

Basic Guide to Section 18A Approval

Income Tax



South African Revenue Service

Basic Guide to Section 18A Approval

Preface

This guide has been prepared to assist organisations in understanding the basic requirements for obtaining and retaining approval under section 18A. It does not deal comprehensively with the technical and legal detail and should not be used as a legal reference. The previous archived issue of this guide is titled the *Basic Guide to Tax-Deductible Donations*.

The *Tax Exemption Guide for Public Benefit Organisations in South Africa* can be consulted for comprehensive information on both the approval of public benefit organisations as well as the approval under section 18A.

The *Basic Guide to Income Tax Exemption for Public Benefit Organisations* can also be consulted for a basic understanding of the requirements to obtain and retain approval as a public benefit organisation under section 30.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act.

It is also not a general binding ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website at www.sars.gov.za for details of the relevant application procedure.

This guide is based on the legislation as at time of issue.

This guide does not consider the tax relief provided under section 8 of the Disaster Management Tax Relief Act 13 of 2020 during the COVID-19 pandemic. The principles and requirements relating to the deduction of donations to COVID-19 disaster relief organisations under section 18A apply only to donations made in accordance with that Act. This guide also does not consider the deductions of donations made by employers on behalf of their employees to the Solidarity Fund under section 5 of the Disaster Management Tax Relief Administration Act 14 of 2020.

All guides, interpretation notes, rulings and forms referred to in this guide are the latest versions available on the SARS website unless the context indicates otherwise.

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 7277;
 - if calling from abroad, on +27 11 602 2093 (only between 8h00 and 16h30 South African time);
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS branch office, preferably after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

Comments on this guide may be e-mailed to policycomments@sars.gov.za.

Leveraged Legal Products

SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 8 March 2013
Date of 2nd issue : 19 September 2016
Date of 3rd issue : 17 March 2020
Date of 4th issue : 18 August 2022

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Glossary

In this guide unless the context indicates otherwise –

- **“agency, programme, fund, High Commissioner, office, entity or organisation”** means, as appropriate, a specialised agency contemplated in section 18A(1)(bA)(i) or the programme, fund, High Commissioner, office, entity or organisation listed in section 18A(1)(bA)(ii) to (xii) meeting the requirements of section 18A(1)(bA), and approved by the Commissioner under section 18A(1)(bA)(dd);
- **“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;
- **“conduit PBO”** means a “public benefit organisation” constituted as either a “non-profit company” as defined in section 1 of the Companies Act 71 of 2008, a trust or an association of persons incorporated, formed or established in South Africa approved by the Commissioner under section 30(3), providing funds or assets to any PBO, any institution, board or body, or the government, and approved by the Commissioner under section 18A(1)(b);
- **“co-ordinating body”** means the regulating or controlling body of a group of institutions, boards or bodies sharing a common purpose and carrying on any PBAs in Part II in South Africa and approved by the Commissioner for purposes of section 18A;
- **“government”** means any department of the government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a) approved by the Commissioner under section 18A(1)(c) and that uses donations made to it for any PBA in Part II;
- **“institution, board or body”** means any institution, board or body exempted by the Commissioner under section 10(1)(cA)(i) carrying on any PBA in Part II in South Africa, and approved by the Commissioner under section 18A(1)(a)(ii);
- **“Minister”** means the Minister of Finance;
- **“Ninth Schedule”** means Ninth Schedule to the Act;
- **“Part I”** and **“Part II”** mean Part I and Part II of the Ninth Schedule;
- **“PBA”** means a “public benefit activity” listed in Part I and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;
- **“PBO”** means a “public benefit organisation” constituted as either a “non-profit company” as defined in section 1 of the Companies Act 71 of 2008, a trust or an association of persons incorporated, formed or established in South Africa approved by the Commissioner under section 30(3), which carries on PBAs in Part II in South Africa, and approved by the Commissioner under section 18A(1)(a)(i);
- **“section”** means a section of the Act;
- **“section 18A-approved organisation”** means any PBO, conduit PBO, institution, board or body, agency, programme, fund, High Commissioner, office, entity, organisation, or the government approved by the Commissioner for purposes of section 18A;

- **“section 18A receipt”** means a special receipt containing prescribed information issued under section 18A by a section 18A-approved organisation entitling the donor to an income tax deduction for a donation made;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“the Act”** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Introduction

Government has recognised that certain organisations are dependent on the generosity of the public and to encourage that generosity has provided a tax deduction (see **12**) for certain donations (see **10**) made by taxpayers. The eligibility to issue section 18A receipts is restricted to specific organisations approved by the Commissioner (see **2**) that use the donations to carry on or fund specific PBAs (see **5**) in South Africa.

The aforementioned specific organisations must apply to the Commissioner for approval under section 18A (see **3**) to issue section 18A receipts (see **11**) for donations received. A section 18A receipt may be issued by a section 18A-approved organisation only from the date the Commissioner has confirmed section 18A approval. The Commissioner issues a reference number for purposes of section 18A which must appear on the section 18A receipts.

2. Qualifying organisations

The following organisations may qualify for approval under section 18A:

- A PBO
- An institution, board or body
- A conduit PBO
- The government
- Any agency contemplated in the definition of “specialized agencies” in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act 37 of 2001. Examples of such agencies include the following:
 - The International Labour Organization (ILO)
 - The Food and Agriculture Organization of the United Nations (FAO)
 - The United Nations Educational, Scientific and Cultural Organization (UNESCO)
 - The International Civil Aviation Organization (ICAO)
 - The International Monetary Fund (IMF)
 - The International Bank for Reconstruction and Development (IBRD)
 - The World Health Organization (WHO)
 - The Universal Postal Union (UPU)
 - The International Telecommunications Union (ITU)
- The following specifically named programmes, funds, High Commissioners, offices, entities or organisations may also qualify:
 - The United Nations Development Programme (UNDP)
 - The United Nations Children’s Fund (UNICEF)
 - The United Nations High Commissioner for Refugees (UNHCR)
 - The United Nations Population Fund (UNFPA)
 - The United Nations Office on Drugs and Crime (UNODC)
 - The United Nations Environmental Programme (UNEP)

- The United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women)
- The International Organisation for Migration (IOM)
- The Joint United Nations Programme on HIV/AIDS (UNAIDS)
- The Office of the High Commissioner for Human Rights (OHCHR)
- The United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA)

The Commissioner may grant approval for purposes of section 18A to a group of institutions, boards or bodies falling directly under the direction and supervision of a co-ordinating body.

The prescribed conditions and requirements that each of the above qualifying organisations must comply with are considered in **6**. The non-compliance penalties in case of a contravention of section 18A are dealt with in **8**.

3. Application for approval

A qualifying organisation (see **2**) not approved by the Commissioner for purposes of section 18A must complete the prescribed application form EI 1. Information on the application process is available on the SARS website.

An application for approval under section 18A can be made simultaneously when an organisation applies for approval as a PBO under section 30 or as an institution, board or body under section 10(1)(cA)(i) on the application form EI 1. A separate selection is, however, made on the application form EI 1 to indicate to the Commissioner that approval under section 18A is being sought. If a PBO or an institution, board or body, however, subsequent to obtaining approval under section 30 or section 10(1)(cA)(i), whichever is appropriate, wishes to apply for section 18A approval, it may do so by written request to the Commissioner. The following information and documentation must be provided:

- The relevant PBO, or exemption reference number and taxpayer reference number allocated to the PBO or institution, board or body.
- The relevant PBAs in Part II for which approval is sought.
- A detailed demonstration of how those activities are carried on.
- Relevant supporting documentation that may include the latest founding document and annual financial statements.

The notification of approval under section 18A is issued by the Commissioner by letter either together with the confirmation of the approval as a PBO under section 30 or as an institution, board or body under section 10(1)(cA)(i) if the application was done simultaneously. A separate letter will, however, be issued by the Commissioner if the application for approval under section 18A is done subsequent to those approvals being granted by the Commissioner.

The date of approval under section 18A is significant because the Act does not allow section 18A approval to be granted retrospectively. Section 18A receipts may therefore be issued for *bona fide* donations received only on or after the date of the letter issued by the Commissioner confirming approval for purposes of section 18A.

The approval letter contains a unique reference number referred to as an exemption reference number. This is a different reference number to the taxpayer reference number allocated to a section 18A-approved organisation on completion of registration for income tax purposes. The section 18A-approved organisation is required to keep this letter confirming approval as part of its records.

A written notification will also be issued by the Commissioner to the organisation if the approval is not granted together with reasons why the organisation failed to meet the requirements of section 18A. The decision not to approve an organisation for purposes of section 18A is subject to objection and appeal (see **13**).

4. Non-qualifying organisations

4.1 Branches of a foreign tax-exempt organisation

A branch established in South Africa by any company, association or trust incorporated, formed or established in any country other than South Africa, which is exempt from tax on income in that foreign country, may qualify for approval as a “public benefit organisation” under section 30, however, such a branch will not qualify for section 18A approval. A branch will not be allowed to issue section 18A receipts for donations received, even if it carries on PBAs in Part II in South Africa.

4.2 Non-approved organisations

Any PBO, conduit PBO, institution, board or body, agency, programme, fund, High Commissioner, office, entity, organisation, or the government not approved by the Commissioner for purposes of section 18A, may not issue section 18A receipts for donations received.

Any organisation, not qualifying for approval under section 18A, irrespective of whether that organisation enjoys approval or exemption from income tax under any other section of the Act, may not issue section 18A receipts for donations received. The following are non-exhaustive examples of organisations not qualifying for approval under section 18A:

- Recreational clubs approved by the Commissioner under section 30A.
- Associations, which include, amongst other things, trade unions, professional associations and local publicity associations approved by the Commissioner under section 30B.
- Small business funding entities approved by the Commissioner under section 30C.
- Homeowners’ associations exempt under section 10(1)(e)(i)(cc).
- Companies wholly owned by institutions, boards or bodies exempt under section 10(1)(cA)(ii).

5. Public benefit activities

The Ninth Schedule is divided into two Parts, namely, Part I (see **Annexure B**) and Part II (see **Annexure C**). Part I lists a number of PBAs for purposes of approval as a PBO under section 30. The PBAs approved by the Minister for purposes of section 18A are listed in Part II. Not all of the PBAs listed in Part I are included in Part II. Section 18A approval is granted for PBAs listed only in Part II.

The PBAs listed in Part II are categorised as follows:

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

See **Annexure C** for a complete list of PBAs falling under each of the aforementioned categories in Part II.

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

The Minister, however, has published conditions and requirements relating to –

- the provision of scholarships, bursaries and awards for study, research, and teaching contemplated in PBA 4(o) in Part I in Government Notice Regulation 302 in *Government Gazette* 24941 of 28 February 2003 (see **Annexure D**). These regulations relate specifically to PBA 4(o) in Part I. However, the Minister declared in Government Notice Regulation 333 in *Government Gazette* 27455 of 8 April 2005 that those regulations will also apply to PBA 3(o) in Part II (see **Annexure E**); and
- the establishment and management of a transfrontier area contemplated in PBA 4(d) (see section 18A(1C) in **Annexure A**).

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

6. Prescribed requirements for section 18A-approved organisations

It is imperative for a section 18A-approved organisation to properly manage and control the application and spending of donations received that qualify for a tax deduction (see **12**) and to comply with the requirements set out below.

6.1 Public benefit organisations and institutions, boards or bodies

6.1.1 Ring-fencing requirement

A PBO, or institution, board or body carrying on a combination of PBAs, some of which are non-section 18A-approved in Part I (see **Annexure B**), and some of which are section 18A-approved in Part II (see **Annexure C**), may be granted approval to issue section 18A receipts for donations received **solely** for PBAs in Part II. The approval is subject to the PBO, or institution, board or body ring-fencing the PBAs in Part II. The concept “ring-fence” in this context generally means to assign donations for which section 18A receipts were issued to a particular purpose, so as to restrict their use to the carrying on of PBAs in Part II in South Africa. Donations received must be controlled and managed in such a manner that their usage is restricted to only those PBAs in Part II carried on in South Africa.

The record-keeping of a PBO, or institution, board or body must clearly identify the donations received for PBAs in Part II and the use to which those donations were applied.

6.2 Conduit public benefit organisations

The approval of a conduit PBO under section 18A(1)(b) is specifically limited to the provision of funds or assets and does not include the provision of services or other resources contemplated in PBA 10 in Part I (see **Annexure B**).

Any PBO, institution, board or body, or the government carrying on PBAs in Part II benefitting from the provision of funds or assets by a conduit PBO are required to use those funds or assets in carrying on any PBA in Part II in South Africa.

6.2.1 Distribution requirement

A conduit PBO must distribute or undertake to distribute at least 50% of all funds received by donation for which section 18A receipts were issued within 12 months after the end of the year of assessment in which the donation was received.

The distribution requirement applies only to a conduit PBO and only to donations for which the conduit PBO issued section 18A receipts.

The obligation to distribute at least 50% of the funds may be deferred, reduced or waived subject to conditions determined by the Commissioner taking into account the public interest and purpose for which the conduit PBO wishes to accumulate the funds. The exercise of this discretion by the Commissioner is limited to only instances when a conduit PBO is accumulating funds for a specific capital project that qualifies as a section 18A-approved PBA. A request to have this distribution requirement relaxed may be submitted to the Commissioner together with –

- full details of the capital project or purpose the funds are to be accumulated;
- the projected timeframe;
- the estimated costs involved; and

- motivated reasons why the relaxation of the distribution requirement is in the interest of the general public.

Any amount not distributed in accordance with the distribution requirement must be invested. A conduit PBO is permitted to invest any undistributed amount as desired, provided the investment does not amount to an indirect distribution of profits or the award of an impermissible benefit. It is expected that fiduciaries responsible for the management or control of the income and assets of a conduit PBO will act with the necessary prudence, integrity and reasonable care.

A conduit PBO must distribute or undertake to distribute all amounts received from investment assets held by it, other than amounts received on the disposal of those investment assets, to any other PBOs, or institutions boards or bodies carrying on PBAs in Part II in South Africa, no later than six months after every five years from –

- the date the Commissioner issued the conduit PBO with a reference number for purposes of section 18A, if that conduit PBO was incorporated, formed or established on or after 1 March 2015; or
- 1 March 2015, if that conduit PBO was incorporated, formed or established and issued with a reference number by the Commissioner for purposes of section 18A before 1 March 2015.

6.2.2 Ring-fencing requirement

A conduit PBO providing funds or assets to other PBOs, institutions, boards or bodies or the government carrying on a combination of PBAs in Part I and Part II, must also comply with the ring-fencing requirement discussed in **6.1.1**.

6.3 The government

Any department of government approved by the Commissioner for purposes of section 18A may issue a section 18A receipt for any donation only to the extent that it will be used solely for the purposes of any PBAs in Part II.

The approval under section 18A(1)(c) of the government in the national, provincial and local sphere is not extended to include any other state entities, for example, entities established as agents of the government, organs of state, or any public entities under the ownership control of the spheres of government.

6.4 Any agency, programme, fund, High Commissioner, office, entity or organisation

An agency, programme, fund, High Commissioner, office, entity or organisation must –

- carry on any PBA in Part II in South Africa;
- submit to the Commissioner a written undertaking that it will comply with the provisions of section 18A; and
- submit confirmation that it will waive diplomatic immunity if found to have failed to comply with section 18A.

By waiving diplomatic immunity, an agency, programme, fund, High Commissioner, office, entity or organisation will be liable to non-compliance penalties if found to have contravened section 18A (see **8.1**).

6.5 Co-ordinating body of a group of institutions, boards or bodies

The co-ordinating body of a group of institutions, boards or bodies approved for purposes of section 18A must share a common purpose, carry on the same PBA in Part II in South Africa, and prepare consolidated annual financial statements. The co-ordinating body must take responsibility to ensure that all institutions, boards or bodies within the group comply with section 18A.

The co-ordinating body must submit a list of the names and addresses of all institutions, boards or bodies within the group when submitting its application for approval (see **3**) to the Commissioner.

7. Audit certificate

Depending on the PBAs carried on, a section 18A-approved organisation except an agency, programme, fund, High Commissioner, office, entity or organisation has an obligation to obtain, retain or submit an audit certificate to the Commissioner. The audit certificate must be retained for record-keeping purposes (see **13**).

An agency, programme, fund, High Commissioner, office, entity or organisation does not have an obligation to obtain and retain an audit certificate, since its activities are restricted to PBAs in Part II carried on in South Africa.

For commentary on the audit certificate, see Interpretation Note 112 “Section 18A: Audit Certificate”.

7.1 Public benefit organisations, institutions, boards or bodies

PBOs, institutions, boards or bodies carrying on a combination of PBAs listed in Part I and Part II in South Africa are required to obtain an audit certificate to confirm that all donations received or accrued during the year for which the PBO, institution, board or body issued section 18A receipts were used solely in carrying on PBAs in Part II in South Africa.

PBOs, institutions, boards or bodies carrying on only PBAs in Part II in South Africa are not required to obtain and retain an audit certificate.

7.2 Conduit public benefit organisations

Any conduit PBO funding PBOs, institutions, boards or bodies, or the government carrying on only PBAs in Part II in South Africa are not required to obtain and retain an audit certificate.

However, a conduit PBO providing funds to PBOs, institutions, boards or bodies, or the government carrying on PBAs in Part II as well as to PBOs, institutions, boards or bodies, or the government not approved for purposes of section 18A [carrying on only PBAs in Part I, or other non-approved organisations (see **4**)] must obtain an audit certificate to confirm that all donations received or accrued in the year of assessment for which section 18A receipts were issued were used solely to provide funds to PBOs, institutions, boards or bodies, or the government using those funds solely in carrying on PBAs in Part II in South Africa.

A conduit PBO may retain a certain percentage of the donations received or accrued for which section 18A receipts were issued instead of distributing them as discussed in **6.2.1**. The audit certificate must also confirm that all donations received or accrued during the year of assessment for which section 18A receipts were issued were distributed as required. This confirmation means that despite the retention of any donations by the conduit PBO, it still meets the distribution requirement within the required period.

7.3 Government

A department in the national or provincial sphere of government must obtain an audit certificate from the accounting authority contemplated in the Public Finance Management Act 1 of 1999 (PFMA) for that department. The PFMA requires every public entity to have an accounting authority, which must be accountable under that Act. The accounting authority for a public entity may include, depending on the facts, the board or controlling body of the entity, the chief executive officer of the department or the person in control of the department, or any other person designated for this purpose by specific legislation.

A department in the local sphere of government, which comprises municipalities, must obtain an audit certificate from the accounting officer contemplated in the Local Government: Municipal Finance Management Act 56 of 2003 for that department. The Local Government: Municipal Finance Management Act requires a municipality to have an accounting officer who must be accountable under that Act. The accounting officer for a municipality is the municipal manager of a municipality.

The audit certificate obtained from the relevant accounting authority or officer must confirm that all donations received or accrued to the department of government in the financial year for which section 18A receipts were issued were used solely for the purpose of any PBAs in Part II. The financial year of a department in the national or provincial sphere will generally end on 31 March, while the financial year of a department in the local sphere ends on 30 June.

The accounting authority or officer required to issue an audit certificate for any department issuing section 18A receipts must submit the audit certificate annually to the Commissioner.

8. Non-compliance by section 18A-approved organisations

8.1 Public benefit organisation, institution, board or body, conduit public benefit organisation, agency, programme, fund, High Commissioner, office, entity or organisation

If the Commissioner has reasonable grounds for believing that the person who is in a fiduciary capacity responsible for the management or control of the income or assets of a PBO, institution, board or body, conduit PBO, agency, programme, fund, High Commissioner, office, entity or organisation has –

- materially failed to ensure that the objects for which that section 18A-approved organisation was established have been carried out;
- expended the monies of that section 18A-approved organisation for purposes not covered by its objects;
- issued or allowed a section 18A receipt to be issued for fees or other emoluments payable to that section 18A-approved organisation;
- issued or allowed a section 18A receipt to be issued in contravention of section 18A(2A) (see **6**); or
- used a donation for which a receipt was issued for any purpose other than for any PBAs in Part II in South Africa; or
- failed to obtain or retain an audit certificate.

The Commissioner may in any of the above instances, by written notice addressed to the person who is in a fiduciary capacity responsible for the management or control of the income or assets, direct that –

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

The amounts received by a conduit PBO from investment assets held by it that are not distributed as required within six months after the five-year period referred to in **6.2.1** will be deemed to be taxable income of that conduit PBO in the year of assessment in which the six months fall.

Institutions, boards or bodies required to have accounting officers or accounting authorities to be accountable for those institutions, boards or bodies under the PFMA or the Local Government: Municipal Finance Management Act 56 of 2003, are not subject to these non-compliance penalties, but will be treated in the manner described in **8.2**.

8.2 Government

SARS must notify National Treasury and the Provincial Treasury (if applicable) when an accounting officer or accounting authority of any department of government or institution, board or body (if applicable) has –

- issued or allowed a receipt to be issued in contravention of section 18A; or
- used a donation for which a section 18A receipt was issued for any purpose other than for any PBA in Part II in South Africa;
- failed to submit an audit certificate (see **7.3**).

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

8.3 Co-ordinating body of a group of institutions, boards or bodies

Non-compliance by the co-ordinating body in taking the steps set out in **6.5** or failing to notify the Commissioner when it becomes aware of any material failure to comply with section 18A may, after due notice, result in the withdrawal of the approval to issue section 18A receipts of the group of institutions, boards or bodies.

The notice issued by the Commissioner will inform the co-ordinating body that if corrective steps are not taken within the period determined by the Commissioner and specified in the notice, any receipt issued by an institution, board or body within the group on or after the date specified in the notice will not qualify for a tax deduction in the hands of the donor.

9. Non-compliance by responsible person

9.1 Public benefit organisations, institutions, boards, bodies or conduit public benefit organisations

A person responsible for the management or control of the income and assets of a PBO, conduit PBO, institution, board or body, who intentionally fails to comply with any provision of section 18A or a provision of the constitution, will or other written instrument under which such organisation is established, to the extent that it relates to section 18A, will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

9.2 Government

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

10. Donations

A donation is given voluntarily and freely by the donor out of liberality or generosity to a donee without expecting anything in exchange. By the giving of a donation, the donor (the person giving the donation) is impoverished and the donee (the person receiving the donation) enriched. There must be no conditions or obligations attached to a donation and no personal benefit for the donor. If a donee gives any consideration in exchange, it is not a donation.

10.1 Types of donation

A donation can be in the form of cash or of property in kind.

10.1.1 Cash

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

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

- Amounts paid to attend a fundraising event such as a dinner or charity golf day.
- Memorabilia and other assets donated to be auctioned to raise funds.
- Amounts paid for school fees, school entrance fees or compulsory school levies by parents to enable their children to attend an educational institution.
- Amounts paid for raffle, lottery tickets, or the payment to purchase poker chips at a fundraising poker event, or the payment for additional poker chips for an amount in excess of the value of the prizes won at each poker table.
- Amounts paid for the successful bid for goods auctioned to raise funds.
- The value of free rent, water and electricity provided by a lessor to the lessee that is a section 18A-approved organisation.
- Payments of debt owed by a section 18A-approved organisation, for example, the cost of repairs to a section 18A-approved organisation's vehicle paid to the service station on behalf of that organisation and not paid directly to the section 18A-approved organisation.

- Prizes and sponsorships donated for a fundraising event.
- Tithes and offerings to churches or other faith-based organisations in support of their religious activities.
- Membership fees.
- Promissory notes.
- Pledges.
- Payments made in future instalments.

10.1.2 Property in kind

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

- A financial instrument provided it is –
 - a share in a listed company; or
 - issued by an “eligible financial institution” as defined in section 1 of the Financial Sector Regulation Act 9 of 2017 (this includes, for example, a financial institution licensed or required to be licensed as a bank under the Banks Act 94 of 1990, a financial institution registered as a long-term insurer under the Long-term Insurance Act 52 of 1998 or a short-term insurer under the Short-term Insurance Act 53 of 1998 or licensed or required to be licensed under the Insurance Act 18 of 2017 and market infrastructure).
- Trading stock forming part of the business or trade conducted by the taxpayer. Such trading stock may include livestock or produce donated by a farmer, goods like computers, foodstuffs, furniture, medical supplies and motor vehicles.
- An asset used by the taxpayer in conducting the taxpayer’s trade but that is not trading stock. Examples of such assets include cash registers, computers, crockery, delivery vehicles, furniture, garden equipment, kitchen utensils and office equipment.
- An asset that is not trading stock and is not used in the business of the taxpayer. Examples of such assets include personal assets or assets bought by the taxpayer like computers, furniture, sport equipment and vehicles.
- Property purchased, manufactured, erected, installed or constructed by or on behalf of the taxpayer. Examples of such property include carpets or cupboards installed, security fencing and buildings such as classrooms erected by or on behalf of the taxpayer for purposes of conducting any PBA in Part II.

A donation of property in kind must be used by the section 18A-approved organisation in carrying on any PBA in Part II in South Africa.

The Act provides a specific formula to calculate the value to be placed on donations of property in kind to determine the amount of any deduction claimed by any taxpayer under section 18A for any donation of immovable property of a capital nature when the lower of market value or municipal value exceeds cost. See the *Tax Exemption Guide for Public Benefit Organisations in South Africa* for more detail.

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

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

The donation of a service such as time, skill or effort to a section 18A-approved organisation will not qualify as a deduction for purposes of section 18A, since a service is not a donation of property made in kind. For example, a professional person such as an auditor, accountant, artist (including a singer, musician or entertainer), electrician, lawyer, medical doctor or plumber who renders a service free of charge to a section 18A-approved organisation will not be entitled to a tax deduction for the value of the service.

11. Section 18A receipts

A section 18A receipt may be issued only for an eligible donation (see **10**) that is solely and exclusively used for PBAs in Part II (see **5**) in South Africa.

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

- The reference number issued to the section 18A-approved organisation by the Commissioner for purposes of section 18A.
- The date the donation is received.
- The name and address of the section 18A-approved organisation issuing the section 18A receipt to which enquiries may be directed.
- The name and address of the donor.
- The amount of the donation if in cash.
- The nature of the donation and the value of the donation (see **10.1.2** and the example of a section 18A receipt in **Annexure F**) if not in cash.
- A certification to the effect that the receipt is issued for purposes of section 18A and that the donation has been or will be used exclusively for the objects of the PBO, conduit PBO, institution, board or body, agency, programme, fund, High Commissioner, office, entity or organisation concerned or, in the case of a department in carrying on the relevant PBA in Part II.
- Any further information the Commissioner may prescribe by public notice to ensure consistency with third party reporting to make it easier for donors receiving section 18A receipts and section 18A-approved organisations issuing such receipts to comply with their obligations.

SARS does not make section 18A receipts available to section 18A-approved organisations. Section 18A-approved organisations must create their own receipts ensuring that all the above details appear on the receipt. **Annexure F** provides an example of a section 18A receipt.

12. Allowable deduction in determining the taxable income of a taxpayer

A taxpayer, that may include an individual, trust or company, making a donation in cash (see 10.1.1) or of property in kind (see 10.1.2) is entitled to a deduction in determining that taxpayer's taxable income provided the donation is actually paid or transferred during the year of assessment to the section 18A-approved organisation. A taxpayer may make a donation directly to a section 18A-approved organisation or through a payroll-giving programme operated by an employer.

A section 18A receipt (see 11) must be issued by a section 18A-approved organisation in the year of assessment in which the donation is received. The taxpayer in the income tax return claims the deduction of donations made directly to a section 18A-approved organisation for which it has issued a section 18A receipt. Taxpayers receiving section 18A receipts issued by an organisation not formally approved by the Commissioner for purposes of section 18A will not be entitled to a deduction in determining taxable income for any donations made to that organisation.

The allowable deduction for a taxpayer that is a portfolio of a collective investment scheme is determined in accordance with a specific formula. See the *Tax Exemption Guide for Public Benefit Organisations in South Africa* for more detail.

For all other taxpayers the allowable deduction may not exceed 10% of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction for donations under section 18A or a deduction for foreign taxes under section 6quat(1C).

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

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

A section 18A-approved organisation must issue a section 18A receipt (see 11) to the employer for the total amount of donations paid by the employer on behalf of the employees. Section 18A receipts may be issued to the employer on a monthly basis or for a period that either coincides with the interim (1 March to 31 August) or annual (1 March to 28 / 29 February) period the employer is required to submit a reconciliation declaration to SARS for employees' tax purposes.

Employers administering donations made by employees through payroll-giving, must consider these donations when determining the monthly employees' tax to be deducted from the employees' remuneration. For commentary, see the *External Guide – Guide for Employers in respect of Employees' Tax*. The deduction is limited for employees' tax purposes to 5% of remuneration after deducting certain amounts as specified in the Fourth Schedule to the Act. Donations may be taken into account only if the employer received section 18A receipts issued by section 18A-approved organisations for donations made on behalf of employees. The employer is not entitled to consider any donation made directly by an employee to a section 18A-approved organisation. Although the section 18A receipt is issued to the

employer by the section 18A-approved organisation, the employer does not qualify for a deduction under section 18A. The employer must retain the section 18A receipts for record-keeping purposes.

13. Administrative provisions

The TA Act deals with tax administration and seeks, among other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act that imposes that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply. If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails. For commentary on taxpayers' obligations and entitlements under the TA Act, see *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

General administrative provisions contained in the TA Act relating to, for example, record-keeping, returns, assessments, dispute resolution, interest, refunds and anti-avoidance will therefore also apply to section 18A-approved organisations. The administrative provisions are considered in detail in the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and are, therefore, not repeated in this basic guide.

Annexure A – Section 18A

18A. Deduction of donations to certain organisations.—(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted in the determination of the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to—

- (a) any—
 - (i) public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30; or
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i), which—
 - (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;
 - (bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A); and
 - (cc) has been approved by the Commissioner for the purposes of this section;
- (b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a), or any department contemplated in paragraph (c) and which has been approved by the Commissioner for the purposes of this section; or
- (bA)
 - (i) any agency contemplated in the definition of “specialized agencies” in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);
 - (ii) the United Nations Development Programme (UNDP);
 - (iii) the United Nations Children’s Fund (UNICEF);
 - (iv) the United Nations High Commissioner for Refugees (UNHCR);
 - (v) the United Nations Population Fund (UNFPA);
 - (vi) the United Nations Office on Drugs and Crime (UNODC);
 - (vii) the United Nations Environmental Programme (UNEP);
 - (viii) the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women);
 - (ix) the International Organisation for Migration (IOM);
 - (x) the Joint United Nations Programme on HIV/AIDS (UNAIDS);
 - (xi) the Office of the High Commissioner for Human Rights (OHCHR); or
 - (xii) the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),

if that agency, programme, fund, High Commissioner, office, entity or organisation—

- (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;
 - (bb) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section;
 - (cc) waives diplomatic immunity for the purposes of subsection (5)(i); and
 - (dd) has been approved by the Commissioner for the purposes of this section; or
- (c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

- (A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

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

in which formula:

- (AA) “A” represents the amount to be determined;
 - (BB) “B” represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or
- (B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6quat (1C):

Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the department carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the department shall be allowed as a deduction under subsection (1).

(1B) Any activity determined by the Minister in terms of subsection (1)(a) or any requirements prescribed by the Minister in terms of subsection (1A), must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those requirements, as the case may be, in the *Gazette*, for incorporation into this Act.

(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4(d) of Part II of the Ninth Schedule, must expressly provide that the organisation—

- (a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—
 - (i) that donation is made by that person on or after 1 August 2002; and
 - (ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;
- (b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and
- (c) must utilise the amount of—
 - (i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and
 - (ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by—

- (a) a receipt issued by the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department concerned, containing—
 - (i) the reference number of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department issued by the Commissioner for the purposes of this section;
 - (ii) the date of the receipt of the donation;
 - (iii) the name of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department which received the donation, together with an address to which enquiries may be directed in connection therewith;
 - (iv) the name and address of the donor;
 - (v) the amount of the donation or the nature of the donation (if not made in cash);
 - (vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation concerned or, in the case of a department in carrying on the relevant public benefit activity; and
 - (vii) such further information as the Commissioner may prescribe by public notice; or
- (b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given.

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

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

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

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

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

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

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

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

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

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

in which formula:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Any person who is—

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

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

Annexure B – Part I

NINTH SCHEDULE

PUBLIC BENEFIT ACTIVITIES

(Section 30)

PART I

WELFARE AND HUMANITARIAN

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

HEALTH CARE

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

LAND AND HOUSING

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

EDUCATION AND DEVELOPMENT

4. (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) “Adult education and training”, as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- (d) “Continuing education and training” provided by a “private college” as defined in the Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.
- (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- (f) The training or education of persons with a severe physical or mental disability.
- (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- (h) The provision of educare or early childhood development services for pre-school children.
- (i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.
- (q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r).
- (r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

RELIGION, BELIEF OR PHILOSOPHY

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

CULTURAL

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

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

RESEARCH AND CONSUMER RIGHTS

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

SPORT

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

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

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

- (d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,

to any—

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

GENERAL

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

NINTH SCHEDULE

PART II

WELFARE AND HUMANITARIAN

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

HEALTH CARE

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

EDUCATION AND DEVELOPMENT

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

- (p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

LAND AND HOUSING

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

Annexure D – Regulations issued under paragraph 4(o) in Part I

GNR.302

28 FEBRUARY 2003

REGULATIONS ISSUED IN TERMS OF PARAGRAPH 4(o) OF PART I OF THE NINTH SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS FOR THE PROVISION OF SCHOLARSHIPS, BURSARIES AND AWARDS FOR STUDY, RESEARCH AND TEACHING

By virtue of the power vested in me by paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto, the conditions on which any scholarships, bursaries and awards for study, research and teaching must be provided for purposes of that paragraph and section 30 of the Act.

SCHEDULE

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning assigned thereto.

2. For purposes of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, an organisation which provides any scholarships, bursaries and awards for study, research or teaching must comply with the conditions prescribed in these regulations.

3. Subject to regulation 4, the founding document of the organisation contemplated in regulation 2, must expressly provide that—

- (a) all scholarships, bursaries or awards granted by that organisation must be *bona fide* and be granted to an individual on grounds of objective merit or need;
- (b) no scholarship, bursary or award granted by that organisation may—
 - (i) be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;
 - (ii) be subject to conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary or award; or
 - (iii) be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or that organisation (or any associated institution in relation to that donor or organisation) or any relative of that person, unless circumstances indicate that that scholarship, bursary or award would have been granted to that person or his or her relative, even if that person had not been an employee of that donor, organisation or associated institution;
- (c) all decisions regarding the granting of scholarships, bursaries and awards must be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted; and
- (d) all scholarships, bursaries and awards granted by that organisation in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted—
 - (i) to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
 - (ii) to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in subparagraph (i).

4. Where the founding document of an organisation which was established before 1 January 2003 does not expressly provide for the conditions contemplated in regulation 3, the organisation will be deemed to comply with regulation 3 until 31 December 2007, if the person responsible in a fiduciary capacity for the funds and assets of that organisation submits a written undertaking to the Commissioner that all scholarships, bursaries and awards granted by that organisation comply with the provisions of these regulations.

5. Copies of all documents and information relating to any scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award is granted must be made available to the Commissioner on request.

Annexure E – Regulations issued under paragraph 3(o) in Part II


GNR.333

8 APRIL 2005

REGULATIONS ISSUED IN TERMS OF PARAGRAPH 3(o) OF PART II OF THE NINTH SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS FOR THE PROVISION OF SCHOLARSHIPS, BURSARIES AND AWARDS FOR STUDY, RESEARCH AND TEACHING

By virtue of the power vested in me by paragraph 3(o) of Part II of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby determine that the regulations issued in terms of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, 1962, and published under Government Notice No. R. 302 in *Gazette* No. 24941 of 28 February 2003, and any amendments thereto, apply *mutatis mutandis* for purposes of paragraph 3(o) of Part II of the Ninth Schedule to that Act.

Annexure F – Example of a section 18A receipt

| | | |
|--|--|------|
|  | <p style="text-align: center;">ABC PRIMARY SCHOOL Oxford Street, Pretoria, 0001 – Telephone (00) 000 0000 Exemption Reference Number: 930000000</p> | |
| <p>DONATION RECEIPT: Issued under section 18A of the Income Tax Act 58 of 1962. The donation received below will be used exclusively for the objects of ABC Primary School in carrying out public benefit activities approved under section 18A.</p> | | 0001 |
| <p>RECEIPT NO.</p> | | 0001 |
| <p>NAME OF DONOR</p> | | |
| <p>ADDRESS OF DONOR</p> | <p>_____</p> <p>_____</p> <p>_____</p> | |
| <p>AMOUNT OF DONATION</p> | <p>R _____</p> | |
| <p>NATURE OF DONATION</p> | <p>CASH: Amount: R _____</p> <p>OTHER:</p> <ul style="list-style-type: none"> • Description: _____ • Details of how the value was determined: _____ _____ • Value: R _____ | |
| <p>DATE OF DONATION</p> | <p>_____</p> | |
| <p>I confirm that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of ABC Primary School.</p> <p>HEADMASTER / SECRETARY / BURSAR DATE</p> | | |