

Tax Exemption Guide for Institutions, Boards, or Bodies

Issue 2



Income Tax

Tax Exemption Guide for Institutions, Boards, or Bodies

Preface

This guide provides general guidance on the exemption from income tax of qualifying institutions, boards, or bodies under section 10(1)(cA)(i) (see **8**) of the Income Tax Act 58 of 1962 (the Act). These institutions, boards, or bodies enjoy preferential tax treatment after they have been granted approval by the Commissioner and continue to comply with the relevant requirements and conditions (see **5**) as set out in the Act. Any institution, board or body approved by the Commissioner under section 10(1)(cA)(i) of the Act carrying on public benefit activities in Part II of the Ninth Schedule to the Act in South Africa may also qualify for approval under section 18A (see **10**) of the Act.

The guide deals with the following taxes and duties that may affect institutions, boards, or bodies:

- Capital gains tax (see **11.1.7**)
- Dividends tax (see **11.1.4**)
- Donations tax (see **11.1.1**)
- Employees' tax (see **11.2.1**)
- Estate duty (see **11.1.2**)
- Securities transfer tax (see **11.1.5**)
- Skills development levy (see **11.1.6**)
- Transfer duty (see **11.1.3**)
- Unemployment insurance fund contributions (see **11.2.2**)

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

It is also not a general binding ruling 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 legislation as at time of issue. Information relating to taxes, duties, levies and contributions reflect the rates applicable as at the date of issue of this guide.²

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Service Centre (between 8am and 4.30pm South African time except on Wednesdays when the service centre can be called between 9am and 4.30pm) –
 - if calling locally, on 0800 00 7277; or

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*.

- 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
25 March 2025

Disclaimer

The use of an entity in an example in this guide is not confirmation of its tax-exempt status. Whether an entity qualifies for approval as an institution, board or body and whether its receipts and accruals are exempt under section 10(1)(cA)(i) will be confirmed by the Commissioner only on completion of the application process (see **12**).

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

Hyperlinks display as **bold** text to assist our visually impaired readers. For example, **www.sars.gov.za**, and see **12**.

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Glossary

In this guide unless the context indicates otherwise –

- “**CIPC**” means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
- “**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 section 18A-approved institutions, boards, or bodies sharing the same objectives and governance provisions contemplated in section 18A(6);
- “**DSI**” means the Department of Science and Innovation;
- “**Estate Duty Act**” means the Estate Duty Act 45 of 1955;
- “**founding document**” means the written instrument or legislation under which an institution, board or body is established and governed;
- “**institution, board or body**” means an institution, board or body (other than a company as defined in the Companies Act, any co-operative, close corporation, trust or water services provider) established by or under any law contemplated in section 10(1)(cA)(i);
- “**Interpretation Act**” means the Interpretation Act 33 of 1957;
- “**Minister**” means the Minister of Finance unless otherwise indicated;
- “**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;
- “**PBA**” means a “public benefit activity” listed in Part I and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;
- “**PFMA**” means the Public Finance Management Act 1 of 1999;
- “**Schedule**” means a Schedule to the Act;
- “**SDL**” means the skills development levy under the Skills Development Levies Act 9 of 1999;
- “**section**” means a section of the Act;
- “**section 18A**” means the section providing for the tax-deductibility of *bona fide* donations actually paid or transferred to section 18A-approved institutions, boards, or bodies during a year of assessment;
- “**section 18A-approved institution, board or body**” means any institution, board or body approved by the Commissioner under section 10(1)(cA)(i) carrying on PBAs in Part II in South Africa, or any other PBA determined by the Minister by notice in the *Government Gazette* for the purposes of section 18A, which meets the requirements in section 18A(1A), if applicable, and which also has been approved by the Commissioner under section 18A(1)(a)(ii);

- “**section 18A receipt**” means a receipt with mandatory information issued under section 18A(2) by a section 18A-approved institution, board or body potentially entitling a donor taxpayer to an income tax deduction for *bona fide* donations actually paid or transferred during a year of assessment;
- “**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;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**the Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Transfer Duty Act**” means the Transfer Duty Act 40 of 1949;
- “**Trust Property Control Act**” means the Trust Property Control Act 57 of 1988;
- “**UIF**” means the unemployment insurance fund established under section 4 of the Unemployment Insurance Act 63 of 2001; and
- any other word or expression bears the meaning ascribed to it in the Act.

All amendment laws, declarations, explanatory memoranda, forms, guides, interpretation notes, public notices, returns and tables referred to in this guide are the latest versions, unless indicated otherwise, available on the SARS website at www.sars.gov.za or via eFiling at www.sarsefiling.co.za (guides only).

1. Introduction

An absolute exemption from income tax of the receipts and accruals (see **8**) is provided in –

- section 10(1)(cA)(i) for any institution, board or body established by or under any law (see **2**) engaged in specified prescribed activities (see **3**); and
- section 10(1)(cA)(ii) for any association, corporation or company all the shares of which are held by any such institution, board or body. The approval of this exemption will not be discussed in this guide.³

The exemption under section 10(1)(cA)(i), however, will apply only to the extent that such institution, board or body –

- has been approved by the Commissioner subject to any conditions deemed necessary (see **6**) to ensure that the activities of that institution, board or body are wholly or mainly directed to the furtherance of its sole or principal object (see **3.1**);⁴ and
- complies by law or under its constitution with the prescribed requirements (see **5**).

Any institution, board or body approved by the Commissioner under section 10(1)(cA)(i) carrying on PBAs in Part II in South Africa potentially qualifies for approval under section 18A subject to the requirements of that section being met (see **10**).

An institution, board or body bears the burden of proving⁵ that it complies with the requirements relative to the approval and exemption under section 10(1)(cA)(i) and the approval under section 18A(1)(a)(ii) and must retain the necessary supporting evidence.

2. Institution, board or body established by or under any law

To qualify for exemption, the institution, board or body must –

- be established –
 - *by* (see **2.2**) any law (see **2.1**); or
 - *under* any law (see **2.3**); and
- in the furtherance of its sole or principal object, engage in specified prescribed activities (see **3**).

The words “institution”, “board” or “body” referred to in section 10(1)(cA)(i) are not defined in the Act. The words separately have a number of dictionary meanings that are not conclusive in the interpretation of that section.⁶

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

⁴ Paragraph (a) of the first proviso to section 10(1)(cA).

⁵ Section 102 of the TA Act.

⁶ See *C: SARS v Terraplas South Africa (Pty) Ltd* [2014] 3 All SA 11 (SCA), 76 SATC 377 at 385 in which the following was stated: “Any one of a number of dictionary meanings of a word is not necessarily conclusive in the interpretation of words and phrases in statutes and documents. Meanings have to be determined contextually.”

2.1 Meaning of any law

Section 10(1)(cA)(i) refers to “any law”. Although the word “any” is of wide and unqualified generality, it may be restricted by the subject matter or the context.⁷

The Interpretation Act defines “law” as –⁸

“any law, proclamation, ordinance, Act of Parliament, or other enactment having the force of law”.

In ITC 1788 the court considered the ambit of the words “any law” in section 10(1)(cA)(i) and held the following:⁹

“To give recognition to creatures created by foreign statutes without any qualification or definition might seriously endanger the object of the entire Income Tax Act.

The entities which the legislature clearly had in mind to exempt from the tax are those to which Mr *Spilg* referred: parastatals created by statutes passed by the South African Parliament, such as the South African Bureau of Standards.”

The expression “any law” used in section 10(1)(cA)(i) therefore means any law such as –

- the Constitution, which is the supreme law¹⁰ of South Africa; or
- an Act that has been passed by the Parliament¹¹ of South Africa.

An Act of Parliament refers only to national legislation¹² and not to provincial legislation.¹³ Provincial legislation will therefore not be considered for the purposes of the exemption under section 10(1)(cA)(i). Furthermore, the reference to “any law” in section 10(1)(cA)(i) excludes any entities created by foreign statutes. Unwritten law such as common and indigenous law also falls outside the ambit of the words “any law” used in section 10(1)(cA)(i).

2.2 Established by any law

The expression “established by any law” means that an institution, board or body is directly established by specific national legislation. The name of an institution, board or body is normally mentioned in the relevant national legislation and its objects, functions and activities are regulated by the specific national legislation by which that institution, board or body is directly established.

Example 1 – Institutions, boards, or bodies established by any law

The following are non-exhaustive examples of institutions, boards, or bodies established by any law:

- The Companies Act establishes the CIPC, the Companies Tribunal, and the Takeover Regulation Panel.

⁷ *CIR v Ocean Manufacturing Ltd* 1990 (3) SA 610 (A), 52 SATC 151 at 161.

⁸ Section 2 of that Act.

⁹ (2004) 67 SATC 161 (G) at 164.

¹⁰ Section 2 of the Constitution.

¹¹ See the definition of “Parliament” in section 2 of the Interpretation Act.

¹² The term “national legislation” as defined in section 239 of the Constitution generally means legislation made under an Act of Parliament.

¹³ The term “provincial legislation” as defined in section 239 of the Constitution generally means legislation made under a provincial Act.

- The Pharmacy Act 53 of 1974 establishes the South African Pharmacy Council.
- The National Environmental Management Biodiversity Act 10 of 2004 establishes the South African Biodiversity Institute.

2.3 Established *under any law*

In contrast to the expression “*by any law*” providing for a specific institution, board or body to be established, the expression “*established under any law*” means that the specific national legislation provides in general for the establishment of a type of institution, board or body to fulfil specified functions.

The specific name of the institution, board or body is not normally mentioned in the national legislation, and the relevant national legislation may prescribe that the establishment of such an institution, board or body must be published by the relevant Minister in a *Government Gazette*.¹⁴

Institutions, boards, or bodies established under any law usually have constitutions, which may include provisions prescribed by the regulating national legislation, for example, the objects, powers, functions, governance, duties and financial matters relating to such institutions, boards, or bodies.

Example 2 – Institutions, boards, or bodies established *under any law*

The following are non-exhaustive examples of institutions, boards, or bodies established *under any law*:

- A bargaining council may apply for registration by submitting to the Registrar of Labour Relations certain documents prescribed in the Labour Relations Act 66 of 1995 and by adopting a constitution meeting the requirements as set out in that Act. A bargaining council is regarded for the purposes of income tax as an institution, board or body established under the Labour Relations Act, 1995.
- The Minister of Higher Education and Training may, by notice in the *Government Gazette* and for a period specified in the notice, establish a sector education and training authority (SETA) with a constitution for any national economic sector under the Skills Development Act 97 of 1998.
- The Minister of Correctional Services may establish and review the establishment, amongst other things, of correctional centres and remand detention facilities under the Correctional Services Act 111 of 1998 by notice in the *Government Gazette*.
- Fire protection associations are established under the National Veld and Forest Act 101 of 1998.

The expression established *under any law*, however, should not be interpreted too widely, for example, a state-owned company, which is incorporated under the Companies Act, is not established under any law. The Companies Act is merely a general enabling Act conferring legal personality on companies complying with the requirements of that Act.¹⁵ The Companies Act therefore does not establish or bring into being a specifically named company but merely empowers the registration of companies under that Act by the CIPC. Other examples of general enabling Acts include the Co-operatives Act 14 of 2005, and the Close Corporations

¹⁴ The term “*Gazette*” is defined in section 2 of the Interpretation Act.

¹⁵ Stoop, H. H. (30 April 2022). Companies Part I. In *Law of South Africa (LAWSA)* 6(1) (Third Edition Volume) in paragraph 1 (see footnote 10). My LexisNexis [online].

Act 69 of 1984. A company, co-operative and a close corporation are specifically excluded from the application of the exemption under section 10(1)(cA)(i) (see 9).

3. Prescribed activities carried on by an institution, board or body

An institution, board or body must in the furtherance of its sole or principal object –

- conduct scientific, technical or industrial research (see 3.2);¹⁶
- provide necessary or useful commodities, amenities or services to the State including any provincial administration or members of the general public (see 3.3);¹⁷ or
- carry on activities designed to promote commerce, industry or agriculture or any branch thereof (see 3.4).¹⁸ Such activities include the rendering of financial assistance by way of loans or otherwise.

The use of the disjunctive word “or” means that the institution, board or body may carry on either one or a combination of the above-prescribed activities in the furtherance of its sole or principal object.

3.1 The carrying on of prescribed activities in the furtherance of the sole or principal object of an institution, board or body

The concept “furtherance of the sole or principal object” is fundamental to section 10(1)(cA)(i). The words “furtherance”, “sole”, “principal” and “object” are not defined in the Act. The words should therefore be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used.¹⁹

The *CollinsDictionary.com* describes “furtherance” of something as –²⁰

“the activity of helping it to be successful or be achieved.”

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

- “Sole” as “being the only one; only”.²¹
- “Principal” as “first or highest in rank, importance, value, chief”.²²
- “Objective” as “something that one’s efforts or actions are intended to attain, accomplish, purpose, goal, target”.²³

¹⁶ Section 10(1)(cA)(i)(aa).

¹⁷ Section 10(1)(cA)(i)(bb).

¹⁸ Section 10(1)(cA)(i)(cc).

¹⁹ Kellaway, E. A. (1995). *Principles of legal interpretation of statutes, contracts and wills* at page 224. Butterworths South Africa. Also, see Steyn, L. C. (1981). *Die uitleg van wette* (5th ed) pages 4 to 7. Juta and Company (Pty) Ltd.

²⁰ www.collinsdictionary.com/dictionary/english-word/furtherance [Accessed 25 March 2025].

²¹ www.dictionary.com/browse/%20sole [Accessed 25 March 2025].

²² www.dictionary.com/browse/%20principal [Accessed 25 March 2025].

²³ www.dictionary.com/browse/objective%20 [Accessed 25 March 2025].

In ITC 1569,²⁴ 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 “object” of an institution, board or body is not the subjective goals of its controllers but the activities, which it is mandated by its founding document (see 4) to perform and is the aim, intention, purpose, thing sought to be accomplished and the goal to be obtained.

The only or predominate object of the institution, board or body is therefore advanced, progressed or achieved when any of the prescribed activities are carried on. The institution, board or body should therefore firstly carry on its sole or principal object and in the course of furthering that object carry on the prescribed activities.

The word “activities” in this context refers to the prescribed activities an institution, board or body must carry on in the furtherance of its sole or principal object and not to any other activities.

Since an institution, board or body qualifying for the exemption under section 10(1)(cA)(i) receives tax privileges, the expression “sole or principal object” must be considered strictly having regard to the facts of each case.²⁵

3.2 Conduct scientific, technical or industrial research

Section 10(1)(cA)(i) may apply if an institution, board or body conducts scientific, technical, or industrial research in the furtherance of its sole or principal object. This wording requires that an institution, board or body must itself organise and carry out research. It will be acceptable for an institution, board or body to undertake research on behalf of another company²⁶ provided this is in the furtherance of the sole or principal object of that institution, board or body.

The words “conduct”, “scientific”, “technical”, “industrial” and “research” are not defined in the Act. The meaning of these words in the context of section 10(1)(cA)(i) is considered below.

3.2.1 Conduct

The word “conduct” is described in the *Longman Dictionary of Contemporary English* as –²⁷

“to carry out a particular activity or process, especially in order to get information or prove facts, conduct a survey / investigation / review etc., conduct an experiment / a test”.

3.2.2 Research

The word “research” used in section 10(1)(cA)(i) is not limited to the technical activities comprising “research and development” as defined for purposes of section 11D. It has a wider meaning of work that involves studying something and trying to discover facts about it.

²⁴ (1993) 56 SATC 86 (C) at 90.

²⁵ *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at 182.

²⁶ See section 11D(4)(c)(i)(aa).

²⁷ www.ldoceonline.com/dictionary/conduct [Accessed 25 March 2025].

The term “research” is described by the Organisation for Economic Co-operation and Development as –²⁸

“any creative systematic activity undertaken in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this knowledge to devise new applications”.

Generally, research is divided into two broad categories, namely, basic and applied research. These categories are described in the *Frascati Manual*²⁹ as follows:

“Basic research is experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation or phenomena and observable facts, without any particular application or use in view. Applied research is original investigation undertaken in order to acquire new knowledge. It is, however, directed primarily towards a specific, practical aim or objective.”

Any research conducted by an institution, board or body must for purposes of the exemption under section 10(1)(cA)(i) be of a scientific, technical or industrial nature.

3.2.3 Scientific research

Scientific research suggests a systematic way of doing something by using experiments or tests. The DSI describes “basic scientific research” as –³⁰

“fundamental theoretical or experimental investigative research to advance knowledge without a specifically envisaged or immediately practical application. It is the quest for new knowledge and the exploration of the unknown”.

Discoveries made through basic scientific research generally tend to be the foundation for the advances in science, engineering and technology and most disruptive technologies.³¹

3.2.4 Technical research

The *BusinessDictionary.com* describes “technical research” as follows:³²

“Applied research oriented toward engineering disciplines (but not to a specific product or process) and aimed at developing tools and test equipment and procedures, and at providing solutions to specific technical problems.”

Applied science according to the *Web’s Largest Resource for Definitions and Translations* is – ³³

“ . . . a discipline that applies existing scientific knowledge to develop more practical applications, such as technology or inventions. Applied science is typically engineering, which develops technology”.

²⁸ Organisation for Economic Co-Operation and Development. (2008). *OECD Glossary of statistical terms*. OECD Publishing Paris. Available online at <https://doi.org/10.1787/9789264055087-en> [Accessed 25 March 2025].

²⁹ The manual is also known as the *Proposed standard practice for surveys of research and development*. The manual provides an international basis for a common language for talking about research and development and its outcomes.

³⁰ Department: Science and Technology. (2016). *Basic sciences development and support framework* in paragraph 1.1. Available online at www.dst.gov.za/index.php/resource-center/strategies-and-reports/2430-basic-sciences-development-support-framework [Accessed 25 March 2025].

³¹ Disruptive technologies are described by DSI as technologies that change the market dynamics as well as national and global competitiveness over a very short period. For example, the change of communication using cell phones.

³² www.businessdictionary.com/definition/technical-research [Accessed 25 March 2025].

³³ www.definitions.net/definition/applied+science [Accessed 25 March 2025].

Technical research usually applies existing well-known methods and technology and is aimed at any scientific or technological advancement.

3.2.5 Industrial research

Industrial research generally refers to research aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services.³⁴

According to the DSI, industrial research is vital and generally related and motivated by scientific research:³⁵

“This situation is extremely relevant in many engineering areas such as wind tunnels for fluid dynamic measurements, wave tanks for coastal experimentation, pilot chemical plants, hydrodynamic testing channels, seismic testing facilities, engine / turbine testing, crash testing facilities, high-speed experimental transport lines (i.e. magnetic levitation railways, solar planes, etc.), nano-manufacturing facilities, industrial robotics, etc. All of them are very complex and expensive facilities to be designed and built by using multidisciplinary teams in large multi-annual industrial-driven projects. The case of studying the effect of climate change on coastal areas, the testing of atmospheric pollution models, new ideas for innovative propulsion techniques or moving 3D printing techniques to actual component manufacturing, etc. benefit from close interaction with scientific research.”

Example 3 – Conduct scientific, technical or industrial research

The following are non-exhaustive examples of institutions, boards, or bodies established by or under any law, which in the furtherance of their sole or principal object conduct scientific, technical or industrial research:

- The Academy of Science South Africa Act 67 of 2001 establishes the Academy of Science of South Africa, which is the only academy of science recognised by Government. The objectives of the Academy, amongst other things, are to promote common ground in scientific thinking across all disciplines, including the physical, mathematical and life sciences, as well as human, social and economic sciences, to encourage and promote innovative and independent scientific thinking, and to link South Africa with scientific communities of the highest levels, in particular within the Southern African Development Community, the rest of Africa and internationally.
- The Council for Mineral Technology (Mintek) is established by the Mineral Technology Act 30 of 1989. The objects of Mintek are to promote mineral technology and to foster the establishment and expansion of industries in the fields of minerals and products derived therefrom through research, development and technology transfer.
- The Technology Innovation Act 26 of 2008 establishes the Technology Innovation Agency to support the State in stimulating and intensifying technological innovation to improve economic growth and the quality of life of all South Africans by developing and exploiting technological innovations.

³⁴ www.innoviscop.com/en/definitions/industrial-research [Accessed 25 March 2025].

³⁵ Wood, J. V., León, G., von Gruenewalt, G. *et al.* (2013). *A South African research infrastructure roadmap* in paragraph 9. Department: Science and Technology. Available online at www.dst.gov.za/images/pdfs/SARIR%20Report%20Ver%202.pdf [Accessed 25 March 2025].

- The Human Sciences Research Council Act 17 of 2008 establishes the Human Sciences Research Council with the object to, amongst other things, initiate, undertake and foster strategic basic research and applied research in human sciences, to gather, analyse and publish data relevant to developmental challenges in South Africa, help build research capacity and infrastructure for the human sciences, and respond to the needs of vulnerable and marginalised groups in society by researching and analysing developmental problems thereby contributing to the improvement of the quality of their lives.
- The South African National Space Agency Act 36 of 2008 establishes the South African National Space Agency to, amongst other things, promote the peaceful use of space, support the creation of an environment conducive to industrial development in space technology, foster research in space science, communications, navigation and space physics, and advance scientific, engineering and technological competencies and capabilities through human capital development outreach programmes and infrastructure development.

3.3 Provision of necessary or useful commodities, amenities or services to the State or members of the general public

An institution, board or body in the furtherance of its sole or principal object may provide necessary or useful commodities, amenities, or services to the State including any provincial administration or members of the general public. This suggests a wide range of activities that may be conducted by the institution, board or body.

The words “provide”, “necessary”, “useful”, “commodities”, “amenities”, “services”, “State” and the expression “members of the general public” are not defined in the Act. The meaning of these words in the context of section 10(1)(cA)(i) is considered below.

3.3.1 Provide

The *Dictionary.com* describes “provide” as –³⁶

- “1. to make available; furnish:
2. to supply or equip:”.

The institution, board or body itself must provide, which implies that it must make available for use, equip or supply the State including any provincial administration or members of the general public with necessary or useful commodities, amenities or services.

3.3.2 Necessary

The *Longman Dictionary of Contemporary English* describes “necessary” as –³⁷

“something that you need to have or do, essential”.

In the present context the commodities, amenities or services must therefore be essential or very important to the State, any provincial administration, or members of the general public.

³⁶ www.dictionary.com/browse/provide [Accessed 25 March 2025].

³⁷ www.ldoceonline.com/dictionary/necessary [Accessed 25 March 2025].

3.3.3 Useful

The word “useful” is described in the *Dictionary.com* as –³⁸

- “1. being of use or service; serving some purpose; advantageous, helpful, or of good effect: a useful member of society.
2. of practical use, as for doing work; producing material results; supplying common needs”.

An institution, board or body must therefore itself equip or supply commodities, amenities or services, which serve some purpose, are helpful, or advantageous to the State, any provincial administration, or members of the general public.

3.3.4 Commodities

The *Free Dictionary* provides the following explanation of the word “commodity”:³⁹

“Commodities are bulk goods and raw materials, such as grains, metals, livestock, oil, cotton, coffee, sugar, and cocoa, which are used to produce consumer products. The term also describes financial products, such as currency or stock and bond indexes.”

Commodities may be categorised as soft or hard commodities. *Investopedia* provides the following explanation of the types of commodities:⁴⁰

“Soft commodities are less well defined than hard commodities. Soft commodities are best understood as grown commodities. Coffee, cocoa, orange juice, sugar, canola, corn, lumber, wheat, lean hog, feeder cattle and so on all go through a growth cycle which ends in harvesting - usually for further processing. This is in contrast to the hard commodities that include mined metals (copper, gold, silver, etc.) and energy extraction (crude oil, natural gas and products refined from them). Hard commodities are waiting in the earth for extraction, as opposed to being planted and nurtured to maturity. Hard commodities can also be found in similar geological deposits around the world, whereas soft commodities depend on regional climate conditions to grow. As there is no definitive list of what is and is not a soft commodity, alternative classifications have cropped up.”

3.3.5 Amenities

The *Free Dictionary* describes “amenities” as follows:⁴¹

- “1. The quality of being pleasant or attractive, agreeableness.
2. Something that contributes to physical or material comfort.
3. A feature that increases attractiveness or value, especially a piece of real estate or a geographic location.”

The *BusinessDictionary.com* describes “amenities” as follows:⁴²

“Additional features (such as high quality fixtures, proximity to shopping centers or schools, striking or unique design) that enhance the desirability, and often the appraisal value, of a property.”

³⁸ www.dictionary.com/browse/useful [Accessed 25 March 2025].

³⁹ <https://financial-dictionary.thefreedictionary.com/commodity> [Accessed 25 March 2025].

⁴⁰ Chen, J. (27 May 2022). Soft commodity: meaning and examples vs hard commodities. *Investopedia*. Available online at www.investopedia.com/terms/s/softcommodity.asp [Accessed 25 March 2025].

⁴¹ www.thefreedictionary.com/amenity [Accessed 25 March 2025].

⁴² www.businessdictionary.com/definition/amenities [Accessed 25 March 2025].

Basic amenities according to the *Merriam-Webster Dictionary* are things considered essential to make life easier and more pleasant. This meaning is illustrated by the following example:⁴³

“The government intends to provide the isolated town with basic amenities, such as roads, running water, and electricity.”

Amenities may therefore include bridges, flyovers, refuse removal, railways, roadways, or other utilities used by the general public. In South Africa, basic amenities include the provision of electricity infrastructure, piped water and basic housing.

3.3.6 Services

The Constitution places the responsibility on government to ensure that basic services are progressively expanded to all South Africans in a sustainable manner.⁴⁴ Basic services, amongst other things, may include housing, education and training, health care, social benefits and services, transport and infrastructure, electricity, water and sanitation, information and communication, refuse and waste removal.⁴⁵

The word “service” is described in the *Cambridge Dictionary* as –⁴⁶

“a government system or private organization that is responsible for a particular type of activity, or for providing a particular thing that people need”.

The *CollinsDictionary.com* describes a “service” as –⁴⁷

“something that the public needs, such as transport, communications facilities, hospitals, or energy supplies, which is provided in a planned and organized way by the government or an official body”.

A service therefore refers to a valuable action, deed, or effort performed to satisfy a need or to fulfill a demand,⁴⁸ by a government system or private organisation responsible for a particular type of activity, or providing a particular thing that people need.

A service provided by an institution, board or body may therefore include anything done, or to be done as an action of labour, work, or an action of help. For example, communication services, correctional services, educational services, electricity services, emergency services, health services, military services, policing services, postal services, revenue collection services and transportation services.

3.3.7 State

The Constitution describes South Africa as –⁴⁹

“one, sovereign, democratic state”.

The word “state” is used to describe different concepts, for example, a country can be referred to as a state, or it can refer to the government of a country to distinguish it from ordinary people. In *Minister of Defence and Military Veterans v Thomas*⁵⁰ the meaning of the word

⁴³ www.merriam-webster.com/dictionary/basic%20amenities [Accessed 25 March 2025].

⁴⁴ Section 152(1)(b) of the Constitution.

⁴⁵ www.gov.za/services-residents [Accessed 25 March 2025].

⁴⁶ <https://dictionary.cambridge.org/dictionary/english/service> [Accessed 25 March 2025].

⁴⁷ www.collinsdictionary.com/dictionary/english/service [Accessed 25 March 2025].

⁴⁸ www.businessdictionary.com/definition/service.html [Accessed 25 March 2025].

⁴⁹ Section 1 of the Constitution.

⁵⁰ 2016 (1) SA 103 (CC).

“state” was considered by the Constitutional Court. The court referred to the judgment in the *Holeni v Land and Agricultural Development Bank of SA*,⁵¹ which held the following:

“The State as a concept does not have a universal meaning. Its precise meaning always depends on the context within which it is used. Courts have consistently refused to accord it any inherent characteristics and have relied, in any particular case, on practical considerations to determine its scope. In a plethora of legislation, no consistency in meaning has been maintained.”

Government is colloquially understood as the authority which directs and controls the affairs of the state.⁵² It is the exclusive power in which the administration of a state is vested. The government of South Africa is under the Constitution⁵³ constituted as the national,⁵⁴ provincial⁵⁵ and local⁵⁶ spheres of government,⁵⁷ which are distinctive, interdependent and interrelated. The different levels of government therefore all have legislative and executive authority in their own spheres. The Constitutional Court held in *Minister of Defence and Military Veterans v Thomas*⁵⁸ that within its constitutional sphere of competence each sphere of government reigns supreme.

The national sphere of government is the central government administration and consists of the national parliament and the different state departments as determined by the President.⁵⁹ The provincial sphere of government consists of the nine provincial legislatures and the respective provincial departments.⁶⁰ The local sphere of government consists of municipalities.⁶¹

An institution, board or body must provide the necessary or useful commodities, amenities or services to the State, including any provincial administration, or members of the general public. The meaning and effect of “include”⁶² was considered in ITC 1878⁶³ in which reference was made to its dictionary meaning as well as a number of previous judgements, which considered its effect. Vally J pointed out that it was well established that our courts have recognised that the term “includes” is sometimes employed as an exhaustive list, but “as a general rule, it is a term of extension”.⁶⁴ After reviewing the history of the use of the term, Vally J concluded that:⁶⁵

“Thus, the word “include” used in a statute is often used to extend or enlarge the meaning of a thing or concept. It brings within the scope of the thing or concept others that are not ordinarily or naturally part of the thing or concept.”

⁵¹ 2009 (4) SA (437) (SCA).

⁵² www.dictionary.com/browse/%20government [Accessed 25 March 2025].

⁵³ Section 40(1) of the Constitution.

⁵⁴ Chapter 5 of the Constitution.

⁵⁵ Chapter 6 of the Constitution.

⁵⁶ Chapter 7 of the Constitution.

⁵⁷ The receipts and accruals of the government of South Africa in the national, provincial or local sphere are exempt under section 10(1)(a). For commentary, see the *Guide to Section 18A Approval for a Department in the National, Provincial and Local Sphere of Government*.

⁵⁸ 2016 (1) SA 103 (CC).

⁵⁹ See Schedule 1 of the Public Service Act 103 of 1994 for a list of national departments.

⁶⁰ See Schedule 2 of the Public Service Act 103 of 1994 for a list of provincial departments.

⁶¹ The Local Government: Municipal Structures Act 117 of 1998 regulates the establishment of municipalities.

⁶² Also, see *CSARS v Glencore Operations SA (Pty) Ltd* [2021] ZASCA 111 in 45 and 46 as well as 50 to 53.

⁶³ (2015) 77 SATC 349 (J).

⁶⁴ In [26].

⁶⁵ In [29].

The State is constituted as the national, provincial and local sphere of government. Although reference is made only to “any provincial administration”⁶⁶ it, however, is considered that an institution, board or body is permitted to provide necessary or useful commodities, amenities or services to any sphere of government, including the local sphere.

Example 4 – Provision of necessary or useful services to the provincial administration

Facts:

Provincial Health Councils are established in each province by the National Health Act 61 of 2003 to advise the relevant member of the Executive Council, amongst other things, on policy concerning any matter that will protect, improve and maintain the health of the population, proposed legislation relating to health matters before it is introduced in the relevant provincial legislature, norms and standards for the establishment of health establishments, and guidelines for the management of health districts.

Result:

The councils are regarded as institutions, boards, or bodies established by any law, which in the furtherance of their sole or principal object provides necessary or useful services to the provincial administration.

3.3.8 Members of the general public

The *CollinsDictionary.com* describes “general public” as follows:⁶⁷

“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” refers to the general population as a whole,⁶⁸ 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 “general public” may also refer to a particular part of a community or population, but this will depend on the context in which the words are used. Normally in such cases, there is an indication of which part of the community or population is being referred to, for example, poor and needy persons, persons in distress, the elderly or unemployed youth.

The requirement does not stipulate that any particular member or members of a particular part of the general public must benefit from the activities provided by an institution, board or body. The requirement is merely that an institution, board or body must provide necessary or useful commodities, amenities or services to members of the general public, which could include any person within the general population.

⁶⁶ Section 10(1)(cA)(i)(bb).

⁶⁷ www.collinsdictionary.com/dictionary/english/general-public [Accessed 25 March 2025].

⁶⁸ See *CIR v Plascon Holdings Ltd* 1964 (2) SA 464 (A), 26 SATC 101 at 109.

Example 5 – Provision of necessary or useful commodities, amenities or services to the State or members of the general public

The following are non-exhaustive examples of institutions, boards, or bodies established by or under any law, which in the furtherance of their sole or principal object provide necessary or useful commodities, amenities or services to the State or members of the general public:

- The South African Heritage Resources Agency is established by the National Heritage Resources Act 25 of 1999 to co-ordinate the identification and management of the national estate comprising heritage resources of cultural significance or other special value for the present community and for future generations.
- The PFMA establishes the Accounting Standards Board, amongst other things, to set Standards of Generally Recognised Accounting Practice (GRAP) for departments, public entities, constitutional institutions, municipalities as well as other entities under the ownership or control of a municipality, Parliament and the provincial legislatures.
- The Minister responsible for water affairs under the National Water Act 36 of 1998 may on own initiative, or after receiving a proposal, establish by notice in the *Government Gazette* a catchment management agency, give it a name and identify and determine its water management area that it must, amongst other things, manage and monitor permitted water usage, conserve and protect water resources as well as the quality of such resources.
- The National Development Agency Act 108 of 1998 establishes the National Development Agency, with the primary object to contribute towards the eradication of poverty and its causes by granting funds to civil society organisations for the purposes of carrying out projects or programmes aimed at meeting development needs of poor communities, and strengthening the institutional capacity of other civil society organisations involved in direct service provision to poor communities.

3.4 Carries on activities designed to promote commerce, industry or agriculture or any branch thereof

An institution, board or body in the furtherance of its sole or principal object may carry on activities designed to promote commerce, industry or agriculture or any branch thereof, including the rendering of financial assistance by way of loans or otherwise.

The expression “carries on” is not defined in the Act. Its ordinary dictionary meaning is “engage in, conduct”.⁶⁹ In this context, the expression “carries on” implies that the institution, board or body must itself in the furtherance of its sole or principal object carry on activities designed to promote commerce, industry or agriculture or any branch thereof. It therefore would be expected that an institution, board or body would use its funds in carrying on those activities designed to promote commerce, industry or agriculture.

3.4.1 Commerce

The word “commerce” is described in *Investopedia* as follows:⁷⁰

“Generally, commerce refers to the exchange of goods, services or something of value, between businesses or entities. From a broad perspective, nations are concerned with managing commerce in a way that enhances the well-being of citizens, by providing jobs and producing beneficial goods and services”.

⁶⁹ www.collinsdictionary.com/dictionary/english/carry-on [Accessed 25 March 2025].

⁷⁰ www.investopedia.com/terms/c/commerce.asp [Accessed 25 March 2025].

3.4.2 Industry

Statistics South Africa defines “industry” as –⁷¹

“the set of all production units engaged primarily in the same or similar kinds of productive activity”.

The *BusinessDictionary.com* describes “industry” as follows:⁷²

1. The manufacturing or technically productive enterprises in a particular field, country, region, or economy viewed collectively, or one of these individually. A single industry is often named after its principal product; for example, the auto industry.
2. Any general business activity or commercial enterprise that can be isolated from others, such as the tourist industry or the entertainment industry.”

Examples of industries include the agricultural and fishing industry, automotive industry, chemical industry, construction industry, defense industry, education industry, energy industry, entertainment industry, manufacturing industry, metal industry, textile and clothing industry, and the tourism industry.

Example 6 – Carrying on activities designed to promote commerce, industry or any branch thereof

The following are non-exhaustive examples of institutions, boards, or bodies established by or under any law, which in the furtherance of their sole or principal object carry on activities designed to promote commerce, industry or any branch thereof :

- The Civil Aviation Act 13 of 2009 establishes the South African Civil Aviation Authority with the object, amongst other things, to control and regulate civil aviation safety and security, oversee the functioning and development of the civil aviation industry, and promote civil aviation safety and security.
- The Estate Agency Affairs Board is established by the Estate Agency Affairs Act 112 of 1976. Having regard to the public interest, the objects of the Board are to maintain and promote the standard of conduct of estate agents, and regulate the activities of estate agents.
- The National Films and Video Foundation is established by the National Film and Video Foundation Act 73 of 1997 with the objects, amongst other things, to develop and promote the film and video industry, to provide and encourage the provision of opportunities for persons, especially from disadvantaged communities, to get involved in the film and video industry, to encourage the development and distribution of local, film and video products, and to support the nurturing and development of and access to the film and video industry.

⁷¹ Statistics South Africa. (2012). Standard industrial classification of all economic activities (7th ed) at page 13. Available online at www.statssa.gov.za/classifications/codelists/Web_SIC7a/SIC_7_Final_Manual_Errata.pdf [Accessed 25 March 2025].

⁷² www.businessdictionary.com/definition/industry [Accessed 25 March 2025].

3.4.3 Agriculture

LAWSA describes “agriculture” as –⁷³

“the science and art of cultivating the soil, including the gathering of the crops and the rearing of livestock”.

(Footnotes omitted)

South Africa has a dual agricultural economy, with both well-developed commercial farming and smaller-scale communal farming generally located in the former homeland areas.⁷⁴ Farming activities range from intensive crop production to cattle ranching and sheep farming. Farming is by far the largest agricultural sector in the country while game ranching is the fastest-growing sector of agriculture in South Africa.

The term “agricultural product” defined in the Marketing of Agricultural Act 47 of 1996 includes agricultural fresh produce such as flowers, ornamental plants, vegetables, fruit and herbs and agricultural livestock produce such as cattle, sheep, goats, pigs, horses, meat, cured hides and skins, and game. Other agricultural production goods include timber, fertilizers, animal hides, leather, industrial chemicals (starch, sugar, alcohols and resins), fibers (cotton, wool, hemp, silk and flax), fuels (methane from biomass, ethanol, biodiesel), cut flowers, ornamental and nursery plants, tropical fish and birds for the pet trade, and both legal and illegal drugs (biopharmaceuticals, tobacco, marijuana, opium, cocaine).⁷⁵

Example 7 –Carrying on activities designed to promote agriculture or any branch thereof

The following are non-exhaustive examples of institutions, boards, or bodies established by or under any law, which in the furtherance of their sole or principal object carry on activities designed to promote agriculture or any branch thereof :

- The National Forests Act 84 of 1998 establishes the National Forests Advisory Council with the object, amongst other things, to advise the Minister responsible for forests on any matter related to forestry in South Africa such as the management of natural forests, woodlands and plantations.
- The South African Bureau of Standards (SABS) continues to exist by the Standards Act 8 of 2008 with the objects, amongst other things, to develop, promote and maintain South African National Standards, promote quality in connection with commodities, products and services, and render conformity services.
- The South African National Parks (SANP) established by the National Parks Act 57 of 1976 continues to exist despite the repeal of the National Environmental Management: Protected Areas Act 57 of 2003. SANP, amongst other things, must manage all existing national parks and any kind of protected area, manage world heritage sites, participate in international, regional and national environmental, conservation, and cultural heritage to protect, conserve and control those national parks and other protected areas.

⁷³ Kidd, M. A., & Lewis, M. (31 October 2013). Agriculture. In *Law of South Africa (LAWSA) 1* (Third Edition Volume) in paragraph 185. My LexisNexis [online].

⁷⁴ Tibesigwa, B., Visser, M., & Turpie, J. (6 January 2016). Climate change and South Africa's commercial farms: an assessment of impacts on specialised horticulture, crop, livestock and mixed farming systems (Volume 19) at pages 607 to 636. *Springer Link Environment, Development and Sustainability*. Available online at <https://doi.org/10.1007/s10668-015-9755-6> [Accessed 25 March 2025].

⁷⁵ www.sciencedaily.com/terms/agriculture.htm [Accessed 25 March 2025].

- The National Environmental Management Biodiversity Act 10 of 2004 establishes the South African National Biodiversity Institute. The Institute, amongst other things, must monitor and report regularly to the Minister responsible for national environmental management on the status of South Africa's biodiversity, the conservation status of all listed threatened or protected species and listed ecosystems, the status of all listed invasive species, monitor and report regularly to the Minister on the environmental impact of all categories of genetically modified organisms, must manage, control and maintain all national botanical gardens, and must establish facilities for horticulture display, environmental education, visitor amenities and research.

3.4.4 Financial assistance

The concept "financial assistance" is described in the *BusinessDictionary.com* as follows:⁷⁶

"Loans, loan guaranties, subsidies, tax allowances, cost sharing arrangements, or outright grants provided by third-parties (usually home or foreign government agencies)."

The word "including" referred to in this prescribed activity is indicative that an institution, board or body is not required to render financial assistance only by way of loans.

The words "or otherwise" are described in the *Merriam-Webster Dictionary* as –⁷⁷

"used to refer to something that is different from something already mentioned".

Having regard to the above, the activity of rendering financial assistance is not limited to loans but may include a wide range of activities such as grants, subsidies, or financial advice to promote commerce, industry or agriculture or any branch thereof.

Example 8 – Carrying on activities, which may include the rendering of financial assistance, designed to promote commerce, industry or agriculture or any branch thereof

The following are non-exhaustive examples of institutions, boards, or bodies established by or under any law, which in the furtherance of their sole or principal object carry on activities, which may include the rendering of financial assistance, designed to promote commerce, industry or agriculture or any branch thereof:

- The Land and Agricultural Bank, trading as Land Bank, established by the Land and Agricultural Development Bank Act 15 of 2002 provides financial services to the commercial farming sector. Government established the Land Bank for the specific purpose of financing agri-business as well as financial products to promote new entrants into the agriculture industry. The Land Bank offers long, medium and short-term loans, deposits, guarantees, establishment loans, and instalment finance products and services to the commercial farming sector.
- The Lotteries Act 57 of 1997 establishes the National Lotteries Commission. The Commission must ensure that the National Lottery and sports pools are conducted with all due propriety and strictly in accordance with the Constitution, and all other applicable law, and ensure that the interests of every participant in the National Lottery are adequately protected. The Commission may conduct research on worthy causes that may be funded without lodging an application prescribed under that Act. The Commission may also invite applications for grants from worthy causes.

⁷⁶ www.businessdictionary.com/definition/financial-assistance [Accessed 25 March 2025].

⁷⁷ www.merriam-webster.com/dictionary/or%20otherwise [Accessed 25 March 2025].

- The Social Housing Act 16 of 2008 establishes the Social Housing Regulatory Authority to promote the development and awareness of social housing, provide advice and support to the Department of Human Settlements in its development of policy for the social housing sector and facilitate national social housing programmes, advise the Minister of Human Settlements on developments in the social housing sector, promote an enabling environment for the growth and development of the social housing sector, provide best practice information and research on the status of the social housing sector, and support provincial governments with the approval of project applications by social housing institutions.

4 Founding document

An institution, board or body applying for the exemption from income tax must have a founding document. The nature of the founding document will depend on whether the institution, board or body has been established *by* (see 2.2) or *under* (see 2.3) any law (see 2.1).

Any institution, board or body established –

- *by* South African law will have national legislation establishing such an institution, board or body. The specific Act will provide the name of the institution, board or body being established and prescribe, amongst other things, its objects, functions, governance, administration, management and financial reporting requirements; or
- *under* South African law may have a separate constitution containing the provisions prescribed in the relevant national legislation or Regulation. The national legislation may provide for the establishment of the type of institution, board or body without publishing its name.

The founding document must be submitted to the Commissioner as part of the application for the exemption (see 12).

5 Prescribed requirements

An institution, board or body is required by law or under its constitution to comply with the following prescribed requirements considered below.⁷⁸

5.1 Prohibition on distributions

An institution, board or body is not permitted to distribute any amount⁷⁹ to any person.⁸⁰ The prohibition on distributions is an absolute prohibition. The requirement is therefore 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 institution, board or body may be subject to the withdrawal of the exemption (see 7).

⁷⁸ Paragraph (b) of the first proviso to section 10(1)(cA).

⁷⁹ Section 10(a) of the Taxation Laws Amendment Act 23 of 2020 deleted the words “of its profits or gains” and substituted it with the word “amount”. The amendment is effective from 20 January 2021. The deleted words, according to the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2020*, were consistent with the wording contained in the repealed Companies Act 61 of 1973 and therefore the amendment achieves alignment with the current Companies Act.

⁸⁰ Paragraph (b)(i) of the first proviso to section 10(1)(cA).

The reference to “any person” is not limited to natural persons, since the definition of “person” does not exclude companies, other incorporated entities, associations of persons, or statutory bodies. Foreign partnerships, however, are specifically excluded.⁸¹ A South African partnership is not a legal entity⁸² and the definition of “person” does not include a partnership, a partnership is not a person at common law⁸³ and therefore would not be a person for income tax purposes. The individual partners are persons for income tax purposes.

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

The *Cambridge Dictionary* describes “distribute” as –⁸⁴

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

The meaning of “amount”⁸⁵ was judicially considered in *WH Lategan v CIR*⁸⁶ in relation to its use in the definition of “gross income” and the following *dictum* of Watermeyer J has been cited with approval in a number of other cases:⁸⁷

“In my opinion, the word ‘amount’ must be given a wider meaning, and must include not only money but the value of every form of property earned by the taxpayer, whether corporeal or incorporeal, which has a money value.”

In *Cactus Investments (Pty) Ltd v CIR*⁸⁸ the court held that to comprise an “amount”, rights of a non-capital nature must be “capable of being valued in money”. Similarly, in the *People’s Stores* case⁸⁹ the court held that to be included in gross income an amount must be of such a nature that a value can be attached to it in money. In *Stander v CIR*⁹⁰ the court held that an amount must be capable of being turned into money or money’s worth. However, this view was rejected in the landmark case of *C: SARS v Brummeria Renaissance (Pty) Ltd & others*.⁹¹ In that case, it was held that it did not follow that if a receipt or accrual cannot be turned into money, it had no money value. The “turn into money” test was merely one of the tests for determining whether an accrual had a money value. The court confirmed that the test was objective, not subjective.

Non-exhaustive examples of a distribution of any amount to any person will exclude –

- any expenditure such as the purchasing of assets, the paying off debts or any funds expended in the operations of the institution, board or body in the furtherance of its sole or principal object;
- investments (see **5.2**);
- any *bona fide* donations (see **10.4**) made by an institution, board or body; or
- the transfer of any remaining assets on dissolution (see **5.3**).

5.2 Use of funds

⁸¹ See the definition of “person” in section 1(1).

⁸² *Michalow, NO v Premier Milling Co Ltd* 1960 (2) SA 59 (W) at 61.

⁸³ *Chipkin (Natal) (Pty) Ltd v C: SARS* 2005 (5) SA 566 (SCA), 67 SATC 243 at 246.

⁸⁴ <https://dictionary.cambridge.org/dictionary/english/distribute> [Accessed 25 March 2025].

⁸⁵ For commentary, see the *Comprehensive Guide to Capital Gains Tax*.

⁸⁶ 1926 CPD 203, 2 SATC 16 at 19.

⁸⁷ Also, see *CIR v Butcher Bros (Pty) Ltd* 1945 AD 301, 13 SATC 21 at 34 and *CIR v People’s Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9 at 21.

⁸⁸ 1999 (1) SA 315 (SCA), 61 SATC 43.

⁸⁹ *CIR v People’s Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A), 52 SATC 9.

⁹⁰ 1997 (3) SA 617 (C), 59 SATC 212 at 218 and 219.

⁹¹ *C: SARS v Brummeria Renaissance (Pty) Ltd & others* 2007 (6) SA 601 (SCA), 69 SATC 205.

An institution, board or body is required to use its funds solely for investment or the object for which such an institution, board or body has been established.⁹²

The word “funds” is described in the *BusinessDictionary.com* as follows:⁹³

“All the financial resources of a firm, such as cash in hand, bank balance, accounts receivable. Any change in these resources is reflected in the firm’s financial position.”

Having regard to the above, “funds” refers to the financial resources, namely, money available to a business for spending in the form of cash, liquid securities and credit lines.⁹⁴ Non-exhaustive examples of “funds” derived by an institution, board or body may include government subsidies or grants, donations, dividends, interest, capital gains or from carrying on the activities for which it was established.

Investopedia explains an investment as follows:⁹⁵

“An investment is an asset or item acquired with the goal of generating income or appreciation. In an economic sense, an investment is the purchase of goods that are not consumed today but are used in the future to create wealth. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or will later be sold at a higher price for a profit.

The term ‘investment’ can refer to any mechanism used for generating future income. In the financial sense, this includes the purchase of bonds, stocks or real estate property. Additionally, a constructed building or other facility used to produce goods can be seen as an investment. The production of goods required to produce other goods may also be seen as investing.”

The funds of an institution, board or body may be invested as desired provided the investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It, however, is expected that fiduciaries should act with prudence, integrity and reasonable care.

The “object” refers to the sole or principal object of the institution, board or body set out in its founding document (see 4).

5.3 Dissolution

On dissolution the remaining assets of an institution, board or body established –

- *under* any law must be transferred to another institution, board or body having similar objects and which is exempt from income tax under section 10(1)(cA)(i);⁹⁶ or
- *by* law must be transferred to –⁹⁷
 - another institution, board or body having similar objects and which is exempt from income tax under section 10(1)(cA)(i); or
 - the State (see 3.3.7).

Normally a process of winding-up precedes the formal process of dissolution of an institution, board or body. During the winding-up of an institution, board or body all, the assets are

⁹² Paragraph (b)(ii) of the first proviso to section 10(1)(cA).

⁹³ www.businessdictionary.com/definition/funds [Accessed 25 March 2025].

⁹⁴ See the meaning of “financial resources” in *BusinessDictionary.com* available online at www.businessdictionary.com/definition/financial-resources [Accessed 25 March 2025].

⁹⁵ Hayes, A. (31 May 2024) Investment: How and where to invest. *Investopedia*. Available online at www.investopedia.com/terms/i/investment.asp [Accessed 25 March 2025].

⁹⁶ Paragraph (b)(iii)(aa) of the first proviso to section 10(1)(cA).

⁹⁷ Paragraph (b)(iii)(bb) of the first proviso to section 10(1)(cA).

recovered and realised, and the proceeds of such realisation are applied firstly to discharge the costs of winding-up (liquidation), then to pay claims of creditors in accordance with the relevant provisions of the law relating to insolvency. Any assets or the proceeds of realised assets, remaining after such payments have been made must be distributed in accordance with the provisions contained in the founding document (see 4) governing the institution, board or body. On dissolution of an institution, board or body all of its assets should therefore have been realised and transferred.

An institution, board or body may not, on dissolution, distribute any of its assets to individuals or other tax-paying entities and in so doing enable the recipients to share in the tax concession it has enjoyed. The institution, board or body is required on dissolution to transfer its remaining assets in accordance with the provisions of section 10(1)(cA).

The *Free Dictionary* describes “similar” as follows:⁹⁸

“Having a resemblance in appearance or nature; alike though not identical.”

Any institution, board or body benefitting from the dissolution of another institution, board or body must be exempt by the Commissioner under section 10(1)(cA)(i) and must have similar, although not necessarily identical, objects to those of the institution, board or body being dissolved. An institution, board or body may choose to whom it will distribute its remaining assets on dissolution, without prior approval from the Commissioner, provided the recipient meets the dissolution requirements.

Failure to transfer, or to take reasonable steps to transfer the remaining assets as required on dissolution will result in the accumulated net revenue not distributed being deemed to be taxable income accruing to the institution, board or body during the year of assessment⁹⁹ (see 17.3) in which dissolution took place.¹⁰⁰

The concept “accumulated net revenue” is not defined in the Act. The *Dictionary.com* describes “accumulated” as –¹⁰¹

“to gather or collect, often in gradual degrees, heap up”.

The words “net revenue” are described in the *BusinessDictionary.com* as follows:¹⁰²

“Gross total minus any returns and any other negative revenue.”

The amount of accumulated net revenue is therefore the total undistributed profits or revenue, which can include amounts of a capital or revenue nature.

The term “taxable income” is defined as –¹⁰³

“the aggregate of—

- (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I¹⁰⁴ of Chapter II¹⁰⁵ to be deducted from or set off against such income; and

⁹⁸ www.thefreedictionary.com/similar [Accessed 25 March 2025].

⁹⁹ The term “year of assessment” is defined in section 1(1).

¹⁰⁰ Paragraph (b) of the second proviso to section 10(1)(cA).

¹⁰¹ www.dictionary.com/browse/accumulated [Accessed 25 March 2025].

¹⁰² www.businessdictionary.com/definition/net-revenue [Accessed 25 March 2025].

¹⁰³ Section 1(1).

¹⁰⁴ Deals with normal tax and comprises of section 5 to 37G.

¹⁰⁵ The heading of that chapter is “The Taxes”.

- (b) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act”.

An institution, board or body guilty of such a transgression will therefore not be allowed to deduct any further tax allowances or deductions from its accumulated net revenue, since its accumulated net revenue is deemed to be taxable income, which is after allowances and deductions.

Example 9 – Non-compliance with the dissolution requirement

Facts:

A national public entity established by national legislation to render or make available legal aid and legal advice, provide legal representation to persons at state expense, and to provide education and information concerning legal rights was approved by the Commissioner as an institution, board or body. Its receipts and accruals are accordingly exempt from income tax under section 10(1)(cA)(i).

A decision was taken to dissolve the national public entity, and its remaining assets were transferred to a Bursary Scheme Trust, which provides scholarships, and bursaries to law students attending South African universities. The Bursary Scheme Trust was approved by the Commissioner as a public benefit organisation under section 30.¹⁰⁶

The year-end of the national public entity is 28 February. The national public entity was finally wound up on 21 December 2024. The assets remaining after winding-up amounted to R300 000, representing accumulated net income of R50 000 and capital profits of R250 000 realised on sale of capital assets. The total accumulated net revenue of R300 000 was accordingly distributed to the Bursary Scheme Trust.

Result:

The remaining assets of the national public entity were transferred on dissolution to an approved public benefit organisation, which is contrary to the dissolution requirement, namely, that the remaining assets must be distributed to some other institution, board or body exempt under section 10(1)(cA)(i) and having objects similar to those of the national public entity. The public benefit organisation is not an institution, board or body exempt under section 10(1)(cA)(i) and does not have objects similar to the national public entity. The national public entity did not comply with the dissolution requirement and is therefore taxable on the amount of R300 000 during the 2025 year of assessment.

6 Conditions prescribed by the Commissioner

The Commissioner has discretion to approve the exemption subject to conditions deemed necessary to ensure that the activities of an institution, board or body are wholly or mainly directed to the furtherance of its sole or principal object (see 3.1).¹⁰⁷ Since the facts and circumstances pertaining to each institution, board or body may differ, each case will be considered on its own merits.

In some instances, it may be impracticable or unfeasible for legislation or constitutions created in accordance with provisions prescribed in legislation or Regulation to be amended to incorporate the prescribed requirements (see 5). In such circumstances, the exemption may be subject to conditions the Commissioner deems necessary to ensure that the activities of

¹⁰⁶ For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

¹⁰⁷ Paragraph (a) of the first proviso to section 10(1)(cA).

an institution, board or body are wholly or mainly directed to the furtherance of its sole or principal object. The prescribed requirements, amongst other things, may therefore be set out as conditions in the letter issued by the Commissioner confirming the exemption. The letter will be binding on the institution, board or body and non-compliance with its terms will result in the same penalties and actions (see 7) as if the conditions were contained in the founding document (see 4) of that institution, board or body.

The determination whether an activity is *wholly* or *mainly* directed to the furtherance of its sole or principal object will be a question of fact. The activity need not be *wholly* directed to the furtherance of its sole or principal object, as long as the activity is *mainly* directed for that purpose. In practice, SARS requires that more than 50% of an activity, measured, for example, based on time or area usage, be directed to the furtherance of its sole or principal object.

7 Withdrawal of the exemption

The Commissioner may withdraw the exemption of any institution, board or body if satisfied that such institution, board or body has during any year of assessment failed to comply with section 10(1)(cA)(i). The exemption may be withdrawn with effect from the commencement of the year of assessment in which non-compliance or failure by an institution, board or body occurred.

The Commissioner, however, must in accordance with section 5 of the Promotion of Administrative Justice Act 3 of 2000 provide adequate reasons relating to the non-compliance or failure to comply with section 10(1)(cA)(i) before the exemption is withdrawn.

The Supreme Court of Appeal in *Minister of Environmental Affairs & Tourism v Phambili Fisheries & another*¹⁰⁸ considered what constitutes adequate reasons. The court relied on an Australian judgment in which the following remarks were stated:

“Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging.”

The decision by the Commissioner to withdraw the exemption under section 10(1)(cA) is subject to objection and appeal (see 20).

An institution, board or body whose approval has been withdrawn will be liable for income tax and other taxes and duties in the same way as any other taxpayer. An institution, board or body will be regarded as a company for income tax purposes and therefore will be liable to tax according to company tax rates.¹⁰⁹

8 Receipts and accruals exempt from income tax

The receipts and accruals of any institution, board or body approved by the Commissioner are exempt from income tax under section 10(1)(cA). The exemption granted under section 10(1)(cA) is an absolute exemption. All receipts and accruals falling within gross income,¹¹⁰ being the total amount, in cash or otherwise, received by or accrued to or in favour of an institution, board or body, will be exempt from income tax under section 10(1)(cA). The type of receipts or accruals envisaged are those, which are included in the definition of “gross income”. Receipts or accruals of a capital nature, which are not deemed to be included

¹⁰⁸ 2003 (6) SA 407 (SCA), [2003] 2 All SA 616 (SCA).

¹⁰⁹ Paragraph (a) of the definition of “company” in section 1(1).

¹¹⁰ The term “gross income” is defined in section 1(1).

in gross income would not be included in the receipts and accruals referred to in the opening words of section 10(1)(cA), since they do not require exemption.

Receipts or accruals of a capital nature are taken into account in determining a taxable capital gain, which is included directly in taxable income. Paragraph 63 of the Eighth Schedule contains the rules for disregarding capital gains and losses of a fully exempt person (see 11.1.7).

9 Entities specifically excluded from the exemption

Section 10(1)(cA)(i) excludes specific entities from qualifying for the exemption from income tax, namely, a –

- company as defined in the Companies Act;¹¹¹
- co-operative;¹¹²
- close corporation;¹¹³
- trust;¹¹⁴ or
- water services provider.¹¹⁵

10 Section 18A approval

Any donor taxpayer making a *bona fide* donation (see 10.4) in cash (see 10.5.1) or of property in kind (see 10.5.2) is entitled to a deduction from taxable income (see 10.7) provided the donation is actually paid or transferred during the year of assessment¹¹⁶ to any institution, board or body carrying on PBAs in Part II in South Africa and approved by the Commissioner for purposes of section 18A.¹¹⁷

10.1 Public benefit activities

The Ninth Schedule is divided into two Parts, namely, Part I and Part II. Part I lists a number of PBAs for purposes of approval as a public benefit organisation under section 30.¹¹⁸ The PBAs approved by the Minister for purposes of section 18A are listed in Part II. Not all the PBAs listed in Part I are included in Part II.

¹¹¹ See the definition of “company” in section 1 of the Companies Act.

¹¹² The term “co-operative” as defined in section 1(1) means any association of persons registered under section 27 of the Co-operatives Act 91 of 1981 or section 7 of the Co-operatives Act 14 of 2005. For commentary, see the *Tax Guide for Small Businesses*.

¹¹³ The term “close corporation” as defined in section 1(1) means a close corporation within the meaning of the Close Corporations Act 69 of 1984. For commentary, see the *Tax Guide for Small Businesses*.

¹¹⁴ The term “trust” as defined in section 1(1) means any trust fund consisting of cash or other assets, which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person. For commentary, see the *Guide to the Taxation of Special Trusts* and the *Comprehensive Guide to Capital Gains Tax*.

¹¹⁵ For commentary, Interpretation Note 133 “Income Tax Exemption: Water Services Provider”.

¹¹⁶ Section 18A(1).

¹¹⁷ Section 18A(1)(a)(ii).

¹¹⁸ For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

The PBAs listed in Part II are categorised as follows:

- Welfare and Humanitarian (paragraph 1)
- Health Care (paragraph 2)
- Education and Development (paragraph 3)
- Conservation, Environment and Animal Welfare (paragraph 4)¹¹⁹
- Land and Housing (paragraph 5)¹²⁰

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

To qualify for section 18A purposes the institution, board or body must carry on these PBAs in South Africa.

The Minister may from time to time by notice in the *Government Gazette* approve additional PBAs. The Minister may also by regulation prescribe additional requirements that an institution, board or body carrying on any specific PBA identified by the Minister in the regulations, must comply with before any donation made to that institution, board or body will be allowed as a tax deduction under section 18A. For example, the granting of loans to emerging micro enterprises to improve capacity to start and manage businesses referred to in PBA 1(p)(iii)¹²¹ in Part II as well as the provision of loans, for study, research and teaching contemplated in PBA 3(o)¹²² in Part II are subject to conditions that the Minister may prescribe by way of regulation. The Minister has, as yet not published any conditions or requirements relating to those PBAs.

The Minister, however, has published conditions and requirements relating to the provision of scholarships, bursaries and awards for study, research, and teaching contemplated in PBA 3(o) in Part II in Government Notice Regulation 302 in *Government Gazette* 29491 of 28 February 2003 (see **Annexure E**).¹²³

Any additional PBAs or 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 PBAs or requirements, as the case may be, in the *Government Gazette*.¹²⁴

¹¹⁹ Limited PBAs in Part I are included in this category in Part II.

¹²⁰ Limited PBAs in Part I are included in this category in Part II.

¹²¹ This PBA is described as community development for poor and needy persons and anti-poverty initiatives including, amongst other things, 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.

¹²² This PBA is described as 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*.

¹²³ The regulations relate specifically to PBA 4(o) in Part I. However, the Minister declared in Government Notice Regulation 333 in *Government Gazette* 24941 of 8 April 2005 that those regulations also apply to PBA 3(o) in Part II.

¹²⁴ Section 18A(1B).

Example 10 – Institutions, boards, or bodies carrying on PBAs in Part II in South Africa

The following are non-exhaustive examples of institutions, boards, or bodies carrying on PBAs in Part II in South Africa:

- A public school is defined in the South African Schools Act 84 of 1996. The governance of every public school is vested in its governing body that may perform functions and obligations as prescribed in that Act. A public school is regarded for the purposes of income tax as an institution established *under law* providing necessary and useful services to the State and members of the general public. A public school may therefore qualify for exemption under section 10(1)(cA)(i). The provision of education by a “school” as defined in the South African Schools Act, 1996, may be regarded as carrying on PBA 3(a)¹²⁵ in Part II.
- A public higher education institution is established or declared as a public higher education institution under the Higher Education Act 101 of 1997. The Minister of Higher Education and Training may by notice in the *Government Gazette* establish a specific university, university of technology or college. A public higher education institution is regarded for the purpose of income tax as an institution established *under law* providing necessary and useful services to the State and members of the general public. A public higher education institution may therefore qualify for exemption under section 10(1)(cA)(i). The provision of “higher education” by a “higher education institution” as defined in the Higher Education Act, 1997, may be regarded as carrying on PBA 3(b)¹²⁶ in Part II.

10.2 Control measures

A section 18A-approved institution, board or body is required to maintain proper control over the application and spending of donations received for which section 18A receipts are issued. A section 18A receipt may be issued only for a donation solely and exclusively used for PBAs in Part II in South Africa. Donations received must therefore be controlled in such a manner that their usage is restricted to only those PBAs in Part II. The records of the section 18A-approved institution, board or body must clearly identify the donations received for PBAs in Part II and the use to which those donations were applied.

A section 18A-approved institution, board or body carrying 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, may issue section 18A receipts for donations received solely to carry on PBAs in Part II.¹²⁷ The section 18A-approved institution, board or body must therefore ring-fence the PBAs in Part II. Donations for which section 18A receipts will be issued must be received subject to the prerequisite that they will be used solely on a PBA in Part II in South Africa.

10.3 Audit certificate

The section 18A-approved institution, board or body carrying on a combination of PBAs in Part I and Part II must obtain an audit certificate confirming that all donations received or accrued during the year for which it issued section 18A receipts were used solely in carrying on PBAs in Part II.¹²⁸

¹²⁵ This PBA is described as the provision of education by a “school” as defined in the South African Schools Act 84 of 1996.

¹²⁶ This PBA is described as the provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act 101 of 1997.

¹²⁷ Section 18A(2A)(a).

¹²⁸ For commentary, see Interpretation Note 112 “Section 18A: Audit Certificate”.

The term “audit certificate” referred to in section 18A is not defined in the Act and should therefore be interpreted according to its ordinary meaning as applied to the subject matter in relation to which it is used,¹²⁹ unless the ordinary meaning creates an absurdity or ambiguity. The context in which words and expressions are used must be considered when giving them their ordinary meaning.

The ordinary meaning of –¹³⁰

- “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.¹³¹ 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 institution, board or body.
- The reference number issued to the section 18A-approved institution, board or body by the Commissioner for purposes of section 18A.¹³²
- The taxpayer reference number of the section 18A-approved institution, board or body approved organisation (see **17.1**).
- The year of assessment (see **17.3**) to which the audit certificate applies.
- Full name, signature and designation of the person responsible for issuing the audit certificate.
- Details of the section 18A receipts issued by the section 18A-approved institution, board or body, for example, the number of section 18A receipts issued and the total rand value of the donations for which section 18A receipts were issued.¹³³
- 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.¹³⁴

¹²⁹ See Kellaway, E. A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills* at page 224. Butterworths South Africa and *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

¹³⁰ Wait, M., Hawker, S., & Soanes, C. (2001). *Oxford Dictionary, Thesaurus and Wordpower Guide*. Oxford University Press.

¹³¹ See section 18A(2B) and (2C).

¹³² This information is also required under section 18A(2)(a)(i).

¹³³ This information is also required to be provided on the Return of Income: Exempt Organisations IT12EI.

¹³⁴ 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.

The section 18A-approved institution, board or body is required to retain the audit certificate as part of its records.¹³⁵ 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 issued by the institution, board or body (see **10.10**).

If the Commissioner has reasonable grounds for believing that any accounting officer¹³⁶ or accounting authority¹³⁷ contemplated in the PFMA or an accounting authority contemplated in the Local Government: Municipal Finance Management Act 56 of 2003,¹³⁸ as the case may be, of any section 18A-approved institution, board or body to which either of those Acts applies, has issued or allowed a section 18A receipt to be issued in contravention of section 18A(2A) or used a donation for which a section 18A receipt was issued for a purpose other than to solely carry on PBAs in Part II, the Commissioner must notify National Treasury and the Provincial Treasury (if applicable).¹³⁹

The Commissioner may also inform the accounting officer or accounting authority by written notice that unless corrective steps are taken within the period specified in the notice, receipts issued by that section 18A-approved institution, board or body will, from a date specified in the notice, not qualify as a valid section 18A receipt. Those donations will therefore not qualify for a deduction from the taxable income of the donor taxpayer.

Failure by the accounting officer or accounting authority, whichever is applicable, to submit an audit certificate may be one of the facts giving the Commissioner reasonable grounds for invalidating the section 18A receipts of the institution, board or body (see **10.10**).

Example 11 – Audit certificate

Facts:

A body established as a juristic person by national legislation to conduct research, development and technology transfer to promote agriculture has been approved by the Commissioner as an institution, board or body under section 10(1)(cA)(i). In addition to conducting research activities, which qualify under PBA 8(a) in Part I, the body provides scholarships, bursaries and awards to deserving students for study or research in agriculture, contemplated in PBA 3(o) in Part II. The Commissioner has also granted the body approval under section 18A(1)(a)(ii).

In accordance with the national legislation establishing and governing the body, the Auditor-General is required to audit the body's accounts.

Result:

¹³⁵ Section 18A(2B).

¹³⁶ The term "accounting officer" as defined in section 1 of the PFMA is a person mentioned in section 36 of that Act. The accounting officer of a department is the head of such department, and the accounting officer of a constitutional institution listed in Schedule 1 to that Act is the chief executive officer, or any other person designated for this purpose in writing by National Treasury.

¹³⁷ The term "accounting authority" as defined in section 1 of the PFMA is a body or person mentioned in section 49 of that Act. The accounting authority for a public entity is, depending on the facts, the board or controlling body of the entity, the chief executive officer of the department or the person in control of the department, or any other person designated for this purpose by specific legislation.

¹³⁸ The term "accounting officer" is defined in section 1(1) of the Local Government: Municipal Finance Management Act 56 of 2003 and requires a municipality or municipal entity to have an accounting officer who must be accountable under that Act.

¹³⁹ Section 18A(5B).

The section 18A-approved institution, board or body is required to obtain and retain an audit certificate from the Auditor-General confirming that all donations received or accrued during the year of assessment in which that body issued section 18A receipts were used solely in carrying on PBA 3(o) in Part II.

10.4 *Bona fide* donations

The word “donation” is not defined in section 18A, however, it is defined for purposes of donations tax. The term “donation” as defined means –¹⁴⁰

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

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

Trollip JA summed up the common law meaning of a donation in *Ovenstone v SIR* when he stated the following:¹⁴¹

“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:¹⁴²

“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:¹⁴³

“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.”

¹⁴⁰ Section 55(1).

¹⁴¹ 1980 (2) SA 721 (A), 42 SATC 55 at 73.

¹⁴² 2005 (4) SA 173 (SCA), 66 SATC 303 at 312 and 314.

¹⁴³ 1945 AD 388, 13 SATC 170 at 173.

In *The Master v Thompson's Estate*, the court confirmed that a transaction would not be a donation when something is received in return or when there is some consideration.¹⁴⁴

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

10.5 Types of donations

A donation can be in the form of cash or of property in kind which was actually paid or transferred by the donor taxpayer to the section 18A-approved institution, board or body in a year of assessment.

10.5.1 Cash donation

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

Example 12 – Payments or transfers not qualifying as tax-deductible donations

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

- Amounts paid for school or university fees, school or university entrance fees or compulsory school or university levies.
- The value of free rent, water and electricity provided by a lessor to a section 18A-approved institution, board or body.
- Payments of debt owned by a section 18A-approved institution, board or body, for example, the cost of vehicle repairs paid directly to the service station or panel beaters by a donor taxpayer on behalf of that institution, board or body.
- Prizes and sponsorships donated for fundraising events.
- Promissory notes.

¹⁴⁴ 1961 (2) SA 20 (FC), 24 SATC 157 at 165.

- Pledges.¹⁴⁵
- Payments made in future instalments.

10.5.2 Donation of property in kind

A donation of property in kind is made in a form other than cash. Donations of property made in kind may include the following:¹⁴⁶

- A financial instrument provided it is –
 - a share in listed company; or
 - issued by an “eligible financial institution”¹⁴⁷ as defined in section 1 of the Financial Sector Regulation Act 9 of 2017.¹⁴⁸
- Trading stock forming part of the business undertaking or trading activity conducted by the donor taxpayer. Such trading stock may include livestock or produce donated by a farmer or goods such as computers, foodstuffs, furniture medical supplies and motor vehicles.
- An asset other than trading stock used by the donor taxpayer in conducting the donor taxpayer’s trade. Examples of such assets include cash registers, computers, crockery, delivery vehicles, furniture, garden equipment, kitchen utensils and office equipment.
- An asset, which is not trading stock and is not used in the business of the donor taxpayer. Example of such assets include personal assets or assets bought by the 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 PBAs in Part II.

A donation of property in kind for which a section 18A receipt has been issued must be used by a section 18A-approved institution, board or body in carrying on PBAs in Part II in South Africa.

¹⁴⁵ To the extent that such a payment is given as security to guarantee payment of a debt or fulfilment of an obligation.

¹⁴⁶ Section 18A(3).

¹⁴⁷ This definition includes a financial institution licensed or required to be licensed as a bank under the Banks Act 94 of 1990, a financial institution registered as a long-term insurer under the Long-term Insurance Act 52 of 1998 or a short-term insurer under the Short-term Insurance Act 53 of 1998 or licensed or required to be licensed under the Insurance Act 18 of 2017, a market infrastructure, and a financial institution prescribed in Regulations for the purposes of this definition.

¹⁴⁸ Section 18A(3B)(b) was amended by section 35(1)(e) of the Taxation Laws Amendment Act 23 of 2018 and deemed to have come into operation on 1 April 2018.

No deduction will be allowed for any donation of any property in kind that –¹⁴⁹

- creates or is subject to any fiduciary right, usufruct or other similar rights;¹⁵⁰ or
- constitutes an intangible asset¹⁵¹ or financial instrument, unless the financial instrument meets the requirements described above.¹⁵²

The donation of a service¹⁵³ such as time, skill or effort to a section 18A-approved institution, board or body is not a donation of property¹⁵⁴ made in kind. Any professional person, such as an accountant, auditor, artist (which may include a singer, musician or entertainer), electrician, lawyer, medical doctor or plumber who renders a service¹⁵⁵ free of charge to a section 18A-approved institution, board or body, will not be entitled to a tax deduction for the value of the service.

10.6 Value of a donation of property in kind

The amount deductible by any donor taxpayer for any donation of property in kind, other than immovable property of a capital nature for which the lower of market value or municipal value exceeds cost, is deemed to be as follows:¹⁵⁶

- A financial instrument, which is trading stock of the donor taxpayer, the lower of fair market value on the date of the donation or the amount, which has been taken into account for that year of assessment for the value of that trading stock under section 22(8)(C).¹⁵⁷
- Any other trading stock of the donor taxpayer (including any livestock or produce of a farmer), the amount, which 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

¹⁴⁹ 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.

¹⁵⁰ Section 18A(3B)(a).

¹⁵¹ 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* in paragraph 23.2. (Volume 1). My LexisNexis [online].

¹⁵² Section 18A(3B)(b).

¹⁵³ Services are not property, see below.

¹⁵⁴ 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].

¹⁵⁵ The ordinary meaning of “for services rendered” is that something has been done for the benefit of some person, for example, 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. See Claassen, R. C. (June 2024). *Claassen's dictionary of legal words and phrases*. My LexisNexis [online].

¹⁵⁶ Section 18A(3).

¹⁵⁷ For commentary, see Interpretation Note 65 “Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade”.

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.¹⁵⁸
- Property that is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the donor taxpayer to form the subject of the donation, the lower of the fair market value on the date of the donation or the cost to the donor taxpayer of such property.

Any deduction claimed by any donor taxpayer for any donation of immovable property of a capital nature when the lower of market value or municipal value exceeds cost must be determined using the following formula:¹⁵⁹

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

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.

10.7 Allowable deduction in determining the taxable income of a donor taxpayer

A donor taxpayer, which may include an individual, trust or company, making a donation in cash (see **10.5.1**) or of property in kind (see **10.5.2**) is entitled to a deduction in determining their taxable income provided the donation is actually paid or transferred during the year of assessment to a section 18A-approved institution, board or body.¹⁶⁰

10.7.1 Allowable deduction for a collective investment scheme

The allowable deduction from the taxable income of a donor taxpayer that is a portfolio of a collective investment scheme¹⁶¹ for all qualifying donations paid or transferred during the year of assessment is determined according to the following formula:¹⁶²

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

¹⁵⁸ Section 8(5)(bB)(i).

¹⁵⁹ Section 18A(3A).

¹⁶⁰ Section 18A(1).

¹⁶¹ The term “collective investment scheme” is defined in section 1 of the Collective Investment Schemes Control Act 45 of 2002.

¹⁶² Section 18A(1)(A).

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.

10.7.2 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).¹⁶³

10.7.3 Allowable deduction for all other donor taxpayers

For all other donor taxpayers, the allowable deduction from the taxable income may not exceed 10% of the taxable income excluding any retirement fund lump sum benefit,¹⁶⁴ retirement fund lump sum withdrawal benefit¹⁶⁵ and severance benefit¹⁶⁶ 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).¹⁶⁷

10.7.4 Carry-forward treatment for excess deductible donations

Any excess amount of a donation made, which is disallowed solely for the reason that it exceeds the amount of the deduction allowable for a year of assessment may be carried forward for purposes of section 18A.¹⁶⁸ The excess amount carried forward will be deemed a donation actually paid or transferred in the next succeeding year of assessment subject to the 10% limitation.¹⁶⁹ Any excess remaining can be further rolled over but always subject to the 10% limitation.

Example 12 – Carry-forward treatment for excess deductible donations

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

¹⁶³ For commentary, see Interpretation Note 97 “Taxation of REITS and Controlled Companies”.

¹⁶⁴ 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.

¹⁶⁵ 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.

¹⁶⁶ The term “severance benefit” is defined in section 1(1).

¹⁶⁷ Section 18A(1)(B).

¹⁶⁸ The carried-forward treatment for excess deductible donations made by the 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.

¹⁶⁹ Proviso to section 18A(1)(B).

10.8 Tax-deductible donations

Any claim for a deduction in determining the taxable income of a donor taxpayer will be allowed only if supported by –¹⁷⁰

- a section 18A receipt issued by a section 18A-approved institution, board or body; or
- an employees' tax certificate (IRP 5 certificate).¹⁷¹

A donor taxpayer may therefore make a donation directly to a section 18A-approved institution, board or body or through a payroll-giving programme operated by an employer.¹⁷²

10.8.1 Donations made directly to a section 18A-approved institution, board or body

The section 18A-approved institution, board or body must issue the section 18A receipt in the year of assessment in which the donation is actually paid or transferred by the donor taxpayer.

The deduction of donations made directly to a section 18A-approved institution, board or body for which it has issued a section 18A receipt is claimed by the donor taxpayer annually on assessment of the income tax return.

10.8.2 Donations made through a payroll-giving programme

A payroll-giving programme operated by an employer enables employees to donate from their salaries on a monthly basis to any section 18A-approved institution, board or body.

A section 18A-approved institution, board or body must issue a section 18A receipt to the employer for the total amount of donations paid by the employer on behalf of the employees. Section 18A receipts may be issued to the employer on a monthly basis or for a period that either coincides with the interim (1 March to 31 August) or annual (1 March to 28/29 February) period for which the employer is required to submit a reconciliation declaration to SARS for employees' tax purposes (see **11.2.1**).

10.9 Section 18A receipts

A section 18A receipt may be issued only for an eligible donation, which is solely and exclusively, used for PBAs in Part II in South Africa.

A section 18A receipt will be valid if it contains the following detail:¹⁷³

- The reference number issued to the section 18A-approved institution, board or body by the Commissioner for purposes of section 18A.
- The date the donation is received by the section 18A-approved institution, board or body.
- The name and address of the section 18A-approved institution, board or body issuing the section 18A receipt to which enquiries may be directed.
- The name and address of the donor taxpayer.
- The amount of the donation or the nature¹⁷⁴ of the donation if not in cash.

¹⁷⁰ Section 18A(2).

¹⁷¹ The term "employees' tax certificate" is defined in paragraph 1 of the Fourth Schedule.

¹⁷² The term "employer" is defined in paragraph 1 of the Fourth Schedule.

¹⁷³ Section 18A(2)(a).

¹⁷⁴ For commentary, see Binding General Ruling (Income Tax) 71 "Section 18A Receipt: Donation of Property in Kind".

- A certification to the effect that the section 18A receipt is issued for purposes of section 18A and that the donation has or will be used exclusively for the object of the section 18A-approved institution, board or body.
- The information¹⁷⁵ the Commissioner prescribed by public notice,¹⁷⁶ to allow for third-party reporting (see **18**),¹⁷⁷ which includes the –¹⁷⁸
 - donor taxpayer nature, for example, a natural person, company or trust;
 - donor taxpayer identification type if the donor is a natural person, for example, the donor’s South African identification number or passport number and country of issue;
 - donor taxpayer identification or registration number if the donor is a juristic person, for example, the company registration number issued by the CIPC or trust registration number issued by the Master of the High Court;
 - donor taxpayer trade name if a juristic person and the trade name is different to the registered name of the donor taxpayer;
 - donor taxpayer income tax reference number, if available;
 - donor taxpayer contact number;
 - donor taxpayer e-mail address; and
 - unique section 18A receipt number.

SARS does not make section 18A receipts available to section 18A-approved institutions, boards, or bodies. Section 18A-approved institutions, boards, or bodies must create their own receipts ensuring that all the above details appear on the receipt. See **Annexure D** for a generic example of a section 18A receipt.

A section 18A receipt must be issued by the section 18A-approved institution, board or body in the year of assessment (see **17.3**) during which the donation is actually paid or transferred to that section 18A-approved institution, board or body.¹⁷⁹ Section 18A-approved institutions, boards, or bodies may receive multiple *bona fide* donations during a year of assessment from the same donor taxpayer. It is acceptable for a section 18A-approved institution, board or body 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.¹⁸⁰

Section 18A receipts issued by institutions, board or bodies not approved by the Commissioner for purposes of section 18A are invalid. Donor taxpayers may not use such invalid receipts to claim a tax deduction from their taxable income for any donations made to such institutions, boards, or bodies. Any such claim for a deduction by donor taxpayers will therefore be disallowed in the determination of their taxable income.

¹⁷⁵ Section 18A(2)(a)(vii).

¹⁷⁶ Public Notice 3082 in *Government Gazette* 48104 of 24 February 2023, which came into effect on 1 March 2023.

¹⁷⁷ For further commentary, see the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2021*, in paragraph 2.2.

¹⁷⁸ Section 18A receipts issued on or after 1 March 2023 must include the further information published in the public notice.

¹⁷⁹ Section 18A(1).

¹⁸⁰ 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”.

10.10 Non-compliance with section 18A approval

There will be adverse consequences for a section 18A-approved institution, board or body if the Commissioner has reasonable grounds for believing that the person who is in a fiduciary capacity responsible for the management or control of its income or assets has –¹⁸¹

- in any material¹⁸² way failed to ensure that the objects for which that section 18A-approved institution, board or body was established are carried out;¹⁸³
- expended the monies of a section 18A-approved institution, board or body for purposes not covered by its objects;
- issued or allowed a section 18A receipt to be issued for fees or other emoluments payable to that section 18A-approved institution, board or body;
- issued or allowed a section 18A receipt to be issued in contravention of section 18A(2) (see **10.2**);
- used a donation for which a section 18A receipt was issued for any purpose other than for any PBAs in Part II in South Africa (see **10.1**);
- failed to obtain and retain an audit certificate (see **10.3**);¹⁸⁴ or
- failed to submit an audit certificate to the Commissioner on an annual basis by the accounting officer or accounting authority, as the case may be.¹⁸⁵

In the above instances, the Commissioner, by written notice, may direct that –

- the amount of the donations for which section 18A receipts were issued will be deemed to be taxable income of that section 18A-approved institution, board or body; and
- unless corrective steps are taken by that section 18A-approved institution, board or body within a period specified in the notice, any receipt issued by that section 18A-approved institution, board or body will not qualify as a valid section 18A receipt from the date specified in the notice. Those donations will therefore not qualify for a deduction from the taxable income of the donor.

An institution, board or body carrying on a combination of Part I and Part II PBAs (see **10.1**) is required to obtain and retain an audit certificate (see **10.3**), and will be subject to consequences considered in **10.10** if in contravention.

10.11 Non-compliance by responsible person

A person who is responsible in a fiduciary capacity for the management or control of the income and assets of a section 18A-approved institution, board or body who intentionally fails to comply with any provision of section 18A or a provision of the founding document under which such an institution, board or body is established to the extent that it relates to

¹⁸¹ Section 18A(5).

¹⁸² The *Cambridge Dictionary* available online at <https://dictionary.cambridge.org/dictionary/english/material> [Accessed 25 March 2025] describes “material” as important or having an important effect.

¹⁸³ The Act does not specify what constitutes a material failure. The Commissioner must therefore decide each case on its own facts and circumstances. A material failure to ensure that the objects for which that section 18A-approved institution, board or body was established have been carried out may include a significant, relevant, and important failure.

¹⁸⁴ Section 18A(5)(d).

¹⁸⁵ Section 18A(5)(e).

section 18A, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.¹⁸⁶

An accounting officer or an accounting authority who intentionally fails to comply with any provision of section 18A will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.¹⁸⁷

10.12 Group registration

The Commissioner may approve a group of institutions, boards, or bodies sharing a common purpose and carrying on any PBAs in Part II in South Africa under the direction or supervision of a co-ordinating body, for purposes of section 18A.¹⁸⁸

The co-ordinating body must ensure compliance with section 18A. A taxpayer reference number will be issued to the co-ordinating body. The co-ordinating body must prepare and submit consolidated annual financial statements of all the institutions, boards, or bodies under its direct control and supervision annually to the Commissioner. The consolidated annual financial statements must contain a certified report that the institutions, boards, or bodies within the group have complied with the provisions of section 18A.

Non-compliance by the co-ordinating body in ensuring compliance with section 18A by the institutions, boards, or bodies within the group or failing to inform the Commissioner when it becomes aware of any material failure to comply with section 18A, may, after due notice, result in the invalidating the section 18A receipts of the group (see **10.10**). The notice issued by the Commissioner will inform the co-ordinating body that if corrective steps are not taken within the period specified in the notice, any receipt issued by an institution, board or body within the group on or after the date specified in the notice will not qualify as a tax deduction in the hands of the donor taxpayer.¹⁸⁹

10.13 Retrospective section 18A approval

The Act does not make provision for the approval under section 18A to be granted with retrospective effect. Section 18A receipts may therefore be issued only for *bonafide* donations received on or after the date of the Commissioner's notification confirming approval under section 18A.

11 Other taxes and duties

11.1 Exemption from other taxes and duties

Institutions, boards, or bodies, in addition to being exempt from the payment of income tax on their receipts and accruals (see **8**), also enjoy the benefit of being exempt from certain other taxes and duties,¹⁹⁰ which are considered below.

¹⁸⁶ Section 18A(7)(i).

¹⁸⁷ Section 18A(7)(ii).

¹⁸⁸ Section 18A(6).

¹⁸⁹ Section 18A(5A).

¹⁹⁰ For commentary, see the *Taxation in South Africa*.

11.1.1 Donations tax

Donations tax is payable on the value of any property¹⁹¹ disposed of by donation by any resident¹⁹² (the donor) to another person (the donee)¹⁹³ at the rate of –¹⁹⁴

- 20% of 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; and
- 25% of that value to the extent that that value exceeds R30 million.

A donation comprises any gratuitous disposal of property including any gratuitous waiver or renunciation of a right, for example, the waiver of debt. 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.¹⁹⁵

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.¹⁹⁶

Donations made by or to an institution, board or body are exempt from the payment of donations tax.¹⁹⁷

11.1.2 Estate duty

Estate duty is levied under the Estate Duty Act at the rate of –¹⁹⁸

- 20% on the first R30 million of the dutiable amount of the estate of a deceased person, and
- 25% of the dutiable amount that exceeds R30 million.

Any property bequeathed to an institution, board or body having as its sole or principal object the carrying on of any PBAs qualifies as a deduction and therefore is excluded from the net value of the estate and not subject to estate duty.¹⁹⁹

11.1.3 Transfer duty

Transfer duty is levied under the Transfer Duty Act on a sliding scale on the value of any property²⁰⁰ acquired by any person.²⁰¹ The rates vary from 0% to 13% for all persons.²⁰² The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty. Transfer duty will apply only if the property transaction is not a taxable supply for value-added tax purposes.

¹⁹¹ The term “property” as defined in section 55(1) means any right in or to property movable or immovable, corporeal or incorporeal, wheresoever situated.

¹⁹² The term “resident” is defined in section 1(1).

¹⁹³ The term “donee” is defined in section 55(1).

¹⁹⁴ Section 64.

¹⁹⁵ Section 58.

¹⁹⁶ Section 59.

¹⁹⁷ Section 56(1)(h). See section 56(1) for further exemptions from donations tax.

¹⁹⁸ Section 2(2) of the Estate Duty Act and at the rate set out in the First Schedule to that Act.

¹⁹⁹ Section 4(h)(iA) of the Estate Duty Act.

²⁰⁰ See definition of “property” in section 1(1) of the Transfer Duty Act.

²⁰¹ For commentary, see the *External Guide - Guide for Transfer Duty via eFiling* and the *Transfer Duty Guide*.

²⁰² Section 2(1)(b) of the Transfer Duty Act.

Any institution, board or body is exempt from the payment of transfer duty on any property acquired provided the whole or substantially the whole²⁰³ of the property is used for the purpose of carrying on one or more PBAs.²⁰⁴

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction. Each transaction is therefore considered on its own merits. A declaration²⁰⁵ must be submitted for each acquisition of property for which an 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 granting the exemption to the institution, board or body;
- an affidavit setting out the activities to be carried out on the property; and
- confirmation that the whole or substantially the whole of the property will be used to carry on one or more PBAs.

At any time, subsequent to 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.²⁰⁶

11.1.4 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 income tax.²⁰⁷

Dividends tax is levied at the rate of 20%²⁰⁸ of the amount of a dividend paid by a company that is a resident.²⁰⁹ 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 for a listed share.²¹⁰

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.²¹¹

²⁰³ For commentary, see the Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’ “.

²⁰⁴ Section 9(1)(c)(ii) of the Transfer Duty Act.

²⁰⁵ 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.

²⁰⁶ For commentary, see the Interpretation Note 22 “Transfer Duty Exemption: Public Benefit Organisations and Statutory Bodies”.

²⁰⁷ For commentary, see the *Comprehensive Guide to Dividends Tax*.

²⁰⁸ Section 64E(1).

²⁰⁹ A reduced or nil rate may apply under specific circumstances.

²¹⁰ 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 19 of 2012 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.

²¹¹ The term “beneficial owner” is defined in section 64D.

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 which case the company paying the dividend is potentially liable for dividends tax unless an exemption applies.

It is not the responsibility of the company or regulated intermediary²¹² paying the dividend to determine who the beneficial owner of a dividend is and whether that person qualifies for an exemption from dividends tax. 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).

Any institution, board or body that is the beneficial owner of a dividend is exempt from dividends tax.²¹³ This exemption applies only if the institution, board or body 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 institution, board or body 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.²¹⁴

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 which are to be prepared by the company, regulated intermediary or beneficial owner.²¹⁵

The obligation lies with the institution, board or body, 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 institution, board or body 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.²¹⁶

²¹² 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.

²¹³ Section 64F(1)(e) and section 64FA(1)(a).

²¹⁴ Section 64G(2)(a) and section 64H(2)(a).

²¹⁵ For commentary, see the *Business Requirements Specifications: Administration of Dividends Tax*.

²¹⁶ For commentary, see the *Comprehensive Guide to Dividends Tax*.

11.1.5 Securities transfer tax

The STT Act provides that a STT²¹⁷ must be levied at a rate of 0,25%²¹⁸ on the taxable amount²¹⁹ of the transfer²²⁰ of every security²²¹ issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on an exchange.²²²

The Securities Transfer Tax Administration Act 26 of 2007 contains the administration provisions governing the payment of STT. Any STT payment must be made electronically through SARS e-STT system.²²³

The exemptions from STT are contained in section 8(1) of the STT Act. STT is not payable if the security is transferred to an institution, board or body having as its sole or principal object the carrying on of any PBA if that institution, board or body would have been liable to pay the STT.²²⁴

The exemption, however, is subject to a declaration²²⁵ being submitted by any person to a participant²²⁶ who holds and administers that security.²²⁷

11.1.6 Skills development levy

The SDL is a compulsory levy to fund education and training under the 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).²²⁸

The SDL Act²²⁹ imposes on every employer an SDL of 1% of the leviable amount,²³⁰ calculated on the total amount of remuneration paid or payable or deemed to be paid or payable by an employer²³¹ to its employees²³² during any month. The amount of such remuneration is the same as the amount of remuneration²³³ determined under the Fourth Schedule from which an

²¹⁷ For commentary, see *Taxation in South Africa*.

²¹⁸ Section 2(1) of the STT Act.

²¹⁹ Sections 3(1), 4, 5 and 6 of the STT Act determine the relevant taxable amount.

²²⁰ The term “transfer” as 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.

²²¹ 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.

²²² The term “exchange” means an “exchange” as defined in section 1 of the Financial Markets Act 19 of 2012 and licensed under section 9 of that Act.

²²³ Section 3(2) and (5) of the Securities Transfer Tax Administration Act 26 of 2007. For commentary, see the *External Reference Guide – Securities Transfer Tax*.

²²⁴ Section 8(1)(e) of the STT Act.

²²⁵ Section 8(2) of the STT Act.

²²⁶ The term “participant” is defined in section 1 of the STT Act and 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 19 of 2012 by a central securities depository as a participant in that central securities depository.

²²⁷ Section 8(3) of the STT Act.

²²⁸ For commentary, see the *External Guide – Guide for Employers in respect of Skills Development Levy*.

²²⁹ Section 3(1) of that Act.

²³⁰ Section 3(3) of the SDL Act.

²³¹ The term “employer” is defined in section 1(1) of the SDL Act and includes an “employer” as defined in the Fourth Schedule.

²³² The term “employee” is defined in section 1(1) of the SDL Act and includes an “employee” as defined in the Fourth Schedule.

²³³ The term “remuneration” is defined in paragraph 1 of the Fourth Schedule.

employer is obligated to withhold employees' tax taking into consideration certain exclusions.²³⁴

Section 4 of the SDL Act contains a number of exemptions from the SDL. There, however, is no specific exemption from SDL for an institution, board or body.

An institution, board or body that is an employer is exempt from the payment of SDL if it is –

- registered as an employer and its annual payroll will not exceed R500 000 in the following 12 months;²³⁵ and
- a national or provincial public entity²³⁶ and if 80% or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament.²³⁷

11.1.7 Capital gains tax

Any capital gain²³⁸ or capital loss determined on an asset donated or bequeathed to an institution, board or body must be disregarded by the donor.²³⁹

A person must disregard any capital gain or capital loss on the disposal of an asset when any amount constituting gross income of whatever nature would be exempt from tax under section 10(1)(cA)(i) were it to be received by or to accrue to that person.²⁴⁰

11.2 Compliance with other taxes and duties

11.2.1 Employees' tax

Employees' tax is dealt with in the Fourth Schedule.²⁴¹ It is often referred to as Pay-As-You-Earn or PAYE. The purpose of the employees' tax system is to ensure that an employee's income tax liability is settled at the same time that the employee's 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 liability²⁴² 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 withheld²⁴³ 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 remuneration²⁴⁴ to any person.

²³⁴ See section 3(4) of the SDL Act for the exclusions.

²³⁵ Section 4(b) of the Skills Development Levies Act.

²³⁶ The terms "national public entity" and "provincial public entity" are defined in section 1 of the PFMA and listed in Part A and C of Schedule 3 to that Act.

²³⁷ Section 4(d) of the Skills Development Levies Act.

²³⁸ For commentary, see the *Comprehensive Guide to Capital Gains Tax* and the *Guide on Valuation of Assets for Capital Gains Tax Purposes*.

²³⁹ Paragraph 62(c) of the Eighth Schedule.

²⁴⁰ Paragraph 63 of the Eighth Schedule.

²⁴¹ For commentary, see the *External Guide – Guide for Employers in respect of Employees' Tax*.

²⁴² Paragraph 28 of the Fourth Schedule.

²⁴³ Paragraph 2(1) of the Fourth Schedule.

²⁴⁴ The term "remuneration" is defined in paragraph 1 of the Fourth Schedule.

An institution, board or body is not exempted from the obligation to deduct or withhold employees' tax. The institution, board or body 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.

Any institution, board or body that is an employer, must if any of its employees are liable for income tax, register for employees' tax within 21 business days²⁴⁵ of becoming an employer.²⁴⁶ Registration is done by completing the prescribed application form EMP 101e.²⁴⁷ An institution, board or body already registered for another tax type on **eFiling** may as part of the single registration initiative register for PAYE on **eFiling**.²⁴⁸ 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 employees' remuneration.²⁴⁹ This certificate discloses, amongst other things, the total remuneration earned during a year of assessment and the employees' tax and UIF contributions deducted by the employer.

11.2.2 Unemployment insurance fund contributions

The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act, and the Unemployment Insurance Contributions Act (UIC Act).²⁵⁰ These statutes, amongst other things, provide for the benefits, to which contributors are entitled, and the imposition and collection of contributions to UIF, respectively.

The 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.²⁵¹

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 2021.²⁵²

Any institution, board or body paying remuneration to its employees will also be liable for UIF contributions unless it qualifies for certain exemptions.²⁵³

²⁴⁵ See section 244 of the TA Act for a discussion on deadlines.

²⁴⁶ Paragraph 15(1) of the Fourth Schedule read with Chapter 3 of the TA Act.

²⁴⁷ For commentary, see the *External Guide – Guide for Completion of Employer Registration Application*.

²⁴⁸ For commentary, see the *External Guide – How to Complete the Registration, Amendments and Verification Form (RAV01)*.

²⁴⁹ Paragraph 14 of the Fourth Schedule.

²⁵⁰ Act 4 of 2002.

²⁵¹ See section 2 of the Unemployment Insurance Act.

²⁵² Section 6(2) of the UIC Act, read with Government Notice 475 in *Government Gazette* 44641 of 28 May 2021.

²⁵³ Section 4(1) of the UIC Act.

These contributions must be paid to the UIF office of the Department of Labour²⁵⁴ or to SARS within seven days after the end of the month during which the amount was deducted.²⁵⁵ Payment can be made via **eFiling**, electronic funds transfer or at a branch of an approved banking institution.²⁵⁶

11.2.3 Value-Added Tax

This guide does not deal with Value-Added Tax (VAT). However, various VAT guides are available. Should a ruling request be required on a specific VAT issue, a ruling application may be submitted by e-mail to **VATRulings@sars.gov.za**.²⁵⁷

12 Applications for the exemption under section 10(1)(cA)(i) and approval under section 18A

Any entity seeking approval by the Commissioner as an institution, board or body under section 10(1)(cA)(i) or approval under section 18A to issue tax-deductible receipts must complete and submit to SARS the prescribed application form EI 1.

The application form EI 1 was developed to allow entities 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 entity. 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.

An application for approval under section 18A can be made simultaneously with an application for approval as an institution, board or body. If, however, an institution, board or body after obtaining approval and exemption under section 10(1)(cA)(i) decides to apply for section 18A approval it may do so by written request to the Commissioner. The following information and documentation must be provided:

- The relevant PBAs (see **10.1**) in Part II for which approval is sought.
- A detailed explanation of how the activities is carried on.
- The relevant supporting documentation that may include the latest founding document (see **4**) and annual financial statements.

The notification of the approval and exemption under section 10(1)(cA)(i) and approval under section 18A, if applicable, is issued by the Commissioner by letter if the application was done simultaneously. A new letter may be issued by the Commissioner if the application for approval under section 18A is done after the approval and exemption as an institution, board or body granted by the Commissioner to reconfirm the approval as an institution, board or body 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 **17.1**). The institution, board or body approved by the Commissioner is required to retain the letter confirming approval as part of its records (see **16**).

²⁵⁴ Information is available from the Department of Labour's website at **www.labour.gov.za**.

²⁵⁵ For commentary, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.

²⁵⁶ For commentary, see the *Guide for Employers in respect of the Unemployment Insurance Fund*.

²⁵⁷ For commentary, see the *VAT Ruling Process Quick Reference Guide*.

A written notification will also be issued by the Commissioner to the entity should that entity not be granted approval as an institution, board or body under section 10(1)(cA)(i) or section 18A approval together with reasons why the entity failed to meet the conditions and requirements of those sections, whichever is applicable. The decision not to grant approval as an institution, board or body or section 18A approval is subject to objection and appeal (see **20**).²⁵⁸

An entity not approved by the Commissioner as an institution, board or body will be liable for income tax and other taxes and duties (see **11**) as a normal taxpayer.²⁵⁹ An institution, board or body not approved for purposes of section 18A (see **10**) will not be entitled to issue section 18A receipts (see **10.9**) for donations received.

13 Administrative provisions – Tax Administration Act

SARS is responsible for the administration of the TA Act under the control and direction of the Commissioner.²⁶⁰ 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,²⁶¹ tax event,²⁶² or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.²⁶³ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.²⁶⁴

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.²⁶⁵

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act imposing that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.²⁶⁶ If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.²⁶⁷

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **16**), returns (see **17**), assessments, dispute resolution (see **20**), interest, refunds and anti-avoidance will apply to institutions, boards, or bodies.

²⁵⁸ Section 3(4)(b).

²⁵⁹ Paragraph (a) of the definition of “company” in section 1(1). An entity 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. The Minister under section 5(2)(a) may announce different rates in the national annual budget. The rates are published annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.

²⁶⁰ Section 3(1) of the TA Act.

²⁶¹ Section 3(2)(a)(i) of the TA Act.

²⁶² 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.

²⁶³ Section 3(2)(a)(iii) of the TA Act.

²⁶⁴ Section 3(2)(h) of the TA Act.

²⁶⁵ For commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

²⁶⁶ Section 4(2) of the TA Act.

²⁶⁷ Section 4(3) of the TA Act.

14 Furnishing of information

SARS may under the TA Act for purposes of the administration of a tax Act request a taxpayer to submit relevant material²⁶⁸ (whether orally or in writing) that SARS requires.²⁶⁹ 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.²⁷⁰

The Commissioner may in the enforcement of the Act request any person to furnish information about any institution, board or body and may require that person to –²⁷¹

- answer any questions relating to the institution, board or body;
- make books of account, records or other documents relating to the institution, board or body available for inspection; or
- meet with the Commissioner’s representative and produce for examination any documents relating to the institution, board or body.

These provisions also apply to any section 18A-approved institution, board or body.²⁷²

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions posed by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.²⁷³

15 Changes in registered particulars

An institution, board or body must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. An institution, board or body must communicate to SARS any change of postal, physical or electronic addresses, representative taxpayer (see **19**) and banking particulars and such other details as the Commissioner may require by public notice.²⁷⁴

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.²⁷⁵

16 Record-keeping

A person is required to keep records, books of account or documents that enable the person to observe the requirements of a tax Act, are specifically required under a tax Act or by the Commissioner by public notice and enable SARS to be satisfied that the person has observed these requirements.²⁷⁶ The period that the person needs to retain the records, books of account or documents is also prescribed.

²⁶⁸ The term “relevant material” as defined in section 1 of the TA Act means any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act as referred to in section 3 of that Act.

²⁶⁹ Section 46(1) of the TA Act.

²⁷⁰ Section 46(3) of the TA Act.

²⁷¹ Section 46(1) of the TA Act.

²⁷² Section 18A(4).

²⁷³ Section 234(h)(i) and (ii) of the TA Act.

²⁷⁴ Section 23 of the TA Act.

²⁷⁵ Section 234(a) of the TA Act.

²⁷⁶ Section 29(1) of the TA Act.

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.²⁷⁷ The required retention periods for records, books of account or documents are as follows:

- Five years from the date of the submission of a return.²⁷⁸
- 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.²⁷⁹
- If an objection or appeal (see **20**) 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.²⁸⁰
- A person that has been notified of or 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.²⁸¹
- Indefinitely if a document is relevant for future years of assessment such as the prescribed application form for approval from income tax EI 1 and the required supplementary information and documentation on which the Commissioner based the decision to approve or not to approve an exemption from income tax.

A return²⁸² 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. This return includes the prescribed application form EI 1 and the required supplementary information and documentation on which the Commissioner based the decision to approve or not to approve the exemption from income tax.

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.

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 issued, if approved by the Commissioner under that section to issue tax-deductible receipts (see **10.9**)

²⁷⁷ Section 32 of the TA Act.

²⁷⁸ Section 29(2)(a) read with section 29(3)(a) of the TA Act.

²⁷⁹ Section 29(2)(b) of the TA Act.

²⁸⁰ Section 23(b) of the TA Act.

²⁸¹ Section 32(a) of the TA Act.

²⁸² The term “return” is defined in section 1 of the TA Act.

- Audit certificates (see **10.3**).

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, any institution, board or body is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.²⁸³

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.²⁸⁴ The rules require that electronic records must be kept in their original form,²⁸⁵ 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.²⁸⁶

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.²⁸⁷

17 Income tax returns

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.²⁸⁸

An institution, board or body must submit income tax returns, even if its exemption results in no tax liability. The income tax return enables the Commissioner to annually assess whether the institution, board or body is operating within the prescribed limits of its approval.

The prescribed Income Tax Return for Exempt Organisations (IT12EI) applicable to institutions, boards, or bodies must be submitted on an annual basis. It may be obtained from –

- the **eFiling website**;
- any SARS Service Centre; or
- the SARS National Service Centre.

A return must be a full and true return²⁸⁹ and be signed by the institution, board or body or by the duly authorised representative of the institution, board or body (see **19**). The person signing the return will be regarded as being cognisant of the statements made in the return.²⁹⁰

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.²⁹¹

²⁸³ Section 30 of the TA Act.

²⁸⁴ See Government Notice 787 *Government Gazette* 35733 of 1 October 2012.

²⁸⁵ A document under section 14 of the Electronic Communications and Transactions Act 25 of 2002 will be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

²⁸⁶ For commentary, see the *Electronic Communications Guide*.

²⁸⁷ Section 234(e) of the TA Act.

²⁸⁸ Section 66(1).

²⁸⁹ Section 25(2) of the TA Act.

²⁹⁰ Section 25(3) of the TA Act.

²⁹¹ Section 25(4) of the TA Act.

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.²⁹²

17.1 Taxpayer reference number

A taxpayer reference number is allocated on completion of registration for income tax purposes.²⁹³ For a group registration for purposes of section 18A, a taxpayer reference number will be allocated to the co-ordinating body (see **10.12**) and not to each individual institution, board or body within the group. This is a different reference number to the exemption reference number allocated to the institution, board or body on application for approval and exemption from income tax (see **12**).

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

17.2 Filing an income tax return

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

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

17.3 Year of assessment

Any institution, board or body established *by* (see **2.2**) or *under* (see **2.3**) any law will have a year of assessment ending on the date that coincides with its financial year.²⁹⁴ 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 has 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.²⁹⁵

17.4 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return. The institution, board or body will be notified if supporting documentation is required to substantiate any aspect of the income tax return.

Any institution, board or body whose income tax return is supported by a balance sheet, statement of assets and liabilities or account prepared by any other person may be requested to submit a certificate or statement recording —²⁹⁶

- 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
- in so 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 or payment or debit.

²⁹² Section 234(d) of the TA Act.

²⁹³ The term "taxpayer reference number" as defined in section 1 of the TA Act means the number referred to in section 24 of the same Act.

²⁹⁴ The term "financial year" is defined in section 1(1). For commentary, see the *Taxation in South Africa*.

²⁹⁵ For commentary, see the 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".

²⁹⁶ Section 28 of the TA Act.

18 Third-party returns

SARS is responsible for the administration of the TA Act under the control or direction of the Commissioner.²⁹⁷ 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,²⁹⁸ tax event,²⁹⁹ or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.³⁰⁰ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.³⁰¹

To give effect to the above responsibility, the Commissioner may by public notice,³⁰² 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.³⁰³ 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.³⁰⁴

The purpose of third-party reporting is to ensure donor taxpayers claim a deduction (see **10.7**) for donations made only to section 18A-approved institution, board or body, and to ensure that the information provided to SARS by the section 18A-approved institution, board or body issuing section 18A receipts (see **10.9**) matches the donor taxpayer's claim for a tax deduction.³⁰⁵

A section 18A-approved institution, board or body that issued a section 18A receipt from 1 March 2024 must submit to SARS a return³⁰⁶ of any amount³⁰⁷ donated for which such a receipt has been issued.³⁰⁸ It is a requirement³⁰⁹ that a section 18A-approved institution, board or body must submit a nil return³¹⁰ if no section 18A receipts were issued.

²⁹⁷ Section 3(1) of the TA Act.

²⁹⁸ Section 3(2)(a)(i) of the TA Act.

²⁹⁹ Section 3(2)(a)(ii) of the TA Act.

³⁰⁰ Section 3(2)(a)(iii) of the TA Act.

³⁰¹ Section 3(2)(h) of the TA Act.

³⁰² Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023.

³⁰³ Section 26(1) of the TA Act.

³⁰⁴ Section 26(2)(a) of the TA Act.

³⁰⁵ For commentary, see the *Business Requirement Specification: IT 3 Data Submission*.

³⁰⁶ 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.

³⁰⁷ See Column 2: Information concerning in paragraph 3 of the Public Notice. Any “amount” need not be an actual amount of money but may be every form of property whether corporeal or incorporeal, which has a money value. See *C: SARS v Brummeria Renaissance (Pty) Ltd and others* 69 SATC 205 at 215.

³⁰⁸ See paragraph 2.14 of the Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023.

³⁰⁹ For commentary, see *SARS External Guide – Manage Submission of Third-Party Data*.

³¹⁰ See Column 3: Form in paragraph 3 of the Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023 amended by Public Notice 4051 in *Government Gazette* 49646 of 10 November 2023, which provides for the submission of data compiled in accordance with the *Business Requirement Specification: IT 3 Data Submission*.

The third-party return containing all the prescribed information for the period from –³¹¹

- 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.

19 Representative taxpayer

Persons other than natural persons act through representatives who, amongst other things, are responsible for the tax compliance and liabilities of a benefit fund. The Income Tax Act defines a representative taxpayer.³¹² For purposes of an institution, board or body, the representative taxpayer is a natural person residing in South Africa and is the person in a fiduciary capacity of the income under that person's management, disposition or control.

A representative taxpayer under the TA Act means a person who is responsible for paying the tax liability of another person as an agent³¹³ and includes, amongst other things, a person who is a representative taxpayer under the Income Tax Act.³¹⁴ Every person who becomes or ceases to be a representative taxpayer under the Income Tax 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.³¹⁵

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 an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.³¹⁶

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 of the tax was chargeable was disposed of.³¹⁷ An assessment on a representative taxpayer for any tax is regarded as made on the representative taxpayer only in that capacity.³¹⁸

A taxpayer³¹⁹ 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.³²⁰

The representative taxpayer for any institution, board or body will be an accounting officer or an accounting authority (see **10.3**).

³¹¹ See paragraph 4.1.1 of the Public Notice.

³¹² See complete definition of "representative taxpayer" in section 1(1).

³¹³ 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.

³¹⁴ The term "representative taxpayer" is defined in section 1 of the TA Act and assigned meaning in section 153(1) of that Act.

³¹⁵ Section 153(2) of the TA Act.

³¹⁶ Section 234(2)(b) of the TA Act.

³¹⁷ Section 155 of the TA Act.

³¹⁸ Section 154(2) of the TA Act.

³¹⁹ The term "taxpayer" is defined in section 1(1).

³²⁰ Section 153(3) of the TA Act.

The Act defines a “company”,³²¹ amongst other things, to include an association formed in the Republic to serve a specific purpose, beneficial to the public or a section of the public. For purposes of the application of the Income Tax Act, an institution, board or body is therefore considered to be a company. The conditions and requirements, which apply to a public officer of a company, are therefore also applicable to the representative taxpayer of any institution, board or body.

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,³²² who must be –³²³

- 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;³²⁴
- appointed by the company or by an agent or legal practitioner³²⁵ 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.³²⁶

A person may not be appointed as a public officer if that person is disqualified under –³²⁷

- 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 being appointed as a public officer if that person has been disqualified under either one or a combination of the Trust Property Control Act, NPO Act or the Companies Act. The grounds of disqualification of a person under those Acts are similar and 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 unrehabilitated³²⁸ insolvent;³²⁹

³²¹ Section 1(1) of the Act.

³²² Section 246(1) of the TA Act.

³²³ Section 246(2) of the TA Act.

³²⁴ Section 246(2)(a) of the TA Act.

³²⁵ 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.

³²⁶ Section 246(5) of the TA Act.

³²⁷ Section 246(8) of the TA Act.

³²⁸ 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.

³²⁹ 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.

- has been prohibited by a court to be a director of a company, or declared by a court to be delinquent³³⁰ under the Companies Act or the Close Corporations Act;³³¹
- is prohibited under any law or any public regulation to be a director of a company;³³²
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty;³³³
- 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 Act³³⁴ for theft, fraud, forgery, perjury or an offence –³³⁵
 - involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities;³³⁶
 - in connection with the promotion, formation, or management of a company,³³⁷ or in connection with consenting to act or acting as a director when ineligible or disqualified;³³⁸ or
 - under the Trust Property Control Act, the NPO Act, the Companies Act, the Insolvency Act,³³⁹ the Close Corporations Act, the Competition Act,³⁴⁰ the Financial Intelligence Centre Act,³⁴¹ the Financial Markets Act, the Prevention and Combating of Corrupt Activities Act,³⁴² the Protection of Constitutional Democracy Against Terrorist and Related Activities Act,³⁴³ or the TA Act;³⁴⁴
- is subject to a resolution adopted³⁴⁵ by the Security Council of the United Nations;³⁴⁶ or

³³⁰ A declaration of delinquency may be made under section 162 of the Companies Act or under section 47 of the Close Corporations Act.

³³¹ 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.

³³² 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.

³³³ 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.

³³⁴ Section 69 of the Companies Act.

³³⁵ 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.

³³⁶ 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.

³³⁷ Section 69(2) or (5) of the Companies Act.

³³⁸ 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.

³³⁹ Act 24 of 1936.

³⁴⁰ Act 89 of 1998.

³⁴¹ Act 38 of 2001.

³⁴² Act 12 of 2004.

³⁴³ Act 33 of 2004.

³⁴⁴ 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.

³⁴⁵ 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.

³⁴⁶ 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.

- is an unemancipated minor or is under a similar legal disability.³⁴⁷

Public registers have been established and maintained of persons disqualified from serving as –

- trustees, under an order of a court pursuant to the Trust Property Control Act or any other law, by the Master;³⁴⁸
- office-bearers, under an order of a court pursuant to the NPO Act or any other law, by the NPO Directorate;³⁴⁹ and
- 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, by the CIPC.³⁵⁰

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.³⁵¹ If a public officer is not appointed as required, the public officer is regarded to be –³⁵²

- 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;³⁵³

³⁴⁷ 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.

³⁴⁸ Section 6(1H) of the Trust Property Control Act.

³⁴⁹ Section 25A(9)(a) of the NPO Act.

³⁵⁰ Section 69(13) of the Companies Act.

³⁵¹ Section 246(7) of the TA Act

³⁵² 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.

³⁵³ 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.

- director³⁵⁴ or prescribed officer³⁵⁵ 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.

The business rescue practitioner is the representative taxpayer of such a company if placed under business rescue under the Companies Act.³⁵⁶ 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.³⁵⁷

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.³⁵⁸ 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.³⁵⁹

20 Objection and appeal

A decision made by a SARS official³⁶⁰ or a notice to a specific person issued by SARS under a tax Act,³⁶¹ 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 —³⁶²

- the SARS official;³⁶³
- a SARS official to whom the SARS official reports;³⁶⁴ or

³⁵⁴ 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.

³⁵⁵ 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.

³⁵⁶ Paragraph (a) of the definition of “representative taxpayer” in section 1(1) and section 248(2) of the TA Act.

³⁵⁷ Section 248(1) of the TA Act.

³⁵⁸ Section 249(2)(a) of the TA Act.

³⁵⁹ Section 249(2)(b) of the TA Act.

³⁶⁰ 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.

³⁶¹ The term “tax Act” as defined in section 1 of the TA Act means the TA Act, or an Act, or portion of Act referred to in section 4 of the South African Revenue Service Act 34 of 1997.

³⁶² Section 9(1) of the TA Act.

³⁶³ Section 9(1)(a) of the TA Act.

³⁶⁴ Section 9(1)(b) of the TA Act.

- a senior SARS³⁶⁵ official.³⁶⁶

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 —³⁶⁷

- the written notice of that decision;³⁶⁸ or
- assessment of the notice of assessment giving effect to the decision (if applicable).³⁶⁹

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.³⁷⁰

Any decision in the exercise of the Commissioner’s discretion under section 10(1)(cA) and section 18A is subject to objection and appeal.³⁷¹ Such a decision may be objected to and appealed against in the same manner as an assessment.³⁷²

The Commissioner’s discretion under section 10(1)(cA) will be exercised to determine whether –

- an organisation may be approved for exemption under section 10(1)(cA);
- any conditions are deemed necessary to ensure that the activities of the institution, board or body are wholly or mainly directed at the furtherance of its sole or principal object; and
- an institution, board or body has failed to comply with section 10(1)(cA).

The Commissioner’s discretion under section 18A³⁷³ will be exercised to determine whether an institution, board or body may be approved for purposes of that section.

³⁶⁵ 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.

³⁶⁶ Section 9(1)(c) of the TA Act.

³⁶⁷ Section 9(2) of the TA Act.

³⁶⁸ Section 9(2)(a) of the TA Act.

³⁶⁹ Section 9(2)(b) of the TA Act.

³⁷⁰ Section 9(3) of the TA Act.

³⁷¹ Section 3(4)(b). The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Regulation Notice 3146 in *Government Gazette* 48188 of 10 March 2023. For commentary, see the *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and the *Alternative Dispute Resolution: Quick Guide*.

³⁷² Section 104(2)(c) of the TA Act.

³⁷³ Section 3(4)(b).

An institution, board or body aggrieved by an assessment³⁷⁴ may before lodging an objection, request SARS to provide reasons for the assessment to enable the institution, board or body to formulate an objection.³⁷⁵ The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days³⁷⁶ from the date of the assessment.

Any institution, board or body may object to an assessment³⁷⁷ in accordance with Chapter 9 of the TA Act read with the “rules” as published in the *Government Gazette*. within 80³⁷⁸ business days after the –³⁷⁹

- delivery of a notice providing reasons requested for an assessment, if applicable;³⁸⁰
- notice issued by SARS notifying the institution, board or body that the reasons requested to enable it to formulate an objection have been provided;³⁸¹ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –³⁸²

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment³⁸³ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the institution, board or body 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 institution, board or body is dissatisfied with SARS’s decision, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.³⁸⁴

³⁷⁴ The term “assessment” as defined in Rule 1 includes, for purposes of the rules, a decision referred to in section 104(2) of the TA Act.

³⁷⁵ Rule 6 deals with reasons for an assessment.

³⁷⁶ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

³⁷⁷ For commentary, see the Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

³⁷⁸ Rule 7(1) was amended from 30 to 80 days. The amendment is effective from 10 March 2023.

³⁷⁹ Rule 7 deals with objections.

³⁸⁰ Rule 7(1)(a) read with Rule 6.

³⁸¹ Rule 7(1)(a) read with Rule 6(4).

³⁸² Rule 7(2).

³⁸³ 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).

³⁸⁴ Rule 10.

Annexure A – Section 10(1)(cA)

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

(cA) the receipts and accruals of—

- (i) any institution, board or body (other than a company as defined in the Companies Act, any co-operative, close corporation, trust or water services provider) established by or under any law and which, in the furtherance of its sole or principal object—
 - (aa) conducts scientific, technical or industrial research;
 - (bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or
 - (cc) carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;
- (ii) any association, corporation or company contemplated in paragraph (a) of the definition of “company” in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body:

Provided that such institution, board, body or company—

- (a) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;
- (b) is by law or under its constitution—
 - (i) not permitted to distribute any amount to any person, other than, in the case of such company, to the holders of shares in that company;
 - (ii) required to utilize its funds solely for investment or the object for which it has been established; and
 - (iii) required on dissolution—
 - (aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
 - (bb) where the institution, board or body is established by law, to transfer its assets to—
 - (A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
 - (B) to the State:

Provided further that—

- (a) where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;

- (b) where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b)(iii) of the first proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and
- (c)

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; and
 - (vii) such further information as the Commissioner may prescribe by public notice; or
- (b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given.

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

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

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

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

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

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

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

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

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

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

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

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

in which formula:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The Commissioner may, for the purposes of this section, approve a group of institutions, boards or bodies contemplated in subsection (1)(a)(ii), sharing a common purpose which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those institutions, boards or bodies in order to ensure that they comply with the provisions of this section.

(7) Any person who is—

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

who intentionally fails to comply with any provisions of this section, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

Annexure C – Part II

NINTH SCHEDULE

PART II

WELFARE AND HUMANITARIAN

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

HEALTH CARE

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

EDUCATION AND DEVELOPMENT

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

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

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

LAND AND HOUSING

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

Annexure D – Example of section 18A receipt



Institute, board or body X
 Helen Joseph Street, Johannesburg, 2001
 Telephone: (000) 000 0000
 Email: **ibdx@org.za**
 Website: **www.ibdx.com**
 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	Registered name	
		Trade name	
		Registration number	
Income tax reference number			
DONATION INFORMATION			
Amount of donation (if cash)	R		
Nature and value of donation (if property in kind)			
Date donation received			
<p>The receipt is issued for the purposes of section 18A of the Income Tax Act 58 of 1962 (the Act). The donation received has been or will be used solely in carrying on public benefit activities listed in Part II of the Ninth Schedule to the Act.</p>			
Details and signature of person in a fiduciary capacity responsible for the management or control of the income and assets of the institution, board or body			
Date receipt issued			

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.