



SOUTH AFRICAN REVENUE SERVICE

**INTERPRETATION NOTE: NO. 22 (Issue 2)**

DATE: 9 December 2008

**ACT : TRANSFER DUTY ACT, NO. 40 OF 1949 (the Act)**  
**SECTION : SECTIONS 9(1)(c) AND 9(1A)**  
**SUBJECT : EXEMPTION: PUBLIC BENEFIT ORGANISATIONS AND STATUTORY BODIES**

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### **Preamble**

In this Note –

- “**IT Act**” means the Income Tax Act, No. 58 of 1962;
- “**PBA**” means a public benefit activity as defined in section 30(1) of the IT Act and listed in Part I of the Ninth Schedule to that Act;
- “**PBO**” means a public benefit organisation as defined in section 30(1) of the IT Act;
- “**SARS**” means the South African Revenue Service;
- “**TEU**” means the Tax Exemption Unit of SARS;
- “**the Commissioner**” means the Commissioner for SARS; and
- “**TLAA 2000**” means the Taxation Laws Amendment Act, No. 30 of 2000

### **1. Purpose**

This Interpretation Note provides guidance on the application of sections 9(1)(c) and 9(1A) of the Act and addresses some of the uncertainties that may have arisen since the amendments to section 9(1)(c) and the introduction of section 9(1A) to the Act.

### **2. Background**

Before the amendments introduced by section 3 of the TLAA 2000, section 9(1)(c) and (j) of the Act provided as follows:

- Section 9(1)(c) of the Act provided for an exemption from the payment of transfer duty for the acquisition of property by religious, charitable and educational institutions of a public character on condition that –
  - the institution was exempt from income tax under section 10(1)(f) of the IT Act; and
  - the property was acquired exclusively for religious, charitable or educational purposes.
- Section 9(1)(j) of the Act provided for the exemption from the payment of transfer duty for the acquisition of property by an organisation that provides residential accommodation to aged or retired persons. In order to qualify for this exemption, the organisation had to be exempt from income tax under section 10(1)(cF) of the IT Act.

With effect from 15 July 2001 –

- sections 10(1)(cF) and 10(1)(f) of the IT Act were repealed by section 21(1)(a) of the TLAA 2000;
- sections 10(1)(cN) and 30 were introduced into the IT Act by sections 21(c) and 35(1) of the TLAA 2000 to regulate the tax-exempt status of PBOs;
- section 9(1)(c) of the Act was amended by section 3(1)(b) of the TLAA 2000;
- section 9(1)(j) of the Act was deleted by section 3(1)(c) of the TLAA 2000; and
- section 9(1A) of the Act was introduced by section 3(1)(d) of the TLAA 2000.

These amendments effectively broadened the category of organisations qualifying for exemption from the payment of transfer duty and no longer confined the exemption to religious, charitable or educational institutions of a public character or organisations providing accommodation to aged persons.

The exemption from the payment of transfer duty is an exemption for a specific transaction and an application must be submitted for each acquisition of property for which the exemption is requested.

### 3. The law

#### Sections 9(1)(c) and 9(1A) of the Act

**9. Exemptions from duty—**(1) No duty shall be payable in respect of the acquisition of property by—

- (c)
  - (i) a public benefit organisation contemplated in paragraph (a) of the definition of “public benefit organisation” in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30(3) of that Act ; or
  - (ii) any institution, board or body, which is exempt from tax in terms of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity contemplated in section 30 of that Act,

in respect of property acquired by such public benefit organisation, institution, board or body, the whole, or substantially the whole, of which will be used for the purposes of one or more public benefit activity carried on by such public benefit organisation, institution, board or body, as the case may be: Provided that if at any time subsequent to the acquisition thereof it is used otherwise than in the manner contemplated in this paragraph, duty shall become payable in respect of the acquisition of that property and the date upon which that property was first so otherwise used shall for the purposes of section 3(1) and section 4 be deemed to be the date of acquisition thereof;

(1A) No duty shall be payable in respect of the registration of any property transferred by any public benefit organisation contemplated in paragraph (a) of the definition of "public benefit organisation" in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30(3) of that Act to any entity which is controlled by that public benefit organisation;

#### 4. Application of the law

##### 4.1 Section 9(1)(c) of the Act

In order to qualify for the exemption from the payment of transfer duty for the acquisition of property under items (i) and (ii) of section 9(1)(c) of the Act, the organisation applying for the exemption must satisfy the following requirements:

First, it must be –

- an approved PBO under section 30(3) of the IT Act; or
- an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the IT Act, which has as its sole or principal object the carrying on of any PBA contemplated in section 30.

Secondly, the whole or substantially the whole of the property acquired must be used by such PBO, institution, board or body for carrying on one or more approved PBA.

##### 4.2 Interpretation of "substantially the whole"

The concept "substantially the whole" is interpreted to mean 90% or more. In order to overcome certain practical difficulties, SARS will accept a usage of not less than 85% for PBAs, provided the application is accompanied by proper motivated reasons and confirmation that the percentage will not, at any time in the future, be less than 85%. This percentage may be calculated on the use of the property based on either time or the surface area of the property. Any portion of the property not specifically used for approved PBAs or other purposes, must be excluded from the calculation.

#### **Example 1 – Substantially the whole determined on area usage**

*Facts:*

The Teddy Bear Baby Centre, a PBO which has been approved under section 30(3) of the IT Act acquired residential property for R950 000 on 18 March 2008 for purposes of caring for abandoned babies (an approved PBA listed in paragraph 1(a) of Part I of the Ninth Schedule to the IT Act). The PBO has confirmed that it will use only a portion of the residence for its PBA and will let the remaining rooms to a third party at a market-related rent. The area of the residence is 420 square metres of which 360 square metres will be used for PBAs.

Confirmation is submitted that the area of the property which will be let is 60 square metres and that this area will not be increased in the future.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the residential property.

*Determine:*

Whether the acquisition of the residential property qualifies for the exemption from the payment of transfer duty.

*Result:*

The area which the PBO will use for its PBA in relation to the whole property is taken into account to determine whether substantially the whole of the property will be used for purposes of carrying on a PBA. The area to be used for the PBA in relation to the whole property is  $360/420 \times 100 = 85.7\%$ . This means that 14.3% of the property will be used for purposes other than to carry on a PBA. This percentage does not exceed the acceptable maximum percentage of 15%.

The PBO will therefore qualify for the exemption from the payment of transfer duty for the acquisition of the property under section 9(1)(c) of the Act as substantially the whole of the property is used to carry on an approved PBA.

**Note:** See **Example 7** for determination of substantially the whole based on time usage.

#### 4.3 Section 9(1)(c)(i) of the Act – PBO approved under section 30(3) of the IT Act

##### 4.3.1 Section 30 of the IT Act

A PBO, is defined in section 30(1) of the IT Act as –

- a company formed and incorporated under section 21 of the Companies Act, No. 61 of 1973, or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
- any branch within the Republic of any company, association or trust incorporated, formed or established in terms of the laws of any country other than the Republic that is exempt from tax on income in that other country.

The PBO must be approved as such by the Commissioner under section 30(3) of the IT Act and must have as its sole or principal object the carrying on of one or more PBAs, approved by the Minister of Finance and which are set out in Part I of the Ninth Schedule of that Act. The PBAs are divided into the following categories:

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment and Animal Welfare

- Research and Consumer Rights
- Sport
- Providing of Funds, Assets or Other Resources
- General

A detailed description of PBAs listed under each category is available in **Annexure A** to this Note.

A PBO which has been approved under section 30(3) of the IT Act and which conducts one or more of the abovementioned approved PBAs, may qualify for the exemption from the payment of transfer duty for the acquisition of property provided the whole, or substantially the whole of the property will be used to conduct the approved PBA.

Not every PBA will be discussed in detail but transactions relating to specific PBAs will be addressed in **4.3.2**.

#### **4.3.2 Transactions qualifying for exemption from the payment of transfer duty**

##### **(a) Accommodation sold to retired persons (life-right scheme)**

Accommodation sold to retired persons under a life-right scheme, may form part of the PBA listed under paragraph 3(c) of Part I of the Ninth Schedule to the IT Act, provided that –

- residential care is provided to retired persons, where more than 90% 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 the activity; and
- residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost (cross-subsidisation).

The IT Act does not prescribe the extent to which the accommodation must be provided to poor and needy persons. The requirement is that the PBO must provide cross-subsidisation to poor and needy persons. See **Examples 3, 4 and 5**.

##### **(b) Residential accommodation acquired by PBOs conducting religious and educational PBAs**

The acquisition of official accommodation as a residence for the pastor or minister of an approved PBO that carries on an approved PBA in paragraph 5(a) of Part I of the Ninth Schedule to the IT Act, will qualify for the exemption from the payment of transfer duty provided the whole or substantially the whole of the property is to be used as a residence by the minister or pastor. It is accepted that the manse is acquired by the PBO for use in carrying on the approved PBA.

An approved PBO that carries on an educational PBA as listed in paragraph 4 of Part I of the Ninth Schedule to the IT Act may qualify for the exemption from the payment of transfer duty for the acquisition of a residence for occupation by teaching staff, provided the requirements of section 9(1)(c) of the Act are met.

See **Examples 2 and 10**

**(c) Provision of assets to another approved PBO or entity exempt from income tax under section 10(1)(cA)(i) of the IT Act**

The above activity comprises an approved PBA under paragraph 10 of Part I of the Ninth Schedule to the IT Act. The acquisition of property by an approved PBO for this purpose will qualify for exemption from the payment of transfer duty provided the whole or substantially the whole of the property is used by another PBO or entity which is exempt from income tax under section 10(1)(cA)(i) of the IT Act for the carrying on of an approved PBA.

**Example 2 – PBO providing assets to another approved PBO**

*Facts:*

The Kings Trust has been established to hold immovable property for the Stuart High School, an approved PBO carrying on the approved PBA listed under paragraph 4(a) of Part I of the Ninth Schedule to the IT Act. The Kings Trust has been approved as a PBO carrying on the approved PBA listed under paragraph 10 of Part I of the Ninth Schedule to the IT Act, namely, the provision of funds and assets to a PBO which has been approved under section 30 of that Act. The trust has acquired immovable property which is to be developed as follows:

- Five residential units for occupation by senior educators of the school.
- Swimming pool and tennis courts for use by the learners of the school.
- Athletics track for use by the school.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the immovable property.

*Determine:*

Whether the acquisition of the immovable property qualifies for the exemption from the payment of transfer duty.

*Result:*

The acquisition of the immovable property by the Kings Trust will qualify for the exemption from the payment of transfer duty provided that –

- confirmation is submitted that the trust is an approved PBO under section 30(3) of the IT Act;
- the trust carries on the PBA approved under paragraph 10 of Part I of the Ninth Schedule to the IT Act, namely, providing assets to another approved PBO to be used in carrying on its approved PBA; and
- the whole of the property will be used to carry on the approved PBA.

**4.3.3 Educational institutions which qualify as PBOs**

**Note:** Public educational institutions are dealt with under 4.4.

**(a) Independent schools**

An Independent school which is registered as such under the South African Schools Act, No. 84 of 1996 and which is established under a founding document as an association of persons or a trust or company incorporated under section 21 of the

Companies Act, No. 61 of 1973, may apply for approval as a PBO under section 30(3) of the IT Act, provided the activities and the founding document comply with section 30 of the IT Act. Should an independent school apply for exemption from the payment of transfer duty, the relevant confirmation must be provided that it has been approved as a PBO under section 30(3) of the IT Act.

**(b) Private higher education institution**

A “private higher education institution” as defined and registered under the Higher Education Act, No. 101 of 1997 provides “higher education” which falls within the ambit of the approved PBA listed under paragraph 4(b) of Part I of the Ninth Schedule to the IT Act and may apply for approval as a PBO under section 30(3) of that Act, provided it complies with the requirements of section 30 of the IT Act.

**(c) Private colleges**

A “private college” is defined under the Further Education and Training Colleges Act, No. 16 of 2006 and provides “further education and training” which is listed under paragraph 4(d) of Part I of the Ninth Schedule to the IT Act as an approved PBA. A private college which is registered as such under the Further Education and Training Colleges Act, No. 16 of 2008 may qualify for approval as a PBO provided the requirements of section 30 of the IT Act are met.

**(d) Private centre**

A “private centre” which is defined and registered as such under the Adult Basic Education and Training Act, No. 52 of 2000 may qualify for approval as a PBO, provided it complies with the requirements of section 30(3) of the IT Act, since it is conducting the approved PBA listed under paragraph 4(c) of the Ninth Schedule to that Act. Such a registered and approved private centre may qualify for exemption from the payment of transfer duty for the acquisition of property, provided the requirements of section 9(1)(c) of the Act are met.

**4.3.4 Requirements for exemption from the payment of transfer duty under section 9(1)(c)(i) of the Act**

In order to qualify for exemption from the payment of transfer duty under section 9(1)(c)(i) of the Act, a PBO must –

- provide a copy of the letter granting the PBO approval under section 30(3) of the IT Act; and
- confirm that the whole or substantially the whole of the property is or will be used for the purposes of carrying on one or more PBA as set out in Part I of the Ninth Schedule to the IT Act.

**Example 3 – Property acquired by a PBO to be used to carry on an approved PBA**

*Facts:*

The Sunset Hills Retirement Village, a company incorporated under section 21 of the Companies Act, No. 61 of 1973, has acquired immovable property which will be developed as follows:

- Ten self-contained single units for needy pensioners whose only source of income is a social pension.



- Twenty units to be sold under the life-right scheme.
- Twenty cottages sold as life-right units.
- Fifteen semi-furnished single rooms for occupation by persons with no income.
- A frail-care centre which will provide nursing services to all residents.
- A community centre for all residents.
- Dining room and kitchen facility providing meals and refreshments to all residents.

All the accommodation will be for occupation by persons over the age of 60. The accommodation provided to the persons with no income and those whose only source of income is a social pension is not market-related and is below cost-recovery. Income which will be received from selling the life-right accommodation will be used to subsidise the accommodation to needy persons.

The company complies with the requirements of section 30 of the IT Act and SARS has confirmed its approval as a PBO conducting the approved PBA in paragraph 3(c) of Part I of the Ninth Schedule to that Act.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the property.

*Determine:*

Whether the acquisition of the property qualifies for the exemption from the payment of transfer duty.

*Result:*

The acquisition of the property by the PBO will qualify for exemption from the payment of transfer duty under section 9(1)(c)(i) of the Act, since –

- the company has been approved as a PBO under section 30(3) of the IT Act;
- the company, by developing the property in the manner contemplated, will be carrying on the approved PBA listed in paragraph 3(c) of Part I of the Ninth Schedule to the IT Act; and
- the whole of the property will be used to carry on the approved PBA.

#### **Example 4 – Usage based on area of property acquired by an approved PBO**

*Facts:*

The facts are the same as in **Example 3** but instead of the cottages being sold as life-right units to persons over the age of 60, the company has decided to construct residential units to be sold to persons over the age of 55 but under the age of 60. The area of the property purchased is 20 000 square metres. The area used for the development of the approved PBA, will be 15 000 square metres and the area used for the development of the residential units for occupation by persons between the ages of 55 and 60 will be 5 000 square metres.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the property.

*Determine:*

Whether the whole or substantially the whole of the property will be used for purposes of one or more approved PBA; and if the acquisition of the property will qualify for the exemption from the payment of transfer duty.

*Result:*

The area to be used to carry on the PBA in relation to the whole property is taken into account to determine whether substantially the whole of the property will be used for purposes of carrying on a PBA. The area used for the PBA is  $15\,000/20\,000 \times 100 = 75\%$ . This means that less than 85% of the property will be used by the PBO for purposes of carrying on its PBA, which percentage is less than the acceptable percentage.

The PBO will not qualify for exemption from the payment of transfer duty on the acquisition of the immovable property as substantially the whole of the property will not be used for approved PBAs.

**Note:** The SARS TEU should be informed of the intended development so that the PBO's status can be reviewed.

**Example 5 – Property acquired by a PBO – whether the whole or substantially the whole of the property will be used to carry on approved PBAs**

*Facts:*

The facts are the same as in **Example 3** above except that the company now acquires a second vacant property which is to be developed by constructing residential units to be sold under the life-right scheme to persons over the age of 60 years. No cross-subsidisation of poor and needy persons will be provided on the property.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the second vacant property.

*Determine:*

Whether the acquisition of the second vacant property will qualify for the exemption from the payment of transfer duty.

*Result:*

The acquisition of the second vacant property will not qualify for the exemption from the payment of transfer duty as the whole or substantially the whole of the property will be used to sell units under the life-right scheme. No residential care will be provided for poor and needy retired persons over the age of 60 and, the PBO will therefore not carry on an approved PBA on its second property.

#### 4.4 Section 9(1)(c)(ii) of the Act – Institution, board or body exempt under section 10(1)(cA)(i) of the IT Act

##### 4.4.1 Section 10(1)(cA)(i) of the IT Act

Subparagraph (ii) was added to section 9(1)(c) of the Act to provide for the exemption of statutory bodies which are exempt from income tax under section 10(1)(cA)(i) of the IT Act and which have, as their sole or principal object, the carrying on of any PBA contemplated in section 30 of the IT Act (see **4.3.1**).

A company registered under the Companies Act, No. 61 of 1973 and a trust are specifically excluded from qualifying for exemption from income tax under section 10(1)(cA)(i) of the IT Act.

Section 10(1)(cA)(i) of the IT Act requires formal approval of the exemption from income tax by the Commissioner. When such an organisation submits an application for the exemption from the payment of transfer duty, the letter issued by the Commissioner approving the relevant exemption must be submitted together with confirmation that the whole or substantially the whole of the property (see **4.1**) is or will be used for the purpose of conducting one or more approved PBA as set out in Part I of the Ninth Schedule to that Act.

**Note:** The exemption from the payment of transfer duty is only applicable to institutions, boards and bodies that are exempt from income tax under section 10(1)(cA)(i) of the IT Act and is not applicable to a limited liability company whose receipts and accruals are exempt from income tax under section 10(1)(cA)(ii) of that Act.

##### 4.4.2 Qualifying activities of institutions, boards or bodies

Institutions, boards or bodies established by or under any law must conduct any of the following activities in order to comply with section 10(1)(cA)(i) of the IT Act:

- Scientific, technical or industrial research, such as medical, water, animal or agricultural research. This qualifies as a PBA under paragraph 8(a) of Part I of the Ninth Schedule to that Act.
- Provide necessary or useful commodities, amenities or services to the state or members of the general public. This includes –
  - cultural institutions such as museums, art galleries, libraries, national monuments, heritage sites, carrying on the PBA under paragraph 6(a) or (b) of Part I of the Ninth Schedule to the IT Act;
  - nature conservation bodies or parks boards carrying on the approved PBA under paragraph 7(a) of Part I of the Ninth Schedule to the IT Act;
  - botanical institutions carrying on the PBA listed under paragraph 7 of the Ninth Schedule to the IT Act; or
  - public schools, universities, universities of technology (previously known as technikons) and colleges carrying on one of the PBAs listed under paragraph 4 of the Ninth Schedule to the IT Act.
- Promote commerce, industry or agriculture such as the Sector Education and Training Authorities (SETAs). This qualifies as a PBA listed in paragraph 4 of the Ninth Schedule to the IT Act.

### 4.4.3 Educational institutions

#### (a) Public schools

A public school, as defined in the South African Schools Act, No. 84 of 1996, falls under the jurisdiction of provincial legislation and under the control of the relevant provincial education authority. A public school is not brought into existence under a founding document, but under the relevant statute law and is therefore neither a PBO nor can it be approved as such under section 30 of the IT Act. For income tax purposes it has been accepted that a public school is exempt from income tax under section 10(1)(cA)(i) of the IT Act. SARS has not required each primary and secondary school to apply for formal approval of the exemption from income tax under section 10(1)(cA)(i) of that Act.

If an application for exemption from payment of transfer duty is received from a public school, confirmation from the relevant educational authority confirming that the school is registered as a public school under the South African Schools Act, 1996 will suffice.

#### (b) Public higher education institutions

Under the Higher Education Act, No. 101 of 1997 a “public higher education institution” means any higher education institution that is established or declared as a public higher education institution. Under the provisions of that Act the Minister of Education may establish a university, university of technology (technikon) or college by way of notice in the *Gazette*. Such a public higher education institution is established under law and qualifies for exemption from income tax under section 10(1)(cA)(i) of the IT Act. Such an institution carries on the approved PBA listed under paragraph 4(b) of Part I of the Ninth Schedule to the IT Act, namely, the provision of “higher education” by a “higher education institution”. The exemption from income tax under section 10(1)(cA)(i) of the IT Act requires formal approval from the Commissioner.

#### (c) Public colleges

A “public college” is defined and registered under the Further Education and Training Colleges Act, No. 16 of 2006 and provides “further education and training” which is listed under paragraph 4(d) of Part I of the Ninth Schedule to the IT Act as an approved PBA. A public college may apply for an exemption from income tax under section 10(1)(cA)(i) of the IT Act.

#### (d) Public centre

A “public centre” as defined in the Adult Basic Education and Training Act, No. 52 of 2000 is established under that Act and qualifies for exemption from income tax under section 10(1)(cA)(i) of the IT Act. A public centre conducts the PBA approved in paragraph 4(c) of Part I of the Ninth Schedule to the IT Act.

#### **Example 6 – Institution, board or body conducting an approved PBA**

##### *Facts:*

The Meadows Primary School is a public school as defined in the South African Schools Act, No. 84 of 1996 and is registered as such by the Western Cape Education Authority. It does not have a formal letter from SARS confirming that it is exempt from income tax under section 10(1)(cA)(i) of the IT Act.

The School has, however, provided confirmation from the relevant education authority that it is registered as a public school. The school has acquired a vacant stand for R90 000 to be developed as a sports ground for sole use by the school in promoting its sporting activities, which form part of the provision of education to its learners.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the vacant stand.

*Determine:*

Whether the acquisition of the vacant stand by the school qualifies for the exemption from the payment of transfer duty under section 9(1)(c)(ii) of the Act.

*Result:*

The vacant stand acquired will qualify for exemption from the payment of transfer duty under section 9(1)(c)(ii) of the Act as all three of the following requirements are met:

- The school is registered as a public school and has provided the relevant confirmation from the education department. It may therefore be accepted that the school qualifies for exemption under section 10(1)(cA)(i) of the IT Act.
- The sole or principal object of the school is carrying on the approved PBA listed in paragraph 4(a) of Part I of the Ninth Schedule to the IT Act.
- The whole or substantially the whole of the vacant stand will be used to conduct the approved PBA listed in paragraph 4(a) of Part I of the Ninth Schedule to the IT Act.

#### **Example 7 – Institution, board or body conducting an approved PBA**

*Facts:*

The Agricultural Research Council is an institution which has been established under the Agricultural Research Act, No. 86 of 1990, with the object of conducting research, development and technology transfer to promote agriculture and industry and thus contribute to the improvement of the quality of life of the people of the Republic.

The Council has been established by law and complies with all the requirements of section 10(1)(cA)(i) of the IT Act and an exemption from income tax under section 10(1)(cA)(i) of that Act has been granted by SARS. The Council is conducting the approved PBA of agricultural research, which is listed in paragraph 8(a) of Part I of the Ninth Schedule to that Act.

The Council has acquired immovable property for purposes of erecting a laboratory to engage in research into the quality of the various cultivars of potatoes and their suitability for agricultural, commercial and consumption purposes. In particular research is to be conducted into the most suitable type of cultivar for the manufacture of crisps with the least impact on the health of the consumer.

An application for exemption from the payment of transfer duty has been lodged for the acquisition of the property.

*Determine:*

Whether the acquisition of the property qualifies for the exemption from the payment of transfer duty under section 9(1)(c)(ii) of the Act.

*Result:*

The acquisition of the property will qualify for the exemption from the payment of transfer duty because –

- the Council has provided confirmation that it is exempt from income tax under section 10(1)(cA)(i) of the IT Act;
- the Council is conducting the approved PBA listed in paragraph 8(a) of Part I of the Ninth Schedule to the IT Act, namely, research; and
- confirmation has been provided that the whole of the property will be used to carry on the approved PBA.

#### **4.5 Section 9(1A) of the Act**

This provision was initially introduced to assist a PBO whose tax-exempt status was jeopardised as a result of a trading activity carried on by it. So as not to forfeit its income tax exemption, a PBO was permitted to transfer the trading asset to a separate taxable entity without incurring a liability for transfer duty. The IT Act has subsequently been amended to permit an approved PBO to retain a trading asset without forfeiting its approval under section 30(3) of the IT Act. Section 9(1A) of the Act has accordingly been amended but still allows for the exemption from the payment of transfer duty for the transfer of property from an approved PBO to a separate taxable entity.

In order to qualify for the exemption from the payment of transfer duty under section 9(1A) of the Act, the organisation transferring the property must –

- be a PBO which has been approved as such by the Commissioner under section 30(3) of the IT Act; and
- transfer the property to any other entity which is controlled by that PBO.

The transfer and registration of property from an approved PBO to a separate taxable entity may qualify for the exemption from the payment of transfer duty, provided the transferee is controlled by the PBO. This requirement will be met by a transferee which is –

- a limited liability company all the issued shares of which are held by the PBO (no shares may be held by any other person);
- a trust, the sole beneficiary of which is an approved PBO; or
- an association of persons or a company incorporated under section 21 of the Companies Act, No. 61 of 1973 the sole member of which is the approved PBO.

There is no restriction or requirement relating to the purpose for which the immovable property is used. The property may be used either to carry on PBAs or to carry on business or trading activities.

**Example 8 – Transfer of property from a PBO to a separate legal entity**

*Facts:*

The Thusano Community Centre, an approved PBO under section 30(3) of the IT Act, owns the following properties under separate title deeds:

- Improved property in the central business area from where it conducts its activities of caring for homeless and destitute persons.
- Improved property which is used to care for terminally-ill persons. Part of the property is let for commercial use.
- A property bequeathed to the Centre comprising of ten flats which are let and produce rental income.
- Vacant stand which the Centre intends to develop as an orphanage but which, in the interim, is let as a parking facility.

For certain practical and administrative reasons the Centre has decided to transfer all the immovable properties into a separate legal entity. For this purpose a separate limited-liability company with an authorised and issued share capital of 100 shares was registered as the property-owning company.

The company is wholly owned by the Centre, since all 100 issued shares of the company are held by the Centre.

*Determine:*

Whether the transfer of all the properties by the PBO to the new company qualifies for the exemption from the payment of transfer duty under section 9(1A) of the Act.

*Result:*

The transfer of all of the above properties from the PBO to the company will qualify for the exemption from the payment of transfer duty, since the Centre complies with the requirements of section 9(1A) of the Act, namely –

- the Centre is an approved PBO under section 30(3) of the IT Act; and
- the properties are transferred to an entity of which the Centre is the sole shareholder.

**5. Non-compliance**

If at any time subsequent to the acquisition of property which has qualified for the exemption from the payment of transfer duty under section 9(1)(c) of the Act, the whole of the property or substantially the whole of that property is used for a purpose other than for carrying on any PBA, transfer duty becomes payable at the time that property was used for purposes other than to carry on the PBA of the PBO. Section 9(1)(c) of the Act deems the date of acquisition to be the date that property is used for any purpose other than for the purpose of carrying on one or more PBA.

Under section 2 of the Act, transfer duty is payable on the value of the property at the time of acquisition. Transfer duty will therefore become payable on the original purchase price on the date that property is used for the first time for purposes other than to carry on one or more PBA. The rate at which the duty is calculated is the rate applicable at the time of acquisition, namely, the date on which that property is used for purposes other than carrying on an approved PBA. Should the duty not be paid within six months from the date of change of use, a penalty of 10% per year for each completed month is payable.

**Example 9 – Property subsequently used for other purposes (determined on time usage)**

*Facts:*

The Sizanani Care Centre, a PBO which has been approved under section 30(3) of the IT Act on 3 November 2002, acquired residential property (first property) for R550 000 on 18 December 2002 for purposes of providing a shelter for street children. At the time of acquisition the Centre –

- submitted confirmation from SARS that it is approved as a PBO under section 30(3) of the IT Act; and
- confirmed that the whole of the property will be used to carry on an approved PBA as listed in paragraph 1(a) of Part I of the Ninth Schedule to the IT Act.

On 27 May 2007 the Centre acquired bigger accommodation (second property) and no longer used the first property for its PBA. As from 1 June 2007 the first property was let for commercial purposes.

*Determine:*

The transfer duty consequences of the first property from date of acquisition.

*Result:*

**Acquisition of first property**

The first property qualified for the exemption from the payment of transfer duty because the Centre supplied confirmation of its approval as a PBO and gave an undertaking that the whole of the property would be used to carry on an approved PBA.

**Subsequent change in use**

On 1 June 2007 the whole property was used for purposes other than to carry on an approved PBA. Under the proviso to section 9(1)(c) of the Act, transfer duty will become payable on the date when it was first used for purposes other than carrying on the PBA, namely, 1 June 2007. Transfer duty is therefore payable on the original purchase price of R550 000 at the rate applicable on 1 June 2007.

Unless the PBO pays the transfer duty within six months from the date the property is first used for such other purposes, namely, 1 June 2007, interest will become payable on the amount of transfer duty due.



**Example 10 – Subsequent change in use (determination of substantially the whole on a time usage)**

*Facts:*

The Sunrise Church is an approved PBO under section 30(3) of the IT Act. It conducts the approved PBA set out in paragraph 5(a) of Part I of the Ninth Schedule to that Act. On 1 March 2002 the church acquired a manse for occupation by a second resident minister who had been appointed to assist with youth work. The minister's term of office ended on 31 August 2006 and in view of the decline in the number of young members of the congregation, it was decided not to fill the vacant post.

The manse was let to a third party from 1 September 2006 to 28 February 2007. The manse was sold on 1 March 2007.

*Determine:*

The transfer duty consequences of the acquisition of the manse for the second resident minister.

*Result:*

**Initial acquisition**

The acquisition of the manse on 1 March 2002 for the second resident minister qualifies for the exemption from the payment of transfer duty as –

- the Church is approved as a PBO under section 30(3) of the IT Act;
- the Church carries on the approved PBA listed under paragraph 5(a) of Part I of the Ninth Schedule to the IT Act; and
- the whole of the property was occupied by the second resident minister who was employed by the Church and the property was therefore used to carry on the approved PBA.

**Subsequent use until date of disposal**

For the period 1 March 2002 to 31 August 2006 the manse was used to carry on the approved PBA.

For the period 1 September 2006 to 28 February 2007 the manse was used for purposes other than carrying on the approved PBA.

During the period 1 March 2002 to 28 February 2007 the manse was used to carry on a PBA for 54 months and let for six months. This represents a usage of 90% ( $54/60 \times 100$ ) for carrying on the PBA from the date of acquisition. This percentage does not exceed the acceptable maximum percentage of 15% which means that the PBO has used substantially the whole of the manse in carrying on its PBA and the proviso to section 9(1)(c) of the Act will not be applicable.

## **6. Procedure for applying for PBO status and exemption from income tax**

### **6.1 Approval as a PBO**

The application for approval as a PBO under section 30(3) of the IT Act is a centralised function which is dealt with by the TEU, a division within SARS having the responsibility to deal with matters relating to the exemption from specific taxes and duties for certain organisations. Contact details of the TEU are on the SARS website [www.sars.gov.za](http://www.sars.gov.za) and in 7.

The application for approval must be made on the prescribed Form EI 1 which is available on the SARS website in the TEU section. The completed form together with the requested documentation must be submitted to the TEU where the application will be considered. The applicant will be informed by way of a letter whether the organisation has been approved as a PBO under section 30(3) of the IT Act.

If the application for exemption from the payment of transfer duty relates to a newly-established organisation or an organisation which has not previously applied for approval as a PBO, the organisation must complete the application form and submit it together with the relevant documentation to the TEU, with the request that the application receive priority attention in light of the pending application for exemption from payment of transfer duty.

The notification of approval issued by the TEU is by way of letter and not a certificate and a copy of this letter must accompany the application for exemption from payment of transfer duty.

It is not a requirement that an approved PBO must renew the application for approval annually. Once an organisation has been approved as a PBO, the approval will be sustained, provided it continues to comply with all the requirements for approval.

The relevant SARS branch office must, therefore, accept the copy of the letter approving the exemption. In cases of doubt the TEU should be contacted.

A SARS branch office may verify the status of an organisation, namely, whether it has been approved or granted an exemption from income tax, on the Income Tax System (ITS).

Organisations that were previously exempt from income tax under the repealed provisions of the IT Act were required to re-apply for approval under sections 10(1)(cN) and 30 of the IT Act (which came into effect on 15 July 2001), on or before 31 December 2004. However, the exemption from income tax under the previous (repealed) legislation will continue to apply until such time as notified by the Commissioner of his decision under section 30 of the IT Act, provided the organisation has re-applied on or before 31 December 2004. A letter confirming exemption from income tax under the repealed legislation is therefore no longer acceptable, unless the TEU confirms that the exemption under the repealed legislation is still applicable as a result of the application for the approval under section 30(3) of the IT Act not being finalised.

Exemption from the payment of transfer duty must not be granted to an organisation which –

- is unable to provide confirmation that it has been approved by the Commissioner as a PBO; or

- provides confirmation of an exemption granted under the repealed provisions of section 10 of the IT Act but has not re-applied for exemption from income tax.

The organisation will be required to lodge an application to be approved as a PBO and only once the letter of approval issued by the TEU is submitted, may the application for exemption from the payment of transfer duty be considered further.

## 6.2 Exemption from income tax under section 10(1)(cA)(i) of the IT Act

The application and approval for exemption from income tax under section 10(1)(cA)(i) of the IT Act is also dealt with by the TEU and the same procedure for application must be followed as for PBOs as discussed in 6.1. The TEU will likewise issue a letter approving the exemption from income tax under section 10(1)(cA)(i) of the IT Act. The status of an organisation which is exempt under section 10(1)(cA)(i) of that Act can also be verified by a SARS branch office.

## 7. Contact details of the Tax Exemption Unit

### Tax Exemption Unit South African Revenue Service

#### Postal address:

PO Box 11955  
HATFIELD  
0028

#### Physical address:

Pro-Equity Court  
1250 Pretorius Street  
Hatfield  
Pretoria  
0083

Telephone: 012 - 422 8800

Fax: 012 - 422 8830

012 - 422 8850

E- mail: [teu@sars.gov.za](mailto:teu@sars.gov.za)

SARS website: [www.sars.gov.za](http://www.sars.gov.za)

## 8. General

An exemption from the payment of transfer duty is not a blanket exemption, but an exemption for a specific transaction. Each transaction is considered on its own merits. A separate application for exemption from the payment of transfer duty must therefore be submitted for each acquisition of property together with the required documentation.

For comprehensive information relating to transfer duty, consult the *Transfer Duty Handbook* which is available on the SARS website.

**9. Conclusion**

This Note merely provides general guidelines and discusses the broad principles of the legislation. The particular circumstances of each case need to be considered before an exemption from the payment of transfer duty can be approved.

**Legal and Policy Division**  
**SOUTH AFRICAN REVENUE SERVICE**  
**Date of first issue: 11 March 2004**

Archived

## Annexure A - Part I of the Ninth Schedule to the IT Act

### NINTH SCHEDULE

[As amended by Taxation Laws Amendment Act, No. 3 of 2008]

#### PUBLIC BENEFIT ACTIVITIES

(Section 30)

#### PART I

##### 1. Welfare and Humanitarian

- (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.

- (g) The promotion of access to media and a free press.

## 2. Health Care

- (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.

## 3. Land and Housing

- (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 R7 500 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.

## 4. Education and Development

- (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) 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 and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.

## **5. Religion, Belief or Philosophy**

- (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.

## **6. Cultural**

- (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.

## **7. Conservation, Environment and Animal Welfare**

- (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.

## **8. Research and Consumer Rights**

- (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.

## **9. Sport**

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.

## **10. Providing of Funds, Assets or Other Resources**

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) or (b).

**11. General**

- (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.

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