in the Act, and therefore reliance is placed on various principles established in this regard by way of case law. An amount will be “received” by a person as envisaged in the Act, only if the person receives it on his or her own behalf and for his or her own benefit.²⁸⁰ An amount “accrues” to a person when the person is entitled to it and when the person’s right to the amount is unconditional.²⁸¹ An amount is

²⁷² Section 10(1)(cN)(i).

²⁷³ Section 10(1)(cN)(ii)(aa), (bb) and (cc).

²⁷⁴ Section 10(1)(cN)(ii)(dd).

²⁷⁵ For commentary, see Interpretation Note 24 “Public Benefit Organisations: Partial Taxation”.

²⁷⁶ See definition in section 1(1).

²⁷⁷ The term “year of assessment” as defined in section 1(1) generally means any year or other period in respect of which any tax or duty leviable under the Act is chargeable.

²⁷⁸ See paragraphs (a) to (n) of that definition.

²⁷⁹ 20 SATC 113.

²⁸⁰ *Geldenhuys v CIR* 1974 (3) SA 256 (C), 14 SATC 419.

²⁸¹ *Lategan v CIR* 1926 CPD 203, 2 SATC 16; *Ochberg v CIR* 1933 CPD 256, 6 SATC 1.

included in a person's gross income in the year of assessment in which that person receives it or the year of assessment in which it accrues to that person, whichever comes first.²⁸²

The receipt or accrual in a form other than money could constitute an amount.²⁸³ Unless this amount is of a capital nature and is not specifically included in the definition of "gross income", it should be valued and included in the gross income of the taxpayer in the year of assessment in which it is received or accrued.

Receipts or accruals of a capital nature not specifically included in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cN) since they do not require exemption. Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain.²⁸⁴ A taxable capital gain is potentially subject to income tax, however, the exemptions in section 10 do not apply to it because a taxable capital gain is included directly in taxable income²⁸⁵ and does not comprise "income" (gross income less exempt income).²⁸⁶ Paragraph 63A of the Eighth Schedule contains the rules for disregarding capital gains and losses of a PBO (see **14.1.7**).

Example 8 – Receipts and accruals of a PBO

The following are non-exhaustive examples of receipts and accruals of a PBO:

- Donations and bequests
- Subsidies
- School fees
- Rent
- Income from fundraising activities
- Investment income
- Sale of movable and immovable assets

7.3 Exempt receipts and accruals derived otherwise than from business undertakings or trading activities under section 10(1)(cN)(i)

The receipts and accruals of any PBO will be exempt from income tax to the extent that the receipts and accruals are derived otherwise than from any business undertaking or trading activity (see **7.3.1**).

The concepts "business undertaking" and "trading activity" are not mentioned in section 30 under which a PBO is approved but appears in section 10(1)(cN). The sole or principal object of a PBO can therefore not be the carrying on of a business undertaking or trading activity. The receipts and accruals derived by a PBO from carrying on its sole or principal object (see **3.2**),²⁸⁷ which must be the carrying on of one or more PBAs (see **Chapter 2**), are therefore exempt from income tax under section 10(1)(cN)(i).

²⁸² *SIR v Silverglen Investments (Pty) Ltd* 1969 (1) SA 365 (A), 30 SATC 199.

²⁸³ *C SARS v Brummeria Renaissance (Pty) Ltd* 2007 (6) SA 601 (SCA), 69 SATC 205. Also, see Interpretation Note 58 "The Brummeria Case and the Right to Use Loan Capital Interest Free".

²⁸⁴ The term "taxable capital gain" as defined in section 1(1) means an amount determined in accordance with paragraph 10 of the Eighth Schedule.

²⁸⁵ Paragraph (b) of the definition "taxable income" in section 1(1).

²⁸⁶ Section 26A.

²⁸⁷ Paragraph (b) of the definition of "public benefit organisation" in section 30.

The concepts “business undertaking” and trading activity” are considered below.

7.3.1 Meaning of “business undertaking” and “trading activity”

The terms “business”, “carrying on business” and “business undertaking” are not defined in the Act.

The *Claassen’s Dictionary of Legal Words and Phrases* defines “business” as follows:²⁸⁸

“Business is anything which occupies the time and attention of a man for the purpose of profit Generally, the word business is capable of a very wide meaning. It may be a charitable business Even a single, isolated activity enterprise or pursuit may constitute a business.”

On the issue of what constitutes “carrying on business”, Beadle CJ, in *Estate G v COT* said the following:²⁸⁹

“The sensible approach, I think, is to look at the activities concerned as a whole, and then to ask the question: Are these the sort of activities which, in commercial life, would be regarded as ‘carrying on business’? The principal features of the activities which might be examined in order to determine this are their nature, their scope and magnitude, their object (whether to make a profit or not), the continuity of the activities concerned, if the acquisition of property is involved, the intention with which the property was acquired. This list of features does not purport to be exhaustive, nor are any one of these features necessarily decisive, nor is it possible to generalize and state which feature should carry most weight in determining the problem. Each case must depend on its own particular circumstances.”

Based on case law, “business” is therefore generally accepted to include anything that occupies the time, attention and labour of a person for profit.²⁹⁰ There are no set rules to determine what constitutes “business” and as a result, the answer to the question of whether a person is carrying on “business” requires an inference from facts, considering certain factors such as intention, motive, frequency and the nature of the activity.²⁹¹

The expression “trading activity” is not defined in the Act. The term “trade” as defined in the Act includes —²⁹²

“every profession, trade, business, employment, calling, occupation or venture, including the letting of property and the use of or the grant of permission to use any patent as defined in the Patents Act²⁹³ or any design as defined in the Designs Act²⁹⁴ or trade mark as defined in the Trade Marks Act²⁹⁵ or any copyright as defined in the Copyright Act²⁹⁶ or any other property which is of a similar nature”.

(Footnotes added)

²⁸⁸ Claassen, R. C. (June 2024). *Claassen’s dictionary of legal words and phrases*. My LexisNexis [online].

²⁸⁹ 1964 (2) SA 701 (SR), 26 SATC 168 at 173 and 174.

²⁹⁰ *Smith v Anderson* (15 Ch.D. 258).

²⁹¹ *Estate G v COT* (above). Also, see *CIR v Stott* 1928 AD 252, 3 SATC 253 at 257 and ITC 1283 (1978) 41 SATC 36 (SW) at 43.

²⁹² Section 1(1).

²⁹³ Act 57 of 1978.

²⁹⁴ Act 195 of 1993.

²⁹⁵ Act 194 of 1993.

²⁹⁶ Act 98 of 1978.

The *Claassen's Dictionary of Legal Words and Phrases* defines “trade” as follows:²⁹⁷

“A handicraft, occupation or a business carried on by a person for profit.”

The courts have also interpreted trade to be neither exhaustive nor restrictive and will include any activity involving risking something with the object of making a profit, including the continuous turnover of floating capital.²⁹⁸ The absence of profit, however, will not preclude a taxpayer’s activities from being classified as a trade.²⁹⁹ Each case will be considered on its own merits to determine whether a trading activity³⁰⁰ is being carried on.³⁰¹

The carrying on of a “trade” is not the same thing as the conducting of a “business”. However, the word “business” is included in the definition of “trade”. The conducting of a “business undertaking” will, therefore, also constitute “trade”.

Example 9 – Trading activities

The following are non-exhaustive examples of trading activities:

- Letting of immovable property.
- Conducting farming activities.
- Providing of professional services.
- The granting of permission to use a copyright or patent.

The passive investment of surplus funds in shares or an investment in a financial institution is not normally regarded as a business undertaking or trading activity. However, if it is undertaken in an active manner, such as the advancing of interest-bearing loans at market-related rates it could be regarded as a business undertaking. The mere holding of shares does not constitute a “business undertaking” or “trading activity”. Continuity is a factor that may be taken into consideration in determining whether a person is conducting a business. However, the main criterion applied in determining whether a business is conducted, is that the transaction should be undertaken with the direct and primary object of making a profit and not with a mere hope of ultimately making a profit.³⁰²

7.4 Exempt receipts and accruals derived from permissible business undertakings or trading activities under section 10(1)(cN)(ii)

The receipts and accruals derived by a PBO from business undertakings or trading activities will be exempt from income tax only if such undertakings or activities fall within the permissible business undertakings or trading activities provided in section 10(1)(cN)(ii), namely, if the undertaking or activity is –

- integral and directly related to the sole or principal object of that PBO [see **7.4.1(a)**], is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost [see **7.4.1(b)**], and does not result in unfair competition to taxable

²⁹⁷ Claassen, R. C. (June 2024). *Claassen's dictionary of legal words and phrases*. My LexisNexis [online].

²⁹⁸ ITC 1675 (1998) 62 SATC 219 (G); *Burgess v CIR* 1993 (4) SA 161 (A), 55 SATC 185 at 196; ITC 770 (1953) 19 SATC 216 (T) at 216 and 7; ITC 615 (1946) 14 SATC 399 (U) at 402 and *Modderfontein Deep Levels Ltd & another v Feinstein* 1920 TPD 288.

²⁹⁹ *De Beers Holdings (Pty) Ltd v CIR* 1986 (1) SA 8 (A), 47 SATC 229 at 260.

³⁰⁰ Section 10(1)(cN)(i).

³⁰¹ For commentary, see Interpretation Note 33 “Assessed Losses Companies: The ‘Trade’ and ‘Income from Trade’ Requirements”.

³⁰² *Platt v CIR* 1922 AD 42, 32 SATC 142.

entities [see **7.4.1(c)**];³⁰³

- of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation (see **7.4.2**);³⁰⁴ or
- approved by the Minister by notice in the *Government Gazette* (see **7.4.3**).³⁰⁵

The use of the disjunctive word “or” between the permissible business undertakings or trading activities provided in that section means that receipts and accruals of a PBO may be derived from either one or a combination of those undertakings or activities. There is no limit on the amount of receipts and accruals qualifying for exemption from income tax under a permissible business undertaking or trading activity.

The conditions and requirements of the permissible business undertakings or trading activities are considered below.

7.4.1 Integral and directly related permissible business undertaking or trading activity

The receipts and accruals of any PBO will be exempt from income tax to the extent that the receipts and accruals are derived from any business undertaking or trading activity if the undertaking or activity –³⁰⁶

- is integral and directly related to the sole or principal object (see **3.2**) of that PBO [see **7.4.1(a)**];³⁰⁷
- is carried out or conducted on the basis substantially the whole of which is directed towards the recovery of cost [see **7.4.1(b)**];³⁰⁸ and
- does not result in unfair competition in relation to taxable entities [see **7.4.1(c)**].³⁰⁹

Section 10(1)(cN)(ii)(aa) must be interpreted and applied as a whole having regard to the context in which it appears and the apparent purpose to which it is directed. The individual requirements should therefore not be read in isolation because they are joined together by the conjunctive word “and”, which means that all the requirements must be met for the receipts and accruals to be regarded as being derived from a permissible business undertaking or trading activity.

(a) Integral and directly related to the sole or principal object

The words “integral”, “directly” and “related” are not defined in the Act. The *Cambridge Dictionary* provides the following descriptions:

- “Integral” is “necessary and important as a part of a whole, contained within something, not separate.”³¹⁰
- “Directly” is “without anything else being involved or in between.”³¹¹
- “Related” is “connected to, influenced by, or caused by something.”³¹²

³⁰³ Section 10(1)(cN)(ii)(aa).

³⁰⁴ Section 10(1)(cN)(ii)(bb).

³⁰⁵ Section 10(1)(cN)(ii)(cc).

³⁰⁶ Section 10(1)(cN)(ii)(aa).

³⁰⁷ Section 10(1)(cN)(ii)(aa)(A).

³⁰⁸ Section 10(1)(cN)(ii)(aa)(B).

³⁰⁹ Section 10(1)(cN)(ii)(aa)(C).

³¹⁰ <https://dictionary.cambridge.org/dictionary/english/integral> [Accessed 18 March 2025].

³¹¹ <https://dictionary.cambridge.org/dictionary/english/directly> [Accessed 18 March 2025].

³¹² <https://dictionary.cambridge.org/dictionary/english/related> [Accessed 18 March 2025].

A business undertaking or trading activity will not be regarded as related to a PBO's sole or principal object if it does not directly contribute to achieving the sole or principal object of the PBO, which must be to carry on one or more PBAs. Whether a business undertaking or trading activity contributes to achieving the PBO's sole or principal object will depend on the facts of each case. The size and extent of the business undertaking or trading activity involved must be considered in relation to the nature and extent of the approved function that they intend to serve to determine whether those business undertakings or trading activities contribute directly to achieve the sole or principal object of a PBO.

Example 10 – Integral and directly related to the sole or principal object

Facts:

A PBO provides healthcare services at no charge to poor and needy persons.³¹³ In addition to providing a medical consultation service, the PBO also provides medication at cost.

Result:

The provision of medication at cost is regarded as integral and directly related to the activity of providing healthcare services to poor and needy persons, which is the PBO's sole or principal object.

Example 11 – Integral and directly related to the sole or principal object

Facts:

A PBO carries on a community broadcasting service to serve a particular community, meet their needs, contribute to the general enrichment of the community members within its broadcasting coverage area and to contribute to the overall community development and empowerment.

The Independent Communications Authority of South Africa has granted the PBO a community broadcasting service licence. Most of the programmes, news bulletins and current affairs broadcast are local origination programmes.

The PBO, amongst other things, derives receipts and accruals from advertising and the sale of airtime from local community members or local businesses within the community served. It is a requirement under the Electronic Communications Act³¹⁴ regulating electronic communications in South Africa that receipts and accruals are to be derived for non-profit purposes. A licenced community broadcasting service is also required in the event of any surplus funds to use or invest such funds in the community served for purposes of community development.

Result:

The receipts and accruals derived by the PBO from advertising income and the sale of airtime may be regarded as integral and directly related to the PBA carried on by the PBO, which is the advancement and promotion of the arts, culture and customs contemplated in PBA 6(a) in Part I. The advertising income and the sale of airtime is derived on a non-profit basis and any surplus funds must be used or invested in the community served.

³¹³ PBA 2(a) in Part I, which is described as the provision of health care services to poor and needy persons.

³¹⁴ Act 36 of 2005.

An unrelated business undertaking or trading activity would be an undertaking or activity conducted by a PBO that is not directly related to the performance of the PBO's sole or principal object (see 3.2). The use by a PBO of the profits derived from any unrelated business undertaking or trading activity does not make the undertaking or activity directly related to the performance by the PBO of its sole or principal object.

It is unacceptable for the sole or principal object of a PBO to be the conducting of a commercial business undertaking or trading activity (see 7.3.1) to use profits or proceeds derived from such commercial undertaking or activity to carry on or fund PBAs. Any receipts and accruals derived from business undertakings or trading activities that are not integral and directly related to the sole or principal object of the PBO are taxable (see 7.6) subject to the basic exemption (see 7.5).

Example 12 – Unrelated business undertakings or trading activities to a PBO's sole or principal object

The following are non-exhaustive examples of unrelated business activities or trading activities:

- A PBO established to practice religion contemplated in PBA 5(a)³¹⁵ in Part I uses its assets to generate income, for example, the letting of parking facilities, and its hall to members of the general public on weekdays and Saturdays for various functions such as weddings, birthday celebrations, concerts, and conferences.
- A museum during the week uses its theatre auditorium for showing educational films to promote the arts, culture, buildings, and collections with historical interest since its sole or principal object is to carry on PBA 6(b)³¹⁶ in Part I. However, to supplement its income the museum operates the theatre as a motion picture theatre showing mainstream movies at market-related prices for the general public over weekends when the museum is closed.
- A PBO established to prevent cruelty to animals contemplated in PBA 7(b)³¹⁷ in Part I receives income from providing pet boarding and grooming services to the general public at market-related prices to augment its income.

(b) Substantially the whole directed towards the recovery of cost

It is a requirement that the business undertaking or trading activity (see 7.4.1) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost.

The words "carried out", "conducted", "basis", "substantially", "whole", "recovery" and "cost" are not defined in the Act. The ordinary meaning in the *Cambridge Dictionary* are as follows:

- "Carried out something" is "to perform or complete a job or activity; to fulfil."³¹⁸
- "Conduct" is "to organize and perform a particular activity."³¹⁹

³¹⁵ This PBA is described as the promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.

³¹⁶ This PBA is described as the promotion, establishment, protection, preservation or maintenance of areas, collections, or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives, and libraries.

³¹⁷ This PBA is described as the care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.

³¹⁸ <https://dictionary.cambridge.org/dictionary/english/carry-out?q=carried+out> [Accessed 18 March 2025].

³¹⁹ <https://dictionary.cambridge.org/dictionary/english/conduct> [Accessed 18 March 2025].

- “Basis” is “the most important facts, ideas, etc. from which something is developed.”³²⁰
- “Substantially” is “to a large degree.”³²¹
- “Whole” is “complete or not divided.”³²²
- “Recovery” is “the process of getting something back.”³²³
- “Cost” is “the amount of money needed to buy, do, or make something, or an amount spent for something.”³²⁴

The expression “substantially the whole” is used in various sections of the Act although not defined in the Act. Strictly interpreted, SARS regards the expression to mean 90% or more. However, because PBOs operate in an uncertain environment making proper planning difficult, SARS in these circumstances accepts a percentage of not less than 85%.³²⁵ This percentage must be determined using a method appropriate to the circumstances and may be motivated by considering time or cost.

It is not always possible to base business undertakings or trading activities on a 100% cost-recovery basis and it is for this reason that legislation requires that substantially the whole, not less than 85%, of the business undertaking or trading activity must be based on recovery of cost.³²⁶ This requirement will be met when not less than 85% of the business undertaking or trading activity is carried out to recover direct and reasonable indirect costs.

The concept “recovery of cost” means that the business undertaking or trading activity is not conducted at a mark-up to maximise profits, but rather with the intention of recovering direct and reasonable indirect costs relating to the business undertaking or trading activity.

In *C v COT Goldin J* stated the following on the meaning of “cost”:³²⁷

“The word ‘cost’, when undefined, may be used in various senses. As Jordan CJ said in the case of *Ex parte Brierley, Re Elvidge* (1947) 47 NSWSR 423 at 427; *Words and Phrases Legally Defined* 2 ed –

‘It may, in the case of manufacture, be used to mean the price paid for the raw material plus the wages paid for turning it into finished articles; and, in the case of trading, the price paid for what is re-sold. Or, in either case, it may include all the other expenses incurred in bringing into existence, or obtaining, and then selling a vendible article – what are generally described as ‘overheads’ ”.

Goldin J stated further that –³²⁸

“[t]he word ‘cost’ has to be construed according to its context”.

³²⁰ <https://dictionary.cambridge.org/dictionary/english/basis> [Accessed 18 March 2025].

³²¹ <https://dictionary.cambridge.org/dictionary/english/substantially> [Accessed 18 March 2025].

³²² <https://dictionary.cambridge.org/dictionary/english/whole> [Accessed 18 March 2025].

³²³ <https://dictionary.cambridge.org/dictionary/english/recovery> [Accessed 18 March 2025].

³²⁴ <https://dictionary.cambridge.org/dictionary/english/cost> [Accessed 18 March 2025].

³²⁵ For further commentary, see Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’ ”.

³²⁶ Section 10(1)(cN)(ii)(aa)(B).

³²⁷ 1973 (4) SA 449 (R), 35 SATC 241 at 246 and 247.

³²⁸ At 247.

Trollip JA held in *SIR v Eaton Hall (Pty) Ltd* that –³²⁹

“in the absence of any definition in the Act of such cost one must look at its ordinary meaning. The *Oxford English Dictionary* defines ‘cost’ as meaning:

‘That which must be given or surrendered in order to acquire, produce, accomplish, or maintain something; the price paid for a thing’ ”.

Example 13 – Substantially the whole towards the recovery of cost

Facts:

A PBO provides training for unemployed persons with the purpose of enabling them to obtain employment.³³⁰ To fund the provision of this PBA, the PBO charges tuition fees for the training provided. The fees are based on the estimated cost to the PBO in providing the tuition including the cost of hiring a hall, tuition material and textbooks, and the printing of certificates on completion of the training. The tuition is provided on a voluntary basis by teachers after hours. The tuition fee is the principal source of income for the PBO.

Result:

Substantially the whole of the activities is regarded as being directed towards the recovery of cost since the tuition fees are determined on a cost-recovery basis and no charge is made for the donated services of the teachers.

Example 14 – Recovery of cost

Facts:

A PBO, which is an independent school,³³¹ operates a tuck shop serving and selling refreshments to learners for a consideration determined by the cost of the goods that includes the purchase price, costs such as telephone, electricity, repairs and maintenance, stationery, cleaning materials and an amount for a reserve created for future replacement costs of capital assets such as a refrigerator, microwave, and deepfreeze. Assistance in the tuck shop is provided by volunteers and as a result no salaries or wages are incurred and a small profit may result, which is used by the PBO to fund its educational PBA.

Result:

The running of the tuck shop is regarded as being carried out or conducted on a cost-recovery basis since substantially the whole of the business activity is directed towards the recovery of cost.

(c) Unfair competition with taxable entities

It is a requirement that the business undertaking or trading activity should not result in unfair competition with other taxable entities.

³²⁹ 1975 (4) SA 953 (A), 37 SATC 343 at 347.

³³⁰ PBA 4(e) in Part I.

³³¹ PBA 4(a) in Part I, which is described as the provision of education by a “school” as defined in the South African Schools Act 84 of 1996.

The *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa* provides the following on unfair competition:³³²

“In granting privileged tax status to particular organisations, the fiscus needs to have regard to the issue of ‘unfair competition’ between bodies which are subject to tax and those which are tax-exempt. The broad issue of fairness or equity within a free-market economy is a fundamental one that warrants some degree of vigilance. However, the Commission is of the view that this value should not be elevated to the status of a ‘*summum bonum*’³³³ and needs to be counter-balanced with other important values in society, including the need for a strong, independent, and viable NPO sector.”

(Footnote added)

A PBO should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity.³³⁴ A PBO has an advantage in that it is not required to sacrifice a portion of its profit in the form of tax.

Each case will be considered on its own merits to determine whether a PBO has an unfair advantage in carrying on the business undertaking or trading activity. Various factors in determining whether a PBO has an unfair advantage could be considered such as –

- whether the PBO engages in active advertising or marketing;
- whether the business undertaking or trading activity is conducted on a competitive basis with the intention of maximising profits;
- the amount of income received;
- the location and availability of similar business undertakings or trading activities; or
- whether voluntary assistance is provided by other persons who are not compensated for their services.

Example 15 – Unfair competition

Facts:

An orphanage caring for abandoned children approved by the Commissioner as a PBO,³³⁵ also operates a service station with the intention of earning a profit to augment its income.

Result:

The operation of the service station is a commercial trading activity resulting in unfair competition with other taxable entities. The receipts and accruals derived by the PBO from the service station does not meet the requirements of the integral and directly related permissible business undertaking or trading activity (see 7.4) and will therefore be taxable (see 7.6) subject to the basic exemption (see 7.5).

³³² Katz, M. M., et al. (1999). *Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa* in paragraph 5.10. Available online at www.treasury.gov.za/publications [Accessed 18 March 2025].

³³³ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/summum%20bonum [Accessed 18 March 2025] describes “*summum bonum*” as “the supreme good from which all others are derived.”

³³⁴ Section 10(1)(cN)(ii)(aa)(C).

³³⁵ PBA 1(a) in Part I, which is described as the care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.

Example 16 – Unfair competition

Facts:

A PBO caring for disabled persons³³⁶ acquired land on which the residents are taught to grow vegetables and care for a small herd of cattle. The mechanical labour as well as veterinary services are provided at no cost by a nearby agricultural college. The residents undertake all the manual labour. The produce is primarily used for own consumption and any surplus is sold to a local farmers' market to defray costs. Some of the residents have been taught to knead and bake bread, which is supplied to a nearby supermarket. No commercial ovens or baking processes are used.

Result:

The trading activities are integral and directly related to the sole object of the PBO, which is to care for and train disabled persons. The principal purpose of the activities is to provide for the consumption of the residents and only the excess produce is sold to recover costs. Secondly, both the farming and baking activities are regarded as being of therapeutic benefit for the residents who are unable to find employment in the open labour market. Substantially the whole of the trading activities are conducted on a cost-recovery basis [see 7.4.1(b)]. If it were not for the donated services or if external labour had been hired, a profit would not have been realised.

The activities do not result in unfair competition with other taxable entities.

7.4.2 Occasional permissible business undertakings or trading activities

The receipts and accruals of any PBO will be exempt from income tax to the extent that the receipts and accruals are derived from any business undertaking or trading activity if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation.³³⁷

The Act does not define “occasional”, “nature”, “substantially”, “assistance”, “voluntary” or “compensation”. The *Cambridge Dictionary* provides the following descriptions:

- “Occasional” is “not happening or done often or regularly.”³³⁸
- “Nature” is “the type or main characteristic of something.”³³⁹
- “Assistance” is “help.”³⁴⁰
- Voluntary” is “done, made, or given willingly, without being forced or paid to do it.”³⁴¹
- “Compensation” is “the combination of money and other benefit (= rewards) that an employee receives for doing their job.”³⁴²

³³⁶ PBA 2(b) in Part I, which is described as the care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard. Also, see PBA 4(f) in Part I, which is described as the training or education of persons with a severe physical or mental disability.

³³⁷ Section 10(1)(cN)(ii)(bb).

³³⁸ <https://dictionary.cambridge.org/dictionary/english/occasional> [Accessed 18 March 2025].

³³⁹ <https://dictionary.cambridge.org/dictionary/english/nature> [Accessed 18 March 2025].

³⁴⁰ <https://dictionary.cambridge.org/dictionary/english/assistance> [Accessed 18 March 2025].

³⁴¹ <https://dictionary.cambridge.org/dictionary/english/voluntary> [Accessed 18 March 2025].

³⁴² <https://dictionary.cambridge.org/dictionary/english/compensation> [Accessed 18 March 2025].

A business undertaking or trading activity of an occasional nature is one conducted on an irregular, infrequent basis or as a special event. It is a requirement that a large or significant part of the occasional permissible business undertaking or trading activity must be undertaken with assistance from volunteers without compensation. For example, fundraising activities that take place on an annual basis with the assistance of helpers or volunteers who are not compensated for their services. The repayment of reasonable and necessary out-of-pocket expenditure to volunteers in assisting in the carrying on of the PBO's occasional permissible business undertakings or trading activities is allowed.

The difference between occasional and frequent is that "occasional" occurs irregularly, from time to time, once in a while, therefore rarely, while "frequent" occurs regularly, very often or many times. Fundraising activities will therefore not be regarded as occasional if there is a frequency and continuity to them, and if such activities are pursued in a manner similar to commercial activities of taxpaying entities.

Example 17 – Business undertakings or trading activities of an occasional nature

The following are non-exhaustive examples of business undertakings or trading activities of an occasional nature:

- Annual jumble sales at which donated second-hand clothing is sold.
- Annual fundraising events such as fêtes, cake sales or the sale of raffle tickets involving prizes that have been donated.
- Charity golf days involving donated or sponsored prizes.
- A gala dinner held to raise funds.
- The sale of Christmas cards reconditioned by volunteers.

Example 18 – Substantially with assistance on a voluntary basis

Facts:

An independent school, which has been approved by the Commissioner as a PBO, provides education to learners from Grade 1 to 12.³⁴³ The independent school intends to hold a fête where each class will be assigned to run a stall selling donated goods to raise funds to buy computers for use by the learners. All the stalls are manned by volunteers who include teachers, parents, and learners.

Result:

The receipts and accruals derived by the independent school from the fête meets the requirement of the occasional permissible business undertaking or trading activity since all the assistance given to the independent school at the fundraising event is provided on a voluntary basis without compensation.

³⁴³ The independent school is carrying on as its sole or principal object PBA 4(a) in Part I.

7.4.3 Permissible business undertakings or trading activities approved by the Minister

The receipts and accruals of any PBO will be exempt from income tax to the extent that the receipts and accruals are derived from any business undertaking or trading activity (see 7.3.1) if the undertaking or activity is approved by the Minister by notice in the *Government Gazette*.³⁴⁴ The Minister may approve a business undertaking or trading activity having regard to the –

- scope and benevolent nature of the undertaking or activity;³⁴⁵
- direct connection and interrelationship of the undertaking or activity with the sole or principal object (see 3.2) of the PBO;³⁴⁶
- profitability of the undertaking or activity;³⁴⁷ and
- level of economic distortion that will be caused by the tax-exempt status of the PBO carrying on the undertaking or activity.³⁴⁸

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

This provision is intended to cater for exceptional business undertakings or trading activities falling outside the permissible business undertakings or trading activities already catered for in section 10(1)(cN)(ii) (see 7.4) and therefore is rarely invoked. Should the Minister, however, approve a particular business undertaking or trading activity as permissible, that undertaking, or activity may be conducted only by the PBO that requested approval from the Minister.

7.5 Basic exemption

The receipts and accruals of any PBO derived from any business undertaking or trading activity (see 7.3.1) other than from permissible business undertakings or trading activities (see 7.4) will be exempt from income tax to the extent that they do not exceed the greater of –³⁴⁹

- 5% of the total receipts and accruals of the PBO during the relevant year of assessment;³⁵⁰ or
- R200 000.³⁵¹

The basic exemption is the amount determined as a threshold and applied to the total receipts and accruals of a PBO during a year of assessment derived from business undertakings or trading activities other than permissible business undertakings or trading activities.

³⁴⁴ Section 10(1)(cN)(ii)(cc).

³⁴⁵ Section 10(1)(cN)(ii)(cc)(A).

³⁴⁶ Section 10(1)(cN)(ii)(cc)(B).

³⁴⁷ Section 10(1)(cN)(ii)(cc)(C).

³⁴⁸ Section 10(1)(cN)(ii)(cc)(D).

³⁴⁹ Section 10(1)(cN)(ii)(dd).

³⁵⁰ Section 10(1)(cN)(ii)(dd)(i).

³⁵¹ Section 10(1)(cN)(ii)(dd)(ii).

The basic exemption cannot create a loss since it is not a deduction but a calculation to determine the threshold amount to be applied to the total receipts and accruals from business undertakings or trading activities other than permissible business undertakings or trading activities (see 7.4) to determine the receipts and accruals qualifying for exemption and the receipts and accruals subject to tax (see 7.6). The total receipts and accruals of a PBO will include the total or gross amount received or accrued from all sources, whether of a capital nature or not, such as donations, subsidies, school fees, rent, accommodation charges, fundraising activities, investment income, the sale of movable and immovable assets and bequests.

If a PBO is operational for only a part of a year of assessment its total receipts and accruals will equate to the receipts and accruals for the relevant operational period derived during that year of assessment. The basic exemption is therefore not applied on a *pro rata* basis to the number of months a PBO operated in a year of assessment because it applies to the PBOs total receipts and accruals derived from business undertakings or trading activities other than permissible business undertakings or trading activities during a year of assessment.

The total receipts and accruals derived from all business undertakings or trading activities other than permissible business undertakings or trading activities must be added together before the deduction of the basic exemption. The basic exemption threshold must be applied collectively to the total receipts and accruals from all business undertakings or trading activities other than permissible business undertakings or trading activities and not individually to each such undertaking or activity.

In the case of a regulating or co-ordinating body of a group of organisations (see Chapter 5),³⁵² the total receipts and accruals of all the individual organisations within the group as reflected in the consolidated financial statements will be considered in calculating the 5% of the total receipts and accruals. The threshold amount of R200 000 is not increased by the number of individual organisations within the group since this amount is applicable to a PBO, which in this case is, the regulating or co-ordinating body approved by the Commissioner as a PBO.

Example 19 – Basic exemption

Facts:

A PBO conducts PBAs from a property it owns. To augment its income, it lets a portion of the property not used for carrying on its PBAs. The total receipts and accruals of the PBO for the year of assessment are as follows:

	R
Donations	450 000
Rental income	90 000
Interest income	<u>50 000</u>
Total receipts and accruals	<u>590 000</u>

Result:

The rental income is not derived from a permissible business undertaking or trading activity and is regarded as a commercial trading activity, which is subject to the basic exemption. The basic exemption is calculated as an amount equal to the greater of –

- 5% of the total receipts and accruals of the PBO during the year of assessment; or

³⁵² Section 30(3A).

- R200 000.

5% of the total receipts and accruals of the PBO during the year of assessment of R590 000 amounts to R29 500.

The total receipts and accruals from letting the property amounting to R90 000 will be exempt since the PBO receives the benefit of the greater of –

- R29 500; or
- R200 000.

The other receipts and accruals of R500 000 (donations of R450 000 + interest of R50 000) are also exempt from income tax since they were not derived from a business undertaking or trading activity.³⁵³

7.6 Partial taxation

A PBO carrying on business undertakings or trading activities (see 7.3.1) other than permissible business undertakings or trading activities (see 7.4) will, subject to the basic exemption (see 7.5), be taxed on the receipts and accruals derived from all such business undertakings or trading activities exceeding the basic exemption threshold.³⁵⁴

A PBO liable to tax on taxable income will pay tax at a rate applicable to PBOs, irrespective of whether it is established as an NPC (see 3.1.1), a trust (see 3.1.2), or as an association of persons (see 3.1.3) or a branch of a foreign tax-exempt organisation (see 3.1.4). A PBO liable to income tax on taxable income will pay tax at a rate of –

- 28% for any year of assessment ending before 31 March 2023;³⁵⁵ and
- 27% in the case of a PBO that is a –³⁵⁶
 - company for any year of assessment ending on or after 1 April 2023; or
 - trust for any year of assessment commencing on or after 1 March 2023.

The Minister may announce different rates in the national annual budget, which are prescribed annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.³⁵⁷

³⁵³ Section 10(1)(cN)(i).

³⁵⁴ For a step-by-step guide to calculating the taxable income of a PBO by applying the basic exemption, see the Annexure to Interpretation Note 24 “Public Benefit Organisations: Partial Taxation”.

³⁵⁵ Paragraph 5 and 6 of Schedule I (Section 1) in the Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2022.

³⁵⁶ 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).

³⁵⁷ Section 5(2)(a).

Chapter 8

Section 18A approval

8.1 Introduction

Section 18A(1) provides that section 18A receipts for *bona fide* donations can be issued only after approval has been granted by the Commissioner under that section. An eligible PBO approved by the Commissioner under section 30 applies to the Commissioner (see **Chapter 13**) for a specific reference number for purposes of section 18A, which number 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**).

8.2 Doer public benefit organisations qualifying for section 18A approval

A PBO may qualify for approval under section 18A(1)(a)(i) if it carries on any PBAs in Part II in South Africa.³⁵⁸ The PBO must itself physically and actively carry on the PBAs in Part II in South Africa. Such PBOs are colloquially referred to as section 18A-approved doer PBOs.

8.2.1 Ring-fencing of donations

A section 18A-approved doer PBO may carry on a combination of PBAs, some of which are non-section 18A-approved in Part I and some of which are section 18A-approved in Part II (see **2.2**). The Commissioner will approve such a PBO to issue section 18A receipts to donor taxpayers for donations received solely to be used for PBAs in Part II in South Africa.³⁵⁹

The approval is subject to the section 18A-approved doer PBO ring-fencing the PBAs in Part II. The concept “ring-fence” in this context generally means to assign donations for which section 18A receipts were issued to a particular purpose, to restrict their use to the carrying on of PBAs in Part II in South Africa.

Donations received must be controlled in such a manner that their usage is restricted to only those PBAs in Part II carried on in South Africa. The record-keeping of a section 18A-approved doer PBO must clearly identify the donations received for PBAs in Part II and the use to which those donations were applied.

8.2.2 Audit certificate

Section 18A-approved doer PBOs carrying on a combination of PBAs listed in Part I and Part II in South Africa are required to obtain and retain an audit certificate³⁶⁰ to confirm that all donations received or accrued during the year for which the section 18A-approved doer PBO issued section 18A receipts were used solely in carrying on PBAs in Part II in South Africa.³⁶¹

Section 18A-approved doer PBOs carrying on only PBAs in Part II in South Africa are not required to obtain and retain an audit certificate since the donations for which section 18A receipts are issued will be used solely for this purpose.

³⁵⁸ Section 18A(1)(a)(i).

³⁵⁹ Section 18A(2A)(a).

³⁶⁰ For commentary, see Interpretation Note 112 “Section 18A: Audit Certificate”.

³⁶¹ Section 18A(2B).

The term “audit certificate” referred to in section 18A is not defined in the Act. The ordinary meaning of —³⁶²

- “audit” is “an official inspection of an organisation’s accounts”; and
- “certificate” is “an official document recording a particular fact, event, or level of achievement”.

An audit certificate in the present context is therefore a physical document, for example, a form, declaration or letter, that must, assuming the work performed and the underlying facts permit this to be done, confirm that all donations for which section 18A receipts were issued were used solely for PBAs in Part II in South Africa.³⁶³ In addition to the above confirmation, although not prescribed in the Act, the audit certificate should at a minimum contain the following detail for purposes of the administration relating to section 18A:

- The name and address of the section 18A-approved PBO.
- The reference number issued to the section 18A-approved PBO (see **Chapter 10**).³⁶⁴
- The taxpayer reference number of the section 18A-approved PBO (see **15.6.1**).
- The year of assessment (see **15.6.3**) to which the audit certificate applies.
- Details of the section 18A receipts issued by the section 18A-approved PBO, for example, the number of section 18A receipts issued and the total rand value of the donations for which section 18A receipts were issued.³⁶⁵
- Full name, signature, and designation of the person responsible for issuing the audit certificate.
- The date on which the audit certificate is issued.

The audit certificate is not limited to the items mentioned above and may contain additional information, for example, the person issuing the audit certificate may be subject to other legal or regulatory requirements, which require other information to be included in the certificate.³⁶⁶

The audit certificate must be retained for record-keeping purposes (see **15.5**). The failure to obtain and retain an audit certificate may be one of the facts giving the Commissioner reasonable grounds for invalidating the section 18A receipts of the section 18A-approved PBO (see **12.2**).

8.3 Conduit public benefit organisations qualifying for section 18A approval

A PBO having as its sole or principal object the provision of funds or assets to a section 18A-approved PBO, institution, board or body approved by the Commissioner under section 18A(1)(a)(ii), or any department approved by the Commissioner under

³⁶² Wait, M., Hawker, S., & Soanes, C. (2001). *Oxford Dictionary, Thesaurus and Wordpower Guide*. Oxford University Press.

³⁶³ Section 18A(2B) and (2C).

³⁶⁴ This information is also required under section 18A(2)(a)(i).

³⁶⁵ This information is also required to be provided on the Return of Income: Exempt Organisations IT12EI and for third-party reporting requirements.

³⁶⁶ Based on the presumption that references in statutes to conduct are references to valid or permissible conduct, see du Plessis, L. M. (31 March 2011). Statute Law and Interpretation. In *Law of South Africa (LAWSA)* 25(1) (Second Edition Volume) in paragraph 343. My LexisNexis [online]. The audit certificate referred to in section 18A(2B) and (2C) contemplates that it complies with all relevant legislative or regulatory requirements, if applicable.

section 18A(1)(c), may qualify for approval under section 18A(1)(b). Such a PBO is colloquially referred to as a section 18A-approved conduit PBO.

Any section 18A-approved doer PBO, institution, board or body approved under section 18A(1)(a)(ii), or department approved under section 18A(1)(c) benefitting from the provision of funds or assets by a section 18A-approved conduit PBO are required to use those funds or assets in carrying on any PBA in Part II in South Africa.

The approval of a conduit PBO for purposes of section 18A is specifically limited to the provision of funds or assets and does not include the provision of services or other resources contemplated in PBA 10 in Part I (see **4.8**).

8.3.1 Ring-fencing of donations

A section 18A-approved conduit PBO providing funds or assets to other section 18A-approved doer PBOs, institutions, boards or bodies approved under section 18A(1)(a)(ii), or any department approved under section 18A(1)(c), carrying on a combination of non-section 18A-approved PBAs in Part I and section 18A-approved PBAs in Part II, must also comply with the ring-fencing requirement considered in **8.2.1**.³⁶⁷

8.3.2 Distribution requirement

A section 18A-approved conduit PBO must distribute or undertake to distribute at least 50% of all funds received by donation for which section 18A receipts were issued within 12 months after the end of the year of assessment in which the donations were received.³⁶⁸ The distribution requirement applies only to a section 18A-approved conduit PBO and only to donations for which the section 18A-approved conduit PBO issued section 18A receipts.

The purpose of the distribution requirement is twofold, in that it —³⁶⁹

- discourages section 18A-approved conduit PBOs from locking in funds; and
- obtains a degree of matching between the timing of the tax deduction claimed by donor taxpayers (see **Chapter 11**) and the distribution of such donations by the section 18A-approved conduit PBOs to section 18A-approved doer PBOs, institutions, boards or bodies approved under section 18A(1)(a)(ii), or any department approved under section 18A(1)(c).

Section 18A donations claimed as a deduction from the taxable income of the donor taxpayer represents a cost to the *fiscus* and it is for this reason that the donation must be passed on by the section 18A-approved conduit PBO to be used by the section 18A-approved doer PBOs, institutions, boards or bodies approved under section 18A(1)(a)(ii), or any department approved under section 18A(1)(c) for the purposes of carrying on PBAs in Part II in South Africa.

³⁶⁷ Section 18A(2A)(b)(ii).

³⁶⁸ Section 18A(2A)(b)(i).

³⁶⁹ The *Explanatory Memorandum on the Taxation Laws Amendment Bill*, 2014, at page 54.

Example 20 – Distribution requirement

Facts:

Fury Friends Trust was established to provide funds or assets for the benefit of Fury Friends Shelter, a doer PBO carrying on PBA 4(b)³⁷⁰ in Part II. The trust was approved by the Commissioner as a conduit PBO under section 18A(1)(b). The trust received donations for which it issued section 18A receipts during the following years of assessment ending 28 February:

	R
2022	100 000
2023	150 000
2024	200 000

Result:

To comply with the distribution requirement, the trust is required to distribute to the shelter at least –

- R50 000 (50% of R100 000) of donations received during the 2022 year of assessment no later than the end of the 2023 year of assessment;
- R75 000 (50% of R150 000) of donations received during the 2023 year of assessment no later than the end of the 2024 year of assessment; and
- R100 000 (50% of R200 000) of donations received during the 2024 year of assessment no later than the end of the 2025 year of assessment.

(a) Commissioners' discretion to waive, defer or reduce the distribution requirement

The Commissioner may on good cause shown and subject to such conditions as may be determined, waive, defer or reduce the obligation to distribute any funds in general or in a particular instance.³⁷¹ The relaxing, waiving or deferring of the distribution requirement to enable section 18A-approved conduit PBOs to use tax-deductible donations for purposes of solely accumulating capital reserves, potentially weakens the control measures of ensuring that donations are used for the purpose for which they are given and may lead to abuse. The danger is also that on dissolution of a section 18A-approved conduit PBO the capital reserves, which have been built up by using tax-deductible donations, can potentially be used for other PBAs and not exclusively for PBAs in Part II in South Africa, as required.

It was the Commissioner's practice based on the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 1) published in 2002 to exercise the discretion only in instances where capital was being accumulated over a set period for specific capital projects. The Supreme Court of Appeal in *Kemp NO v Van Wyk*³⁷² confirmed that even if a policy or guideline exists, it cannot be applied thoughtlessly. The policy cannot be a binding rule and prevent a decision-maker from applying discretion. The decision-maker must consider the facts of each case having regard to the principles set out in the Promotion of Administrative Justice Act.³⁷³ The policy or guide regarding the distribution requirement for capital projects will therefore not be applied if the circumstances dictate otherwise.

³⁷⁰ This PBA is described as the care of animals, including the rehabilitation or prevention of the ill-treatment of animals.

³⁷¹ Section 18A(2A)(b)(i).

³⁷² 2005 (6) SA 519 (SCA).

³⁷³ Act 3 of 2000.

The obligation to distribute at least 50% of the funds may therefore be deferred, reduced, or waived either in general or in a particular instance subject to conditions determined by the Commissioner considering the public interest and purpose for which the section 18A-approved conduit PBO needs to accumulate the funds.³⁷⁴

The words “generally”, “particular instance”, “waive”, “defer”, “reduce”, “public interest” and “purpose” are not defined in the Act. The *Cambridge Dictionary* describes the words as follows:

- “Generally” is “considering the whole of someone or something, and not just a particular part of him, her, or it.”³⁷⁵
- The expression “particular instance” is described separately as –
 - “particular” is “special, or this and not any other”;³⁷⁶ and
 - “instance” is “a particular situation, event, or fact, especially an example of something that happens generally.”³⁷⁷
- “Waive” is “to not demand something you have a right to, or not to cause a rule to be obeyed.”³⁷⁸
- “Defer” is “to delay something until a later time.”³⁷⁹
- “Reduce” is “to become or to make something smaller in size, amount, degree, importance, etc. .”³⁸⁰
- “Public interest” is “used when talking about people’s rights to know the facts about a particular situation.”³⁸¹
- “Purpose” is “why you do something or why something exists”.³⁸²

A section 18A-approved conduit PBO that has a specific need to accumulate funds and therefore needs to distribute less than the required percentage may request the Commissioner to postpone, reduce or waive the distribution requirement. A request to have this distribution requirement relaxed may be submitted to the Commissioner together with –

- full details relating to the reason and purpose for which the funds are to be accumulated;
- the projected timeframe;
- the estimated costs involved; and
- motivated reasons why the relaxation of the distribution requirement is in the interest of the general public (see **3.5**).

Failure to use the funds for a PBA in Part II in South Africa may have harsh consequences for the section 18A-approved conduit PBO (see **12.2**).

³⁷⁴ The proviso to section 18A(2A)(b)(i).

³⁷⁵ <https://dictionary.cambridge.org/dictionary/english/generally> [Accessed 18 March 2025].

³⁷⁶ <https://dictionary.cambridge.org/dictionary/english/particular> [Accessed 18 March 2025].

³⁷⁷ <https://dictionary.cambridge.org/dictionary/english/instance> [Accessed 18 March 2025].

³⁷⁸ <https://dictionary.cambridge.org/dictionary/english/waiver> [Accessed 18 March 2025].

³⁷⁹ <https://dictionary.cambridge.org/dictionary/english/defer> [Accessed 18 March 2025].

³⁸⁰ <https://dictionary.cambridge.org/dictionary/english/reduce> [Accessed 18 March 2025].

³⁸¹ <https://dictionary.cambridge.org/dictionary/english/public-interest> [Accessed 18 March 2025].

³⁸² <https://dictionary.cambridge.org/dictionary/english/purpose> [Accessed 18 March 2025].

Example 21 – Relaxation of the distribution requirement for a capital project

Facts:

Happy Days Trust was established to provide funds for Happy Days Orphanage caring for abandoned and orphaned children. The Commissioner has approved the orphanage under section 18A(1)(a)(i) as a doer PBO carrying on PBA 1(a)³⁸³ in Part II in South Africa. The Commissioner has approved the trust as a conduit PBO under section 18A(1)(b).

A request has been submitted by the trust to have the distribution requirement waived because it needs to collect sufficient funds to enable the orphanage to build a home for abandoned babies. The orphanage has reached its maximum capacity, and additional facilities are required to enable it to carry on its PBA to better serve the community. The trust has submitted that the estimated cost of the project is R1 million and will take at least three years to raise sufficient funds considering its annual income budget.

Result:

The Commissioner, having regard to the public interest and purpose for which funds are to be accumulated by the trust, has waived the distribution requirement for the three years as requested by the trust.

8.3.3 Investment of undistributed amount

A section 18A-approved conduit PBO must invest any amount not distributed in accordance with the distribution requirement (see **8.3.2**).³⁸⁴

A section 18A-approved conduit PBO may invest any undistributed amount within its own discretion, provided that the investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that fiduciaries (see **4.4.1**) will act with the necessary prudence, integrity, reasonable care and in the best interest of the section 18A-approved conduit PBO.

A section 18A-approved conduit PBO must distribute or incur the obligation to distribute all amounts received from investment assets held by it, other than amounts received on the disposal of those investment assets, to other section 18A-approved doer PBOs, institutions, boards or bodies approved under section 18A(1)(a)(ii), or any department approved under section 18A(1)(c), no later than six months after every five years from –

- the date (see **16.1**) on which the Commissioner issued the section 18A-approved conduit PBO with a reference number for purposes of section 18A (see **Chapter 10**),³⁸⁵ if that section 18A-approved conduit PBO was incorporated, formed, or established on or after 1 March 2015;³⁸⁶ or
- 1 March 2015, if that section 18A-approved conduit PBO was incorporated, formed, or established and issued with a reference number by the Commissioner for purposes of section 18A before 1 March 2015.³⁸⁷

³⁸³ This PBA is described as the care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.

³⁸⁴ Section 18A(2D).

³⁸⁵ Section 18A(2)(a)(i).

³⁸⁶ Section 18A(2D)(a)

³⁸⁷ Section 18A(2D)(b).

If any section 18A-approved conduit PBO has not distributed or has not incurred the obligation to distribute the amounts received from investment assets held by it, those amounts will be deemed to be taxable income of that section 18A-approved conduit PBO in that year of assessment.³⁸⁸

Example 22 – Conditions for the use of undistributed amounts

Facts:

The Kings Trust was approved as a conduit PBO under section 18A(1)(b) and issued with a reference number for purposes of section 18A by the Commissioner on 6 June 2003. The trust received donations for which it issued section 18A receipts amounting to R500 000 during the year of assessment ending 29 February 2016. The trust beneficiary is Knights Preparatory School, a doer PBO carrying on PBA 3(a)³⁸⁹ in Part II, in South Africa.

Result:

The trust was required to distribute or incur the obligation to distribute at least R250 000 ($R500\,000 \times 50\%$) to its beneficiary within but no later than the end of the 2017 year of assessment in accordance with the distribution requirement.

The remaining R250 000 (or a lesser amount if more than R250 000 was distributed) is required to be invested by the trust.

The trust is required to distribute or incur the obligation to distribute all amounts received from the investment of the undistributed amount no later than six months after every five years from 1 March 2015, namely –

- 29 February 2020 to be distributed no later than 31 August 2020; and
- 28 February 2025 to be distributed no later than 31 August 2025, and so on.

Thus, if the trust derived interest income of R20 000 a year on invested funds of R250 000 between 1 March 2015 and 29 February 2020, it must distribute all those amounts by no later than 31 August 2020 ($R20\,000 \times 5 = R100\,000$). Likewise, all income derived on amounts accumulated during the five-year period ending 28 February 2025 must also be distributed on or before 31 August 2025.

8.3.4 Audit certificate

Any section 18A-approved conduit PBO providing funds or assets to section 18A-approved doer PBOs, institutions, boards or bodies approved under section 18A(1)(a)(ii), or any department approved under section 18A(1)(c), carrying on only PBAs in Part II in South Africa, is not required to obtain and retain an audit certificate.

A section 18A-approved conduit PBO providing funds to section 18A-approved doer PBOs, institutions, boards or bodies approved under section 18A(1)(a)(ii), or any department approved under section 18A(1)(c), carrying on PBAs in Part II as well as to PBOs, or institutions, boards or bodies not approved for purposes of section 18A (carrying on only PBAs in Part I or other non-approved organisations) (see **8.4**) must obtain and retain an audit certificate.

³⁸⁸ Section 18A(5C).

³⁸⁹ This PBA is described as the provision of education by a “school” as defined in the South African Schools Act 84 of 1996.

The audit certificate must confirm that all donations received or accrued in the year of assessment for which section 18A receipts were issued were used solely to provide funds or assets to –

- section 18A-approved doer PBOs (see **8.2**), which will use those funds or assets solely in carrying on PBAs (see **Chapter 2**) in Part II in South Africa;
- institutions, boards or bodies approved under section 18A(1)(a)(ii), which will use those funds or assets solely in carrying on PBAs in Part II in South Africa; or
- any department approved under section 18A(1)(c), which will use those funds or assets solely for the purpose of any PBA in Part II in South Africa.

The audit certificate must also confirm that all donations received or accrued during the year of assessment for which section 18A receipts were issued were distributed as required (see **8.3.2**). This confirmation ensures that despite the retention of any donations by the section 18A-approved conduit PBO, it still meets the distribution requirement within the required period.³⁹⁰

The audit certificate should contain the minimum details considered in **8.2.2**.

8.4 Organisations not qualifying for section 18A approval

No section 18A receipt purported to be issued by organisations, which have not been approved by the Commissioner for purposes of section 18A, are valid receipts. Donor taxpayers to whom such invalid section 18A receipts have been issued may therefore not claim a deduction in determining their taxable income (see **Chapter 11**).

8.4.1 Non-approved public benefit organisations

PBO's not approved by the Commissioner for purposes of section 18A may not issue section 18A receipts (see **Chapter 10**) for donations (see **Chapter 9**) received.

8.4.2 Branches of foreign tax-exempt organisations

A branch of a foreign tax-exempt organisation established in South Africa (see **3.1.4**) does not qualify for section 18A approval and is not allowed to issue section 18A receipts for donations received, even if it carries on PBAs in Part II in South Africa.

8.4.3 Non-qualifying organisations

Any organisation not qualifying for approval under section 18A, irrespective of whether that organisation enjoys approval or exemption from income tax under any other section of the Act, may not issue section 18A receipts (see **Chapter 10**) for donations received (see **Chapter 9**).

The following are non-exhaustive examples of organisations not qualifying for approval under section 18A:

- Recreational clubs³⁹¹ approved by the Commissioner under section 30A and whose receipts and accruals are partially exempt under section 10(1)(cO).³⁹²
- Small business funding entities³⁹³ approved by the Commissioner under section 30C whose receipts and accruals are partially exempt under section 10(1)(cQ).

³⁹⁰ Section 18A(2B).

³⁹¹ Defined in section 30A(1).

³⁹² For commentary, see the *Tax Exemption Guide for Recreational Clubs*.

³⁹³ Defined in section 1(1).

- Homeowners' associations exempt under section 10(1)(e)(i)(cc).³⁹⁴
- Associations,³⁹⁵ which include, amongst other things, trade unions, professional associations, and local publicity associations, approved by the Commissioner under section 30B and whose receipts and accruals are exempt under section 10(1)(d)(iii) or (iv)(bb).³⁹⁶
- Companies wholly owned by institutions, boards or bodies whose receipts and accruals are exempt under section 10(1)(cA)(ii).³⁹⁷
- Any political party registered under section 15 of the Electoral Commission Act³⁹⁸ whose receipts and accruals are exempt under section 10(1)(cE).

³⁹⁴ For commentary, see the Interpretation Note 64 "Income Tax Exemption: Bodies Corporate, Share Block Companies and Associations of Persons Managing the Collective Interests Common to all Members".

³⁹⁵ Defined in section 30B(1).

³⁹⁶ For commentary, see Interpretation Note 125 "Associations: Funding Requirement".

³⁹⁷ For commentary, see the *Tax Exemption Guide for Companies Wholly Owned by Institutions, Boards or Bodies*.

³⁹⁸ Act 51 of 1996.

Chapter 9

Donations for purposes of section 18A

9.1 Meaning of “donation”

Although the word “donation” is not defined in section 18A it is defined for purposes of donations tax (see **14.1.1**) and means —³⁹⁹

“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 as a donation for purposes of section 18A.⁴⁰⁰

The common law meaning of a donation was summarised up by Trollip JA in *Ovenstone v SIR* when he stated the following:⁴⁰¹

“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:⁴⁰²

“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:⁴⁰³

“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.”

³⁹⁹ Section 55(1).

⁴⁰⁰ *Minister of Defence and Military Veterans v Thomas* 2016 (1) SA 103 (CC).

⁴⁰¹ 1980 (2) SA 721 (A), 42 SATC 55 at 73.

⁴⁰² 2005 (4) SA 173 (SCA), 66 SATC 303 at 312 and 314.

⁴⁰³ 1945 AD 388, 13 SATC 170 at 173.

In *The Master v Thompson's Estate*, the court confirmed that a transaction will not be a donation when something is received in return or when there is some consideration.⁴⁰⁴

LAWSA provides the following on the meaning of a donation:⁴⁰⁵

“A donation (*donation mera*) is, in its strict legal sense, an agreement which has been induced by pure (or disinterested) benevolence or sheer liberality whereby the donor without a legal obligation undertakes to give something to the donee with the intention of enriching the donee, and without the donor receiving any consideration in return or the expectation of a future advantage.”

(Footnotes omitted)

A donation is therefore a gratuitous disposal by the donor out of liberality or generosity, under which the donee⁴⁰⁶ 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 personal benefit for the donor. If the donee gives any consideration in exchange, it is not a donation.

A PBO may not accept donations that are subject to conditions enabling the donor or any connected person in relation to the donor to derive some direct or indirect benefit from the application of the donation. The donation may also, subject to limited exceptions, not be revocable by the donor (see 4.4.6).

9.2 Formalities

A donation may be contracted verbally, except when by law it is required that the contract be in writing, for example, when immovable property is donated or in the case of executory donations.

Thus, no donation takes place until the necessary formalities have been completed. A donation *inter vivos*⁴⁰⁷ and a donation *mortis causa*⁴⁰⁸ must comply with all the basic legal requirements for contracts such as contractual capacity, offer and acceptance and consensus and if applicable, compliance with prescribed formalities.

9.3 Types of donations

A donation can be in the form of cash or of property in kind for purposes of section 18A.⁴⁰⁹

9.1.1 Cash donation

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

The following payments or transfers are non-exhaustive examples of payments or transfers that are not donations and do not qualify for a deduction under section 18A:

- Amounts paid for attending a fundraising dinner or dance.

⁴⁰⁴ 1961 (2) SA 20 (FC), 24 SATC 157 at 165.

⁴⁰⁵ Harms, L. T. C. (31 January 2017). Donations. In *Law of South Africa (LAWSA)* 16 (Third Edition Volume) in paragraph 19. My LexisNexis [online].

⁴⁰⁶ The term “donee” is defined in section 55(1) and 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.

⁴⁰⁷ The donation must comply with the provisions of the General Law Amendment Act 50 of 1956 or the Alienation of Land Act 68 of 1981.

⁴⁰⁸ The donation must comply with the formalities applicable to wills in accordance with the Wills Act.

⁴⁰⁹ Section 18A(1).

- Memorabilia and other assets donated to be auctioned to raise funds.
- Amounts paid for school fees, school entrance fees or compulsory school levies by parents to enable their children to attend an educational institution.
- Amounts paid for raffle or lottery tickets.
- The value of free rent, water and electricity provided by a lessor to the lessee that is a section 18A-approved doer PBO or conduit PBO.
- Payments of debt owed by a section 18A-approved doer PBO or conduit PBO. For example, the cost of repairs to a section 18A-approved doer PBOs or conduit PBOs vehicle paid to the service station on behalf of that doer PBO or conduit PBO and not paid directly to that section 18A-approved doer PBO or conduit PBO.
- Prizes and sponsorships donated for a fundraising event such as a charity golf day.
- Tithes and offerings contributed to churches or other faith-based organisations in support of their religious activities.⁴¹⁰
- Membership fees.
- Promissory notes.
- Pledges.⁴¹¹
- Payments made in future instalments.
- Payments for the purchase of poker chips at a fundraising poker event or the payment for additional poker chips for an amount more than the value of the prizes to be won at a poker table.
- Contributions by corporates under the Broad-Based Black Economic Empowerment (B-BBEE) Codes of Good Practice to enhance the contributor's B-BBEE credentials.

9.1.2 Donation of property in kind

A donation of property in kind⁴¹² is made in a form other than cash and may include the following:⁴¹³

- A financial instrument held by the donor taxpayer as trading stock provided it is —⁴¹⁴
 - a share in a listed company; or
 - issued by an “eligible financial institution” as defined in section 1 of the Financial Sector Regulation Act.⁴¹⁵

⁴¹⁰ PBA 5(a) and PBA 5(b) in Part I, which are described as “the promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity” and “the promotion and/or practice of a belief”, respectively.

⁴¹¹ To the extent that such a payment is given as security to guarantee payment of a debt or fulfilment of an obligation.

⁴¹² Section 18A(1).

⁴¹³ Section 18A(3).

⁴¹⁴ Section 18A(3B).

⁴¹⁵ Act 9 of 2017. This includes, for example, 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 and a market infrastructure.

- Trading stock forming part of the business or trade conducted by the donor taxpayer. Such trading stock may include livestock or produce donated by a farmer, goods such as computers, foodstuffs, furniture, medical supplies, and motor vehicles.
- An asset used by the donor taxpayer in conducting the donor taxpayer's trade excluding trading stock. Examples of such assets may include cash registers, computers, crockery, delivery vehicles, furniture, garden equipment, kitchen utensils and office equipment.
- An asset that is not trading stock and is also not used in the business of the donor taxpayer. For example, such assets may include personal assets or assets bought by the donor 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 PBA in Part II.

A donation of property in kind must be used by a –

- section 18A-approved PBO (see **8.2**) in carrying on PBAs (see **Chapter 2**) in Part II in South Africa; and
- conduit PBO (see **8.3**) in providing funds or assets to any section 18A-approved donor PBO, institution, board or body approved under section 18A(1)(a)(ii), or department approved under section 18A(1)(c) in carrying on any PBA in Part II in South Africa.

Any deduction claimed by a 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:

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

In which formula –

- “A” represents the amount deductible contemplated in section 18A(1);
- “B” represents the cost of the immovable property being donated;
- “C” represents the amount of capital gain (if any), that would have been determined under 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” represents 60% in the case of a natural person or special trust or 20% in any other case.

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:⁴¹⁶

- A financial instrument that is trading stock of the donor taxpayer, the lower of fair market value on the date of the donation or the amount that has been taken into account for that year of assessment for the value of that trading stock under section 22(8)(C).⁴¹⁷

⁴¹⁶ Section 18A(3).

⁴¹⁷ For commentary on the application and interpretation of section 22(8), see Interpretation Note 65 “Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade”.

- Any other trading stock of the donor taxpayer (including any livestock or produce of a farmer), the amount that has been 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, 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 the 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.
- Property that is 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 the cost to the donor taxpayer of such asset less depreciation using the 20% reducing balance method in the case of deterioration of movable property.
- Property purchased, manufactured, erected, assembled, installed, or constructed by or on behalf of the donor taxpayer forming the subject of the donation, the lower of the fair market value on the date of the donation or the cost to the donor taxpayer of such property.

No deduction is allowed for any donation of any property in kind that —⁴¹⁸

- constitutes or is subject to any fiduciary right, usufruct,⁴¹⁹ or other similar right;⁴²⁰ or
- constitutes an intangible asset⁴²¹ or financial instrument, unless the financial instrument meets the requirements set out above.⁴²²

Providing a service⁴²³ such as time, skill, or effort to a section 18A-approved doer PBO or conduit PBO is not a donation of property⁴²⁴ made in kind. Any professional person, such as an accountant, auditor, artist (who 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 doer PBO or conduit PBO, is not entitled to a tax deduction for the value of the service.

⁴¹⁸ Section 18A(3B). The reference to “other similar right” is to a right like the preceding types of rights. See ITC 1880 78 SATC 103 at 32 and ITC 1898 79 SATC 266 at 44.

⁴¹⁹ The *Merriam-Webster Dictionary* available online at www.merriam-webster.com/dictionary/usufruct [Accessed 18 March 2025] describes “usufruct” as “the legal right of using and enjoying the fruits or profits of something belonging to another” and “the right to use or enjoy something”.

⁴²⁰ Section 18A(3B)(a).

⁴²¹ An intangible asset is generally defined as an identifiable non-monetary asset without physical substance. The identifiable requirement enables an intangible asset to be distinguished from goodwill, which is an asset representing future economic benefits that are not individually identified and separately recognised, for example, patents, computer software, copyrights, customer lists, franchises, and marketing rights. The classification as an intangible asset is based purely on the nature of the asset irrespective of whether the asset will be used in the production of goods, for administrative purposes, for sale to others, etc. See Badenhorst, W., *et al.* (2024). *GAAP Handbook Volume 1* at page 23.2. My LexisNexis [online].

⁴²² Section 18A(3B)(b).

⁴²³ Services are not property, see below.

⁴²⁴ The word “property” generally includes practically anything that a person can own and which that person has a right of disposition so that such property can be made into money. See Claassen, R. C. (June 2024). *Claassen's dictionary of legal words and phrases*. My LexisNexis [online].

Chapter 10

Section 18A receipts

A section 18A receipt may be issued by a section 18A-approved doer PBO (see **8.2**) or a section 18A-approved conduit PBO (see **8.3**) only for a qualifying donation (see **Chapter 9**).

A section 18A receipt will be valid if it contains the following details:⁴²⁵

- The reference number issued by the Commissioner to the section 18A-approved doer PBO or conduit PBO for purposes of section 18A.
- The unique section 18A receipt number.
- The date the donation is received.
- The name and address of the section 18A-approved doer PBO or conduit PBO issuing the section 18A receipt to which enquiries may be directed.
- The name and address of the donor taxpayer.
- The amount of the donation if in cash (see **9.1.1**).
- The nature and value of the donation if not in cash (see **9.1.2**).⁴²⁶
- A certification to the effect that the receipt is issued for purposes of section 18A and that the donation has been or will be used exclusively for the object of the section 18A-approved doer PBO or conduit PBO.
- The information for third-party reporting (see **15.7**),⁴²⁷ which includes the –⁴²⁸
 - nature of the donor taxpayer, for example, a natural person, a company or a trust;
 - identification type of the donor taxpayer, for example, the South African identification number or passport number and country of issue if a natural person;
 - identification or registration number of the donor taxpayer, for example, the company registration number issued by the CIPC, the trust registration number issued by the Master or the NPO registration number issued by the NPO Directorate (see **Chapter 17**) if a juristic person;
 - trade name of the donor taxpayer if a juristic person and the trade name is different to the registered name of the donor taxpayer;
 - income tax reference number of the donor taxpayer, if available;
 - contact number of the donor taxpayer; and
 - e-mail address of the donor taxpayer.

⁴²⁵ Section 18A(2)(a).

⁴²⁶ For commentary, see Binding General Ruling (Income Tax) 71 “Section 18A Receipt: Donation of Property in Kind”.

⁴²⁷ For commentary, see the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2021*, in 2.2.

⁴²⁸ Section 18A(2)(a)(vii) was inserted by section 2 of the Tax Administration Laws Amendment Act 21 of 2021.

SARS does not make section 18A receipts available therefore section 18A-approved doer PBOs or conduit PBOs must create their own receipts ensuring that all the above details appear on the receipt. See **Annexure G** for a generic example of a section 18A receipt.

A section 18A receipt must be issued by the section 18A-approved doer PBO or conduit PBO in the year of assessment (see **15.6.3**) during which the donation is actually paid or transferred to that section 18A-approved doer PBO or conduit PBO.⁴²⁹ Section 18A-approved doer PBO or conduit PBO may receive multiple *bona fide* donations during a year of assessment from the same donor taxpayer. It is acceptable for a section 18A-approved doer PBO or conduit PBO to issue a single section 18A receipt complying with the mandatory details listed above to a donor taxpayer for the sum of *bona fide* donations actually paid or transferred by that donor taxpayer during a year of assessment.⁴³⁰

A section 18A-approved doer PBO or conduit PBO must issue a section 18A receipt to an employer operating a payroll-giving programme⁴³¹ 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 (see **14.2.3**).

Section 18A receipts issued by organisations not approved by the Commissioner for purposes of section 18A (see **8.4**) are invalid. Donor taxpayers may not use such invalid receipts to claim a tax deduction from their taxable income (see **Chapter 11**) for any donations made to such organisations.

⁴²⁹ Section 18A(1).

⁴³⁰ For further commentary, see Binding General Ruling (Income Tax) 70 "Issue of a Single Section 18A Receipt to a Donor Taxpayer for Multiple *Bona Fide* Donations".

⁴³¹ A payroll-giving programme operated by an employer enables employees to donate from their salaries on a monthly basis to section 18A-approved PBOs or conduit PBOs.

Chapter 11

Allowable deduction in determining the taxable income of a donor taxpayer

11.1 Introduction

A donor taxpayer, which may include an individual, a trust or a company, making a donation in cash (see 9.1.1) or of property in kind (see 9.1.2) is entitled to a deduction in determining a donor taxpayer's taxable income provided the donation is actually paid or transferred during the year of assessment to a section 18A-approved donor PBO (see 8.2) or conduit PBO (see 8.3).⁴³² Any claim for a deduction in determining the taxable income of a donor taxpayer will be allowed only if supported by –⁴³³

- a valid section 18A receipt (see **Chapter 10**) issued by a section 18A-approved donor PBO or conduit PBO; or
- an employees' tax certificate (IRP 5 certificate)⁴³⁴ issued by an employer operating a payroll-giving programme.

The deduction of donations made directly to a section 18A-approved donor PBO or conduit PBO for which such a PBO has issued section 18A receipts must be claimed by the donor taxpayer in the annual income tax return of that donor taxpayer for the year of assessment during which the donation was actually paid or transferred.

Donor taxpayers receiving section 18A receipts issued by a PBO not approved by the Commissioner for purposes of section 18A (see 8.4) are not entitled to a deduction in determining their taxable income. Any such claim for a deduction by donor taxpayers will therefore be disallowed in the determination of their taxable income.

11.2 Allowable deduction for a collective investment scheme

The allowable deduction for a donor taxpayer that is a portfolio of a collective investment scheme,⁴³⁵ excluding a Real Estate Investment Trust (REIT) (see 11.3), for all qualifying donations paid or transferred during the year of assessment is determined according to the following formula:⁴³⁶

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

In which formula –

- "A" represents the amount to be determined; and
- "B" represents 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.

⁴³² Section 18A(1).

⁴³³ Section 18A(2).

⁴³⁴ The term "employees' tax certificate" is defined in paragraph 1 of the Fourth Schedule.

⁴³⁵ 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.

⁴³⁶ Section 18A(1)(A).

11.3 Allowable deduction for a 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 Real Estate Investment Trust (REIT) or a resident-controlled company is allowed under section 25BB(2A)(c).⁴³⁷

11.4 Allowable deduction for all other donor taxpayers

For all other donor taxpayers, the allowable deduction may not exceed 10% of the taxable income excluding any retirement fund lump sum benefit,⁴³⁸ retirement fund lump sum withdrawal benefit⁴³⁹ and severance benefit⁴⁴⁰ 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).⁴⁴¹

11.5 Carried-forward treatment for excess deductible donations

Any excess amount of a donation made that is disallowed solely because it exceeds the amount of the deduction allowable for a year of assessment may be carried forward for purposes of section 18A.⁴⁴²

The excess amount carried forward will be deemed to be a donation actually paid or transferred in the next succeeding year of assessment, subject to the limitations considered in 11.2, 11.3 and 11.4.⁴⁴³ If any excess remains, it can be further rolled over but always subject to the relevant limitations.

Example 23 – Carry-forward treatment for excess deductible donations subject to the 10% limitation

	Year 1 R	Year 2 R
Taxable income	1 000 000	1 500 000
Maximum amount potentially allowable as deduction (10%)	100 000	150 000
Actual donation made	150 000	0
Deduction allowed	100 000	50 000 (amount brought forward)
Amount carried forward	50 000	0

⁴³⁷ For commentary, see Interpretation Note 97 “Taxation of REITS and Controlled Companies”.

⁴³⁸ 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.

⁴³⁹ 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.

⁴⁴⁰ The term “severance benefit” is defined in section 1(1).

⁴⁴¹ Section 18A(1)(B).

⁴⁴² The carried-forward treatment for excess deductible donations made by a deceased donor taxpayer up to the date of death is forfeited at death. No carried-forward balance is carried over to the deceased estate as it is a separate taxpayer from the deceased person.

⁴⁴³ The proviso to section 18A(1)(B).

Chapter 12

Non-compliance with section 18A and 30

12.1 Withdrawal of public benefit organisation approval under section 30

The Commissioner may withdraw the approval as a PBO under section 30(3) if –

- the Commissioner is satisfied that a PBO has, in any year of assessment in any material respect or on a continuous or repetitive basis, failed to comply with section 30 (see 4.4) or with its founding document (see 4.3) as it relates to section 30;⁴⁴⁴ or
- requested by the NPO Directorate,⁴⁴⁵ if registered as an NPO (see Chapter 17) and convicted of an offence⁴⁴⁶ under the NPO Act.⁴⁴⁷

The Act does not specify what constitutes a material, continuous or repetitive failure by a PBO to comply with section 30 or with the founding document as it relates to that section. The words are described in the *Cambridge Dictionary* as follows:

- “Material” is “important or having an important effect.”⁴⁴⁸
- “Continuous” is “without a pause or interruption.”⁴⁴⁹
- “Repetition” is “something that happens in the same way as something that happened before.”⁴⁵⁰

A failure by a PBO to comply with section 30 in any material respect may therefore include a significant, relevant, and important failure. A failure on a continuous basis may be prolonged without interruption, while a failure on a repetitive basis may be done many times in the same manner by the PBO.

The Commissioner may withdraw the approval in any of the above circumstances but must decide each case on its own facts and circumstances. Notice must be given to the transgressing PBO to take corrective steps in a specified period failing which the intention is to withdraw the approval as a PBO.⁴⁵¹

If no corrective steps are taken by the PBO within the period stated in the notice, the approval will be withdrawn from the beginning of the year of assessment in which corrective steps are not taken to rectify the non-compliance or failure by the PBO.

The decision of the Commissioner to withdraw the approval is subject to objection and appeal (see Chapter 16).⁴⁵²

⁴⁴⁴ Section 30(5).

⁴⁴⁵ The body established under section 4 of the NPO Act.

⁴⁴⁶ The relevant offences and contraventions are contained in section 29 of the NPO Act.

⁴⁴⁷ Section 30(3C).

⁴⁴⁸ <https://dictionary.cambridge.org/dictionary/english/material?q=material+> [Accessed 18 March 2025].

⁴⁴⁹ <https://dictionary.cambridge.org/dictionary/english/continuous> [Accessed 18 March 2025].

⁴⁵⁰ <https://dictionary.cambridge.org/dictionary/english/repetition> [Accessed 18 March 2025].

⁴⁵¹ Section 30(5).

⁴⁵² Section 3(4)(b).

On withdrawal of the approval as a PBO, the affected organisation must transfer or take reasonable steps to transfer its remaining assets within six months or a longer period allowed by the Commissioner to —⁴⁵³

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

Failure to transfer, or to take reasonable steps to transfer the remaining assets on withdrawal of the approval as a PBO will result in an amount equal to the market value of those assets not transferred less the amount equal to the *bona fide* liabilities of the PBO deemed to be taxable income (see 4.4.5) accruing to the PBO during the year of assessment⁴⁵⁴ in which approval was withdrawn.⁴⁵⁵ A PBO guilty of such a transgression will therefore not be allowed to deduct any further tax allowances or deductions from its net revenue since its net revenue is deemed to be taxable income, that is, after allowances and deductions.

An organisation may reapply for approval as a PBO in the year of assessment following the year of assessment in which the approval was withdrawn. The Commissioner may grant the approval in that subsequent year if satisfied that the non-compliance giving rise to the withdrawal of approval has been rectified.⁴⁵⁶ Under these circumstances, an organisation may not be approved with retrospective effect (see 13.2), since the organisation was non-compliant with section 30 before reapplication for PBO approval.

An organisation that has had its approval withdrawn will be liable for income tax and other taxes and duties as a normal taxpayer and subject to income tax as follows:

- An NPC (see 3.1.1) and any association of persons (see 3.1.3)⁴⁵⁷ will be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies, which is currently 27%.
- A trust (see 3.1.2) will be liable for tax on its taxable income, subject to section 7 and 25B, at the rate applicable to trusts, which is currently 40%.

The Minister of Finance may announce different tax rates in the national annual budget. The tax rates are published annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.⁴⁵⁸

12.2 Non-compliance with section 18A

If any person who is in a fiduciary capacity (see 4.4.1) responsible for the management or control of the income or assets of a section 18A-approved doer PBO or conduit PBO has —⁴⁵⁹

- materially failed to ensure that the objects for which that section 18A-approved doer PBO (see 8.2) or conduit PBO (see 8.3) were established are carried out;
- expended the monies for purposes not covered by the section 18A-approved doer PBO or conduit PBO objects;

⁴⁵³ Section 30(6).

⁴⁵⁴ The term “year of assessment” is defined in section 1(1).

⁴⁵⁵ Section 30(6) read with section 30(7).

⁴⁵⁶ Section 30(8).

⁴⁵⁷ Paragraph (d) of the definition of “company” in section 1(1).

⁴⁵⁸ Section 5(2)(a).

⁴⁵⁹ Section 18A(5).

- issued or allowed a section 18A receipt (see **Chapter 10**) to be issued for fees or other emoluments payable to a section 18A-approved doer PBO or conduit PBO;
- issued or allowed section 18A receipts to be issued in contravention of section 18A(2A) 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 **8.2.1**, **8.3.1** and **8.3.2**); or
- failed to obtain and retain an audit certificate (see **8.2.2** and **8.3.4**).

The Commissioner may in any of the above circumstances, if reasonable grounds exist, by written notice addressed to the person in a fiduciary capacity responsible for the management or control of the income or assets direct 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 (see **4.4.5**) of that section 18A-approved doer PBO or conduit PBO in that year of assessment;⁴⁶⁰ and
- if corrective steps are not taken by that section 18A-approved doer PBO or conduit PBO within a period specified in the notice, any receipt issued by that doer PBO or conduit PBO of any donation made on or after the date specified in the notice will not qualify as a valid section 18A receipt (see **Chapter 10**). Those donations will therefore not qualify for a deduction in determining the taxable income of the donor taxpayer (see **Chapter 11**).⁴⁶¹ The amounts received by a section 18A-approved conduit PBO (see **8.3**) from investment assets held by it that are not distributed as required (see **8.3.3**) will be deemed to be taxable income (see **4.4.5**) of that conduit PBO in the year of assessment in which the six months fall.⁴⁶²

12.3 Non-compliance by responsible person

A person in a fiduciary capacity (see **4.4.1**) responsible for the management or control of the income and assets of a PBO who intentionally fails to comply with section 18A (see **Chapter 8**) or 30 (see **Chapter 4**) or a provision of the founding document (see **4.3**) under which such a PBO is established and governed to the extent that it relates to section 18A or 30, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.⁴⁶³

⁴⁶⁰ Section 18A(5)(i).

⁴⁶¹ Section 18A(5)(ii).

⁴⁶² Section 18A(5C).

⁴⁶³ Sections 30(11) and 18A(7).

Chapter 13

Application procedure

13.1 Introduction

An organisation seeking approval as a PBO or approval under section 18A to issue section 18A receipts must complete and submit to SARS the prescribed application form EI 1.⁴⁶⁴

The application form EI 1 was developed to allow organisations seeking approval from the Commissioner to do so in a uniform and consistent manner. The application form EI 1 consolidates all the information and documentation required by the Commissioner to evaluate the approval being sought by the applicant organisation. The content of the application form EI 1 is not a deciding factor for approval by the Commissioner, since it is merely an administrative tool used by SARS to consider the application.

In ITC 1872⁴⁶⁵ it was held that to encourage and promote the carrying on of *bona fide* PBAs a broad interpretation should be applied, but always subject to the organisation seeking approval complies with the requirements as set out in section 30:

“It is accepted that applications for approval in terms of section 30 of the Income Tax Act should be scrutinised. This approach does not mean that a narrow rather than a wider view should be taken as to what constitutes public benefit activity. Where a narrow sector of the public may benefit from an exemption, as for an example, farmers who receive certain tax benefits in terms of the Income Tax Act, then the provisions should indeed be interpreted narrowly. However, the ambit of section 30 of the Income Tax Act is to encourage activities that will benefit the general public. With this in mind, the net should be thrown fairly wide to encourage and promote the carrying on of all and any *bona fide* public benefit activity provided always the organisation seeking approval complies with the requirements as set out in section 30 of the Income Tax Act and provided further the proposed public benefit activity falls within the framework set out in the 9th Schedule to the Income Tax Act.”

An application for approval under section 18A can be made simultaneously with an application for approval as a PBO. If, however, a PBO after obtaining approval as a PBO decides to apply for section 18A approval it may do so by written request to the Commissioner together with information and documentation, which may include –

- a detailed description of the relevant PBAs (see **2.2**) in Part II for which approval is being sought;
- a detailed explanation of how the Part II PBAs are carried on in South Africa; and
- the latest founding document (see **4.3**) and annual financial statements (see **15.6.5**).

The notification of approval as a PBO under section 30 and approval under section 18A is issued by the Commissioner by letter if the application was done simultaneously. A new letter will be issued by the Commissioner if the application for approval under section 18A is done after the approval as a PBO granted by the Commissioner to reconfirm the approval as a PBO and confirm approval under section 18A. The letter contains a unique reference number generally referred to as an exemption reference number, which is a different reference number to the taxpayer reference number (see **15.6.1**) allocated on completion of the registration for

⁴⁶⁴ Information on how to apply for approval as a PBO is available on the SARS website.

⁴⁶⁵ (2014) 76 SATC 225 (WC) at page 41. Although the income tax case does not create precedent it may be used as a guide.

income tax purposes. The organisation is required to retain the letter confirming approval as part of its records (see **15.5**).

A written notification will also be issued by the Commissioner to the organisation should the organisation not be granted approval as a PBO or approved for purposes of section 18A together with reasons why the organisation failed to meet the conditions and requirements of section 30 or section 18A. The decision not to grant approval as a PBO or section 18A approval is subject to objection and appeal (see **Chapter 16**).⁴⁶⁶

An organisation not approved by the Commissioner as a PBO will be liable for income tax and other taxes and duties (see **14.1**) as a normal taxpayer (see **12.1**). An organisation not approved for purposes of section 18A (see **8.4**) will not be entitled to issue section 18A receipts (see **Chapter 10**) for donations received.

13.2 Effective date of section 30 approval

Retrospective approval can be considered by the Commissioner only for purposes of the approval as a PBO under section 30(3) and does not apply to the approval of a PBO for purposes of section 18A (see **Chapter 8**).

A PBO may apply for the approval to be applied to years of assessment before the approval date. The purpose of retrospective approval is explained in the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2009*, as follows:⁴⁶⁷

“Many PBOs and clubs applying for exemption do so after several years of activity. This delay may stem from a lack of expertise or due to an over-emphasis on starting activities. Failure to seek prompt approval then keeps the relevant parties from subsequently seeking relief on a going forward basis because of concerns about the potential tax liability from pre-existing activities.

If a PBO or recreational club applies for tax exempt status, it is proposed that the Commissioner be given discretionary powers to retroactively approve tax exemption status. In order to obtain this relief, the Commissioner must be satisfied that the relevant PBO or club was substantially within its given status in terms of existing law (i.e. satisfied the current definitional requirements for being a PBO or club).”

In *XY Mining v CSARS*⁴⁶⁸ the court had to decide whether a trust approved by the Commissioner as a PBO qualified for retrospective approval. The following was held:⁴⁶⁹

“In this matter one is grappling with two clear words retrospective and approval. Nevertheless, the context where the words appear need to be meticulously examined. The context needs [sic] to be approached as to the extent that the Commissioner should be satisfied that the [sic] organisation during the period prior to its application complied with the requirements of a “public benefit organisation “as defined in subsection 1.

Furthermore, the purpose of the provisions of section 30(3B) is to empower the Commissioner to grant the qualifying PBO retrospective status. The statute makes it clear that the Commissioner needs to be satisfied that the applicant meets the requirements of section 30(1), nothing less and nothing more.”

Retrospective approval as a PBO will be granted only if the Commissioner is satisfied that the organisation complied with the requirements of a “public benefit organisation” as defined in section 30(1), during the period before it lodged its application for approval as a PBO.⁴⁷⁰

⁴⁶⁶ Section 3(4)(b).

⁴⁶⁷ In paragraph 5.3.

⁴⁶⁸ Judgement of the Tax Court: Johannesburg delivered on 18 May 2021 in case number ITC 25390.

⁴⁶⁹ At 13 and 14.

⁴⁷⁰ Section 30(3B)(a).

The burden to prove such compliance rests on the organisation.⁴⁷¹ Each request for retrospective approval will be considered by the Commissioner on its own merits and specific facts.

The receipts and accruals of any years of assessment (see **15.6.3**) not complying with the retrospective approval requirements, as considered below, will be liable for income tax and other taxes and duties as a normal taxpayer (see **12.1**).

13.1.1 Effective date of the approval as a PBO complying with obligations under the Tax Administration Act

The Commissioner may not extend retrospective approval as a PBO⁴⁷² to an organisation that has complied with all its obligations under Chapter 4,⁴⁷³ Chapter 10⁴⁷⁴ and Chapter 11⁴⁷⁵ of the TA Act to years of assessment that have prescribed.⁴⁷⁶ An assessment may not be made three years after the date of assessment of an original assessment by SARS.⁴⁷⁷

If the organisation complied with the above chapters of the TA Act, it would have submitted its returns when due, and the three-year period will include the earliest year of assessment for which an assessment was issued during that period. For example, if the PBO applied for approval as a PBO on 31 March 2024, the three-year period would begin on 1 April 2021. If the organisation has a February year-end and its first assessment after 1 April 2021 was for the 2021 year of assessment, the retrospective approval can be made for the 2021 to 2023 years of assessment.

13.1.2 Effective date of the approval as a PBO not complying with obligations under the Tax Administration Act

Retrospective approval of the exemption may be considered in instances where organisations apply to the Commissioner for approval as a PBO and are not registered for income tax purposes after years of activity. Such organisations would therefore not have complied with the Chapter 4, Chapter 10 and Chapter 11 of the TA Act. Retrospective approval may not be extended to years of assessment that would have prescribed if the income tax returns relating to those years of assessment had been submitted in accordance with section 25(1) of the TA Act.⁴⁷⁸

It therefore is necessary to determine when those years of assessment would have been assessed had the organisation complied with the return submission requirements under that section of the TA Act in accordance with the public notice issued annually by the Commissioner. This determination will require the organisation to establish when its returns should have been submitted under the public notice issued annually by the Commissioner (see **15.6**). For example, the 2021 public notice required a company lodge its return for the 2021 year of assessment within 12 months of its financial year-end. A company with a February year-end would therefore have had to submit its 2021 return on or before 28 February 2022, and it is the latter date that must fall within the three years preceding the date of application for retrospective approval.

⁴⁷¹ Section 102 of the TA Act.

⁴⁷² Section 30(3B)(b)(i).

⁴⁷³ Deals with returns and records.

⁴⁷⁴ Deals with tax liability and payment.

⁴⁷⁵ Deals with recovery of tax.

⁴⁷⁶ Section 99 of the TA Act.

⁴⁷⁷ Section 99(1)(a) of the TA Act.

⁴⁷⁸ Section 30(3B)(b)(ii).

16.1 Effective date of section 18A approval

The date of approval for purposes of section 18A stated in the letter issued by the Commissioner is significant because the –

- Act does not allow for section 18A approval by the Commissioner to be granted with retrospective effect, therefore, section 18A receipts may be issued for eligible *bona fide* donations (see **Chapter 9**) received only on or after the date of the letter issued by the Commissioner confirming section 18A approval; and
- date determines when a section 18A-approved conduit PBO (see **8.3**) incorporated, formed, or established on or after 1 March 2015 must distribute amounts received from the investment of the undistributed amount of the distribution requirement (see **8.3.3**).

Chapter 14

Other taxes and duties

14.1 Exemption from other taxes and duties

In addition to being exempt from the payment of income tax on certain receipts and accruals (see **Chapter 7**), PBOs also enjoy the benefit of being exempt from certain other taxes and duties,⁴⁷⁹ which are considered below.

14.1.1 Donations tax

Donations tax is payable⁴⁸⁰ on the value of any property wheresoever situated disposed of by donation, whether directly or indirectly and whether in trust or not, by any resident⁴⁸¹ (the donor) to another person (the donee),⁴⁸² unless an exemption applies, at the rate⁴⁸³ of –⁴⁸⁴

- 20% on that value if the aggregate of that value and the value of any other property disposed of under a taxable donation on or after 1 March 2018 until the date of that donation does not exceed R30 million;⁴⁸⁵ and
- 25% of that value to the extent that that value exceeds R30 million.⁴⁸⁶

A donation comprises any gratuitous disposal of property, which includes cash or non-cash property, including any gratuitous waiver or renunciation of a right, for example, the waiver of debt.⁴⁸⁷ The disposal of property at less than its market value will also constitute a donation to the extent that the Commissioner is not satisfied that the consideration was adequate.⁴⁸⁸

The term “property”⁴⁸⁹ is legally a very wide concept and inclusive to not only movable or immovable property, corporeal (tangible) or incorporeal (intangible), but also a right in that property. Property is an object of legal rights and includes anything tangible or intangible over which a person has a legal title. Property is movable if it can be moved from one place to another without being damaged and without losing its identity.⁴⁹⁰ Some examples include stocks, money, notes, patents, as well as intangible property such as copyrights. Animals that can move on their own are also moveable property. Immovable property is land, things attached to it as well as certain rights registered against the title deed of the land.

The main function of money is distinguished as a medium of exchange or a unit of account and therefore falls within the definition of “property”.

⁴⁷⁹ For commentary, see *Taxation in South Africa*.

⁴⁸⁰ Section 54.

⁴⁸¹ The term “resident” is defined in section 1(1).

⁴⁸² The term “donee” is defined in section 55(1).

⁴⁸³ Section 64.

⁴⁸⁴ Section 56.

⁴⁸⁵ Section 64(1)(a)(i).

⁴⁸⁶ Section 64(1)(a)(ii).

⁴⁸⁷ The term “donation” is defined in section 55(1).

⁴⁸⁸ Section 58.

⁴⁸⁹ Section 55(1).

⁴⁹⁰ Van der Merwe, C. G. (31 January 2014). Things. In *Law of South Africa (LAWSA)* 27 (Second Edition Volume) in paragraph 50. My LexisNexis [online].

Donations tax is payable by the donor, but if the donor fails to pay the tax within the prescribed period, the donor and donee are jointly and severally liable for the tax.⁴⁹¹

Donations made by or to a PBO are exempt from the payment of donations tax.⁴⁹²

14.1.2 Estate duty

Estate duty is levied under the Estate Duty Act⁴⁹³ at the rate of 20% on the first R30 million of the dutiable amount of the estate of a deceased person, and at the rate of 25% of the dutiable amount that exceeds R30 million.⁴⁹⁴

Any property bequeathed to a PBO qualifies as a deduction and therefore is excluded from the net value of the estate and not subject to estate duty.⁴⁹⁵

14.1.3 Transfer duty

Transfer duty is levied under the Transfer Duty Act⁴⁹⁶ on a sliding scale on the value of any property⁴⁹⁷ acquired by any person. The rates vary from 0% to 13% for all persons.⁴⁹⁸ The person acquiring the property (the transferee) is normally the person liable for the payment of transfer duty. Transfer duty will apply only if the property transaction is not a taxable supply for VAT purposes.⁴⁹⁹

A PBO is exempt from the payment of transfer duty on any property acquired provided that the whole or substantially the whole⁵⁰⁰ of the property is used for the purpose of carrying on one or more PBAs.⁵⁰¹ The transfer of property by a PBO to a separate entity controlled by that PBO may also qualify for an exemption from transfer duty.⁵⁰²

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction.⁵⁰³ Each transaction is therefore considered on its own merits. A declaration⁵⁰⁴ must be submitted for each acquisition of property for which exemption is required. No supporting documents need to be submitted at the time that the required declaration is submitted. Supporting documents, however, must be retained and submitted when requested in writing by SARS through **eFiling**. Supporting documents may include –

- the letter issued by the Commissioner confirming approval as a PBO;
- an affidavit setting out the activities to be carried out on the property; and

⁴⁹¹ Section 59.

⁴⁹² Section 56(1)(h).

⁴⁹³ Act 45 of 1955.

⁴⁹⁴ Section 2(2) and at the rate set out in the First Schedule to the Estate Duty Act.

⁴⁹⁵ Section 4(h) of the Estate Duty Act.

⁴⁹⁶ Act 40 of 1949.

⁴⁹⁷ See definition of “property” in section 1(1) of the Transfer Duty Act.

⁴⁹⁸ Section 2(1)(b) of the Transfer Duty Act.

⁴⁹⁹ For commentary on transfer duty in general and the processing of transactions on **eFiling**, see the *External Guide – Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

⁵⁰⁰ For commentary, see Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’”.

⁵⁰¹ Section 9(1)(c) of the Transfer Duty Act.

⁵⁰² Section 9(1A) of the Transfer Duty Act.

⁵⁰³ For commentary, see Interpretation Note 22 “Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies”.

⁵⁰⁴ The declaration is required under section 14 of the Transfer Duty Act and is regarded as a “return” and subject to section 25 of the TA Act.

- confirmation that the whole or substantially the whole of the property will be used to carry on one or more PBAs.

If at any time after the acquisition of property that qualified for the exemption from transfer duty, the whole or substantially the whole of the property is used for a purpose other than for carrying on any PBAs, transfer duty becomes payable. The date the property is used for a purpose other than for the carrying on of the PBA is deemed to be the date of acquisition. The transfer duty will be calculated at the rate applicable at the deemed date of acquisition but will be based on the value of the property as at the original date of acquisition.

14.1.4 Dividends tax

The provisions relating to dividends tax are contained in sections 64D to 64N and apply to any dividend paid by a company, other than a headquarter company, on or after 1 April 2012. Although dividends tax is part of the Act, it is a separate tax from normal tax.⁵⁰⁵

Dividends tax is levied at the rate of 20%⁵⁰⁶ of the amount of a dividend paid by a company that is a resident.⁵⁰⁷ Dividends tax is also payable on a foreign dividend to the extent that the foreign dividend does not constitute the distribution of an asset *in specie*, and it is paid by a foreign company in respect of a listed share.⁵⁰⁸

Dividends tax on a cash dividend is levied on the person entitled to the benefit of the dividend attaching to the share. This person is generally known as the beneficial owner.⁵⁰⁹

Generally, a company declaring and paying a dividend must withhold an amount of dividends tax, except to the extent that the dividend consists of a distribution of an asset *in specie*, in that case the company paying the dividend is potentially liable for dividends tax unless an exemption applies. The exemptions from dividends tax for cash dividends are contained in section 64F while the exemptions for dividends *in specie* are contained in section 64FA(1).

It is not the responsibility of the company or regulated intermediary⁵¹⁰ paying the dividend to determine who the beneficial owner of a dividend is and whether that person qualifies for an exemption from dividends tax.

Any PBO that is the beneficial owner of a dividend is exempt from dividends tax.⁵¹¹ This exemption applies only if the PBO has submitted a declaration to the company that declared and paid the dividend or to the regulated intermediary that paid the dividend, that it is exempt from dividends tax. The PBO is also required to submit a written undertaking to the company or regulated intermediary that it will inform such company or regulated intermediary in writing should it cease to be the beneficial owner of the shares or if the circumstances affecting the exemption change.⁵¹²

⁵⁰⁵ For commentary, see the *Comprehensive Guide to Dividends Tax*.

⁵⁰⁶ Section 64E(1).

⁵⁰⁷ A reduced or zero rate may apply under specific circumstances.

⁵⁰⁸ The term “listed share” as defined in section 1(1) means a share that is listed on an exchange as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act. A listed share could therefore include a share in a foreign company whose shares are listed on a South African exchange.

⁵⁰⁹ The term “beneficial owner” is defined in section 64D.

⁵¹⁰ The term “regulated intermediary” is defined in section 64D. A regulated intermediary is generally an entity that temporarily holds a dividend paid by a company before it is paid over to the ultimate beneficial owner.

⁵¹¹ Sections 64F(1)(c) and 64FA(1)(a).

⁵¹² Sections 64G(2)(a) and 64H(2)(a).

The Commissioner has not issued actual forms to be used for purposes of a declaration or written undertaking but has prescribed the required wording and minimum information required in the forms that are to be prepared by the company, regulated intermediary or beneficial owner.⁵¹³

The obligation lies with the PBO, which is the beneficial owner of the dividend to ensure that the prescribed declaration and written undertaking are filed timeously with the company or regulated intermediary paying the dividend.

Any PBO that is a beneficiary of a trust should determine whether it has a vested right to a dividend received by or which accrued to the trust before the dividend is paid by the relevant company to ensure that the necessary declaration of exemption is filed with the company or regulated intermediary. A beneficiary that has a vested right in a dividend received by or which accrued to a trust will be regarded as the beneficial owner. Should the trust be the beneficial owner of the dividend, dividends tax at the rate of 20% may become payable. A trust whose beneficiary acquires a vested right to a dividend after it is paid but before the end of the trust's year of assessment may be able to claim a refund of the dividends tax withheld.

14.1.5 Securities transfer tax

The STT Act provides that STT must be levied at the rate of 0,25%⁵¹⁴ on the taxable amount⁵¹⁵ of the transfer⁵¹⁶ of every security⁵¹⁷ issued by a close corporation⁵¹⁸ or company⁵¹⁹ incorporated in South Africa as well as foreign companies listed on an exchange.⁵²⁰

The Securities Transfer Tax Administration Act⁵²¹ contains the administration provisions governing the payment of STT. Any STT payment must be made electronically through SARS e-STT system.⁵²²

The exemptions from STT are contained in section 8(1) of the STT Act. STT is not payable if the security is transferred to a PBO, provided the STT would legally have been payable by

⁵¹³ For commentary, see *Business Requirements Specifications: Administration of Dividends Tax*.

⁵¹⁴ Section 2(1) of the STT Act

⁵¹⁵ Sections 3(1), 4, 5 and 6 of the STT Act determine the relevant taxable amount.

⁵¹⁶ The term "transfer" is defined in section 1 of the STT Act and save for certain exclusions, includes the transfer, sale, assignment or cession or disposal in any other manner of a security or the cancellation or redemption of that security.

⁵¹⁷ The term "security" as defined in section 1 of the STT Act means any share or depository receipt in a company, or any member's interest in a close corporation.

⁵¹⁸ The term "close corporation" as defined in section 1 of the STT Act means a "corporation" as defined in section 1 of the Close Corporation Act 69 of 1984.

⁵¹⁹ The term "company" as defined in section 1 of the STT Act means any corporation, or company incorporated, established, or formed by or under any law.

⁵²⁰ For commentary on STT and the electronic submission of STT declarations and payments on the e-STT system via **eFiling**, see *Taxation in South Africa* and the *External Reference Guide – Securities Transfer Tax*.

⁵²¹ Act 26 of 2007.

⁵²² Sections 3(2) and 5 of the STT Administration Act.

that PBO.⁵²³ The exemption, however, is subject to a declaration⁵²⁴ being submitted by any person to a participant,⁵²⁵ who holds and administers that security.⁵²⁶

14.1.6 Skills development levy

The skills development levy (SDL) is a compulsory levy to fund education and training under the Skills Development Levies Act⁵²⁷ (SDL Act). SARS administers the collection of this levy. Employers providing training to employees may receive grants from the relevant Sector Education and Training Authority (SETA).⁵²⁸

The SDL Act⁵²⁹ imposes on every employer an SDL of 1% of the leviable amount,⁵³⁰ calculated on the total amount of remuneration paid or payable or deemed to be paid or payable by an employer⁵³¹ to its employees⁵³² during any month. The amount of such remuneration is the same as the amount of remuneration⁵³³ determined under the Fourth Schedule from which an employer is obligated to withhold employees' tax taking into consideration certain exclusions.⁵³⁴

A PBO is exempt from the payment of SDL if it –

- is registered as an employer (see **14.2.3**) and its annual payroll will not exceed R500 000 in the following 12 months;⁵³⁵
- solely carries on PBAs 1, 2(a), 2(b), 2(c), 2(d) and 5 in Part I (see **Annexure D**);⁵³⁶ or
- solely provides funds to a PBO that solely carries on the above PBAs.⁵³⁷

14.1.7 Capital gains tax

Capital gains and capital losses may under specified circumstances be disregarded.⁵³⁸ As from the first day of its first year of assessment commencing on or after 1 April 2006 (as from the introduction of partial taxation, see **Chapter 7**) any capital gain or capital loss made by a PBO on the disposal of an asset that has been used for a business undertaking or

⁵²³ Section 8(1)(d) of the STT Act.

⁵²⁴ Section 8(2) of the STT Act.

⁵²⁵ The term “participant” as defined in section 1 of the STT Act means a person that holds in custody and administers a listed security or an interest in a listed security and that has been authorised in accordance with section 31 of the Financial Markets Act by a central securities depository as a participant in that central securities depository.

⁵²⁶ Section 8(3) of the STT Act.

⁵²⁷ Act 9 of 1999.

⁵²⁸ For commentary, see the *External Guide – Guide for Employers in respect of Skills Development Levy* and Interpretation Note 10 “Skills Development Levy Exemption: Public Benefit Organisations”.

⁵²⁹ Section 3(1) of that Act.

⁵³⁰ Section 3(3) of the SDL Act.

⁵³¹ The term “employer” is defined in section 1(1) of the SDL Act and includes an “employer” as defined in the Fourth Schedule.

⁵³² The term “employee” is defined in section 1(1) of the SDL Act and includes an “employee” as defined in the Fourth Schedule.

⁵³³ The term “remuneration” is defined in paragraph 1 of the Fourth Schedule.

⁵³⁴ See section 3(4) of the SDL Act for the exclusions.

⁵³⁵ Section 4(b) of the SDL Act.

⁵³⁶ Section 4(c)(i) of the SDL Act.

⁵³⁷ Section 4(c)(ii) of the SDL Act.

⁵³⁸ For commentary, see the Interpretation Note 44 “Public Benefit Organisations: Capital Gains Tax”, the *Comprehensive Guide to Capital Gains Tax*, the *Guide on Determining the Market Value of Assets for Capital Gains Tax Purposes*, and the *ABC of Capital Gains Tax for Companies*.

trading activity or substantially the whole of which has been used in such an undertaking or activity will not be disregarded.⁵³⁹

(a) Non-trading assets

This category applies to assets that have not been used by the PBO on or after the valuation date⁵⁴⁰ in carrying on any business undertaking or trading activity and includes assets that have been used exclusively for conducting PBAs. Only the usage of the asset on or after the valuation date is considered. Any trade usage before that date is ignored.⁵⁴¹

Example 24 – Asset used exclusively on or after the valuation date in carrying on a PBA

Facts:

The financial year of a PBO carrying on the PBA of providing health care services to poor and needy persons⁵⁴² ends on 30 April. The PBO acquired immovable property on 30 June 2003 from which it carries on its PBA. During the period 30 June 2003 to 30 April 2006, 30% of the property was let to third parties while the remaining usage was for its PBAs. As from the valuation date (1 May 2006) the property was used exclusively in carrying on PBAs. The property was sold on 30 September 2019 resulting in a capital gain of R100 000.

Result:

The capital gain of R100 000 must be disregarded, since the asset was used exclusively on or after the valuation date, namely, 1 May 2006 to carry on PBAs. Any trade usage before the valuation date is disregarded.

Assets such as investments, for example, shares and participatory interests in collective investment schemes that are not “used” but “held” are also included in this category.

Example 25 – Asset “held” not “used”

Facts:

A PBO carrying on a PBA of caring for homeless children⁵⁴³ invested its surplus funds in a collective investment scheme. The PBO disposed of its participatory interest in the collective investment scheme at a capital gain to fund the purchase of additional accommodation.

Result:

The capital gain must be disregarded since the participatory interest was “held” by the PBO and not “used” in carrying on a business undertaking or trading activity.

(b) Minimal-trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after the valuation date was directed at a purpose other than carrying on a business undertaking or trading activity.⁵⁴⁴ An example of such an asset is one that is used 10% of the

⁵³⁹ Paragraph 63A of the Eighth Schedule.

⁵⁴⁰ The valuation date is the effective date for implementation of CGT. A PBO that came into existence after 1 April 2006 does not need a valuation date, since it will have acquired its assets at cost.

⁵⁴¹ Paragraph 63A(a) of the Eighth Schedule.

⁵⁴² PBA 2(a) in Part I.

⁵⁴³ PBA 1(a) in Part I.

⁵⁴⁴ Paragraph 63A(b)(i) of the Eighth Schedule.

time for trading purposes and 90% of the time to carry on PBAs. Of critical importance are the words “substantially the whole of the use” considered in **7.4.1(b)**.

The assets referred to in this category are excluded from the non-trading category, since they are used, albeit to a limited extent, in carrying on a business undertaking or trading activity. The percentage of the asset used for trade or business purposes must be determined using a method appropriate to the circumstances, for example, one based on time or floor area.

Example 26 – Determination of “substantially the whole of the use” on a time basis

Facts:

The financial year of a religious organisation⁵⁴⁵ approved as a PBO, ends on 30 April. The Commissioner has approved the organisation as a PBO. It acquired a manse in 1995 for occupation by its resident minister. The minister’s term of office ended on 30 June 2006 and the manse was let to a third party from 1 July 2006 to 31 December 2007. The newly appointed minister took occupation on 1 January 2008 and continued to occupy the manse until it was sold on 30 April 2019.

Result:

The PBO’s valuation date is 1 May 2006, being the first day of its first year of assessment commencing on or after 1 April 2006.

The asset was held for 156 months from the valuation date to the date of sale (1 May 2006 to 30 April 2019). During this period, the manse was used to carry on PBAs for 138 months (2 months from 1 May 2006 to 30 June 2006 and 136 months from 1 January 2008 to 30 April 2019) and let for 18 months (1 July 2006 to 31 December 2007). This represents a usage of 88,4% of the time ($138 / 156 \times 100$) for carrying on PBAs from the valuation date. The PBO has therefore used substantially the whole of the manse from the valuation date in carrying on its PBAs.

Paragraph 63A(b)(i) applies and the PBO must accordingly disregard any capital gain or capital loss on the disposal of the manse.

(c) Permissible trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after the valuation date was directed at carrying on a permissible business undertaking or trading activity qualifying for exemption, namely, —⁵⁴⁶

- integral and directly related permissible business undertakings or trading activities (see **7.4.1**);
- occasional permissible business undertakings or trading activities (see **7.4.2**); and
- permissible business undertakings or trading activities approved by the Minister (see **7.4.3**).

⁵⁴⁵ PBA 5(a) in Part I.

⁵⁴⁶ Paragraph 63A(b)(ii) of the Eighth Schedule.

Example 27 – Asset used to carry on an integral and directly related permissible business undertaking or trading activity

Facts:

A PBO carries on PBAs of providing facilities for the care of disabled persons.⁵⁴⁷ As a therapeutic and remedial activity, the PBO has acquired land on which the residents are taught to grow vegetables. The produce is primarily used for own consumption and any surplus is sold to a local home industry. The residents undertake all the labour. The PBO disposed of the land on which the vegetable gardening took place resulting in a capital gain.

Result:

The vegetable gardening activity is regarded as an integral and directly related permissible business undertaking or trading activity (see **7.4.1**) because it forms part of the PBA of caring for and providing training⁵⁴⁸ for the residents. The capital gain realised on the sale of the property is disregarded for CGT purposes.

Example 28 – Asset used to carry on an occasional permissible business undertaking or trading activity

Facts:

A PBO carries on a PBA of caring for poor and needy persons 60 years and older.⁵⁴⁹ The PBO holds an annual fête as a fundraising event for which it acquired a marquee. The fundraising event was undertaken with assistance from volunteers and the items sold were all donated.

Result:

This event qualifies as an occasional permissible business undertaking or trading activity (see **7.4.2**). If the marquee is sold, any resulting capital gain or capital loss must be disregarded for CGT purposes.

Different rules apply for determining the base cost of an asset depending on whether it was acquired before, or on or after the “valuation date”. The base cost of a pre-valuation date asset is its “valuation date value” plus any further qualifying costs incurred on or after the valuation date.⁵⁵⁰ For assets acquired on or after the valuation date the base cost of an asset is generally its actual cost determined under paragraph 20 of the Eighth Schedule. The base cost of an asset can be required to be determined at market value under specified circumstances if it is acquired by donation, for a consideration not measurable in money or at a non-arm’s length price from a connected person.⁵⁵¹

The following methods of determining the base cost of an asset on the valuation date are available:

- The market value of the asset on valuation date. A PBO deciding to adopt the market-value method for an asset must have valued it within two years from the valuation date.⁵⁵² A table available in the *Comprehensive Guide to Capital Gains Tax*

⁵⁴⁷ PBA 2(b) in Part I.

⁵⁴⁸ PBA 4(f) in Part I.

⁵⁴⁹ PBA 1(b) in Part I.

⁵⁵⁰ Paragraph 25 of the Eighth Schedule.

⁵⁵¹ Paragraph 38 of the Eighth Schedule.

⁵⁵² Paragraph 29(4)(b)(i) of the Eighth Schedule.

summarises the valuation dates for PBOs in existence on 1 April 2006 and the final date by which valuations must have been completed.

- “Twenty per cent of proceeds” method is likely to be a method of last resort. 20% of the proceeds from the disposal of the asset after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after valuation date.
- The time-apportionment base cost of an asset.⁵⁵³ A time-apportionment calculator “*TAB Calculator for PBOs and Recreational Clubs*” is available. An asset acquired by donation or inheritance by a PBO before the valuation date for no consideration has an acquisition cost equal to the market value of the asset at the time of its acquisition for the purposes of determining “B” in the time-apportionment formula.

14.2 Compliance with other taxes and duties

It is important that PBOs comply with the relevant requirements and conditions relative to other taxes and duties. A general overview relating to certain other taxes and duties is considered.

14.2.1 Provisional tax payments

Provisional tax⁵⁵⁴ is dealt with in the Fourth Schedule. It is not a separate tax but merely a mechanism to assist taxpayers in meeting their tax liability by spreading it over the relevant year of assessment as opposed to paying a large amount at the end of a year of assessment. A provisional taxpayer⁵⁵⁵ is required to estimate taxable income for a year of assessment and calculate provisional tax payable on that estimate.⁵⁵⁶

PBOs are excluded from the definition of “provisional taxpayer” in the Fourth Schedule and are not required to submit provisional tax payments.⁵⁵⁷ Any liability to income tax on taxable income (see 7.6) will become payable on assessment.

14.2.2 Value-added tax

VAT is an indirect tax levied under the VAT Act. VAT is presently levied at a standard rate of 15% on most supplies and services in South Africa and on most goods imported into the country. There is a limited range of goods and services that are subject to VAT at the zero rate when supplied in South Africa and on exports to other countries. Certain goods are also exempt when supplied in or imported into South Africa. VAT is payable only on imported services that are acquired for non-taxable purposes.

VAT is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor. Supplies that attract VAT at either the standard or zero rate are called “taxable supplies”. Any person that makes taxable supplies above the compulsory registration threshold or has been allowed to register voluntarily for VAT is referred to as a “vendor”. A vendor includes a person that is liable to register for VAT, even if that person has not actually registered.

⁵⁵³ The time-apportionment base cost of an asset is determined under paragraph 30 of the Eighth Schedule.

⁵⁵⁴ The term “provisional tax” is defined in paragraph 1 of the Fourth Schedule.

⁵⁵⁵ The term “provisional taxpayer” is defined in paragraph 1 of the Fourth Schedule.

⁵⁵⁶ For commentary, see *Taxation in South Africa* and the *Guide for Provisional Tax*.

⁵⁵⁷ Paragraph (aa) of the exclusions to the definition of “provisional taxpayer” in paragraph 1 of the Fourth Schedule.

If a PBO falls within the definition of an “association not for gain” or “welfare organisation” as defined in the VAT Act⁵⁵⁸ and complies with the requirements for compulsory or voluntary registration such a PBO will be treated like any other business making taxable supplies and will be liable to register and account for VAT according to the normal VAT rules applying to all vendors. There, however, are a few special provisions applying to associations not for gain and welfare organisations.⁵⁵⁹

Should a ruling be required relating to a specific VAT issue, a ruling application may be submitted by e-mail to **VATRulings@sars.gov.za**.⁵⁶⁰

14.2.3 Employees’ tax

Employees’ tax is dealt with in the Fourth Schedule.⁵⁶¹ It is often referred to as Pay-As-You-Earn or PAYE. The purpose of the employees’ tax system is to ensure that an employees’ income tax liability is settled at the same time that the employees’ remuneration is earned, therefore avoiding burdening the employee with a large tax bill on assessment. Employees’ tax deducted serves as an income tax credit that is set off against the income tax liability⁵⁶² of an employee, calculated on an annual basis, to determine the employees’ final income tax liability for a year of assessment.

Employees’ tax must be deducted or withheld⁵⁶³ by every employer that is a resident (or, by an employer that is not a resident but conducts business through a permanent establishment in South Africa, or by a representative employer) who pays or becomes liable to pay an amount of remuneration⁵⁶⁴ to any person.

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

A PBO that is an employer must, if any of its employees are liable for income tax, register for employees’ tax within 21 business days⁵⁶⁵ of becoming an employer.⁵⁶⁶ Registration is done by completing the prescribed application form EMP 101e.⁵⁶⁷ A PBO already registered for another tax type on **eFiling** may as part of the single registration initiative register for PAYE on **eFiling**.⁵⁶⁸ A registered employer will receive a monthly return, the EMP 201 form, which must be completed and submitted together with the payment of employees’ tax within seven days after the end of the month during which the deduction was made.

An employer must issue an employee with an employees’ tax certificate (IRP 5 certificate) if employees’ tax was deducted or withheld from the employee’s remuneration.⁵⁶⁹ This certificate discloses, amongst other things, the total remuneration earned during a year of assessment

⁵⁵⁸ Section 1(1) of the VAT Act.

⁵⁵⁹ For commentary on VAT and “associations not for gain”, see the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

⁵⁶⁰ For commentary, see the *VAT Ruling Process Quick Reference Guide*.

⁵⁶¹ For commentary, see the *External Guide – Guide for Employers in respect of Employees’ Tax*.

⁵⁶² Paragraph 28 of the Fourth Schedule.

⁵⁶³ Paragraph 2(1) of the Fourth Schedule.

⁵⁶⁴ The term “remuneration” is defined in paragraph 1 of the Fourth Schedule.

⁵⁶⁵ See section 244 of the TA Act for a discussion on deadlines.

⁵⁶⁶ Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.

⁵⁶⁷ For commentary, see the *External Guide – Guide for Completion of Employer Registration Application*.

⁵⁶⁸ For commentary, see the *External Guide – How to Complete the Registration, Amendments and Verification Form (RAV01)*.

⁵⁶⁹ Paragraph 14 of the Fourth Schedule.

and the employees' tax and unemployment insurance fund contributions (see **14.2.4**) deducted by the employer.

Employers who administer donations made by employees through a payroll-giving programme must take these donations into account when determining the monthly employees' tax to be deducted from their remuneration. The deduction is limited for employees' tax purposes to 5% of remuneration after deducting certain amounts as specified in the Fourth Schedule.⁵⁷⁰ Donations may be taken into account only if the employer received section 18A receipts (see **Chapter 10**) issued by section 18A-approved donor PBOs (see **8.2**) or conduit PBOs (see **8.3**) for donations made on behalf of employees. If an employee donates to a section 18A-approved donor PBO or conduit PBO independently of the employer, the employer is not entitled to take the donation into account. Although the section 18A receipt is issued to the employer by the section 18A-approved donor PBO or conduit PBO, the employer does not qualify for a deduction under section 18A. The section 18A receipt must be retained by the employer for record purposes.⁵⁷¹

14.2.4 Unemployment insurance fund contributions

The unemployment insurance fund (UIF) gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave or illness. It also provides relief to the dependants of a deceased contributor.⁵⁷²

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act 63 of 2001 and the Unemployment Insurance Contributions Act (UIC).⁵⁷³ These statutes, amongst other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

UIF contributions, which are equal to 2% of the remuneration paid or payable by an employer to its employees, subject to specified exclusions, are payable by employers on a monthly basis. The employer must pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period. A contribution will not apply to so much of the remuneration paid or payable by an employer to an employee, as exceeds R17 712 per month (R212 544 annually) with effect from 1 June 2021.⁵⁷⁴

A PBO paying remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.

These contributions must be paid to the UIF office of the Department of Labour⁵⁷⁵ or to SARS within seven days after the end of the month during which the amount was deducted. Payment can be made via **eFiling**, electronic funds transfer (EFT) or at a branch of an approved banking institution.⁵⁷⁶

⁵⁷⁰ Paragraph 2(4)(f) of the Fourth Schedule.

⁵⁷¹ Section 29 of the TA Act.

⁵⁷² Section 2 of the Unemployment Insurance Act.

⁵⁷³ Act 4 of 2002.

⁵⁷⁴ Section 6(2) of the UIC Act, read with Government Notice 475 in *Government Gazette* 44641 of 28 May 2021.

⁵⁷⁵ Information is available from the Department of Labour's website at **www.labour.gov.za**.

⁵⁷⁶ For commentary, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.

Chapter 15

Administrative provisions

15.1 The Tax Administration Act

SARS is responsible for the administration of the TA Act under the control and direction of the Commissioner.⁵⁷⁷ 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,⁵⁷⁸ tax event,⁵⁷⁹ or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.⁵⁸⁰ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.⁵⁸¹

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.⁵⁸²

Some administrative provisions applying 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.⁵⁸³ If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.⁵⁸⁴

General administrative provisions contained in the TA Act relating, for example, to record-keeping (see **15.5**), returns (see **15.6**), assessments, dispute resolution (see **Chapter 16**), interest, refunds and anti-avoidance also apply to PBOs.

15.2 Furnishing of information

SARS under the TA Act may for purposes of the administration of a tax Act request a taxpayer to submit relevant material (whether orally or in writing) that SARS requires.⁵⁸⁵ A request for relevant material from a person other than the taxpayer is limited to material maintained or kept that should reasonably be maintained or kept by the person relating to the taxpayer.⁵⁸⁶

The Commissioner may, under the Act, by written notice request any person whom the Commissioner may deem able to furnish information about any PBO and may require that person to —⁵⁸⁷

- answer any questions relating to the PBO;
- make books of account, records or other documents relating to the PBO available for

⁵⁷⁷ Section 3(1) of the TA Act.

⁵⁷⁸ Section 3(2)(a)(i) of the TA Act.

⁵⁷⁹ Section 3(2)(a)(ii) of the TA Act. The term “tax event” as defined in section 1 of the TA Act means an occurrence, which affects or may affect the liability of a person to tax.

⁵⁸⁰ Section 3(2)(a)(iii) of the TA Act.

⁵⁸¹ Section 3(2)(h) of the TA Act.

⁵⁸² For further commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

⁵⁸³ Section 4(2) of the TA Act.

⁵⁸⁴ Section 4(3) of the TA Act.

⁵⁸⁵ Section 46(1) of the TA Act.

⁵⁸⁶ Section 46(3) of the TA Act.

⁵⁸⁷ Section 30(10).

inspection; or

- meet with the Commissioner's representative and produce for examination any documents relating to the PBO.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions requested by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.⁵⁸⁸

15.3 Changes in registered particulars

A PBO must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. A PBO must communicate to SARS any change of postal, physical, or electronic addresses, representative taxpayer (see **15.4**) and banking particulars.⁵⁸⁹

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.⁵⁹⁰

15.4 Representative taxpayer

Persons other than natural persons, such as a trust (see **3.1.2**), an association of persons (see **3.1.3**) or an NPC (see **3.1.1**) act through its representatives. The representatives, amongst other things, are responsible for the tax compliance and liabilities of a PBO. The Act defines a representative taxpayer.⁵⁹¹ For purposes of a PBO the representative taxpayer is a natural person residing in South Africa and includes the –

- trustee [see **4.4.1(b)**] of the income of a trust;
- person in a fiduciary capacity of the income of an association of persons under his or her management, disposition, or control [see **4.4.1(c)**];
- public officer of the income of an NPC; and
- business rescue practitioner of an NPC under business rescue under the Companies Act.

A representative taxpayer under the TA Act means a person who is responsible for paying the tax liability of another person as an agent⁵⁹² and includes, amongst other things, a person who is a representative taxpayer under the Act.⁵⁹³ Every person who becomes or ceases to be a representative taxpayer under the Act, except a public officer of a company, must notify SARS within 21 business days, as the case may, in such form as the Commissioner may prescribe.⁵⁹⁴

Any person who wilfully and without just cause refuses or neglects to appoint a representative taxpayer, notify SARS of the appointment, or change of a representative taxpayer is guilty of

⁵⁸⁸ Section 234(2)(h) and (i) of the TA Act.

⁵⁸⁹ Section 23 of the TA Act.

⁵⁹⁰ Section 234(2)(a) of the TA Act.

⁵⁹¹ See complete definition of "representative taxpayer" in section 1(1).

⁵⁹² The term "agent" as defined in section 1(1) includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent.

⁵⁹³ The term "representative taxpayer" is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act.

⁵⁹⁴ Section 153(2) of the TA Act.

an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.⁵⁹⁵

A representative taxpayer is personally liable for tax payable in that capacity if the tax could have been paid to SARS but was not, or the amount in respect of which the tax was chargeable was disposed of.⁵⁹⁶ An assessment on a representative taxpayer for any tax is regarded as made on the representative taxpayer only in that capacity.⁵⁹⁷

A taxpayer⁵⁹⁸ is not relieved from any liability, responsibility or duty imposed under a tax Act because the taxpayer's representative taxpayer failed to perform those responsibilities or duties, or the representative taxpayer is liable for the tax payable by the taxpayer.⁵⁹⁹

The trustee [see **4.4.1(b)**] or other person entitled to the receipt, management, disposal or control of the income of any trust (see **3.1.2**) are the representative taxpayer.⁶⁰⁰ Generally, where there is more than one trustee, the practice is for the trustees to nominate a single trustee to carry out all the duties and responsibilities imposed as a representative taxpayer. The other trustees despite this practice remain subject to the same duties, responsibilities, and liabilities of a representative taxpayer.⁶⁰¹

The representative taxpayer for any association of person (see **3.1.3**) may generally be the treasurer, or other person appointed to administer or manage the financial assets and liabilities of the association of persons [see **4.4.1(c)**].

Every company carrying on business or having an office in South Africa must at all times be represented by an individual residing in South Africa,⁶⁰² who must be –⁶⁰³

- a person who is a senior official of the company or, if no senior official resides in South Africa, another suitable person approved by SARS;⁶⁰⁴
- appointed by the company or by an agent or legal practitioner⁶⁰⁵ who has authority to appoint such a representative for the purposes of a tax Act; and
- called the public officer of the company responsible for all acts, matters, or things that the public officer's company must do under a tax Act, and in the case of default, the public officer is subject to penalties for the company's defaults.⁶⁰⁶

⁵⁹⁵ Section 234(2)(b) of the TA Act.

⁵⁹⁶ Section 155 of the TA Act.

⁵⁹⁷ Section 154(2) of the TA Act.

⁵⁹⁸ The term "taxpayer" is defined in section 1(1).

⁵⁹⁹ Section 153(3) of the TA Act.

⁶⁰⁰ Paragraph (c) of the definition of "representative taxpayer" in section 1(1).

⁶⁰¹ Davis, D. M. & Jooste, R. D. (2023). *Estate Planning* at page 6.4. My LexisNexis [online].

⁶⁰² Section 246(1) of the TA Act.

⁶⁰³ Section 246(2) of the TA Act.

⁶⁰⁴ Section 246(2)(a) of the TA Act.

⁶⁰⁵ The term "legal practitioner" as defined in section 1 of the TA Act, which was inserted by section 14 of the Tax Administration Laws Amendment Act 43 of 2024 and came into operation on 24 December 2024, the promulgation of that Act, means a legal practitioner as defined in section 1 of the Legal Practice Act 28 of 2014. The term "legal practitioner" as defined in the Legal Practice Act means an advocate or attorney admitted and enrolled under sections 24 and 30 of that Act, respectively.

⁶⁰⁶ Section 246(5) of the TA Act.

A person may not be appointed as a public officer if that person is disqualified (see 4.4.2) under –⁶⁰⁷

- section 6 of the Trust Property Control Act;
- section 25A of the NPO Act; or
- section 69 of the Companies Act.

A company will be regarded as not having appointed a public officer if the public officer is not eligible to be appointed because the above requirements are not met, or notified by SARS that such person is not considered suitable to represent the company as public officer. In such circumstances the company has 21 business days to notify SARS in writing of the newly appointed public officer.⁶⁰⁸ If a public officer is not appointed as required, the public officer is regarded to be –⁶⁰⁹

- the first person who is eligible to represent the company as public officer, in order of priority, namely, the –
 - managing director or equivalent;
 - financial director or equivalent;
 - company secretary;⁶¹⁰
 - director⁶¹¹ or prescribed officer⁶¹² who has the largest shareholding in the company;
 - director or prescribed officer who has held office for the longest period of time; and
 - senior employee of the company according to the company's reporting hierarchy; or
- any suitable person that SARS designates for that purpose.

⁶⁰⁷ Section 246(8) of the TA Act.

⁶⁰⁸ Section 246(7) of the TA Act

⁶⁰⁹ Section 246(3) of the TA Act, which was amended by section 31(b) of the Tax Administration Laws Amendment Act 43 of 2024 and came into operation on 24 December 2024, the date of promulgation of that Act.

⁶¹⁰ The duties of a company secretary are set out in section 88 of the Companies Act, which, amongst other things, include providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers, making the directors aware of any law relevant to or affecting the company, reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or the Companies Act, ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with the Companies Act, and certifying in the company's annual financial statements whether the company has filed required returns and notices, and whether all such returns and notices appear to be true, correct and up to date.

⁶¹¹ The term "director" as defined in section 1 of the Companies Act means a member of the board of a company, as contemplated in section 66 of that Act, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated. The term "alternate director" as defined in section 1 of the Companies Act means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company.

⁶¹² The term "prescribed officer" as defined in section 1 of the Companies Act means a person who, within a company, performs any function that has been designated by the Minister, the member of the Cabinet responsible for companies, under section 66 (10) of that Act.

The business rescue practitioner is the representative taxpayer of such a company if placed under business rescue under the Companies Act.⁶¹³ In the event of a company being placed in voluntary or compulsory liquidation, the liquidator or the liquidators appointed are to exercise all the functions and assume all responsibilities of a public officer during the continuance of the liquidation.⁶¹⁴

A company must keep the office of public officer constantly filled and must at all times maintain a place for the service or delivery of notices.⁶¹⁵ A company must notify SARS of every change of public officer or the place of the service or delivery of notices within 21 business days of the change taking effect.⁶¹⁶

15.5 Record-keeping

All PBOs are required to keep records for five years⁶¹⁷ from the date of the submission of a return under the TA Act.

A return⁶¹⁸ includes any form, declaration, document, or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS.

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.⁶¹⁹

The required retention periods for records, books of account or documents are as follows:⁶²⁰

- Five years from the date of the submission of a return.⁶²¹
- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.⁶²²
- If an objection or appeal (see **Chapter 16**) against an assessment or decision is lodged, the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.⁶²³
- A person notified of, or who is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded, or the applicable five-year period has elapsed, whichever is the later.⁶²⁴
- Indefinitely, if a document is relevant for future years of assessment such as the prescribed application form EI 1 and the required supplementary information and

⁶¹³ Paragraph (a) of the definition of “representative taxpayer” in section 1(1) and section 248(2) of the TA Act.

⁶¹⁴ Section 248(1) of the TA Act.

⁶¹⁵ Section 249(2)(a) of the TA Act.

⁶¹⁶ Section 249(2)(b) of the TA Act.

⁶¹⁷ Section 29(3) of the TA Act.

⁶¹⁸ The term “return” is defined in section 1 of the TA Act.

⁶¹⁹ Section 32 of the TA Act.

⁶²⁰ For commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

⁶²¹ Section 29(2)(a) read with section 29(3)(a) of the TA Act.

⁶²² Section 29(2)(b) of the TA Act.

⁶²³ Section 32(b) of the TA Act.

⁶²⁴ Section 32(a) of the TA Act.

documentation on which the Commissioner based the decision to approve or not to approve an exemption from normal tax (see **Chapter 13**).

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.

Example 29 – Records, books of account or documents that must be kept and retained

The following are non-exhaustive examples of records, books of account or documents that must be kept and retained:

- Cash books.
- Debtors, creditors, and sales ledgers.
- Journals.
- Fixed-asset register.
- Bank statements and deposit slips.
- Invoices.
- Section 18A receipts (see **Chapter 10**) issued by section 18A-approved PBOs or conduit PBOs.
- Audit certificates (see **8.2.2** and **8.3.4**).
- Minutes of meetings where scholarships, bursaries or awards were granted (see **2.4.1**).
- Third-party returns (see **15.7**).

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a PBO is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.⁶²⁵

The Electronic Record-Keeping Rules regulate the electronic form of record-keeping.⁶²⁶ The rules require that electronic records must be kept in their original form,⁶²⁷ 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.⁶²⁸

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.⁶²⁹

⁶²⁵ Section 30 of the TA Act.

⁶²⁶ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

⁶²⁷ A document will under section 14 of the Electronic Communications and Transactions Act 25 of 2002 be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

⁶²⁸ For commentary, see the *Electronic Communications Guide*.

⁶²⁹ Section 234(2)(e) of the TA Act.

15.6 Income tax returns

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

- **eFiling**;
- any SARS Service Centre; or
- the SARS National Service Centre.

A return must be a full and true return⁶³⁰ and be signed by the PBO's duly authorised representative (see **15.4**). The person signing the return will be regarded as being cognisant of the statements made in the return.⁶³¹

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.⁶³² 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.⁶³³

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

15.6.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of registration for income tax purposes.⁶³⁴ This is a different reference number to the exemption reference number allocated on application for PBO approval (see **Chapter 13**). For a group registration (see **Chapter 5**) a taxpayer reference number will be allocated to the co-ordinating body and not to each individual PBO within the group.

The taxpayer reference and the exemption reference number (see **13.1**) must be included when filing a return or any document with SARS.

15.6.2 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 (see **4.7**). A PBO must submit an income tax return within 12 months from the date on which its financial year ends.

An appropriate penalty⁶³⁵ will be imposed by SARS if satisfied that the PBO failed to comply with the obligation to submit an income tax return under the Act and public notice issued by the Commissioner.⁶³⁶ The appropriate penalty for non-compliance will be imposed according to a fixed amount penalty table.⁶³⁷

⁶³⁰ Section 25(2) of the TA Act.

⁶³¹ Section 25(3) of the TA Act.

⁶³² Section 25(4) of the TA Act.

⁶³³ Section 234(2)(d) of the TA Act.

⁶³⁴ The term "taxpayer reference number" is defined in section 1 of the TA Act and means the reference number referred to in section 24 of the same Act.

⁶³⁵ 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 the TA Act and excludes an understatement penalty referred to in Chapter 16 of the TA Act.

⁶³⁶ Section 210 of the TA Act. For commentary, see the *Guide to Understatement Penalties*.

⁶³⁷ Section 211 of the TA Act.

15.6.3 Year of assessment

A PBO that is a trust or a testamentary trust (see 3.1.2) will have a year of assessment ending on the last day of February. A trust can apply for permission to draw up its financial statements to a different closing date if it would be more convenient for it to do so.⁶³⁸

A PBO that is an NPC (see 3.1.1) or an association of persons (see 3.1.3) will have a year of assessment ending on the date that coincides with its financial year-end. If the financial year-end is 30 June, its year of assessment will run from 1 July to 30 June of the following year. The Commissioner may exercise discretion to accept financial accounts of a “company” for a period ending on a day differing from the last day of the company’s financial year.⁶³⁹

15.6.4 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return. The PBO will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

A PBO whose income tax return is supported by any balance sheet, statement of assets and liabilities or account prepared by any other person may be requested to submit a certificate or statement recording —⁶⁴⁰

- the extent of the examination by the preparer of the books of account and of the documents from which the books of account were prepared; and
- as far as may be ascertained by the examination, whether the entries in those books and documents disclose the true nature of any transaction, receipt, accrual, payment, or debit.

The accounts must be signed by a person responsible for the PBO in a fiduciary capacity (see 4.4.1) and by the person who prepared them on behalf of the PBO.

15.6.5 Financial statements

A PBO that is an NPC (see 3.1.1) may be required to be audited or independently reviewed under the Companies Act⁶⁴¹ considering, for example, the category of the company and its public interest score.

15.7 Third-party returns

SARS is responsible for the administration of the TA Act under the control or direction of the Commissioner.⁶⁴² 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,⁶⁴³ tax event,⁶⁴⁴ or the obligation of a person, whether personally or on behalf of another person, to

⁶³⁸ For commentary, see Interpretation Note 19 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February”.

⁶³⁹ 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”.

⁶⁴⁰ Section 28 of the TA Act.

⁶⁴¹ See section 30(2) of the Companies Act read with Regulations 27, 28 and 29 to that Act.

⁶⁴² Section 3(1) of the TA Act.

⁶⁴³ Section 3(2)(a)(i) of the TA Act.

⁶⁴⁴ Section 3(2)(a)(ii) of the TA Act. The term “tax event” as defined in section 1 of the TA Act means an occurrence which affects or may affect the liability of a person to tax.

comply with a tax Act.⁶⁴⁵ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.⁶⁴⁶

To give effect to the above responsibility, the Commissioner may by public notice,⁶⁴⁷ 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.⁶⁴⁸ 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.⁶⁴⁹

The purpose of third-party reporting is to ensure donor taxpayers claim a deduction (see **Chapter 11**) for donations made only to section 18A-approved doer PBOs (see **8.2**) or conduit PBOs (see **8.3**), and to ensure that the information provided to SARS by the section 18A-approved doer PBO or conduit PBO issuing section 18A receipts (see **Chapter 10**) matches the donor taxpayer's claim for a tax deduction.⁶⁵⁰

A section 18A-approved doer PBO or conduit PBO that issued a section 18A receipt from 1 March 2024 must submit to SARS a return⁶⁵¹ of any amount⁶⁵² donated for which such a receipt has been issued.⁶⁵³ It is a requirement⁶⁵⁴ that a section 18A-approved doer PBO or conduit PBO must submit a nil return⁶⁵⁵ if no section 18A receipts were issued.

The third-party return containing all the prescribed information for the period from —⁶⁵⁶

- 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.

⁶⁴⁵ Section 3(2)(a)(iii) of the TA Act.

⁶⁴⁶ Section 3(2)(h) of the TA Act.

⁶⁴⁷ Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023.

⁶⁴⁸ Section 26(1) of the TA Act.

⁶⁴⁹ Section 26(2)(a) of the TA Act.

⁶⁵⁰ For commentary on how third-party information relating to section 18A receipts issued by section 18A-approved doer PBOs and conduit PBOs must be submitted to SARS, see the *Business Requirement Specification: IT 3 Data Submission*.

⁶⁵¹ 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 3631 of 30 June 2023.

⁶⁵² See Column 2: Information concerning in paragraph 3 of the Public Notice 3631 of 30 June 2023. 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.

⁶⁵³ See paragraph 2.14 of the Public Notice 3631 of 30 June 2023.

⁶⁵⁴ For further commentary, see *SARS External Guide – Manage Submission of Third-Party Data*.

⁶⁵⁵ See Column 3: Form in paragraph 3 of the Public Notice 3631 of 30 June 2023, which provides for the submission of data compiled in accordance with the *Business Requirement Specification: IT 3 Data Submission*.

⁶⁵⁶ See paragraph 4.1.1 of the Public Notice 3631 of 30 June 2023.

Chapter 16

Objection and appeal

A decision made by a SARS official⁶⁵⁷ or a notice to a specific person issued by SARS under a tax Act,⁶⁵⁸ excluding a decision given effect to in an assessment or a notice of assessment that is subject to objection and appeal, may in the discretion of a SARS official mentioned below or at the request of the relevant person, be withdrawn or amended by –⁶⁵⁹

- the SARS official;⁶⁶⁰
- a SARS official to whom the SARS official reports;⁶⁶¹ or
- a senior SARS⁶⁶² official.⁶⁶³

If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to above may not be withdrawn or amended with retrospective effect, after three years from the later of the date of –⁶⁶⁴

- the written notice of that decision;⁶⁶⁵ or
- assessment of the notice of assessment giving effect to the decision (if applicable).⁶⁶⁶

A decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act is regarded as made by a SARS official authorised to do so or duly issued by SARS, until proven to the contrary.⁶⁶⁷

Any decision of SARS in the exercise of its discretion under section 30 and section 18A(1)(a)(cc) is subject to objection and appeal.⁶⁶⁸ Such a decision may be objected to and appealed against in the same manner as an assessment.⁶⁶⁹

A PBO aggrieved by an assessment may before lodging an objection, request SARS to provide reasons for the assessment to enable the PBO to formulate an objection.⁶⁷⁰

⁶⁵⁷ The term “SARS official” as defined in section 1 of the TA Act means (a) the Commissioner, (b) an employee of SARS, or (c) a person contracted or engaged by SARS, other than an external legal representative, for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction, or supervision of the Commissioner.

⁶⁵⁸ The term “tax Act” as defined in section 1 of the TA Act means the TA Act, or an Act, or portion of Act referred to in section 4 of the South African Revenue Service Act, 1997.

⁶⁵⁹ Section 9(1) of the TA Act.

⁶⁶⁰ Section 9(1)(a) of the TA Act.

⁶⁶¹ Section 9(1)(b) of the TA Act.

⁶⁶² The term “senior SARS official” as defined in section 1 and read with section 6(3) of the TA Act refers to persons exercising the powers and duties required under the TA Act to be exercised by (a) the Commissioner, (b) a SARS official who has specific written authority from the Commissioner, or (c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.

⁶⁶³ Section 9(1)(c) of the TA Act.

⁶⁶⁴ Section 9(2) of the TA Act.

⁶⁶⁵ Section 9(2)(a) of the TA Act.

⁶⁶⁶ Section 9(2)(b) of the TA Act.

⁶⁶⁷ Section 9(3) of the TA Act.

⁶⁶⁸ Section 3(4)(b). Section 9(1) of the TA Act applies only to decisions or notices made by SARS, which are not subject to objection and appeal under section 3(4).

⁶⁶⁹ Section 104(2)(c) of the TA Act.

⁶⁷⁰ Rule 6 deals with reasons for an assessment.

The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days⁶⁷¹ from the date of the assessment.

Any PBO may object to an assessment⁶⁷² in accordance with Chapter 9 of the TA Act read with the “rules”⁶⁷³ as published in the *Government Gazette* within 80⁶⁷⁴ business days⁶⁷⁵ after the –⁶⁷⁶

- delivery of the notice providing reasons requested for an assessment, if applicable;⁶⁷⁷
- notice issued by SARS notifying the PBO that the reasons requested to enable it to formulate an objection have been provided;⁶⁷⁸ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –⁶⁷⁹

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment⁶⁸⁰ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the PBO has not previously delivered to SARS for purposes of the disputed assessment.

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

If on disallowance of the objection the PBO is dissatisfied with the decision by SARS it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.⁶⁸¹

⁶⁷¹ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

⁶⁷² For commentary, see Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

⁶⁷³ The rules for objections and appeals are formulated under section 103 of the TA Act.

⁶⁷⁴ Rule 7(1) was amended from 30 to 80 days. The amendment is effective from 10 March 2023.

⁶⁷⁵ The term “business day” is defined in section 1 of the TA Act.

⁶⁷⁶ Rule 7 deals with objections.

⁶⁷⁷ Rule 7(1)(a) read with Rule 6.

⁶⁷⁸ Rule 7(1)(a) read with Rule 6(4).

⁶⁷⁹ Rule 7(2).

⁶⁸⁰ 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).

⁶⁸¹ Rule 10.

Chapter 17

Non-Profit Organisations

17.1 Definition of “nonprofit organisation”

The term “non-profit organisation” as defined in the NPO Act means –⁶⁸²

“a trust, company or other association of persons –

- (a) established for a public purpose; and
- (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered”.

A PBO constituted as either an NPC (see 3.1.1), a trust (see 3.1.2) or association of persons (see 3.1.3) may fall within the above definition of an NPO under the NPO Act.

Registration as an NPO under the NPO Act is not a condition for approval by the Commissioner as a PBO.

Further information relating to NPOs is available from the NPO Directorate’s website at www.dsd.gov.za.

17.2 Registration as a nonprofit organisation

The NPO Act provides for a compulsory and a voluntary registration as an NPO.⁶⁸³

An NPO is required to be registered under the NPO Act if it –⁶⁸⁴

- makes donations to individuals or organisations outside South Africa;⁶⁸⁵ or
- provides humanitarian, charitable, religious, educational, or cultural services⁶⁸⁶ outside South Africa.

⁶⁸² Section 1(1) of the NPO Act.

⁶⁸³ Section 12(1)(a) of the NPO Act.

⁶⁸⁴ Section 12(1)(b) of the NPO Act.

⁶⁸⁵ A PBO, that has as its sole or principal object the carrying on of PBA 11(d) in Part I, which provides for the provision of funds to an organisation incorporated, established in any country other than South Africa, would be required to register as a NPO under the NPO Act.

⁶⁸⁶ The NPO Act does not define “humanitarian”, “charitable”, “religious”, “educational” and “cultural” services.

Annexure A – Section 10(1)(cN)

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

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

Annexure B – 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; or
 - (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 C – Section 30

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

“public benefit activity” means—

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

“public benefit organisation” means any organisation—

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

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

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

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

- (ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;
- (iii) in the case of a public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in subsection (1), required on dissolution to transfer its assets to—
 - (aa) any public benefit organisation which has been approved in terms of this section;
 - (bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or
 - (cc) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a),
 which is required to use those assets solely for purposes of carrying on one or more public benefit activities;
- (iiiA) in the case of a branch of a public benefit organisation contemplated in paragraph (a) (ii) of the definition of “public benefit organisation” in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such branch to any public benefit organisation, institution, board, body, department or administration contemplated in subparagraph (iii), if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic;
- (iv)
- (v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- (vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- (c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (d) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;
- (e) complies with such reporting requirements as may be determined by the Commissioner;
- (f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which those funds have been provided;

(g)

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

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

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

(3B) (a) Subject to paragraph (b), where an organisation applies for approval, the Commissioner may approve that organisation for the purposes of this section with retrospective effect, if the Commissioner is satisfied that that organisation during the relevant period prior to its application complied with the requirements of a public benefit organisation as defined in subsection (1).

(b) For the purposes of paragraph (a), where the organisation—

(i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of section 99(1) of that Act not be made; or

(ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of section 99 (1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with section 25(1) of that Act.

(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.

(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply if the persons contemplated in subsection (3)(b)(i) responsible in a fiduciary capacity for the funds and assets of a branch contemplated in paragraph (a)(ii) of the definition of “public benefit organisation” in subsection (1) or any trust established in terms of a will of any person furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

(5) Where the Commissioner is—

(a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or

(b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of the organisation with effect from the commencement of that year of assessment, where corrective steps are not taken by that organisation within a period stated by the Commissioner in that notice.

(5A) Where any regulating or co-ordinating body contemplated in subsection (3A)—

(a) with intent or negligently fails to take any steps contemplated in that subsection to exercise control over any public benefit organisation; or

(b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations with effect from the commencement of that year of assessment, where corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice.

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

(6A) As part of—

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

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

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

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

(9)

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

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

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

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

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

(12)

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

WELFARE AND HUMANITARIAN

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

HEALTH CARE

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

LAND AND HOUSING

- 3.
- (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.
 - (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
 - (c) The provision of residential care for retired persons, where⁶⁸⁷
 - (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
 - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
 - (d) Building and equipping of—
 - (i) clinics or crèches; or
 - (ii) community centres, sport facilities or other facilities of a similar nature, for the benefit of the poor and needy.
 - (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
 - (f) Granting of loans for purposes of subparagraph (a) or (b), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.
 - (g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
 - (h) The provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations.

EDUCATION AND DEVELOPMENT

- 4.
- (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
 - (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
 - (c) “Adult basic education”, as envisaged in section 29(1)(a) of the Constitution, 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.

⁶⁸⁷ For commentary, see Interpretation Note 124 “Public Benefit Organisations: Provision of Residential Care for Retired Persons.”

- (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- (f) The training or education of persons with a severe physical or mental disability.
- (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- (h) The provision of educare or early childhood development services for pre-school children.
- (i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.
- (q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r).
- (r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

RELIGION, BELIEF OR PHILOSOPHY

- 5. (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.
- (b) The promotion and/or practice of a belief.
- (c) The promotion of, or engaging in, philosophical activities.

CULTURAL

- 6. (a) The advancement, promotion or preservation of the arts, culture or customs.
- (b) The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries.
- (c) The provision of youth leadership or development programmes.

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

RESEARCH AND CONSUMER RIGHTS

8. (a) Research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research.
- (b) The protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

SPORT

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

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

10. The provision of—
- (a) funds, assets, services or other resources by way of donation;
 - (b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
 - (c) funds by way of loan at no charge; or
 - (d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,
- to any—
- (i) public benefit organisation which has been approved in terms of section 30;
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
 - (iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or⁶⁸⁸
 - (iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a).

GENERAL

11. (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.

⁶⁸⁸ For commentary, see Interpretation Note 98 “Public Benefit Organisations: The Provision of Funds, Assets or Other Resources to any Association of Persons”.

- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—⁶⁸⁹
 - (i) the foreign participation in that event; and
 - (ii) the economic impact that event may have on the country as a whole.
- (c) The promotion, monitoring or reporting of development assistance for the poor and needy.
- (d) The provision of funds to an organisation—
 - (i) which is incorporated, formed or established in any country other than the Republic;
 - (ii) which is exempt from tax on income in that other country;
 - (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
 - (iv) that carries on each of its activities—
 - (aa) in a non-profit manner;
 - (bb) with altruistic or philanthropic intent;
 - (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
 - (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).

⁶⁸⁹ For commentary, see Interpretation Note 122 “Public Benefit Activity: Bid to Host or Hosting of any International Event”.

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 basic education", as envisaged in section 29(1)(a) of the Constitution, 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.

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 G – Example of section 18A receipt



ABC HOUSE OF SAFETY

Oxford Street, Pretoria, 0001 – Telephone (00) 000 0000

Exemption Reference Number: 930000000

Receipt number	0001		
DONOR INFORMATION			
Name			
Physical address			
E-mail address			
Contact number			
Nature	Individual	RSA identification number	
		Passport number	
		Country issued	
	Company/ Trust/NPO	Registered name	
		Trade name	
		Company/Trust/NPO 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			
<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 in South Africa.</p>			
Details and signature of person in a fiduciary capacity responsible for the management or control of the income and assets of the PBO			
Date receipt issued			