

DRAFT INTERPRETATION NOTE X

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 11(b) IN PART I IN THE NINTH SCHEDULE
SUBJECT : PUBLIC BENEFIT ACTIVITY: BID TO HOST OR HOSTING OF ANY INTERNATIONAL EVENT

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Preamble

In this Note unless the context indicates otherwise –

- “**Commissioner**” means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act;
- “**Minister**” means the Minister of Finance;¹
- “**PBA**” means a “public benefit activity” listed in Part I of the Ninth Schedule to the Act, and any other activity determined by the Minister 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 11(b)**” means the bid to host or hosting of any international event approved by the Minister for purposes of this PBA, having regard to the foreign participation in the event and the economic impact the event may have on the country as a whole;
- “**PBO**” means a public benefit organisation contemplated in the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30(3);
- “**section**” means a section of the Act;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides, interpretation notes, *Government Gazettes*, forms and returns, 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 PBA 11(b) relating to the bid to host or hosting of any international event approved by the Minister having regard to specified prescribed criteria.

The bid to host or hosting of any international event exposes South Africa on an international level by providing public pride in hosting such an event, attracting overseas visitors, changing perceptions about South Africa as a business and leisure destination and providing an inflow of funds. These benefits can be realised on a tax beneficial basis when the Minister approves an international event for purposes of PBA 11(b) and the Commissioner approves the organisation bidding to host or hosting that international event as a PBO under section 30(3).

This Note does not consider any other taxes² or duties³ the bid to host or hosting of any international event may attract, or for which exemption may be required.

¹ See section 1(1).

² For example, capital gains tax, donations tax or value-added tax.

³ For example, transfer duty or customs and excise.

2. Background

An international event is normally an event of a limited duration having a global reach in terms of participation, audience and media coverage.

A document published by the Organisation for Economic Co-operation and Development (OECD)⁴ called the *Recommendation on Global Events⁵ and Local Development* provides the following on the hosting of global events:⁶

“The hosting of global events such as the Olympic Games, Expos, World Cups, Cultural Festivals, and many more have long been seen as opportunities to stimulate growth and development in the countries, and particularly the cities, that host them. Hosts increasingly seek to ensure that such events act as catalysts for local development, are used to leverage long-term infrastructure investments, boost tourism and trade, create jobs and promote community development.

To deliver on these promises, events must be deliberately designed and executed to generate long-term benefits. They need to clearly demonstrate how they impact upon communities to contribute to economic growth and development. Tax incentives, investment and sponsorship deals must be thoroughly assessed and managed to ensure that each event benefits host cities and the awarding body.

Global events can leverage investment, urban, rural and infrastructure development towards progressive opportunities for further job creation, community development, business development, environmental protection, social cohesion and post-event uses.”

Local development benefits generally occur through the bidding process or before hosting an event, which may include improved environment, infrastructure and amenities, global exposure, increased visitor economy and tourism, trade and investment promotion, employment and social or business development, national pride and public engagement. The local development benefits are an important justification for the event itself, for the investment and an incentive to ensure the event is a success. An event should also create a lasting legacy and not leave a host country or city in a worse position, with expensive facilities that have no post-event use, with huge debt and impoverished.⁷

3. The law

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

⁴ For more information, see www.oecd.org/about/how-we-work/ [Accessed 21 February 2022].

⁵ The OECD defines the term “global events” as “events of a limited duration that have global reach in terms of participation, audience and/or media coverage, require significant public investment and have an impact on the population and built environment”. See www.oecd.org/cfe/leed/OECD-Rec-Global-Events.pdf [Accessed 21 February 2022].

⁶ See <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0444> [Accessed 21 February 2022].

⁷ See www.oecd.org/berlin/40514233.pdf [Accessed 21 February 2022].

4. Application of the law

PBA 11(b) provides the bid to host (see 4.2) or hosting (see 4.3) of any international event (see 4.1) must be approved by the Minister (see 4.4) having regard to the –

- foreign participation in that event (see 4.4.1); and
- economic impact that event may have on the country as a whole (see 4.4.2).

In addition to the international event being approved by the Minister for purposes of PBA 11(b), the organisation bidding to host or hosting the international event must, be approved by the Commissioner as a PBO (see 5).

4.1. International event

The phrase “international event” is not defined in the Act. The method of attributing meaning to the words used in legislation involves, as a point of departure, examining the language of the provision at issue, the language and design of the statute as a whole and its statutory purpose.⁸ The words are described separately in the *Dictionary.com* as follows:

- “International” as “between or among nations; involving two or more nations; of or relating to two or more nations or their citizens; having members or activities in several nations.”⁹
- “Event” as “something that happens or is regarded as happening; an occurrence, especially one of some importance; something that occurs in a certain place during a particular interval of time.”¹⁰

An international event in the context of PBA 11(b) therefore means an event in which participants of that international event represent foreign countries. The foreign participation in an event is a requirement considered by the Minister when approving an event as an international event for purpose of PBA 11(b) (see 4.4.1). PBA 11(b) does not provide any minimum requirement on the number of foreign countries that need to participate in the event, in order for that event to be an international event. Foreign participation is in addition to domestic participation. Domestic participation, however, is not a requirement. The requirement is that an international event may not be an event in which the participants of that event are only participants representing South Africa.

PBA 11(b) does not prescribe the types of international events that an organisation may bid to host or host. International events, for example, may therefore include medical or professional conferences, conventions, symposiums, summits, sporting events, trade fairs and shows, trade exhibitions or expos and consumer exhibitions. The international event must take place in South Africa.

⁸ See *Chetty t/a Nationwide Electrical v Hart NO & another* 2015 (6) SA 424 (SCA), 4 All SA 401.

⁹ www.dictionary.com/browse/international?s=t [Accessed 21 February 2022].

¹⁰ www.dictionary.com/browse/event?s=ts [Accessed 21 February 2022].

Example 1 – Examples of international events previously approved by the Minister for purposes of PBA 11(b)

- 2003 Presidents Golf Cup
- 2003 ICC Cricket World Cup
- 2005 South African World Petroleum Congress (see **Example 2 in Annexure B**)
- 2007 ICC 20 20 World Cup
- 2010 Soccer World Cup
- 2010 International Congress of Actuaries
- 2013 African Cup of Nations (see **Example 3 in Annexure B**)
- Johannesburg World Summit
- International Congress of Entomology

4.2 Bid to host any international event

The words “bid” and “host” are not defined in the Act. The *BusinessDictionary.com* describes “bid” as follows:¹¹

“2. Contracting: Complete proposal (submitted in competition with other bidders) to execute specified job(s) within prescribed time, and not exceeding a proposed amount (that usually includes labor, equipment, and materials). The bid-receiving party may reject the bid, make a counter offer, or turn it into a binding contract by accepting it.”

The word “host” is described in the *Cambridge English Dictionary* as –¹²

“a place or organization that provides the space and other necessary things for a special event”.

A country or city intending to bid to host an international event usually needs to meet prescribed requirements in order to submit a bid to host a particular event. The bidding and preparation process may vary hugely between events because each event has its own unique requirements. Some events may require multiple sites within a city or the country, for example, a sporting event, while other events may require a single concentrated large area or venue, for example, a world expo and others may require only a conference centre, for example, a summit, congress or conference.¹³ Different events may attract different number of visitors requiring different degrees of city mobility, which may necessitate an assessment and investment in transport infrastructure to accommodate the requirements of the event successfully.

¹¹ <http://www.businessdictionary.com/definition/bid.html> [Accessed 21 February 2022].

¹² <https://dictionary.cambridge.org/dictionary/english/host> [Accessed 21 February 2022].

¹³ OECD “Global Sports Events and Local Development” available online at www.oecd.org/cfe/leed/OECD-leed-principles-global-sporting-events.pdf [Accessed 21 February 2022].

The bid planning, feasibility and preparation stages are very important because the securing of event rights to host events may hold many benefits or considerable costs for the host country or city. Prospective bidders may therefore need to provide, amongst other things, comprehensive information on the –¹⁴

- hosting vision and strategy, legacy and political support in the host country or city;
- general information about the host country or city, including, political, economic, media and marketing information;
- infrastructure including stadiums, conference or expo venues, facilities for teams and referees, accommodation, transport, general mobility, broadcasting, and safety and security;
- other event-related matters such as communication, public relations, event promotion, fan fests, volunteers, health and medical infrastructure, expenditure budget, ticket revenues and hospitality packages; and
- sustainable event management, human rights, labour standards, and environmental protection.

4.3 Hosting of any international event

The word “hosting” is not defined in the Act. The *Dictionary.com* describes “hosting” as –¹⁵

“3. a person, place, company, or the like, that provides services, resources, etc., as for a convention or sporting event”.

The country or city whose bid to host is successful is awarded the right to host the international event. The hosting requirements for a specific event are generally publicly available. To host an event usually means that the organisation is going to provide the resources necessary to have the event such as food, facilities, or services.

4.4 Ministerial approval of an international event

In view of the wide range of possible international events, PBA 11(b) provides the Minister with discretionary power to approve international events for purposes of PBA 11(b), having regard to the foreign participation in that event and the economic impact that event may have on the country as a whole.

An organisation bidding to host or hosting an international event wishing to obtain approval of the international event by the Minister for purposes of PBA 11(b) must comprehensively motivate the foreign participation in the event and clearly demonstrate the economic benefits the event will have on the country as a whole (see 5). See **Example 2** and **3** in **Annexure B** for examples of substantiating motivation and information submitted on the foreign participation in the respective international events as well as the economic benefit those events will have on South Africa.

¹⁴ OECD “Global Sports Events and Local Development” available online at www.oecd.org/cfe/leed/OECD-leed-principles-global-sporting-events.pdf [Accessed 21 February 2022].

¹⁵ www.dictionary.com/browse/hosting [Accessed 21 February 2022].

If the applicant organisation cannot provide the required motivation and information mentioned above in support of the application under PBA 11(b), SARS will not be in a position to make a recommendation to the Minister to consider approving that particular event as an international event for purposes of PBA 11(b). SARS will therefore not approve the applicant organisation as a PBO carrying on PBA 11(b) (see 5).

4.4.1 Foreign participation

The phrase “foreign participation” is not defined in the Act. The words are described separately in the *Cambridge English Dictionary* as follows:

- “Foreign” as “belonging or connected to a country that is not your own.”¹⁶
- “Participation” as “the fact that you take part or become involved in something” and “the act of taking part in an event or activity.”¹⁷

Foreign participation in the context of PBA 11(b) means that persons who are not citizens of South Africa must participate or take part in the international event. Participants must therefore represent foreign countries. Participants may include international teams or companies representing a foreign country or professional persons who are citizens of a foreign country. The inclusion of international players or persons in domestic teams or associations do not meet the foreign participation requirement.

The number of foreign participants will depend on the number of members or persons that have an interest in the international event. For example, the number of participants at the World Summit on Sustainable Development cannot be compared to an international conference for plumbers because the number of persons involved in the plumbing industry would be exclusive and limited. Likewise, the international participants of an international sporting event would normally far exceed the hosting of an international conference. Thus, there is no minimum requirement on foreign participants that must participate in an international event as this may prejudice smaller international events from being hosted in South Africa.

4.4.2 Economic impact on the country as a whole

The Minister will evaluate the economic impact on the country as a whole when considering the approval of an international event for purposes of PBA 11(b).

The success of an international event cannot be judged only on a profit and loss basis since, many events are part of a broader strategy aimed at improving the profile of a country or city. Often the attraction of an event is linked to a re-imaging process or to strategies of urban regeneration and tourism development. International events may have the ability to project a new image and identity for a region, town, city or country. The economic impact on the country as a whole may therefore not be limited to the event itself but may include the long-term results it may have of the country as a whole.

¹⁶ <https://dictionary.cambridge.org/dictionary/english/foreign> [Accessed 21 February 2022].

¹⁷ <https://dictionary.cambridge.org/dictionary/english/participation> [Accessed 21 February 2022].

The bid to host or hosting of an international event attracts foreign participants, guests, spectators, media and dignitaries. Thus, the bid to host or hosting of an international event may affect the economy by generating income, among other things, from the following sources:

- Ticket or gate income.
- Entry or participation fees.
- Advertising and ticket printing and sales.
- Revenue spent by media representatives such as broadcast rights, officials and sponsors such as global and local sponsorships.
- Building and upgrading of infrastructure, for example, the building and upgrading of stadiums and conference centres, improved national roads and airports.
- Improved public transport such as the Gautrain and rapid bus transport system.
- Improved information and communications technology (ICT).
- Increase in marketing opportunities and job creation.
- Foreign business investment.
- Improved tourism because most foreign participants view the attending of an international event as an opportunity to bring their families for an extended holiday either before or after the event to explore South Africa as a leisure destination.
- Opportunities for entrepreneurs and artisans manufacturing or creating authentic gifts and souvenirs.
- The increase in foreign participants, spectators and tourists results in a greater need for accommodation, care hire and air travel.
- Opportunities for the hospitality industry (hotels, restaurants, bars).
- Merchandising opportunities.
- Goods and services produced by the sport sector may include goods such as sports clothing, footwear and equipment. Services include coaching, gym and fitness training, hospitality services for sportspeople and teams traveling and competing at events.
- Volunteer programmes recruit and train locals in different job categories. Even though the job opportunities may be temporary, the training provides a foundation for life-skills for the future development of volunteers.
- Creates a platform to display South Africa's ability to host international events successfully.
- The educational, scientific and professional knowledge shared at trade fairs, conventions or conferences inevitably has a valuable impact on the country as a whole.

5. Approval as a public benefit organisation

Various organisations may bid to host or host international events. For example, such organisations, amongst other things, may include –

- a professional or representative body qualifying for approval under section 30B may host an international conference relating to a particular business, profession or occupation;
- an institution, board or body qualifying for exemption under section 10(1)(cA)(i) may host an international symposium on a particular scientific research topic; or
- the national, provincial or local spheres of the government of South Africa qualifying for exemption under section 10(1)(a) may host an international trade fair.

The bodies above do not qualify as PBOs and therefore the requirements of PBA 11(b) are not applicable to them. However, should these bodies establish a separate legal entity with the sole or principal object of carrying on the bid to host or hosting any international event, it is that separate legal entity, which may apply to SARS for approval as a PBO (see 7). If an organisation, which has been granted approval by the Commissioner as a PBO, carries on PBA 11(b) in addition to PBAs for which it has already obtained approval, such a PBO must also obtain Ministerial approval (see 4.4) for that international event.

The Commissioner will approve an organisation as a PBO provided its sole or principal object is to carry on one or more PBAs and complies with the prescribed requirements of section 30(3). The requirements of section 30 are not repeated in this Note since, they are dealt with comprehensively in the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

In order for an organisation to qualify as a PBO, such an organisation must be –¹⁸

- a non-profit company as defined in section 1 of the Companies Act 71 of 2008 incorporated in South Africa;
- a trust formed in South Africa;
- an association of persons¹⁹ established in South Africa; or
- a branch within South Africa of any company, association or trust incorporated, formed or established in any country other than South Africa that is exempt from tax on income in that other country.

¹⁸ See definition of “public benefit organisation” in section 30(1).

¹⁹ 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 GJ Pienaar “Formation” 2 (Third Edition Volume) *LAWSA* [online] (My LexisNexis: 28 February 2015) in paragraph 155.

An organisation, which has as its sole or principal object the carrying on of PBA 11(b) is required, amongst other things, to carry on such PBA –

- in a non-profit manner with an altruistic and philanthropic intent and may not promote the economic self-interest of any fiduciary or employee of the hosting organisation other than reasonable remuneration for services actually rendered;²⁰ and
- for the benefit of the general public,²¹ no person may receive any financial benefit.²²

An organisation constituted as described above will enjoy preferential tax treatment only if approved by the Commissioner as a PBO (see 7), and it continues to comply with the relevant prescribed requirements of section 30. Preferential tax treatment includes the benefit of partial taxation which is a method of taxing the receipts and accruals of PBOs derived from business undertakings or trading activities falling outside the permissible business undertaking or trading activity categories including the basic exemption set out in section 10(1)(cN)(ii) (see 6). In addition to being exempt from the payment of income tax on certain receipts and accruals, PBOs will also enjoy the benefit of being exempt from certain other taxes and duties, which include, amongst other things, donations tax, estate duty, transfer duty,²³ dividends tax²⁴ and capital gains tax.²⁵

Organisations established to bid to host or to host any international event may only be in existence for the duration of the bid to host or the hosting of the international event. The facts and circumstances pertaining to the dissolution of each organisation will differ and therefore the dissolution of a PBO carrying on PBA 11(b) will be fact specific. If the organisation approved by the Commissioner as a PBO is dissolved after the completion of the bid to host or after the international event has been hosted, the remaining assets must be distributed to one or more of the following organisations –²⁶

- another PBO;
- any institution, board or body whose sole or principal object is the carrying on of any PBA;
- the government of South Africa in the national,²⁷ provincial²⁸ or local²⁹ sphere contemplated in section 10(1)(a); or

²⁰ Paragraph (b) of the definition of “public benefit organisation” in section 30(1).

²¹ Paragraph (c)(i) of the definition of “public benefit organisation” in section 30(1).

²² Section 30(3)(b)(ii).

²³ For further commentary, see Interpretation Note 22 “Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies”.

²⁴ For further commentary, see *Comprehensive Guide to Dividends Tax*.

²⁵ For further commentary, see Interpretation Note 44 “Public Benefit Organisations: Capital Gains Tax”.

²⁶ Section 30(3)(b)(iii).

²⁷ 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. See Schedule 1 of the Public Service Act 103 of 1994 for a list of National Departments.

²⁸ The provincial sphere of government consists of the nine provincial legislatures and the respective provincial departments. See Schedule 2 of the Public Service Act 103 of 1994 for a list of Provincial Departments.

²⁹ The local sphere of government consists of municipalities. The Local Government: Municipal Structures Act 117 of 1998 regulates the establishment of municipalities.

- the National Finance Housing Corporation³⁰ contemplated in section 10(1)(f)(xvii).

Any of the above organisations benefitting from the dissolution of the PBO carrying on PBA 11(b) are required to use those assets solely for purposes of carrying on one or more PBAs. A PBO carrying on PBA 11(b) may choose to whom it will distribute its remaining assets on dissolution, without prior approval from the Commissioner, provided the recipients meet the dissolution requirement. A PBO carrying on PBA 11(b) may not distribute any of its funds, on dissolution, to individuals or other tax-paying entities and in so doing enable the recipients to share in the tax concession it has enjoyed.

Failure to transfer, or to take reasonable steps to transfer the remaining assets on dissolution will result in an amount equal to the market value of those assets not transferred less the amount equal to the *bona fide* liabilities, being deemed to be taxable income³¹ accruing to the PBO during the year of assessment³² in which dissolution took place.³³ A PBO guilty of such a transgression will therefore not be allowed to deduct any further tax allowances or deductions from its net revenue, since, its net revenue is deemed to be taxable income, that is, after allowances and deductions.

6. Business undertakings or trading activities

A PBO is allowed to carry on a business undertaking or trading activity provided it falls within the parameters of section 10(1)(cN)(ii) and such undertaking or activity does not become its sole or principal object.³⁴

An organisation bidding to host or hosting an international event may derive receipts and accruals, among other things, from –

- exhibition or trade entrance fees;
- registration fees paid by foreign and local participants;
- membership fees, subscriptions or contributions from foreign participants or member associations;
- exhibitors charges paid by exhibitors;
- advertising revenue;
- foreign and local sponsorships;
- gate income;
- broadcasting rights;
- sale of tickets and programmes;

³⁰ The National Department of Human Settlements established the National Housing Finance Corporation.

³¹ Defined in section 1(1).

³² The term “year of assessment” is defined in section 1(1).

³³ Section 30(6A) read with section 30(7).

³⁴ For further commentary on the interpretation and application of section 10(1)(cN) as well as a step-by-step guide to calculating the taxable income of PBOs, see *Tax Exemption Guide for Public Benefit Organisations in South Africa* and Interpretation Note 24 “Income Tax: Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts”.

- licensing and merchandise;
- sale of refreshments, food and beverage concessions rights at stadiums;
- sale of souvenirs;
- commercial hospitality rights; and
- government grants.

The receipts and accruals derived by an organisation established to bid to host or hosting an international event, which has been approved by the Minister for purposes of PBA 11(b), will be exempt if the receipts and accruals of any business undertaking or trading activity meet the requirements of section 10(1)(cN)(ii)(aa), namely, that it should –

- be integral and directly related to the sole or principal object of that PBO, which is the carrying on of PBA 11(b);³⁵
- be carried out substantially the whole on a cost-recovery basis;³⁶ and
- not result in unfair competition in relation to taxable entities.³⁷

Receipts and accruals from any business undertaking or trading activity not falling within the ambit of section 10(1)(cN)(ii), will be subject to partial taxation if it exceeds 5% of the total receipts and accruals of the PBO in a year of assessment or R200 000, whichever is the greatest.

Since the facts and circumstances pertaining to each organisation differ, each case will be considered on its own merits in deciding whether receipts and accruals from a business undertaking or trading activity meets the requirements of section 10(1)(cN)(ii).

7. Application for approval as a public benefit organisation

An organisation seeking approval by the Commissioner as a PBO must complete the prescribed application form EI 1.³⁸ The completed form must be submitted to SARS together with following:

- The required registration information.
- The requested supporting documentation such as the founding document, annual financial statement or bank statements.
- Comprehensive information relating to the international event, which may include –
 - the date;
 - venues;
 - anticipated number of attendees, or participants;

³⁵ Section 10(1)(cN)(ii)(aa)(A).

³⁶ Section 10(1)(cN)(ii)(aa)(B).

³⁷ Section 10(1)(cN)(ii)(aa)(C).

³⁸ Information on the application process is available on the SARS website by selecting Businesses and Employers / Tax Exempt Organisations.

- motivation to substantiate the foreign participation in the event (see 4.4.1);
 - details and nature of the international event; and
 - projected source and amount of income and nature of expenditure.
- Motivated reasons why the Minister should approve the international event for purposes of PBA 11(b) having regard to the economic impact the international event will have on the country as a whole (see 4.4.2).

An organisation already granted approval by the Commissioner as a PBO for the carrying on of one or more PBAs, other than PBA 11(b), who wishes to apply to obtain the Minister's approval to bid to host or host an international event for purposes of PBA 11(b), may do so by written request. The written request must be submitted to SARS together with the required information and documentation set out above.

SARS will ensure that the organisation seeking approval complies with the requirements for approval as a PBO (see 5) and the requirements of PBA 11(b) (see 4). SARS, if satisfied, will submit a recommendation by way of a submission based on the information and motivation provided by the applicant organisation for the Minister's consideration and possible approval of the international event for purposes of PBA 11(b).

The applicant organisation will be informed of the outcome once the Minister has exercised his discretion under PBA 11(b). If the Minister has exercised his discretion in favour of the organisation and approves the bid to host or the hosting of the international event for purposes of PBA 11(b) the application for approval as a PBO will be finalised by SARS. SARS will notify the applicant organisation of the approval as a PBO by way of a letter. A letter regarding the outcome of the written request in the case of an organisation already approved as a PBO will also be issued by SARS. The organisation is required to keep this letter confirming approval as a PBO as part of its records (see 10).

If the Minister has exercised his discretion not to approve the international event for purposes of PBA 11(b), the applicant organisation will be notified by a written notification. Under these circumstances, the Commissioner will be unable to consider the application for approval as a PBO favourably since, the organisation will not be carrying on a PBA, which in this instance is PBA 11(b). Organisations not approved by the Commissioner as a PBO will be liable for income tax and other taxes and duties as a normal taxpayer.

The tax-exempt status of an already approved PBO carrying on of one or more other PBAs will not be jeopardised if the Minister exercises his discretion not to approve the international event for purposes of PBA 11(b). However, the receipts and accruals derived by that PBO from the bid to host or hosting of an international event, which has not approved by the Minister for purposes of PBA 11(b), will be taxable.

8. Tax-deductible donations

Part I of the Ninth Schedule to the Act lists a variety of activities recognised as PBAs for approval as a PBO for purposes of section 30.

Part II of the Ninth Schedule to the Act lists some, but not all, of the activities listed in Part I for the purposes of section 18A. Section 18A is the section providing for the tax-deductibility of *bona fide* donations made to certain organisations³⁹ approved by the Commissioner, carrying on PBAs in Part II of the Ninth Schedule to the Act, in South Africa.⁴⁰

PBA 11(b) is listed only in Part I and is not included in Part II of the Ninth Schedule to the Act and therefore donations made to a PBO to carry on that activity will not qualify for a tax deduction under section 18A.

9. Objection and appeal

Any decision of SARS in the exercise of its discretion under section 30 is subject to objection and appeal in accordance with Chapter 9 of the TA Act.⁴¹

An organisation may object within 30 days from the date of –

- the decision by the Commissioner not to approve the organisation bidding to host or hosting an international event as a PBO under section 30; or
- an assessment issued in accordance with section 10(1)(cN).

The objection must be made on the prescribed form and specify in detail the grounds on which it is made.⁴² 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 organisation is dissatisfied with the decision by SARS, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.

The appeal process does not extend to the Minister's discretion not to approve an international event exercised under PBA 11(b). The Minister's decision will have to be taken on review to a High Court.

³⁹ See section 18A(1)(a), (b), (bA) and (c).

⁴⁰ See *Basic Guide to Tax-Deductible Donations* for the basic requirements for obtaining and retaining approval under section 18A as well as the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

⁴¹ Section 3(4)(b).

⁴² The rules for objections and appeals are formulated under section 103 of the TA Act and published in Government Notice 550 in *Government Gazette* 37819 of 11 July 2014. For more commentary on the resolution of tax disputes, see *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of Section 103 of the Tax Administration Act, 2011* and *Alternative Dispute Resolution: Quick Guide*.

10. Record-keeping

A PBO must adhere to all applicable compliance obligations under the TA Act, for example, record-keeping, submission of returns, assessments, dispute resolution (see 9), interest, refunds and anti-avoidance.

All PBOs are required to keep records for five years⁴³ from the date of the submission of a return⁴⁴ under the TA Act. A person must keep records, books of account or documents that –⁴⁵

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

The records, books of account or documents must be kept or retained in –⁴⁶

- their original form in an orderly fashion and in a safe place;
- the form, including electronic form, as may be prescribed by the Commissioner in a public notice;⁴⁷ or
- a form specifically authorised by a senior SARS official.

These records should be available for inspection purposes by a SARS official to verify compliance with the requirements as explained above, or for purposes of an inspection, audit or investigation.⁴⁸

Records that are relevant to an audit or investigation or an objection or appeal must be retained until the audit or investigation is concluded or until the assessment or the decision becomes final in the event of an objection or appeal (in case the five-year retention period is exceeded).⁴⁹

The persons accepting fiduciary responsibility⁵⁰ for a PBO will be required to keep records after the dissolution (see 5) of that PBO for the relevant prescribed period.

A PBO is not exempted from the obligation to deduct or withhold employees' tax if the PBO qualifies as an employer.⁵¹ The PBO must register as an employer for employees' tax purposes within 21 business days of becoming an employer and submit monthly EMP201s.

⁴³ Section 29(3) of the TA Act.

⁴⁴ The term "return" is defined in section 1 of the TA Act, and includes any form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS.

⁴⁵ Section 29(1) of the TA Act.

⁴⁶ Section 30(1) of the TA Act.

⁴⁷ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

⁴⁸ Section 31 of the TA Act.

⁴⁹ Section 32 of the TA Act.

⁵⁰ Section 30(3)(b)(i)

⁵¹ See definition of "employer" in paragraph 1 of the Fourth Schedule to the Act.

11. Conclusion

The approval of an international event for purposes of PBA 11(b) is at the discretion of the Minister. The Minister may approve an international event for purposes of PBA 11(b) having regard to the foreign participation in that event and the economic impact that event may have on the country as a whole. An organisation must submit comprehensive reasons why the Minister should approve the event as an international event for purposes of PBA 11(b).

The application for approval by the Commissioner of the organisation bidding to host or hosting an international event as a PBO is therefore dependent on the approval of the international event by the Minister for purposes of PBA 11(b). An organisation bears the onus of proving⁵² that it complies with the requirements relative to the approval as a PBO carrying on PBA 11(b) as discussed in this Note and must retain the necessary evidence to support the view taken (see **10**).⁵³ The burden may be discharged by way of supporting evidence submitted by the organisation, provided such evidence is reasonable.⁵⁴ Whether an organisation complies with the requirements of PBA 11(b) will be a factual enquiry and since, the facts and circumstances, pertaining to each organisation may differ, each case will be considered on its own merits.

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⁵² Section 102 of the TA Act.

⁵³ Section 29 of the TA Act.

⁵⁴ See ITC 1872 (2014) 76 SATC 225 (WC) at paragraphs 29 to 31. Although the income tax case does not create precedent, it may be used as a guide.

Annexure A – The law

Section 30

30. Public benefit organisations.—(1) For the purposes of this Act—

“**public benefit activity**” means—

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

“**public benefit organisation**” means any organisation—

- (a) which is—
 - (i) a non-profit company as defined in section 1 of the Companies Act or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
 - (ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;
- (b) of which the sole or principal object is carrying on one or more public benefit activities, where—
 - (i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;
 - (ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and
 - (iii)
- (c) where—
 - (i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
 - (ii)
 - (iii)

(2) Any activity determined by the Minister in terms of paragraph (b) of the definition of “public benefit activity” in subsection (1) or any conditions prescribed by the Minister in terms of subsection (3)(a) must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those conditions in the *Gazette*, for incorporation into this Act.

(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which—

- (a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;
- (b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is—
 - (i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person;

- (ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;
- (iii) in the case of a public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in subsection (1), required on dissolution to transfer its assets to—
 - (aa) any public benefit organisation which has been approved in terms of this section;
 - (bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity;
 - (cc) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a); or
 - (dd) the National Finance Housing Corporation contemplated in section 10(1)(f)(xvii),
 - which is required to use those assets solely for purposes of carrying on one or more public benefit activities;
- (iiiA) in the case of a branch of a public benefit organisation contemplated in paragraph (a) (ii) of the definition of “public benefit organisation” in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such branch to any public benefit organisation, institution, board, body, department or administration contemplated in subparagraph (iii), if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic;
- (iv)
- (v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- (vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- (c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (d) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;
- (e) complies with such reporting requirements as may be determined by the Commissioner;

- (f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which those funds have been provided; and
- (g)
- (h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

(3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.

(3B) (a) Subject to paragraph (b), where an organisation applies for approval, the Commissioner may approve that organisation for the purposes of this section with retrospective effect, if the Commissioner is satisfied that that organisation during the relevant period prior to its application complied with the requirements of a public benefit organisation as defined in subsection (1).

(b) For the purposes of paragraph (a), where the organisation—

- (i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of section 99(1) of that Act not be made; or
- (ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of section 99 (1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with section 25(1) of that Act.

(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.

(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply if the persons contemplated in subsection (3)(b)(i) responsible in a fiduciary capacity for the funds and assets of a branch contemplated in paragraph (a)(ii) of the definition of “public benefit organisation” in subsection (1) or any trust established in terms of a will of any person furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

(5) Where the Commissioner is—

- (a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or
- (b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of the organisation with effect from the commencement of that year of assessment, where corrective steps are not taken by that organisation within a period stated by the Commissioner in that notice.

(5A) Where any regulating or co-ordinating body contemplated in subsection (3A)—

- (a) with intent or negligently fails to take any steps contemplated in that subsection to exercise control over any public benefit organisation; or

- (b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations with effect from the commencement of that year of assessment, where corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice.

(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any public benefit organisation, institution, board or body or the government as contemplated in subsection (3)(b)(iii).

(6A) As part of—

- (a) the dissolution of an organisation contemplated in paragraph (a)(i) of the definition of “public benefit organization” in subsection (1); or
- (b) the termination of the activities of a branch contemplated in paragraph (a)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic,

the organisation or branch must transfer its assets to any public benefit organisation, institution, board or body or the government contemplated in subsection (3)(b)(iii).

(7) If the organisation fails to transfer, or to take reasonable steps to transfer, its assets, as contemplated in subsection (6) or (6A), an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the organisation, must for purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment in which approval was withdrawn or the dissolution of the organisation or termination of activities took place.

(8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.

(9)

(10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—

- (a) to answer any questions relating to such organisation; or
- (b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or
- (c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation and who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

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Public benefit activity in paragraph 11(b) in Part I

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

GENERAL

11. (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.

Annexure B – Examples of international events

The following are examples of the motivation submitted by the relevant organisations hosting international events substantiating the foreign participation and the economic benefits the respective events potentially had on the country as a whole.

Example 2 – South African World Petroleum Congress 2005

Facts:

During 2001, the South African National Committee of the World Petroleum Congress received an invitation from the World Petroleum Congress in London, for South Africa to prepare a bid proposal to host the World Petroleum Congress (the Congress) in 2005.

A non-profit company incorporated under the Companies Act 71 of 2008, was formed with the main object of managing, entering into agreements and co-ordinating activities of hosting the Congress. The main activities of the company was to organise, promote and host the international congress.

The Congress is organised every three years and provides a unique opportunity for all key players and members of the industry to gather and discuss the latest economic, political, scientific and commercial developments related to the petroleum sector.

The congress was held in the Sandton Convention Centre from 25 to 29 September 2005.

Support and commitment was received from the Ministry of Minerals and Energy of South Africa, Gauteng Tourism Authority, South African Tourism Authority, Sandton Convention Centre and the City of Johannesburg.

The Congress was founded in London in 1933 and for the first time in its history, the prestigious petroleum congress would be held on the African continent.

Foreign participation in the event:

The World Petroleum Congress membership comprises of 59 countries, which represents 90% of the world's major oil and gas producing and consuming nations. 4 000 delegates representing all the member countries attended. In addition, 400 exhibitors and 25 000 trade visitors attended.

Economic impact that the event may have on the country as a whole:

The World Petroleum Congress was the largest oil and gas exhibition ever held on the African continent.

The country as a whole benefitted by international promotional campaigns in every member country. These campaigns not only marketed the attendance of the congress but also promoted tourism and investment in South Africa.

The estimated budget was:

Expenses	:	U\$ 4,01 million
Income	:	U\$ 6,22 million

In addition to the delegates attending the congress there was an oil and gas equipment exhibition, which attracted in excess of 15 000 visitors, predominantly from the West African oil producing countries. This enabled South African companies to display their wares and services.

80% of the total revenue generated from the congress fees went to black economic empowerment within South Africa.

The congress was held in Sandton, a self-sufficient metropolitan node. It is the business, hotel and entertainment district of Johannesburg and is also recognised as the premier shopping area in South Africa, renown for fashion, specialist diamond jewellery stores and African arts, crafts and curios. It also benefits from the proximity of 40 hotels with over 6 000 rooms.

Most delegates made use of the opportunity to do pre- and post-congress tours. The congress promoted a wide range of tours, which included township tours and tours to private game reserves.

Result:

Based on the information submitted in support of the application the Minister having regard to the foreign participation and the economic impact of the country as a whole exercised his discretion in favour of the company and approved the hosting of the World Petroleum Congress 2005 as a PBA for purposes of PBA 11(b). The memorandum of incorporation of the company complied with the requirements of section 30 and therefore the Commissioner approved the company as a PBO.

Example 3 – Africa Cup of Nations 2013

Facts:

The Confédération Africaine de Football (CAF) is the governing body responsible for promoting football in Africa and around the world through educational and developmental programmes. CAF represents the National Football Association of Africa and runs continental and national competitions.

CAF has the exclusive right to organise the African Cup of Nations (AFCON) and the African Nations Championship (CHAN), collectively referred to as the tournaments, for participation by national teams. CHAN is held every two years alternating with AFCON. CHAN is directly linked to the hosting of AFCON and any country that bids and wins the rights to host AFCON, will be obligated to host CHAN in the following year.

The organising, hosting and staging of the tournaments are entrusted by CAF to the national football association of the host country, which under an agreement must establish a local organising committee (LOC).

The South African Football Association (SAFA) hosted the 29th AFCON in 2013 and CHAN in January 2014. Mbombela, Port Elizabeth, Durban and Johannesburg were the host cities for AFCON while Polokwane, Cape Town, Kimberley and Manguang hosted CHAN.

SAFA established a non-profit company incorporated under the Companies Act 71 of 2008, to be responsible for the organising, staging and hosting of the two tournaments.

Foreign participation in AFCON:

AFCON consists of a qualifying competition and a final competition. Sixteen senior men's national football teams participated in the qualifying competition, which included the host team. The AFCON tournament consisted of 32 matches of which the final competition took place from 19 January to 10 February 2013.

Foreign participation in CHAN:

This tournament is open to the national representative teams of the national associations affiliated to CAF, composed exclusively of national players playing in the national championship. The affiliated associations were entitled to enter one team to participate in CHAN, which took place in January 2014.

Economic impact that the event may have on the country as a whole:

Football matches of both tournaments were played in various host cities, which were selected to be inclusive of a geographically diverse area of coastal and inland cities as well as larger and smaller municipalities in South Africa.

The host cities were responsible for the provision of public infrastructure and services such as rigging, de-rigging of stadiums, décor and overlays, supply of designs, signage, marketing and branding materials, information technology and wireless broadband support, deliveries, security, medical services, parking services, hospitality and transport. This increased employment opportunities as well as the demand and need for local service providers to provide the required infrastructure and services.

In accordance with the contractual arrangements with CAF, concessions to conduct business in commercial exclusion zones at the various stadiums of the host cities were mainly granted to South African businesses. Smaller informal businesses in host cities, beyond the exclusion zones, also benefitted.

Products and services such as corporate hospitality, security, merchandising, ticketing, promotional items, screening and entertainment were procured locally. Goods and services were procured and bids assessed according to the prevailing broad-based black economic empowerment legislation and regulations in order to meet the conditions of the South African government guarantees associated with the funding of the tournaments.

A volunteer programme was operational where approximately 2 500 individuals were offered requisite support for the successful staging and hosting of the tournaments.

The promotion of the tournaments increased the demand for tourist facilities such as accommodation, car hire, air travel as well as marketing opportunities.

The final draw, opening, closing and award ceremonies, promotions, interviews, trophy tours, live and delayed coverage of the matches, studio presentations and highlight packages were broadcasted by way of satellite television into Africa and free-to-air terrestrial. This media coverage offered an opportunity for displaying South Africa and the potential activities, which may be experienced in South Africa as well as reaffirm South Africa's position to stage and host international sporting events.

The promotion of South Africa extended beyond the tournaments as the draws and trophy tours were scheduled to take place from Zambia to South Africa.

An estimated 500 000 tickets were made available for AFCON at prices equivalent to local South African football ticket prices making it affordable and accessible to both the broader domestic and international spectators.

The international nature of the tournaments meant that both domestic and international spectators contributed by spending amounts in connection with the tournaments and associated events.

Result:

Based on the information submitted in support of the application the Minister having regard to the foreign participation and the economic impact of the country as a whole exercised his discretion in favour of the company and approved the hosting of the Africa Cup of Nations 2013 as a PBA for purposes of PBA 11(b). The memorandum of incorporation of the company complied with the requirements of section 30 and therefore the Commissioner approved the company as a PBO.