

DRAFT INTERPRETATION NOTE

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 18A(2B) AND (2C)
SUBJECT : SECTION 18A: AUDIT CERTIFICATE

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Preamble

In this Note unless the context indicates otherwise –

- **“agency”** means a specialised agency, programme, fund, High Commissioner, office, entity or organisation listed in section 18A(1)(bA)(i) to (xii)¹ carrying on in South Africa any PBA in Part II, or any other activity determined by the Minister by notice in the *Government Gazette* for the purposes of section 18A, which meets the requirements of section 18A(1)(bA) and has been issued a reference number by the Commissioner for the purposes of section 18A;²
- **“approved organisation”** means a PBO, an institution, board or body, or a conduit PBO;
- **“Companies Act”** means the Companies Act 71 of 2008;
- **“conduit PBO”** means any PBO contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30(3), that provides funds or assets to any PBO or any institution, board or body, and which has been approved by the Commissioner under section 18A(1)(b);
- **“department”** means any department of the government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a), which has been approved by the Commissioner under section 18A(1)(c), to be used for the purpose of any PBA in Part II;
- **“institution, board or body”** means any institution, board or body contemplated in section 10(1)(cA)(i) carrying on in South Africa any PBA in Part II, or any other activity determined by the Minister by notice in the *Government Gazette* for the purposes of section 18A, which meets the requirements in section 18(1A) if applicable, and which has been approved by the Commissioner under section 18A(1)(a)(ii);
- **“Ninth Schedule”** means the Ninth Schedule to the Act;
- **“PBA”** means a “public benefit activity” listed in Part I of the Ninth Schedule 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;
- **“PBA in Part I”** means a PBA listed in Part I, which is not included in Part II, of the Ninth Schedule;³
- **“PBA in Part II”** means a PBA listed in Part II of the Ninth Schedule;
- **“PBO”** means a public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) which is approved by the Commissioner under section 30(3) carrying on in South Africa any PBA in Part II, or any other activity determined by the Minister by

¹ Section 18A(1)(bA) was amended by section 31 of the Taxation Laws Amendment Act 17 of 2017. The amendment is effective 18 December 2017.

² Section 18A(2)(a)(i).

³ Part I of the Ninth Schedule lists a number of PBAs, not all of which are included in Part II of that Schedule. For the purposes of this Note, “PBAs in Part I” refers to PBAs listed in Part I which are not listed in Part II. Conducting a combination of PBAs some of which are not included in Part II impacts on the need to obtain an audit certificate as discussed later in this Note.

notice in the *Government Gazette* for the purposes of section 18A, which meets the requirements in section 18A(1A) and (1C) if applicable, and which has been approved by the Commissioner under section 18A(1)(a)(i);

- “**PFMA**” means the Public Finance Management Act 1 of 1999;
- “**section**” means a section of the Act;
- “**section 18A**” means the section providing for the tax deductibility of donations made to any approved organisation, agency or department;
- “**section 18A receipt**” means a receipt issued under section 18A(2) by any approved organisation, agency⁴ or department potentially entitling the donor to a tax deduction for *bona fide* donations made;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides and interpretation notes referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise the latest issue of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of section 18A(2B) and (2C) in relation to the audit certificate which must be obtained and retained in specified circumstances for section 18A receipts issued by an approved organisation or department.

2. Background

Section 18A(1) and (2) potentially provide a taxpayer with a deduction for *bona fide* donations paid or transferred to any approved organisation, agency or department, if the donation is supported by a section 18A receipt issued by that approved organisation, agency or department.

Generally speaking, under section 18A(2A) a PBO, an institution, board or body, an agency or a department may issue section 18A receipts only to the extent that the donation will be used to carry on PBAs in Part II or, in the case of a conduit PBO, that 50% of the donations will be distributed within 12 months and that the funds will be used to fund PBOs, or institutions, boards or bodies, which carry on PBAs in Part II.

A section 18A receipt issued by an approved organisation, agency or department is required to include a certification to the effect that the receipt is issued for the purposes of section 18A and that the donation has been or will be used exclusively for the object of that organisation or the agency or department’s relevant PBA.⁵

Part I of the Ninth Schedule lists a variety of activities which are recognised as PBAs for purposes of section 30(1). Part II of the Ninth Schedule lists some, but not all, of

⁴ Although section 18A(2)(a) refers to “agencies” as defined in section 18A(1)(bA)(i), the requirement for a section 18A receipt also applies to programmes, funds, High Commissioners, offices, entities and organisations which were included in section 18A(bA) by section 31 of the Taxation Laws Amendment Act 17 of 2017.

⁵ Section 18A(2)(a)(vi).

the activities listed in Part I for the purposes of section 18A. An organisation may conduct a combination of PBAs in Part I and PBAs in Part II. In this situation section 18A receipts can be issued only for donations which will be used for purposes of carrying on PBAs in Part II. Concerns arose regarding whether approved organisations and departments in these situations would restrict the issuing of section 18A receipts to donations which would be used for PBAs in Part II.

As a result, the requirement for an approved organisation or department to obtain an audit certificate was introduced as a control measure to ensure that section 18A receipts were issued only for donations received or accrued during the year of assessment⁶ that would be and ultimately are used for purposes of PBAs in Part II.

This Note provides guidance on the information required in an audit certificate referred to in section 18A(2B) and (2C) and from whom such certificate may be obtained.

3. The law

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

4. Application of the law

4.1 What is an audit certificate?

The term “audit certificate” referred to in section 18A(2B) and (2C) 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 used⁷ 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 –⁸

- “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 provides an opinion on the use of donations for which an approved organisation or department issued section 18A receipts.

⁶ The term “year of assessment” is defined in section 1(1). See Interpretation Note 90 “Year of Assessment of a Company: Accounts Accepted to a Date Other Than the Last Day of a Company’s Financial Year” and Interpretation Note 19 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date Other Than the Last Day of February”.

⁷ See EA Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths at 224 and *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

⁸ M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus and Wordpower Guide* (2001) Oxford University Press.

4.2 Circumstances under which an audit certificate must be obtained and retained

4.2.1 Approved organisation

An approved organisation carrying on a combination of PBAs in Part I and PBAs in Part II must obtain and retain an audit certificate confirming that all donations received or accrued in the year of assessment⁹ for which section 18A receipts were issued were used solely in carrying on PBAs in Part II.¹⁰

A conduit PBO providing funds to PBOs, or institutions, boards or bodies, for PBAs in Part II as well as to PBOs, or institutions, boards or bodies, for PBAs in Part I or other organisations which are not approved by the Commissioner for section 18A purposes,¹¹ must obtain and retain an audit certificate confirming that all donations received or accrued in the year of assessment¹² in which section 18A receipts were issued were used solely to provide funds to PBOs, or institutions, boards or bodies, which used those funds solely in carrying on PBAs in Part II.¹³ A conduit PBO may retain a certain percentage of the donations received or accrued for which section 18A receipts were issued instead of distributing them as noted above. The audit certificate would also need to confirm that the retention of such donations meets the requirements of section 18A(2A)(b)(i).¹⁴

An approved organisation carrying on only PBAs in Part II and any conduit PBO funding PBOs, or institutions, boards or bodies, carrying on only PBAs in Part II, are not required to obtain and retain an audit certificate.

Example 1 – A PBO carrying on a combination of PBAs in Part I and PBAs in Part II

Facts:

Hopeful Joy Centre, a PBO, carries on religious activities which fall within PBA 5(a) in Part I. The centre has also acquired a residence, appointed staff and purchased equipment for purposes of caring for persons afflicted with HIV/AIDS contemplated in PBA 2(d) in Part II.

The centre has been granted approval by the Commissioner to issue section 18A receipts for all *bona fide* donations received by or accrued to the centre which it will use for carrying on PBA 2(d) in Part II. The centre has not been granted approval and may not issue section 18A receipts for donations received or accrued for its activities falling within PBA 5(a) in Part I. Section 18A receipts may therefore not be issued for tithes and offerings received in support of the centre's religious activities.

⁹ Section 18A(2B) refers to “that year” and section 18A(2C) refers to “the year” which is interpreted to mean the “year of assessment” in which section 18A receipts were issued and not a calendar year.

¹⁰ Section 18A(2B) read with section 18A(2A)(a) and (b).

¹¹ Organisations which are not approved for section 18A purposes refers to organisations that are not approved by the Commissioner under section 18A and include, for example, associations of persons contemplated in PBA 10(iii) in Part I. See *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

¹² Section 18A(2B) refers to “that year” which is interpreted to mean the “year of assessment” in which section 18A receipts were issued and not a calendar year.

¹³ Section 18A(2B) read with section 18A(2A)(b)(ii).

¹⁴ Section 18A(2B) read with section 18A(2A)(b)(i).

Result:

Donations are received by or accrue to the centre for PBAs in Part I and PBAs in Part II. The centre must therefore obtain and retain an audit certificate confirming that all donations received or accrued during the year of assessment for which it issued section 18A receipts were used solely in carrying on PBA 2(d) in Part II.

Example 2 – A conduit PBO providing funds to PBOs conducting PBAs in Part I and PBAs in Part II**Facts:**

Star Trust, a conduit PBO, was established to source and provide funds to two PBOs, namely –

- an independent school providing education contemplated in PBA 3(a) in Part II; and
- YouLead Foundation providing youth leadership and development programmes contemplated in PBA 6(c) in Part I.

Star Trust has been granted approval by the Commissioner to issue section 18A receipts for all *bona fide* donations received by or accrued to it which it will use in providing funds to the independent school. Star Trust distributes all the funds received by way of donation within 12 months of the end of the year of assessment for which it issued section 18A receipts.

The independent school carries on only PBA 3(a) in Part II. The Commissioner has also granted the independent school approval to issue section 18A receipts for donations which are received by or accrue to it directly.

Star Trust has not been granted approval and may not issue section 18A receipts for donations received or accrued which will be used to provide funds to the YouLead Foundation which carries on only a PBA in Part I.

Result:

Donations received by or accrued to the Star Trust are used to provide funds to a combination of PBOs which use the funds to either carry on only a PBA in Part I or only a PBA in Part II.

The trust must obtain and retain an audit certificate confirming that all donations received or accrued during the year of assessment for which it issued section 18A receipts were used solely in providing funds to the independent school, an approved organisation, which used those funds solely to carry on in South Africa a PBA in Part II. In addition, the audit certificate must also provide confirmation that the Star Trust complied with the distribution requirement stipulated in section 18A(2A)(b)(i).

The independent school is not required to obtain and retain an audit certificate contemplated in section 18A(2A)(a), since it carries on only a PBA in Part II.

Both the Star Trust and the independent school will be required to include a certification in each section 18A receipt issued to the effect that the receipt is issued for the purposes of section 18A and that the donation has been or will be used exclusively for the object of that organisation in carrying on PBAs in Part II.¹⁵

4.2.2 Department

A department must obtain an audit certificate from the accounting authority contemplated in the PFMA for that department (see **4.3.2**) confirming that all donations received or accrued in the year of assessment¹⁶ for which section 18A receipts were issued were used solely in carrying on PBAs in Part II.¹⁷

4.2.3 Agency

In the context of section 18A, an agency's activities are restricted to PBAs in Part II carried on in South Africa. Accordingly, such agencies have been excluded from the requirement to obtain an audit certificate under section 18A(2B) and (2C).

4.3 Persons from whom an audit certificate must be obtained and the acceptability of such a certificate

4.3.1 Approved organisation

The Act does not specify from whom an approved organisation should obtain an audit certificate and what constitutes an acceptable audit certificate. These matters can be assessed only on a case-by-case basis but as a general principle the person issuing the certificate should be independent of the approved organisation and suitably qualified, and appropriate work must have been performed to enable that person to express the opinion in the audit certificate. Whether a person is suitably qualified involves a consideration of the person's qualifications and experience.

For example, it will generally be acceptable to obtain an audit certificate, in the case of –

- an institution, board or body which is required by law to be audited by the Auditor-General, from the Auditor-General¹⁸ or any person the Auditor-General may appoint to undertake the audit on its behalf;¹⁹
- a PBO that is a non-profit company²⁰ which is required to be audited or independently reviewed under the Companies Act²¹ taking into account, for example, the category of the company and its public interest score, from the independent auditor or independent reviewer appointed under the Companies Act and applicable regulations, as the case may be; or

¹⁵ Section 18A(2)(a)(vi).

¹⁶ Section 18A(2B) refers to "that year" and section 18A(2C) refers to "the year" which is interpreted to mean the "year of assessment" in which section 18A receipts were issued and not a calendar year.

¹⁷ Section 18A(2C) read with section 18A(2A)(c).

¹⁸ See section 4(1)(f) of the Public Audit Act 25 of 2004.

¹⁹ See section 4(1)(f) read with section 12(2)(b) of the Public Audit Act 25 of 2004.

²⁰ As defined in section 1 of the Companies Act.

²¹ See section 30(2) of the Companies Act read with regulations 27, 28 and 29 of the Companies Regulations, 2011.

- a trust²² or an association of persons²³ that is not required to be audited or independently reviewed, from a bookkeeper or auditor who is not employed by the trust or association of persons and who has the necessary capabilities and capacity to provide such confirmation.

Example 3 – Obtaining of an audit certificate by an institution, board or body

Facts:

An entity established as a juristic person by national legislation to conduct research, development and technology transfer in order 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 contemplated in PBA 8(a) in Part I, the entity provides scholarships, bursaries, awards and loans to deserving students for study or research in agriculture contemplated in PBA 3(o) in Part II. The Commissioner has also granted the entity approval to issue section 18A receipts under section 18A(1)(a) for donations received or accrued which will be used in providing the scholarships, bursaries, awards and loans.

The Auditor-General is required to audit the entities accounts under the national legislation establishing and governing the entity.

Result:

The entity must obtain an audit certificate confirming that all donations received or accrued during the year of assessment for which the entity issued section 18A receipts were used solely in carrying on PBA 3(o) in Part II. It will be acceptable for purposes of section 18A(2B) if the entity obtains the audit certificate from the Auditor-General.

The entity must retain the audit certificate as part of its records (see **4.6**).

4.3.2 Department

As discussed in **4.2.2**, a department must obtain an audit certificate confirming that all donations received or accrued in the year of assessment for which section 18A receipts were issued²⁴ were used solely in carrying on PBAs in Part II.²⁵

The audit certificate must be obtained from the accounting authority contemplated in the PFMA for the department.²⁶ The PFMA requires every public entity to have an

²² The term “trust” is defined in section 1(1).

²³ An association of persons contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) is generally established or formed by adopting a legal founding document such as a constitution or other written instrument. See JAvS d’Oliveira, DW Butler, GJ Pienaar *et al* Associations/Nature and Formation/Formation Volume 2, Third Edition Volume LAWSA [online] (My LexisNexis: 10 November 2016) in paragraph 155.

²⁴ Section 18A(2C) refers to “the year in respect of which receipts were issued” which is interpreted to mean the “year of assessment” in which section 18A receipts were issued and not a calendar year.

²⁵ Section 18A(2C) read with section 18A(2A)(c).

²⁶ Section 18A(2C).

accounting authority which must be accountable under that Act.²⁷ 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.²⁸

Example 4 – Obtaining of an audit certificate by a department

Facts:

A metropolitan municipality established a feeding scheme for homeless children living in the inner city contemplated in PBA 1(a) in Part II.

Result:

The municipality forms part of the local sphere of government contemplated in section 10(1)(a) and as such must obtain an audit certificate from its accounting authority confirming that all donations received or accrued during the year of assessment in which it issued section 18A receipts were used solely in carrying on PBA 1(a) in Part II.

4.4 Content of an audit certificate

The Act prescribes that the audit certificate must, assuming the work performed and the underlying facts permit this to be done, express an opinion confirming that all donations for which section 18A receipts were issued were used solely for PBAs in Part II. An audit certificate for a conduit PBO must express an opinion confirming that donations for which section 18A receipts were issued were used solely to provide funds to any PBOs, or institutions, boards or bodies, which used those funds solely in carrying on PBAs in Part II and that any of those donations that were retained were retained in accordance with section 18A(2A)(b)(i) (see **4.2.1**).

In addition to the above prescribed opinion, although not prescribed in the Act, the audit certificate should contain the following detail:

- The name and address of the approved organisation or department.
- The reference number issued to the approved organisation or department²⁹ by the Commissioner for purposes of section 18A.³⁰

²⁷ The term “accounting authority” is defined in section 1 of the PFMA as a body or person mentioned in section 49 of that Act.

²⁸ See section 49 of the PFMA.

²⁹ Section 31 of the Taxation Laws Amendment Act 17 of 2017 amended section 18A(1)(c) to require that any department must be approved by the Commissioner for purposes of section 18A with effect from the date of promulgation of that Act. Section 18A(2)(a)(i) does not refer to a department, but it can be inferred that since a department must be approved by the Commissioner, the Commissioner must also issue a reference number for the purposes of section 18A which must be included in the section 18A receipts issued by an approved department.

³⁰ Section 18A(2)(a)(i).

- The taxpayer reference number³¹ of the approved organisation (inapplicable to a department).³²
- The year of assessment 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 approved organisation or department, for example, the receipt numbers and the total amount of the donations for which section 18A receipts were issued.
- A statement addressing the following:
 - A description of the work performed which formed the basis for the opinion reached, for example, the extent of the person's examination of the books of account and of the documents from which the books of account were written up.
 - Whether the entries in those books and documents disclose the true nature of the transactions in so far as may be ascertained by that examination, and how the linkage between the funds for which a section 18A receipt was issued and the application of those funds to carry on PBAs in Part II was tested.
 - Details of the local or international standards and regulations under which the audit was performed.
 - Express confirmation that, in the opinion of the person issuing the audit certificate, sufficient and appropriate audit evidence was obtained to provide a basis for the opinion.
- 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 (see **4.3**) issuing the audit certificate may be subject to other legal or regulatory requirements which require other information to be included in the certificate.

4.5 Submission of an audit certificate

A person who wilfully and without cause fails or neglects to submit a return or document to SARS,³³ which would include an audit certificate which is required to be submitted as noted below, is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.³⁴ In addition, section 18A(5) and (5B) stipulate various consequences if the Commissioner has reasonable grounds for believing a section 18A receipt was issued in contravention of section 18A(2A) or that a donation for which a section 18A receipt was issued was used for a purpose other than that permitted in that section. Failure to submit an audit certificate may be one of the facts giving the Commissioner reasonable grounds for invoking section 18A(5) and (5B).

³¹ The term "taxpayer reference number" is defined in section 1 of the TA Act and allocated to specified persons under section 24 of that Act.

³² The national, provincial or local sphere of government is exempt from income tax under section 10(1)(a). This exemption is not subject to the discretion or approval of the Commissioner. The three spheres of government are therefore not taken on register for income tax purposes.

³³ The term "document" is defined in section 1 of the TA Act.

³⁴ Section 234(d) of the TA Act.

4.5.1 Approved organisation

An approved organisation is not required to submit the audit certificate together with its annual income tax return.³⁵ The Commissioner will notify an approved organisation if any supporting documentation, including the audit certificate, is required to be submitted in order to substantiate any aspect of the income tax return or to determine compliance with section 18A.³⁶

4.5.2 Department

The accounting authority required to issue the audit certificate for any department issuing section 18A receipts (see 4.3.2) must submit the audit certificate annually to the Commissioner.³⁷

4.6 Retention of an audit certificate

The audit certificate, whether in physical or electronic form, is generally required to be kept and retained for five years from the date of submission of the income tax return for the year of assessment to which it relates.³⁸ There are, however, circumstances in which it may be required to be retained for a longer period.³⁹ For example, if –

- an income tax return for a particular year of assessment is not submitted as required, the audit certificate must be retained indefinitely until the obligation to submit a return has been complied with and, once the return has been submitted, for five years from the date of submission; or
- a person has been notified of or is aware of an audit or investigation by SARS regarding donations received or accrued, the issue of section 18A receipts or the usage of those donations, the audit certificate must be retained until the audit or investigation is concluded or the applicable five-year period has elapsed, whichever is the later.

A person who wilfully and without cause fails or neglects to retain records as required is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.⁴⁰

5. Conclusion

Strict control measures must be applied to donations received by or accrued to approved organisations, agencies and departments for which section 18A receipts are issued, since such donations may qualify for a tax deduction from the taxable income of taxpayers and as such represent a cost to the *fiscus*.⁴¹ Approved organisations, agencies and departments are therefore required to maintain proper control over the application and spending of such donations.

³⁵ Section 18A(2B) was amended by section 6(1) of the Taxation Laws Second Amendment Act 4 of 2008 to remove the requirement to submit the audit certificate with the annual income tax return. This amendment came into operation on 3 July 2008.

³⁶ Sections 18A(4), 30(10) and section 46(1) of the TA Act.

³⁷ Section 18A(2C) and section 18A(2A)(c).

³⁸ Section 29(3) of the TA Act.

³⁹ Section 32 of the TA Act. See *Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

⁴⁰ Section 234(e) of the TA Act.

⁴¹ For comprehensive information on the approval under section 18A to issue section 18A receipts, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

Approved organisations and departments must, under the circumstances described in **4.2**, obtain and retain, or submit as appropriate, an audit certificate confirming that such donations were used in conducting PBAs in Part II and, in the case of conduit PBOs, also confirm that donations were distributed in accordance with section 18A(2A)(b)(i).

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Annexure – The law**Sections 18A(1), (1A), (1B), (1C), (2), (2A), (2B) and (2C)**

18A. Deduction of donations to certain organisations.—(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted from 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) 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; and
- (cc) waives diplomatic immunity for the purposes of subsection (5)(i); 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: 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 or the department concerned, on which the following details are given, namely—
- (i) the reference number of the public benefit organisation, institution, board, body or agency 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 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 concerned or, in the case of a department in carrying on the relevant public benefit activity; 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) if that public benefit organisation provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds solely in carrying on activities 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 Authority contemplated in the Public Finance Management Act 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).

Part I of the Ninth Schedule to the Act

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

WELFARE AND HUMANITARIAN

1. (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

- (p) Community development for poor and needy persons and anti-poverty initiatives, including—
 - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
 - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
 - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.
- (q) The promotion of access to media and a free press.

HEALTH CARE

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

LAND AND HOUSING

- 3. (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) The provision of residential care for retired persons, where—
 - (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
 - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
- (d) Building and equipping of—
 - (i) clinics or crèches; or
 - (ii) community centres, sport facilities or other facilities of a similar nature,
 for the benefit of the poor and needy.
- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
- (f) Granting of loans for purposes of subparagraph (a) or (b), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.
- (g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

- (h) The provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations.

EDUCATION AND DEVELOPMENT

4. (a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) "Adult 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 "public college" or "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) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.
- (q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r).
- (r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

RELIGION, BELIEF OR PHILOSOPHY

5. (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.
- (b) The promotion and/or practice of a belief.
- (c) The promotion of, or engaging in, philosophical activities.

CULTURAL

6. (a) The advancement, promotion or preservation of the arts, culture or customs.
- (b) The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries.
- (c) The provision of youth leadership or development programmes.

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

RESEARCH AND CONSUMER RIGHTS

8. (a) Research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research.
- (b) The protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

SPORT

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

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

10. The provision of—
- (a) funds, assets, services or other resources by way of donation;
 - (b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
 - (c) funds by way of loan at no charge; or
 - (d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,

to any—

- (i) public benefit organisation which has been approved in terms of section 30;
- (ii) institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
- (iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
- (iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a).

GENERAL

11. (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.
- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—
- (i) the foreign participation in that event; and
 - (ii) the economic impact that event may have on the country as a whole.
- (c) The promotion, monitoring or reporting of development assistance for the poor and needy.
- (d) The provision of funds to an organisation—
- (i) which is incorporated, formed or established in any country other than the Republic;
 - (ii) which is exempt from tax on income in that other country;
 - (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
 - (iv) that carries on each of its activities—
 - (aa) in a non-profit manner;
 - (bb) with altruistic or philanthropic intent;
 - (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
 - (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).

Part II of the Ninth Schedule to the Act

PART II

WELFARE AND HUMANITARIAN

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

HEALTH CARE

2.
 - (a) The provision of health care services to poor and needy persons.
 - (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
 - (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.

- (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.
- (e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.

EDUCATION AND DEVELOPMENT

- 3. (a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) "Adult basic education and training", as defined in the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.
- (d) "Further education and training" provided by a "public college" or "private college" as defined in the Further 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.