



Guide to Section 18A Approval of a Department in the National, Provincial and Local Sphere of Government

Income Tax



South African Revenue Service

Guide to Section 18A Approval of a Department in the National, Provincial and Local Sphere of Government

Preface

This guide provides guidance on –

- the meaning of the government of South Africa in the national, provincial and local sphere contemplated in section 10(1)(a);
- the approval of a department of government contemplated in section 10(1)(a) by the Commissioner under section 18A(1)(c) to issue section 18A receipts for *bona fide* donations received; and
- a section 18A-approved department of government's obligation to use *bona fide* donations for which section 18A receipts were issued for purposes of only a public benefit activity in Part II of the Ninth Schedule in South Africa.

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 binding general ruling (BGR) under section 89 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.¹

This guide is based on legislation as at time of issue. Information relating to taxes, duties, levies and contributions reflect the rates applicable as at the date of issue of this guide.²

All amendment Acts, explanatory memorandums, forms, *Government Gazettes* relating to income tax, guides, interpretation notes and returns referred to in this guide are the latest versions unless the context indicates otherwise, which are available on the **SARS website** or on request via eFiling at www.sarsefiling.co.za, whichever is applicable.

For more information you may –

- visit the **SARS website**;
- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093 (only between 8am and 4:30pm South African time); or
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS branch office, after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

¹ For further commentary, see the *Comprehensive Guide to Advance Tax Rulings*.

² For historical rates of various taxes, duties and levies, see the *Guide for Tax Rates/Duties/Levies*.

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

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
31 October 2023

Disclaimer

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

Whether an entity falls within the meaning and ambit of national, provincial or local sphere of government contemplated in section 10(1)(a) to qualify for approval under section 18A(1)(c) will be fact-specific. Each case must therefore be objectively considered based on its own facts and merits.

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Glossary

In this guide unless the context indicates otherwise –

- “**Companies Act**” means the Companies Act 71 of 2008;
- “**department of government**” or “**government**” means the government of South Africa in the national, provincial or local sphere contemplated in section 10(1)(a);
- “**Local Government: Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act 56 of 2003;
- “**Local Government: Municipal Structures Act**” means the Local Government: Municipal Finance Structures Act 117 of 1998;
- “**Local Government: Municipal Systems Act**” means the Local Government: Municipal Systems Act 32 of 2000;
- “**Minister**” means Minister of Finance;
- “**Part I**” and “**Part II**” mean Part I and Part II of the Ninth Schedule;
- “**PBA**” as defined in section 30(1) means a “public benefit activity” listed in Part I and any other activity determined by the Minister by notice in the *Government Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;
- “**PFMA**” means the Public Finance Management Act 1 of 1999;
- “**Public Service Act**” means the Public Service Act 103 of 1994;
- “**Schedule**” means a Schedule to the Act;
- “**section**” means a section of the Act;
- “**section 10(1)(a)**” means the section providing for the exemption from income tax of the receipts and accruals of the government of South Africa in the national, provincial or local sphere;
- “**section 18A(1)(c)**” means the section providing for the tax-deductibility of *bona fide* donations made to any department of government approved by the Commissioner, to be used for any PBA in Part II in South Africa;
- “**section 18A-approved department**” means any department of government carrying on PBAs in Part II in South Africa, or any other activity determined by the Minister by notice in the *Government Gazette* for the purposes of section 18A, which meets the requirements in section 18A(1A), if applicable, and approved by the Commissioner under section 18A(1)(c);
- “**section 18A receipt**” means a special prescribed receipt issued under section 18A(2) by a section 18A-approved department entitling a donor taxpayer to a tax deduction for *bona fide* donations made;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**the Constitution**” means the Constitution of the Republic of South Africa, 1996; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Introduction

The receipts and accruals of the government of South Africa in the national, provincial or local sphere are fully exempt from income tax under section 10(1)(a). The exemption under section 10(1)(a) is absolute and does not require any approval and is not subject to the Commissioner's discretion. All the receipts and accruals of the government are therefore automatically exempt from income tax.

The Commissioner may approve a department of government in the national, provincial or local sphere contemplated in section 10(1)(a) for purposes of section 18A under section 18A(1)(c) (see 7). A department of government approved by the Commissioner for section 18A purposes must use donations for which section 18A receipts (see 7.10) are issued solely for purposes of any PBA in Part II in South Africa (see 7.2).

The absolute exemption from income tax under section 10(1)(a) and the approval under section 18A(1)(c) applies only to the government in the "national, provincial or local sphere" contemplated in section 10(1)(a). It, therefore, is critical to determine the meaning and ambit of these three spheres of government. The expressions "government" (see 2), "national" (see 3), "provincial" (see 4) and "local" (see 5) contemplated in section 10(1)(a) are considered below.

2. The government

There is no universal meaning for "government". The ordinary dictionary meaning of "government" is the –

- group of people who are responsible for governing a country or state;³
- the form or system of rule by which a state, community etc is governed;⁴ and
- an organisation that officially manages and controls a country or region, creating laws, collecting taxes, providing public services etc.⁵

The Constitutional Court analysed the meaning of "government" and "the state" in *Minister of Defence and Military Veterans v Thomas*.⁶ In this case the respondent, Thomas, was employed in the health department as a medical doctor by the Western Cape Provincial Government. While she was seconded to a military hospital under the control of the Minister of Defence and Military Veterans, she was seriously injured. Thomas instituted damages claim for her injuries against the Minister of Defence and Military Veterans. The issue in court was who is Thomas's employer, namely, the state as a single employer or its individual component, in this case the provincial government. Froneman J held that in terms of the Constitution –⁷

"government is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated".

³ www.oxfordlearnersdictionaries.com/definition/english/government?q=government [Accessed 31 October 2023].

⁴ www.dictionary.com/browse/government [Accessed 31 October 2023].

⁵ <https://dictionary.cambridge.org/dictionary/english/government> [Accessed 31 October 2023].

⁶ 2016 (1) SA 103 (CC).

⁷ At 14.

It was further held that –⁸

“[a]n organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose and must exhaust all other remedies before it approaches a court to resolve the dispute”.

These provisions do not expressly provide that for all purposes the three different spheres of government must be regarded as one entity. The Constitutional Court has previously held that within its constitutional sphere of competence, each sphere of government reigns supreme.⁹

Froneman J referred to *Holeni v Land and Agricultural Development Bank of SA*¹⁰ in which the following was held:¹¹

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

Froneman J held that Thomas was employed within the state by the Western Cape provincial government, which remained her employer during her secondment to the Department of Defence and Military Veterans.

Government is understood as the exclusive power in which the administration of a state is vested. The government collects revenue from taxes, duties and levies and uses these monies to provide government services and infrastructure, such as, education, health, safety, transport, water, electricity, welfare and housing.

All spheres of government must observe and adhere to the principles set out in Chapter 3 of the Constitution, and must conduct their activities within the parameters of that Chapter.¹²

The spheres of government, amongst other things, must secure the well-being of the people of South Africa,¹³ and provide effective, transparent, accountable and coherent government for South Africa as a whole.¹⁴ The spheres of government must co-operate with one another in mutual trust and good faith.¹⁵

The expressions “national sphere of government”¹⁶ (see **3**) and “provincial sphere of government”¹⁷ (see **4**) are not defined in the Act. Although the expression “local sphere of

⁸ As above.

⁹ *Maccsand (Pty) Ltd v City of Cape Town and Others* 2012 (4) SA 181 (CC).

¹⁰ 2009 (4) SA 437 (SCA) at 11.

¹¹ At 19.

¹² Section 40(2) of the Constitution.

¹³ Section 41(1)(b) of the Constitution.

¹⁴ Section 41(1)(c) of the Constitution.

¹⁵ Section 41(1)(h) of the Constitution.

¹⁶ For further commentary, see Main, O. (2022) *National Government Handbook South Africa 2022* Eighth Edition. Yes! Media available online at www.yesmedia.co.za/the-national-government-handbook/ [Accessed 31 October 2023].

¹⁷ For further commentary, see Main, O. (2022). *Provincial Government Handbook South Africa 2022* Ninth Edition. Yes! Media available online at www.yesmedia.co.za/the-provincial-government-handbook/ [Accessed 31 October 2023].

government”¹⁸ is also not defined in the Act, it comprises municipalities (see 5), which term is defined in the Act.¹⁹

The term “organ of state” as defined in section 239 of the Constitution means –

- “(a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include the court or a judicial officer”.

The term “organ of state” is a wider concept than government.

In *Independent Electoral Commission v Langeberg Municipality*²⁰ the Constitutional Court had to consider whether the Independent Electoral Commission was an organ of state within the national sphere of government. The court explained the position as follows:²¹

“It is now possible to address the question whether the Commission is an organ of state which can be said to be within the national sphere of government. It is not, for the reasons that follow. In the first place, the Commission cannot be said to be a department or administration within the national sphere of government in respect of which the national executive has a duty of co-ordination in accordance with section 85(2) of the Constitution. Secondly, the Constitution, in effect, describes the Commission as a state institution that strengthens constitutional democracy, and nowhere in chapter 9 is there anything from which an inference may be drawn that it is a part of the national government. The term “state” is broader than “national government” and embraces all spheres of government. Thirdly, under section 181(2) the Commission is independent, subject only to the Constitution and the law. It is a contradiction in terms to regard an independent institution as part of a sphere of government that is functionally interdependent and interrelated in relation to all other spheres of government. Furthermore, independence cannot exist in the air, and it is clear that the chapter intends to make a distinction between the state and government, and the independence of the Commission is intended to refer to independence from the government, whether local, provincial or national.”

In *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society and Others*,²² the Constitutional Court considered the interpretation of words in one Act with reference to words used in another Act. In this case it was stated that there is no principle of interpretation that requires a court without more to interpret one piece of legislation with reference to another.

The Constitutional Court in *Chisuse and Others v Director-General, Department of Home Affairs and Another*²³ held that in interpreting statutory provisions, recourse is first had to the plain, ordinary, grammatical meaning of the words in question.

¹⁸ For further commentary, Main, O. (2022). *Local Government Handbook South Africa 2022* 12th Edition (2022) Yes! Media available online at www.yesmedia.co.za/the-local-government-handbook/ [Accessed 31 October 2023].

¹⁹ Section 1(1).

²⁰ 2001 (3) SA 925 (CC).

²¹ At 27.

²² 2020 (2) SA 325 (CC).

²³ 2020 (6) SA 14 (CC).

The words “government in the national, provincial and local sphere of government” used in section 10(1)(a) should therefore be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used²⁴ and should not be extended to the wider meaning of an “organ of state” as defined in the Constitution.

3. National sphere of government

The national sphere of government is the central government administration and its legislative authority is vested in the Parliament of South Africa.²⁵

In *Independent Electoral Commission v Langeberg Municipality*, the Constitutional Court explained the composition of the national sphere of government as follows:²⁶

“We conclude that the national sphere of government comprises at least Parliament and the national executive including the President. The national sphere of government is distinct in the sense that it is separate from the other spheres. It is allocated limited functional areas in terms of the Constitution. The provincial and national spheres of government have concurrent powers in relation to those functional areas described in Schedule 4 of the Constitution. All the spheres are interdependent and interrelated in the sense that the functional areas allocated to each sphere cannot be seen in isolation of each other. They are all interrelated. None of these spheres of government nor any of the governments within each sphere have any independence from each other. Their interrelatedness and interdependence is such that they must ensure that while they do not tread on each other’s toes, they understand that all of them perform governmental functions for the benefit of the people of the country as a whole. Sections 40 and 41 are designed in an effort to achieve this result.”

The executive authority of South Africa is vested in the President.²⁷ The President exercises the executive authority together with the members of the Cabinet.²⁸ The national sphere of government comprises the different national state departments²⁹ as determined by the President.³⁰ Each national state department plays a different role in the function and service delivery of the government. Thus, the various national state departments are the implementing arm of the government for purposes of the administration of the public service. To assist with the administration of the public service, national government components, which fall within a principal national department, may be established.³¹

²⁴ Kellaway, E., A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills* at 224. Butterworth’s: Durban.

²⁵ Section 43(a) of the Constitution.

²⁶ 2001 (3) SA 925 (CC) at 26.

²⁷ Section 85(1) of the Constitution.

²⁸ Section 85(2) of the Constitution.

²⁹ Listed in column 1 of Schedule 1 to the Public Service Act.

³⁰ Sections 7(5) and (6) of the Public Service Act.

³¹ The term “national government component” as defined in section 1 of the Public Service Act means a national government component referred to in section 7(2)(c) and mentioned in column 1 of Part A of Schedule 3 to that Act. An executive authority may request the establishment of a national government component only if the prescribed feasibility study is conducted and its findings recommend the establishment of that component. The head of a national government component may have powers or duties, or both imposed by national legislation or under the Public Service Act. See Dendy, M. (2019). “Public Service” 34 (Third Edition Volume) *LAWSA* in 119 [online] (My LexisNexis: 31 March 2019).

A list of the current national government departments, with relevant website addresses and contact information is available online at www.gov.za/about-government/government-system/national-departments. Currently, the national departments and their national government components are as follows:

- Agriculture, Land Reform and Rural Development
- Basic Education
- Communications and Digital Technologies
- Cooperative Governance and Traditional Affairs, which includes the following national government component:
 - The Municipal Infrastructure Support Agent³²
- Correctional Services
- Defence
- Employment and Labour
- Forestry, Fisheries and the Environment
- Health
- Higher Education and Training
- Home Affairs, which includes the following national government component:
 - The Government Printing Works³³
- Human Settlements
- International Relations and Cooperation³⁴
- Justice and Constitutional Development
- Military Veterans
- Mineral Resources and Energy
- National Treasury, which includes the following national government components:
 - The Government Pensions Administration Agency³⁵
 - The Government Technical Advisory Centre³⁶
- Planning, Monitoring and Evaluation
- Police
- Public Enterprises

³² See Government Notice Regulation 469 in *Government Gazette* 36634 of 5 July 2013.

³³ See Government Notice Regulation 968 in *Government Gazette* 32616 of 9 October 2006.

³⁴ According to that department's 2020/2021 Annual Report, which is available online at www.dirco.gov.za/department/report/index.htm its national government component, namely, the South African Development Partnership Agency is non-operational.

³⁵ See Government Notice 231 in *Government Gazette* 33051 of 26 March 2010.

³⁶ See Government Notice 261 in *Government Gazette* 35194 of 30 March 2012.

- Public Service and Administration, which includes the following national government component:
 - The Centre of Public Service Innovation³⁷
- Public Works and Infrastructure
- Science and Innovation
- Small Business Development
- Social Development
- Sport, Arts and Culture
- State Security Agency³⁸
- Statistics South Africa³⁹
- Tourism
- Trade, Industry and Competition
- Transport
- Water and Sanitation
- Women, Youth and Persons with Disabilities
- The Presidency

All money received by the national government, except money excluded by an Act of Parliament,⁴⁰ must be paid into the National Revenue Fund.⁴¹ Money may be withdrawn from the National Revenue Fund only by an appropriation by an Act of Parliament or as a direct charge if provided for in the Constitution or an Act of Parliament.⁴² The PFMA applies to all national departments.⁴³

Every national department must have an accounting officer, who is the head of that department.⁴⁴ It is the responsibility of the accounting officer to keep full and proper records of the financial affairs of the national department in accordance with the prescribed norms and standards and to prepare financial statements.⁴⁵

³⁷ See Government Notice 700 in *Government Gazette* 34562 of 2 September 2011.

³⁸ The President may only establish an intelligence service in accordance with section 209(1) of the Constitution. The objects, powers and functions of the intelligence service is regulated under national legislation, which is the Intelligence Services Act 65 of 2002.

³⁹ Statistics South Africa continues to be regarded under section 4(1) of the Statistics Act 6 of 1999 as a national department contemplated in section 7(4)(a) of the Public Service Act and listed as such in Schedule 1 of the latter Act.

⁴⁰ The exclusions are listed in section 13(1) of the PFMA.

⁴¹ Section 213(1) of the Constitution. The National Treasury is in accordance with section 11(1) of the PFMA in charge of the National Revenue Fund and must ensure compliance with section 213 of the Constitution.

⁴² Section 213(2) of the Constitution.

⁴³ Section 3(1)(a) of that Act.

⁴⁴ Sections 36(1) and (2)(a) of the PFMA.

⁴⁵ Section 40(1) of the PFMA.

4. Provincial sphere of government

South Africa has the following provinces:⁴⁶

- Eastern Cape
- Free State
- Gauteng
- KwaZulu-Natal
- Limpopo
- Mpumalanga
- North West
- Northern Cape
- Western Cape

The legislative authority of a province is vested in its provincial legislature.⁴⁷ The executive authority of a province is vested in the Premier of that province.⁴⁸ The Premier exercises the executive authority together with other members of the Executive Council.⁴⁹ The Executive Council of a province consists of the Premier, as head of the Council, and a prescribed number of members from the provincial legislature appointed by the Premier.⁵⁰ Provinces have exclusive legislative competence on the areas set out in Schedule 5 to the Constitution.

For a comprehensive list of the provincial departments in each province, see Schedule 2 of the Public Service Act. To assist with the administration of the public service, provincial government components,⁵¹ which fall within a provincial department, may be established.

All money received by the provincial government, except money excluded by an Act of Parliament,⁵² must be paid into the Provincial Revenue Fund.⁵³ Money may be withdrawn from the Provincial Revenue Fund only by an appropriation by a provincial Act or as a direct charge if provided for in the Constitution or a provincial Act.⁵⁴ The PFMA applies to the provincial departments.⁵⁵

⁴⁶ Section 103(1) of the Constitution.

⁴⁷ Section 104(1) of the Constitution.

⁴⁸ Section 125(1) of the Constitution.

⁴⁹ Section 125(2) of the Constitution.

⁵⁰ Section 132(1) of the Constitution.

⁵¹ The term “provincial government component” as defined in section 1 of the Public Service Act means a provincial government component referred to in section 7(2)(d) and mentioned in column 1 of Part B of Schedule 3 to that Act. The current provincial government component mentioned in Part B of Schedule 3 to the Public Service Act, is the Gauteng Infrastructure Financing Agency, which is a provincial government component of the Gauteng Treasury established under section 7A(4) of the Public Service Act.

⁵² The exclusions are listed in section 22(1) of the PFMA.

⁵³ The term “Revenue Fund” defined in section 1 of the PFMA includes a Provincial Revenue Fund mentioned in section 226(1) of the Constitution. Section 17(1) of the PFMA establishes a provincial treasury for each province. The provincial treasury in accordance with section 21(1) of the PFMA is in charge of the provinces Provincial Revenue Fund and must enforce compliance with section 226 of the Constitution. All money received by the provincial government must be paid into the Provincial Revenue Fund, except money reasonably excluded by an Act of Parliament.

⁵⁴ Section 226(2) of the Constitution.

⁵⁵ Section 3(1)(a) of that Act.

Every provincial department must have an accounting officer, who is the head of that department.⁵⁶ It is the responsibility of the accounting officer to keep full and proper records of the financial affairs of the provincial department in accordance with the prescribed norms and standards and to prepare financial statements.⁵⁷

5. Local sphere of government

The local sphere of government consists of municipalities, which must be established for the whole territory of South Africa.⁵⁸

Section 1(1) defines the term “municipality” as –

“a municipality which is within a category listed in section 155(1) of the Constitution of the Republic of South Africa, 1996, and which is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act 1998 (Act 27 of 1998)”.

The objects of local government are to –⁵⁹

- provide democratic and accountable government for local communities;
- ensure the provision of services to communities in a sustainable manner;
- promote social and economic development;
- promote a safe and healthy environment; and
- encourage the involvement of communities⁶⁰ and community organisations in the matters of local government.

A municipality also has developmental duties and must –⁶¹

- structure and manage the administration, budgeting and planning processes to give priority to the basic needs of the community;
- promote the social and economic development of the community; and
- participate in national and provincial development programmes.

The executive and legislative authority of a municipality is vested in its municipal council.⁶² A municipality has the right to govern on its own initiative the local government affairs of its community subject to national and provincial legislation.⁶³

⁵⁶ Sections 36(1) and (2)(a) of the PFMA.

⁵⁷ Section 40(1) of the PFMA.

⁵⁸ Section 151(1) of the Constitution. The Local Government: Municipal Structures Act regulates the establishment of municipalities.

⁵⁹ Section 152(1) of the Constitution.

⁶⁰ The term “community” is defined in section 1 of the Local Government: Municipal Systems Act and includes, amongst other things, the residents and ratepayers (specifically the persons who are poor and disadvantaged) of the municipality, any civic organisations, non-governmental, private sector, or labour organisations involved in local affairs within the municipality.

⁶¹ Section 153 of the Constitution.

⁶² Section 151(2) of the Constitution.

⁶³ Section 151(3) of the Constitution.

Municipalities are the sphere of government that operate closest to the citizens of South Africa because they operate at local or community level.⁶⁴ Municipalities are therefore responsible for local basic services required by communities, for example, local tourism, municipal health services, municipal public transport, air pollution, local markets, licensing of dogs, noise pollution, control of public nuisances and cemeteries.⁶⁵

The Constitution provides for the following three types of municipalities:⁶⁶

- Category A, also referred to as a metropolitan municipality, is established in areas that are the centre of economic activity with a complex and diverse economy, have a high population density, substantial movement of people, goods and services, with multiple business districts and industrial areas.⁶⁷
- Category B, also referred to as local municipalities, are established in areas that fall outside of the metropolitan municipal areas.⁶⁸
- Category C, also referred to as district municipalities, comprise local municipalities falling in one district, which include nature reserves and low population density areas.⁶⁹

Each municipal category has different municipal executive and legislative authority.

Provincial legislation determines the distinct types of municipalities to be established in the province.⁷⁰ The Local Government: Municipal Structures Act contains criteria for determining when an area must have a category A, B or C municipality.⁷¹

The Local Government: Municipal Finance Management Act applies to all municipalities.⁷² Every municipality must open and maintain a bank account in the name of the municipality and pay all money received by that municipality into its bank account,⁷³ which must be administered by an accounting officer,⁷⁴ who is the municipal manager⁷⁵ of a municipality.⁷⁶

⁶⁴ Department of Public Service and Administration “The Machinery of Government” (May 2003) available online at www.dpsa.gov.za/dpsa2g/documents/lkm/mog.pdf [Accessed 31 October 2023].

⁶⁵ Part B in Schedule 4 and Part B in Schedule 5 to the Constitution.

⁶⁶ Section 155(1) of the Constitution. Also, see Local Government: Municipal Structures Act.

⁶⁷ For a complete list of metropolitan municipalities, see <https://demo.municipalities.co.za/municipalities/type/1/metropolitan> [Accessed 31 October 2023].

⁶⁸ For a complete list of local municipalities, see <https://demo.municipalities.co.za/municipalities/type/3/local> [Accessed 31 October 2023].

⁶⁹ For a complete list of district municipalities, see <https://demo.municipalities.co.za/municipalities/type/2/district> [Accessed 31 October 2023].

⁷⁰ Section 155(5) of the Constitution.

⁷¹ Sections 2, 3 and 4 of that Act.

⁷² Section 3(1)(a) of that Act.

⁷³ Sections 7(1) and (2) of the Local Government: Municipal Finance Management Act.

⁷⁴ Section 10(1) of the Local Government: Municipal Finance Management Act. Also, see section 55(2) of the Local Government: Municipal Systems Act.

⁷⁵ The term “municipal manager” is defined in section 1 of the Local Government: Municipal Systems Act and in accordance with section 54A(1)(a) is the head of the administration of the municipal council.

⁷⁶ Paragraph (a) of the definition of “accounting officer” in section 1(1) of the Local Government: Municipal Finance Management Act and section 60 of that Act.

6. Entities excluded from the exemption under section 10(1)(a)

The three spheres of government may not always have sufficient capacity to meet the needs of the persons in South Africa. Thus, a mechanism used by government to improve the quality and cost of government services is to create semi-autonomous bodies or entities at arm's length from parent ministries.⁷⁷ These bodies or entities are generally quasi-government⁷⁸ organisations, which may include, for example, entities established as agents of the government or any public entities under the ownership control⁷⁹ of the national, provincial or local spheres of government.

The exemption of the receipts and accruals of the government in the national, provincial and local sphere under section 10(1)(a), however, may not generally be extended to include other organisations as agent or public entity under the ownership control of the national, provincial or local spheres of government. Since all government's receipts and accruals are fully exempt from income tax, the reference to the government in the national, provincial or local sphere in section 10(1)(a) must be interpreted strictly.⁸⁰ It is accepted law that when interpreting taxing statutes, exemptions must be interpreted restrictively.⁸¹ This is also in accordance with the principle that a concessionary statute must be interpreted narrowly, as opposed to a statute imposing a burden.

All spheres of government through their legislative capacity have the power to establish state-owned companies or public entities. Each state-owned company or public entity generally reports to a responsible official in the government institution or department, which is responsible for its existence.⁸² State-owned companies and agents of government are often created through legislation for a specific purpose. They are normally distinct from a government department or other types of public body established by government. The question is whether these government agents and state-owned companies are part of government or the state. The facts of each case must be considered.

Some guidelines in this regard were provided by the Supreme Court of Zimbabwe in *Posts and Telecommunications Corporation v Modus Publications (PVT) Ltd*.⁸³ In a defamation action the court had to consider whether the Post and Telecommunications Corporation (PTC) was part of the state. The court held that the PTC was created by legislation and had an individual legal personality and was an artificial *persona* in its own right. It by no means

⁷⁷ Department of Public Service and Administration "The Machinery of Government" (May 2003) available online at www.dpsa.gov.za/dpsa2g/documents/lkm/mog.pdf [Accessed 31 October 2023].

⁷⁸ The *Merriam-Webster Dictionary* describes the expression "quasi-governmental" as "supported by government but managed privately". See www.merriam-webster.com/dictionary/quasi-governmental [Accessed 31 October 2023].

⁷⁹ The term "ownership control" is defined in section 1 of the PFMA and refers to the ability of an entity to exercise powers to govern the financial and operating policies of the entity to obtain benefits from its activities. Examples of such powers are to appoint or remove all, the majority of, the members of that entity's board of directors or equivalent governing body, to appoint or remove the chief executive officer, or to control all, or the majority of, the voting rights at a general meeting.

⁸⁰ The rule to reject a construction of a statutory provision, which implies the extension of a class privilege and to interpret it strictly was laid down in *Ernst v CIR* 1954 (1) SA 318 (A), 19 SATC 1 and approved in *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at 182 and *Western Platinum Ltd v C: SARS* [2004] 4 All SA 611 (SCA), 67 SATC 1 at 6.

⁸¹ See *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296, 57 SATC 178.

⁸² For further commentary, see O Main the *National Government Handbook South Africa 2022* Eighth Edition (2022) at 20 Yes! Media available online at www.yesmedia.co.za/the-national-government-handbook/ [Accessed 31 October 2023].

⁸³ 1998 (3) SA 114 (ZS).

followed, however, that because the PTC was a separate and distinct artificial *persona*, it could not be a government instrument. One must be careful not to confuse distinctions made for one purpose with distinctions made for another. The court acknowledged that an entity such as the PTC might fall on one side of the line for one purpose and on the other side for a different purpose. One must appreciate that the conclusion may be different because the question is different. The court concluded that the phrase “organ of the state” is not a term of art, which has a specific legal definition. It must be defined in context.

The guidelines or criteria to apply when one needs to establish whether the agent or organ of state is indeed part of the state or government were explained by the court as follows:

“Concepts and techniques of government are developing and changing. The functions of government differ from country to country. I propose therefore merely to set out some criteria which I think are helpful in deciding whether the PTC, in this context, is 'the State'. I start with the criteria set out by Moorthy (op cit), and used by Goldstone J and Corbett CJ in the cases to which I have referred. They are as follows:

1. Whether the body has any discretion of its own; if it has, what is the degree of control by the Executive over the exercise of that discretion?
2. Whether the property vested in the corporation is held by it for and on behalf of the government.
3. Whether the corporation has any financial autonomy.
4. Whether the functions of the corporation are government functions.

I pause here to point out that Mr Moorthy set out these tests to determine whether a statutory trading corporation was a government instrumentality. They are not very useful in deciding whether a local government body falls within the criteria. I would therefore add:

5. Whether, if the body is not a statutory trading corporation, it performs governmental functions either at local or national level.

And, to ensure that the policy of the law does not promote defamatory statements having the effect of hampering a governmental body in its competitive trading position, I would also add:

6. Whether, if the body concerned is, at least largely or effectively, a monopoly, providing what are generally regarded as essential services traditionally provided by government, it would be contrary to public policy to muzzle criticism of it.”

Examples of bodies or entities excluded from the exemption under section 10(1)(a) are considered below. It, however, is acknowledged that these are by no means the only bodies or entities that may be excluded from the exemption under section 10(1)(a). Each case must be objectively considered based on its own facts and merits.

Even though the bodies or entities considered do not enjoy the same absolute exemption under section 10(1)(a) of the receipts and accruals as the government in the national, provincial or local sphere, they may qualify for exemption under another section of the Act, provided the conditions and requirements of that section are met. These bodies or entities can broadly be divided into constitutional entities (see 6.1), public entities (see 6.2) and municipal entities (see 6.3). None of these bodies or entities are included in government in the national, provincial, or local sphere, and therefore the receipts and accruals do not qualify for exemption under section 10(1)(a).

6.1 Constitutional institutions

Various constitutional institutions exist to exercise a power or perform a function under the Constitution. The Constitution prescribes the functions of these constitutional institutions, colloquially called “Chapter 9 institutions”.

The Chapter 9 institutions are unique in that they are established by the Constitution. They are independent and subject only to the Constitution, which is the supreme law of South Africa and the law.⁸⁴ Additional powers and functions of the Chapter 9 institutions are provided for in law. Chapter 9 institutions must be impartial, exercise their powers, and perform their functions without fear, favour or prejudice.⁸⁵

The Chapter 9 institutions currently include the –⁸⁶

- Auditor-General;⁸⁷
- Commission for Gender Equality;⁸⁸
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;⁸⁹
- Independent Electoral Commission;⁹⁰
- Public Protector;⁹¹ and
- South African Human Rights Commission.⁹²

In *Independent Electoral Commission v Langeberg Municipality*, it was argued on behalf of the Electoral Commission that it was an organ of state within the national sphere of government. The Constitutional Court held the following:⁹³

“In this broad sense, the Commission does perform a governmental function. More specifically, it implements national legislation concerning the conduct of elections. ... That does not mean, however, that the Commission falls within the national sphere of government as contemplated by Chapter 3 of the Constitution.”

The Constitutional Court concluded the following:⁹⁴

“The Commission has tried to make some point of the fact that the conduct of the election falls within the national legislative authority of Parliament, contending that this is a factor which points to the Commission being part of the national sphere of government. This is an oversimplification. ... The Commission is clearly a State structure. The fact that a State structure has to perform its functions in accordance with national legislation does not mean that it falls within the national sphere of government.”

⁸⁴ Section 2 of the Interpretation Act 33 of 1957 defines “law” as “any law, proclamation, ordinance, Act of Parliament, or other enactment having the force of law”. Also, see ITC 1788 (2004) 67 SATC 161 (G) at 164.

⁸⁵ Section 181(2) of the Constitution.

⁸⁶ See Chapter 9 of the Constitution.

⁸⁷ Sections 188 and 189 of the Constitution and the Public Audit Act 25 of 2004.

⁸⁸ Section 187 of the Constitution and the Commission for Gender Equality Act 39 of 1996.

⁸⁹ Section 185 of the Constitution and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002.

⁹⁰ Sections 190 and 191 of the Constitution and the Electoral Commission Act 51 of 1996.

⁹¹ Sections 182 and 183 of the Constitution and the Public Protector Act 23 of 1994.

⁹² Section 184 of the Constitution and the South African Human Rights Commission Act 40 of 2013.

⁹³ 2001 (3) SA 925 (CC) at 24.

⁹⁴ Above at 30.

In *Minister of Home Affairs and another v Public Protector of the Republic of South Africa*, the Supreme Court of Appeal held that –⁹⁵

“[t]he Office of the Public Protector is not a department of State or administration and neither can it be said to be part of the national, provincial or local spheres of government: it is an independent body that is answerable to the National Assembly”.

Schedule 1 of the PFMA lists further to the Chapter 9 institutions in the Constitution the following constitutional institutions, which are subject to the PFMA:

- Financial and Fiscal Commission⁹⁶
- Independent Communications Authority of South Africa⁹⁷
- Municipal Demarcation Board⁹⁸
- Pan South African Language Board⁹⁹

Although Chapter 9 institutions and constitutional entities listed in Schedule 1 of the PFMA are organs of state¹⁰⁰ they do not fall within the ambit of “government in the national, provincial or local sphere” contemplated in section 10(1)(a). Accordingly, their receipts and accruals do not qualify for exemption under that section.

Chapter 9 institutions and constitutional entities listed in Schedule 1 of the PFMA, however, may fall within the meaning of “institution” referred to in section 10(1)(cA)(i). Their receipts and accruals potentially qualify for exemption under section 10(1)(cA)(i) provided the conditions and requirements of that section are met.¹⁰¹

6.2 Public entities

Typically, public entities are established in the public sector but outside the public service for the following reasons:¹⁰²

- Strategic, social or economic intervention by the government.
- To deal with strategic risks and dangers the government or society faces to its security, health, prosperity or well-being.
- To adopt commercial and business principles, when required, in service delivery.
- A need for objectivity and greater operational autonomy yet retaining accountability in the delivery of services.

⁹⁵ [2018] 2 All SA 311 (SCA) at 34.

⁹⁶ Sections 220 to 222 of the Constitution and the Financial and Fiscal Commission Act 99 of 1997.

⁹⁷ Section 192 of the Constitution and the Independent Communication Authority Act 13 of 2000.

⁹⁸ Section 155(3)(b) of the Constitution and the Local Government: Municipal Demarcation Act 27 of 1998.

⁹⁹ Section 6(5) of the Constitution and the Pan South African Language Board Act 59 of 1995.

¹⁰⁰ Paragraph (b)(i) of the definition of “organ of state” in section 239 of the Constitution. See *Minister of Home Affairs and another v Public Protector of the Republic of South Africa* [2018] 2 All SA 311 (SCA).

¹⁰¹ For further commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies*.

¹⁰² Department of Public Service and Administration “The Machinery of Government” (May 2003) available online at www.dpsa.gov.za/dpsa2g/documents/lkm/mog.pdf [Accessed 31 October 2023].

The PFMA defines a “public entity” as –¹⁰³

“a national or provincial public entity”.

Public entities are categorised into different Schedules to the PFMA based on their nature and level of autonomy, namely, major public entities (see 6.2.1) and other public entities (see 6.2.2). The Schedules change, as new public entities are added, classified, re-classified, amalgamated or delisted.¹⁰⁴

None of the entities listed in Schedule 2 or 3 of the PFMA qualify as “government in the national, provincial or local sphere” contemplated in section 10(1)(a).

6.2.1 Major public entities

Major public entities are listed in Schedule 2 to the PFMA.¹⁰⁵ These entities generally generate profits and declare dividends. They have the most autonomy of all the public entities as they operate in a competitive marketplace and are run in accordance with general business principles.¹⁰⁶

Major public entities, amongst other things, may be incorporated as state-owned company’s (SOC Ltd)¹⁰⁷ under the Companies Act.¹⁰⁸ Thus, major public entities are colloquially called “state-owned enterprises” because they are independent bodies either partially or solely owned by the government.

6.2.2 Other public entities

The Minister by notice in the *Government Gazette* may classify public entities listed in Schedule 3 to the PFMA as follows:

- National public entities listed in Part A.¹⁰⁹

National public entities are usually extensions of a department with the mandate to fulfil a specific economic or social responsibility of government and may include boards, commissions, companies, corporations, funds or other entities established under national legislation. They are fully or substantially funded from the National Revenue Fund, by way of a tax, levy or other money imposed under the relevant national legislation. National public entities have less autonomy and are accountable to Parliament.¹¹⁰

¹⁰³ Section 1 of that Act.

¹⁰⁴ Chapter 6 of the PFMA.

¹⁰⁵ See www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 31 October 2023].

¹⁰⁶ *Annual Report Guide for Schedule 3A and 3C Public Entities* available at <https://oag.treasury.gov.za/Publications/Forms/AllItems.aspx> [Accessed 31 October 2023].

¹⁰⁷ The term “state-owned company” as defined in section 1 of the Companies Act means an enterprise registered under that Act as a company and either (a) is listed as a public entity in Schedule 2 or 3 of the PFMA, or (b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, and is otherwise similar to an enterprise referred to in paragraph (a).

¹⁰⁸ See section 8(2)(a) of the Companies Act.

¹⁰⁹ See www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 31 October 2023].

¹¹⁰ Paragraph (b) of the definition of “national public entity” in section 1 of the PFMA.

- National government business enterprises¹¹¹ listed in Part B.¹¹²

A national government business enterprise refers to legal entities created and governed by the national government to undertake commercial activities on its behalf. Thus, they generate their own income and have the most autonomy, since they operate in a competitive marketplace where decisions are made in accordance with business principles.

- Provincial public entities¹¹³ listed in Part C.¹¹⁴

These entities may include boards, commissions, companies, corporations, funds or other entities established under legislation or a provincial constitution¹¹⁵ with the mandate to fulfil a specific economic or social responsibility of government. They are fully or substantially funded either from a Provincial Revenue Fund or by way of a tax, levy or other money imposed under legislation, and accountable to a provincial legislature.¹¹⁶

- Provincial government business enterprises¹¹⁷ listed in Part D.¹¹⁸

A provincial government business enterprise is a juristic person under the ownership control of a provincial executive,¹¹⁹ which has been assigned financial and operational authority to carry on a business activity of providing goods or services in accordance with ordinary business principles. These entities are therefore either substantially self-funded from the income they generate or substantially government-funded from a Provincial Revenue Fund or by way of a tax, levy or other statutory money.

Public entities listed in Schedule 3 to the PFMA, amongst other things, may be incorporated as a state-owned company (SOC Ltd) under the Companies Act.

6.2.3 Public higher education institutions

The Minister may not list any public institution functioning outside the national or provincial sphere of government, and any higher education institution, for example, universities as a public entity in Schedule 3 to the PFMA.¹²⁰ Public higher education institutions are established or declared as public higher education institutions under the Higher Education Act 101 of 1997. The Minister of Higher Education and Training may by notice in the *Government Gazette* establish a specific university, university of technology or college. A public higher education

¹¹¹ The term “national government business enterprise” is defined in section 1 of the PFMA. Also, see paragraph (a) of the definition of “national public entity” in section 1 of the PFMA.

¹¹² See www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 31 October 2023].

¹¹³ The term “provincial public entity” is defined in section 1 of the PFMA.

¹¹⁴ See www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 31 October 2023].

¹¹⁵ Provincial legislation is not considered to fall within the ambit of the expression “any law” used in section 10(1)(cA)(i). Therefore, any entity established by or under any provincial legislation will not qualify for an exemption under section 10(1)(cA)(i). For further commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies* in 2.1.

¹¹⁶ Paragraph (b) of the definition of “provincial public entity” is defined in section 1 of the PFMA.

¹¹⁷ The term “provincial government business enterprise” is defined in section 1 of the PFMA.

¹¹⁸ See www.treasury.gov.za/legislation/pfma/public%20entities/default.aspx [Accessed 31 October 2023].

¹¹⁹ The provincial executive who exercises ownership control is the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or whose portfolio it falls. See paragraph (d) of the definition of “executive authority” in section 1 of the PFMA.

¹²⁰ Section 47(4) of the PFMA.

institution is regarded for the purpose of income tax as an institution established under law providing necessary and useful services to the state and members of the general public. A public higher education institution may therefore qualify for exemption under section 10(1)(cA)(i).¹²¹

6.3 Municipal entities

Many municipalities have established municipal entities to operate as ring-fenced business units to assist municipalities fulfil their constitutional mandate (see 5). Municipal entities are generally established to provide basic services such as water and electricity, support economic and social development in their municipal area, for example, the removal of refuse, the provision of municipal health services, the provision of public transport, or commercial ventures. Municipal entities are therefore established to operate independently from their municipality, however, in alignment to the municipal mandate and the oversight of its operations.

The term “municipal entity” as defined in the Local Government: Municipal Systems Act includes a –¹²²

- private company –
 - established by one or more municipality; or
 - in which one or more municipalities have acquired or hold an interest.
- service utility¹²³ established by a municipality, or
- multi-jurisdictional service utility¹²⁴ established by two or more municipalities.

Although municipal entities are generally regarded as merely being branches or extensions of municipalities by virtue of their objectives and governance, they are registered as companies under the Companies Act and are for purposes of income tax separate legal entities from the municipalities establishing them.

The Supreme Court of Appeals in *City Power (SOC) Limited v C: SARS*¹²⁵ had to consider whether City Power (SOC) could be considered as local sphere of government. City Power (SOC) Limited contended that because it is a municipal entity and performs functions that would otherwise have been performed by the City of Johannesburg it qualified for exemption, amongst other things, under section 10(1)(a). The following was held:¹²⁶

“ ... It is not part of the local sphere of government and is thus not located within such sphere. The mere fact that it performs constitutional functions, which would ordinarily have been performed by the City, does not mean that it is part of or located within the local sphere of government.

¹²¹ A complete list of public high education institutions is available online at www.education.gov.za/FurtherStudies/Universities/tabid/393/Default.aspx [Accessed 31 October 2023].

¹²² Section 1 read with section 68B(1) of that Act.

¹²³ The term “service utility” is defined in section 1 and established under section 86H of the Local Government: Municipal Systems Act.

¹²⁴ The term “multi-jurisdictional service utility” is defined in section 1 and established under section 87 of the Local Government: Municipal Systems Act.

¹²⁵ 2022 (1) SA 121 (SCA); 83 SATC 523.

¹²⁶ In 22 and 26.

There is accordingly no merit in the suggestion that City Power falls within the local sphere of government. As the receipts and accruals of City Power are not those of 'the government of the Republic' in any of the spheres (ie the national, provincial or local spheres), and were at no stage the 'receipts and accruals of municipalities', the s 10(1)(a) and 10(1)(b) exemptions do not apply in respect of the income in issue."

A municipal entity cannot be regarded as a "municipality" since they are not listed within a category in the Constitution and are not regarded as forming part of the local sphere of government. Municipal entities fall within the definition of "company".¹²⁷ Thus, municipal entities generally do not qualify for exemption under section 10(1)(a).

The receipts and accruals of municipal entities will potentially be treated similar to normal taxpayers¹²⁸ if such municipal entities do not qualify for an exemption from income tax under a different section. Applications for exemption from income tax by municipal entities will be fact-specific and considered by the Commissioner based on the relevant section under which such an entity is claiming an exemption.

7. Section 18A approval

7.1 Introduction

Section 18A(1)(c) provides that the Commissioner may approve a department of government in the national, provincial or local sphere contemplated in section 10(1)(a) for purposes of section 18A if the donations received are used only for the purpose of PBAs in Part II of the Ninth Schedule. Such a *bona fide* donation (see 7.5) in cash (see 7.6.1) or property made in kind (see 7.6.2) actually paid or transferred by a donor taxpayer during the year of assessment¹²⁹ to any section 18A-approved department may qualify as a deduction for the donor taxpayer (see 7.8). The Commissioner will issue a specific reference number for purposes of section 18A to a section 18A-approved department, which must appear on section 18A receipts (see 7.10) for such receipts to be valid and to enable donor taxpayers to claim a tax deduction in the determination of their taxable income.

A department of government seeking approval under section 18A(1)(c) is required to submit to the Commissioner the application form EI 1 together with the required supporting documentation. The section 18A approval is effective from the date of the notice of approval granted by the Commissioner (see 7.11). A written notification will also be issued by SARS to the department of government should approval under section 18A(1)(c) not be granted together with reasons why the department of government failed to meet the conditions and requirements of that section.

Any sphere of government approved by the Commissioner for purposes of section 18A may issue section 18A receipts only for *bona fide* donations used solely for purposes of any PBAs in Part II in South Africa.

¹²⁷ Paragraph (a) of the definition of "company" in section 1(1) includes any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law.

¹²⁸ A municipal entity will be liable for tax on all its taxable income, namely, gross income less exempt income and allowable deductions, at the rate applicable to companies. The Minister in accordance with section 5(2)(a) may announce different rates in the national annual budget. The rates are published annually in the Rates and Monetary Amounts and Amendment of Revenue Laws Act.

¹²⁹ Section 18A(1).

Section 18A(1)(c) applies only to departments of government contemplated in section 10(1)(a) (see 3, 4 and 5).

7.2 Public benefit activities

The PBAs are listed in the Ninth Schedule, which is divided into –

- Part I comprising PBAs approved by the Minister for purposes of the approval as a public benefit organisation (PBO) under section 30;¹³⁰ and
- Part II comprising a limited number of PBAs¹³¹ approved by the Minister for purposes of the approval under section 18A.

The PBAs listed in Part II for purposes of section 18A 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)¹³²
- Land and Housing (paragraph 5)¹³³

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

The Minister may from time-to-time by notice in the *Government Gazette* approve additional PBAs.¹³⁴ The Minister may also by regulation prescribe additional requirements a section 18A-approved department carrying on any specific PBA identified by the Minister in the regulations, must comply with before any donation made to that section 18A-approved department will be allowed as a deduction under section 18A.¹³⁵ 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 contemplated in PBA 3(o) in Part II are subject to conditions 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 referred to in PBA 3(o) in Part II in Government Notice Regulation 302 in *Government Gazette* 29491 of 28 February 2003 (see **Annexure D**).¹³⁶

¹³⁰ For further commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

¹³¹ Not all PBAs listed in Part I are included in Part II.

¹³² Limited PBAs in Part I are included in this category in Part II.

¹³³ Limited PBAs in Part I are included in this category in Part II.

¹³⁴ Section 18A(1)(a)(aa).

¹³⁵ Section 18A(1A).

¹³⁶ The regulations relate specifically to PBA 4(o) in Part I. However, the Minister declared in Government Notice Regulation 333 in *Government Gazette* 24941 of 8 April 2005 that those regulations also apply to PBA 3(o) in Part II.

Any additional PBAs or requirements prescribed by the Minister must be approved by Parliament and formally incorporated into the Ninth Schedule or the Act within 12 months after the date of publication by the Minister of those PBAs or requirements, as the case may be, in the *Gazette*.¹³⁷

7.3 Control measures

A section 18A-approved department is required to maintain proper control over the application and spending of donations received for which section 18A receipts (see **7.10**) are issued. A section 18A receipt may be issued only for a donation, which will be used solely in carrying on PBAs in Part II in South Africa (see **7.2**).¹³⁸ Donations received must therefore be controlled in such a manner that their usage is restricted to only those PBAs in Part II. The records of the section 18A-approved department must clearly identify the donations received for PBAs in Part II and the use to which those donations were applied.

7.4 Audit certificate

Any section 18A-approved department, which issued section 18A receipts must annually submit an audit certificate¹³⁹ to the Commissioner confirming that all donations received or accrued in the year of assessment¹⁴⁰ in which receipts were issued were used solely in carrying on PBAs in Part II in South Africa. The accounting officer or accounting authority contemplated in the PFMA or accounting officer contemplated in the Local Government: Municipal Finance Management Act, as the case may be, for that section 18A-approved department (see **3, 4** and **5**) must annually submit the audit certificate to the Commissioner.¹⁴¹

The term “audit certificate” referred to in section 18A is not defined in the Act and should therefore be interpreted according to its ordinary meaning. The ordinary meaning of –¹⁴²

- “audit” is “an official inspection of an organisation’s accounts”; and
- “certificate” is “an official document recording a particular fact, event, or level of achievement”.

An audit certificate in the present context is therefore a physical document, for example, a form, declaration or letter, that must, assuming the work performed and the underlying facts permit this to be done, confirm that all donations for which section 18A receipts were issued were used solely for PBAs in Part II in South Africa.¹⁴³ In addition to the above confirmation, although not prescribed in the Act, the audit certificate should at a minimum contain the following detail for purposes of the administration relating to section 18A:

- The name and address of the section 18A-approved PBO
- The reference number issued to the section 18A-approved PBO¹⁴⁴
- The taxpayer reference number of the section 18A-approved PBO

¹³⁷ Section 18A(1B).

¹³⁸ Section 18A(2A)(c).

¹³⁹ For further commentary, see Interpretation Note 112 “Section 18A: Audit Certificate”.

¹⁴⁰ Section 18A(2C) refers to “the year”, which is interpreted to mean the financial year in which section 18A receipts were issued and not a calendar year.

¹⁴¹ Section 18A(2C) read with section 18A(2A)(c).

¹⁴² Wait, M., Hawker, S., and Soanes, C. (2001). *Oxford Dictionary, Thesaurus and Wordpower Guide* Oxford University Press: Cape Town.

¹⁴³ Section 18A(2B) and (2C).

¹⁴⁴ This information is also required under section 18A(2)(a)(i).

- The year of assessment to which the audit certificate applies
- Full name, signature and designation of the person responsible for issuing the audit certificate
- Details of the section 18A receipts issued by the section 18A-approved department, for example, the number of section 18A receipts issued and the total rand value of the donations for which section 18A receipts were issued¹⁴⁵
- The date on which the audit certificate is issued

The audit certificate is not limited to the items mentioned above and may contain additional information.¹⁴⁶ For example, the person issuing the audit certificate may be subject to other legal or regulatory requirements, which require other information to be included in the certificate.¹⁴⁷

The audit certificate must be retained for record-keeping purposes. The failure to obtain and retain an audit certificate may be one of the facts giving the Commissioner reasonable grounds for invalidating the section 18A receipts of the section 18A-approved department (see **7.12**).

Example 1 – Obtaining of an audit certificate by a section 18A-approved department

Facts:

A metropolitan municipality, which has been approved by the Commissioner under section 18A(1)(c), has established a feeding scheme for homeless children living in the inner city contemplated in PBA 1(a)¹⁴⁸ in Part II.

Result:

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

7.5 Bona fide donations

Although the word “donation” is not defined in section 18A it is defined for purposes of donations tax. The term “donation” as defined means –¹⁴⁹

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

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

¹⁴⁵ This information is also required to be provided on the Return of Income: Exempt Organisations IT12EI.

¹⁴⁶ The audit certificate referred to in section 18A(2B) and (2C) contemplates that it complies with all relevant legislative or regulatory requirements, if applicable.

¹⁴⁷ Based on the presumption that references in statutes to conduct are references to valid or permissible conduct, see du Plessis, L., M. (2011). “Statute Law and Interpretation” 25(1) (Second Edition Volume) LAWSA in 343 [online] (My LexisNexis: 31 March 2011).

¹⁴⁸ This PBA is described as the care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.

¹⁴⁹ Section 55(1).

Trollip JA summed up the common law meaning of a donation in *Ovenstone v SIR* when he stated the following:¹⁵⁰

“In a donation the donor disposes of the property gratuitously out of liberality or generosity, the donee being thereby enriched and the donor correspondingly impoverished, so much so that, if the donee gives any consideration at all therefor, it is not a donation . . .”.

In *Welch’s Estate v C: SARS* Marais JA stated the following on the meaning of a donation:¹⁵¹

“The test to be applied at common law to determine whether the disposition of an asset amounts to a donation properly so called (as opposed to a remuneratory donation) is so well-settled that it hardly needs repetition. The test is of course that the disposition must have been motivated by ‘pure liberality’ or ‘disinterested benevolence’.

In my opinion the legislature has not eliminated from the statutory definition the element which the common law regards as essential to a donation, namely, that the disposition be motivated by pure liberality or disinterested benevolence and not by self-interest or the expectation of a *quid pro quo* of some kind from whatever source it may come.

If one were to scour the dictionaries to find a single word apt to convey that the disposition should be motivated by pure liberality and not in expectation of any *quid pro quo* of whatever kind, one would not find a better or more appropriate word than ‘gratuitous’.

The shorter OED gives the following meaning to the word:

- ‘1. Freely bestowed or obtained; granted without claim or merit; costing nothing to the recipient; free.
2. Done, made, adopted or assumed without any good ground or reason; uncalled for; unjustifiable.’ ”

In *Estate Sayle v CIR* the court stated the following:¹⁵²

“In short, liberality at the expense of another is not a ‘donatio’; to be a ‘donatio’ the gift must be liberality at the expense of the donor, an act whereby the donee is enriched and the donor correspondingly impoverished.”

In *The Master v Thompson’s Estate*, the court confirmed that a transaction would not be a donation when something is received in return or when there is some consideration.¹⁵³

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

¹⁵⁰ 1980 (2) SA 721 (A), 42 SATC 55 at 73.

¹⁵¹ 2005 (4) SA 173 (SCA), 66 SATC 303 at 312 and 314.

¹⁵² 1945 AD 388, 13 SATC 170 at 173.

¹⁵³ 1961 (2) SA 20 (FC), 24 SATC 157 at 165.

7.6 Types of donations

A donation can be in the form of cash (see 7.6.1) or of property in kind (see 7.6.2), which was actually paid or transferred by the donor taxpayer to the section 18A-approved department in a year of assessment.

7.6.1 Cash donation

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

Example 2 – Payments or transfers not qualifying as tax-deductible donations

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

- The value of free rent, water and electricity provided by a lessor to a section 18A-approved department.
- Prizes and sponsorships donated for fundraising events.
- Promissory notes.
- Pledges.
- Payments made in future instalments.

7.6.2 Donation of property in kind

A donation of property in kind is made in a form other than cash. Donations of property made in kind may include the following:¹⁵⁴

- A financial instrument provided it is –
 - a share in a listed company; or
 - issued by an “eligible financial institution”¹⁵⁵ as defined in section 1 of the Financial Sector Regulation Act 9 of 2017.¹⁵⁶
- Trading stock forming part of the business undertaking or trading activity conducted by the taxpayer. Such trading stock may include livestock or produce donated by a farmer or goods such as computers, foodstuffs, furniture medical supplies, research equipment and motor vehicles.
- An asset other than trading stock used by the taxpayer in conducting the taxpayer’s trade. Examples of such assets include computers, crockery, delivery vehicles, furniture, garden equipment, kitchen utensils and office equipment.
- An asset, which is not trading stock and is not used in the business of the taxpayer. Example of such assets include personal assets or assets bought by the taxpayer such as computers, furniture, sport equipment and vehicles.

¹⁵⁴ Section 18A(3).

¹⁵⁵ This definition includes a financial institution licensed or required to be licensed as a bank under the Banks Act 94 of 1990, a financial institution registered as a long-term insurer under the Long-term Insurance Act 52 of 1998, a short-term insurer under the Short-term Insurance Act 53 of 1998 or licensed or required to be licensed under the Insurance Act 18 of 2017, a market infrastructure, and a financial institution prescribed in Regulations for the purposes of this definition.

¹⁵⁶ Section 18A(3B)(b) was amended by section 35(1)(e) of the Taxation Laws Amendment Act 23 of 2018 and deemed to have come into operation on 1 April 2018.

- 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 an orphanage or old age home erected by or on behalf of the taxpayer for purposes of conducting any PBAs in Part II (see 7.2).

A donation of property in kind for which a section 18A receipt (see 7.10) has been issued must be used by a section 18A-approved department solely in carrying on PBAs in Part II in South Africa.

No deduction will be allowed for any donation of any property in kind which –¹⁵⁷

- creates or is subject to any fiduciary right, usufruct or other similar rights; 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 department is not a donation of property made in kind. Any professional person, such as an accountant, auditor, artist (which may include a singer, musician or entertainer), electrician, lawyer, medical doctor or plumber who renders a service free of charge to a section 18A-approved department, will not be entitled to a tax deduction for the value of the service.

7.7 Value of a donation of property in kind

The amount deductible by any donor taxpayer for any donation of property in kind, other than immovable property of a capital nature for which the lower of market value or municipal value exceeds cost, is deemed to be as follows:¹⁵⁸

- A financial instrument, which is trading stock of the donor taxpayer, the lower of fair market value on the date of the donation or the amount taken into account for that year of assessment for the value of that trading stock under section 22(8)(C).¹⁵⁹
- Any other trading stock of the donor taxpayer (including any livestock or produce of a farmer), the amount taken into account for that year of assessment for the value of that trading stock forming part of trading stock of the donor taxpayer under section 22(8)(C) or paragraph 11 of the First Schedule, as appropriate.
- An asset used in the donor taxpayer's trade, the lower of the fair market value on the date of donation of the property or the cost to the donor taxpayer of such property less any allowance (other than an investment allowance) deducted from the income of that donor taxpayer for that asset.
- Property not trading stock of the donor taxpayer and not a business asset, the lower of the fair market value on the date of the donation or the cost to the donor taxpayer of such asset less depreciation using the 20% reducing balance method in the case of deterioration of movable property.¹⁶⁰

¹⁵⁷ Section 18A(3B).

¹⁵⁸ Section 18A(3).

¹⁵⁹ For further commentary, see Interpretation Note 65 "Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade".

¹⁶⁰ See section 8(5)(bB)(i).

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

Any deduction claimed by any donor taxpayer for any donation of immovable property of a capital nature when the lower of market value or municipal value exceeds cost must be determined using the following formula:¹⁶¹

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

In which formula –

- “A” represents the amount deductible contemplated in section 18A(1);
- “B” represents the cost of the immovable property being donated;
- “C” represents the amount of capital gain (if any) that would have been determined under the Eighth Schedule had the immovable property been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and
- “D” represents 60% in the case of a natural person or special trust¹⁶² or 20% in any other case.

7.8 Allowable deduction from the taxable income of a donor taxpayer

The allowable deduction from the taxable income of a donor taxpayer that is a portfolio of a collective investment scheme¹⁶³ for all qualifying donations paid or transferred during the year of assessment is determined according to the following formula:¹⁶⁴

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

In which formula –

- “A” represents the amount to be determined; and
- “B” represents the average value of the aggregate of all participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all the participatory interests in the portfolio at the end of each day during that year.

The allowable deduction for a taxpayer that is a portfolio of a collective investment scheme in property qualifying as a Real Estate Investment Trust (REIT) or a resident controlled company is allowed under section 25BB(2A)(c).¹⁶⁵

For all other donor taxpayers, the allowable deduction from the taxable income may not exceed 10% of the taxable income excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit of the donor taxpayer as calculated

¹⁶¹ Section 18A(3A) was inserted by section 52(1)(g) of the Taxation Laws Amendment Act 31 of 2013 with effect from 1 March 2014 and applicable to amounts paid or transferred during years of assessment commencing on or after that date.

¹⁶² For further commentary, see the *Guide to the Taxation of Special Trust*.

¹⁶³ The term “collective investment scheme” is defined in section 1 of the Collective Investment Schemes Control Act 45 of 2002.

¹⁶⁴ Section 18A(1)(A).

¹⁶⁵ For further commentary, see Interpretation Note 97 “Taxation of REITS and Controlled Companies”.

before allowing any deduction for donations under section 18A or a deduction for certain foreign tax credits under section 6quat(1C).¹⁶⁶

Any excess amount of a donation made, which is disallowed solely because 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.¹⁶⁷ Any excess remaining can be further rolled over but always subject to the 10% limitation.¹⁶⁸

Example 3 – Carry-forward treatment for excess deductible donations

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

7.9 Tax-deductible donations

Any claim for a tax deduction from the taxable income of a donor taxpayer will be allowed only if supported by –¹⁶⁹

- a section 18A receipt issued by a section 18A-approved department (see **7.9.1**); or
- an employees' tax certificate (IRP 5 certificate)¹⁷⁰ (see **7.9.2**).

A donor taxpayer may therefore donate directly to a section 18A-approved department or through a payroll-giving programme operated by an employer.¹⁷¹

7.9.1 Donations made directly to a section 18A-approved department

The deduction of donations made directly to a section 18A-approved department for which it has issued a section 18A receipt (see **7.10**) is claimed by the donor taxpayer annually on assessment of the income tax return.

¹⁶⁶ Section 18A(1)(B). This section was amended by section 35(1)(a) of the Taxation Laws Amendment Act 23 of 2018 and deemed to have come into operation on 1 March 2018.

¹⁶⁷ Proviso to section 18A(1)(B).

¹⁶⁸ The carry-forward treatment applies to donations paid or transferred during years of assessment commencing on or after 1 March 2014.

¹⁶⁹ Section 18A(2).

¹⁷⁰ The term "employees' tax certificate" is defined in paragraph 1 of the Fourth Schedule. An employer must issue an employee with an IRP 5 certificate if employees' tax was deducted from the employee's remuneration. This certificate discloses, amongst other things, the total remuneration earned during a year of assessment and the employees' tax and unemployment insurance fund contributions deducted by the employer.

¹⁷¹ The term "employer" is defined in paragraph 1 of the Fourth Schedule.

7.9.2 Donations made through a payroll-giving programme

A payroll-giving programme operated by an employer enables employees to donate from their salaries monthly to any section 18A-approved department.

A section 18A-approved department must issue a section 18A receipt (see **7.10**) 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 monthly or for a period that either coincides with the interim (1 March to 31 August) or annual (1 March to 28 / 29 February) period for which the employer is required to submit a reconciliation declaration to SARS for employees' tax purposes.

7.10 Section 18A receipts

A section 18A receipt may be issued by a section 18A-approved department only for an eligible donation used solely for PBAs in Part II in South Africa.

A section 18A receipt will be valid if it contains the following detail:¹⁷²

- The reference number issued to the section 18A-approved department by the Commissioner for purposes of section 18A.
- The date the donation is received by the section 18A-approved department.
- The name and address of the section 18A-approved department issuing the section 18A receipt to which enquiries may be directed.
- The name and address of the donor taxpayer.
- The amount of the donation or the nature of the donation if not in cash.
- A certification to the effect that the section 18A receipt is issued for purposes of section 18A and that the donation has or will be used in carrying on PBAs in Part II.
- The further information¹⁷³ the Commissioner prescribed by public notice,¹⁷⁴ which includes the –
 - nature of the donor, for example, a natural person, company or trust;
 - donor identification type if the donor is a natural person, for example, the donor's South African identification number or passport number and country of issue;
 - identification or registration number of the donor if the donor is a juristic person, for example, the company registration number issued by the Companies and Intellectual Property Commission or the trust registration number issued by the Master of the High Court;
 - trade name of the donor if the donor is a juristic person, and if the trade name is different from the registered name of the donor;
 - income tax reference number of the donor, if available;
 - contact number of the donor;

¹⁷² Section 18A(2)(a).

¹⁷³ Section 18A(2)(a)(vii) was inserted by section 2 of the Tax Administration Laws Amendment Act 21 of 2021 and applies to all section 18A receipts issued on or after 1 March 2023.

¹⁷⁴ Public Notice 3082 in *Government Gazette* 48104 of 24 February 2023, which came into effect on 1 March 2023.

- e-mail address of the donor; and
- unique receipt number.

The information required on the section 18A receipts has been extended to allow for third-party reporting.¹⁷⁵ The purpose of third-party reporting is to ensure donor taxpayers claim a deduction for donations made only to section 18A-approved departments, and also to ensure the section 18A receipt claimed by donor taxpayers matches information provided by the section 18A-approved department issuing such receipts.¹⁷⁶

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

7.11 Retrospective section 18A approval

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

7.12 Non-compliance by a section 18A-approved department

SARS must notify National Treasury and the Provincial Treasury (if applicable) when an accounting officer or accounting authority of any government department has –¹⁷⁷

- issued or allowed a receipt to be issued in contravention of section 18A;
- 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; or
- failed to submit an audit certificate (see **7.4**).¹⁷⁸

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 government department will, from a date specified in the notice, not qualify as a valid section 18A receipt (see **7.10**). Those donations will therefore not qualify for a deduction in the determination of the taxable income of the donor taxpayer (see **7.8**).

¹⁷⁵ For further commentary, see the *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2021*, in 2.2.

¹⁷⁶ For commentary on how third party information relating to section 18A receipts issued by section 18A-approved departments must be submitted to SARS, see the *Business Requirement Specification: IT 3 Data Submission*.

¹⁷⁷ Section 18A(5B).

¹⁷⁸ Section 18A(5)(e) was inserted by section 4(f) of the Tax Administration Laws Amendment Act 24 of 2020 and came into operation on 20 January 2021. The *Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2020*, states that the audit certificate requirement be added to the listed requirements where non-compliance may give rise to the taxation of donations and ultimately the invalidity of section 18A receipts.

8 Administrative provisions

The TA Act¹⁷⁹ deals with tax administration and seeks, amongst other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts, and as far as possible harmonise administrative provisions.¹⁸⁰

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act imposing that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.¹⁸¹ If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.¹⁸²

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see 10) and dispute resolution (see 11) therefore applies to the government.

9. Furnishing of information

To assist in enforcing the Act, the Commissioner may submit a written request to any person to furnish information about any sphere of government and may require that person to –¹⁸³

- answer any questions relating to the sphere of government;
- make books of account, records or other documents relating to the sphere of government; or
- meet with the Commissioner's representative and produce for examination any documents relating to the sphere of government.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions posed by SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.¹⁸⁴

10. Record-keeping

All spheres of government are required to keep records for five years.¹⁸⁵ The following are non-exhaustive examples of records, books of account or documents that must be kept and retained:

- Section 18A receipts (see 7.10) issued.
- Audit certificates (see 7.4).

¹⁷⁹ The TA Act came into effect on 1 October 2012.

¹⁸⁰ For further commentary, see the *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

¹⁸¹ Section 4(2) of the TA Act.

¹⁸² Section 4(3) of the TA Act.

¹⁸³ Section 46(1) of the TA Act.

¹⁸⁴ Sections 234(1)(c)(i), (2)(f) and (2)(h) of the TA Act.

¹⁸⁵ Section 29(3) of the TA Act.

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained for longer periods.¹⁸⁶ For example –

- a person notified of or aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded, or the applicable five-year period has elapsed, whichever is the later;¹⁸⁷ or
- indefinitely if a document is relevant for future years of assessment such as the prescribed application form EI 1 and the required supplementary information and documentation, on which the Commissioner based the decision to approve or not section 18A.

The records, books of account, or documents that must be kept and retained may include anything that contains a written, sound or pictorial record or other record of information whether in physical or electronic form.

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, any sphere of government is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.¹⁸⁸

The Electronic Record-Keeping Rules regulate the electronic form of record-keeping.¹⁸⁹ The rules require that electronic records must be kept in their original form,¹⁹⁰ and should within a reasonable time, be accessible to and readable by SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups and conversions.¹⁹¹

A person, who wilfully and without just cause fails or neglects to retain records, is guilty of an offence, and on conviction is subject to a fine or imprisonment for a period not exceeding two years.¹⁹²

11. Objection and appeal

Any decision in the exercise of the Commissioner's discretion under section 18A(1)(c)¹⁹³ is subject to objection and appeal.¹⁹⁴ The Commissioner's discretion under section 18A will be exercised to determine whether a government department may be approved for purposes of that section. Such a decision may be objected to and appealed against in the same manner as an assessment.¹⁹⁵

¹⁸⁶ Section 32 of the TA Act.

¹⁸⁷ Section 32(a) of the TA Act.

¹⁸⁸ Section 30 of the TA Act.

¹⁸⁹ See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

¹⁹⁰ Section 14 of the Electronic Communications and Transactions Act 25 of 2002 provides that a document will be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

¹⁹¹ For further commentary, see the *Electronic Communications Guide*.

¹⁹² Section 234(2)(e) of the TA Act.

¹⁹³ Section 3(4)(b) was amended by section 1(1) of the Tax Administration Laws Amendment Act 23 of 2015 to include only sections 18A(5), (5A) and (5B). The amendment comes into operation on a date determined by the Minister by notice in the *Government Gazette*, which to date has not yet been determined.

¹⁹⁴ Section 3(4)(b).

¹⁹⁵ Section 104(2)(c) of the TA Act.

A section 18A-approved department aggrieved by an assessment¹⁹⁶ may, before lodging an objection, request SARS to provide reasons for the assessment to enable the section 18A-approved department to formulate an objection.¹⁹⁷ The request, amongst other things, must be made in the prescribed form and manner and delivered to SARS within 30 days¹⁹⁸ from the date of the assessment.

Any section 18A-approved department may object to an assessment¹⁹⁹ in accordance with Chapter 9 of the TA Act read with the “rules”²⁰⁰ as published in the *Government Gazette*. within 80²⁰¹ business days after the –²⁰²

- delivery of a notice providing reasons requested for an assessment, if applicable;²⁰³
- notice issued by SARS notifying the section 18A-approved department that the reasons required to enable it to formulate an objection have been provided;²⁰⁴ or
- date of assessment.

The objection must be made on the prescribed form and set out the grounds of the objection in detail including –²⁰⁵

- specifying the part or specific amount of the disputed assessment objected to;
- specifying which of the grounds of assessment²⁰⁶ are disputed; and
- submitting the documents required to substantiate the grounds of objection that the section 18A-approved department has not previously delivered to SARS for purposes of the disputed assessment.

SARS will consider the objection and may disallow the objection or allow the objection completely or in part.

If on disallowance of the objection the section 18A-approved department is dissatisfied with SARS’s decision, it may appeal against the disallowance. Such appeal must be in writing and lodged with SARS within the prescribed period.²⁰⁷

¹⁹⁶ The term “assessment” as defined in Rule 1 includes, for purposes of the rules, a decision referred to in section 104(2) of the TA Act.

¹⁹⁷ Rule 6 deals with reasons for an assessment.

¹⁹⁸ The term “day” in Rule 1 means a “business day” as defined in section 1 of the TA Act.

¹⁹⁹ For further commentary, see the Interpretation Note 15 “Exercise of Discretion in case of Late Objection or Appeal”.

²⁰⁰ The word “rules” means the rules referred to in section 103 of the TA Act which were made by the Minister, after consultation with the Minister of Justice and Correctional Services and published in Government Notice 3146 in the *Government Gazette* 48188 of 10 March 2023.

²⁰¹ Rule 7(1) was amended from 30 to 80 days, effective from 10 March 2023.

²⁰² Rule 7 deals with objections.

²⁰³ Rule 7(1)(a) read with Rule 6.

²⁰⁴ Rule 7(1)(a) read with Rule 6(4).

²⁰⁵ Rule 7(2).

²⁰⁶ The term “grounds of assessment” as defined in Rule 1, for purposes of the rules, include, amongst other things, any grounds for a decision referred to in section 104 (2) of the TA Act; and reasons for assessment provided by SARS contemplated in Rule 6(5).

²⁰⁷ Rule 10.

Annexure A – Section 10(1)(a)

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

- (a) the receipts and accruals of the government of the Republic in the national, provincial or local sphere;

Annexure B – Section 18A

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

(a) any—

(i) public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30; or

(ii) institution, board or body contemplated in section 10(1)(cA)(i),

which—

(aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;

(bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A); and

(cc) has been approved by the Commissioner for the purposes of this section;

(b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a), or any department contemplated in paragraph (c) and which has been approved by the Commissioner for the purposes of this section; or

(bA) (i) any agency contemplated in the definition of “specialized agencies” in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);

(ii) the United Nations Development Programme (UNDP);

(iii) the United Nations Children’s Fund (UNICEF);

(iv) the United Nations High Commissioner for Refugees (UNHCR);

(v) the United Nations Population Fund (UNFPA);

(vi) the United Nations Office on Drugs and Crime (UNODC);

(vii) the United Nations Environmental Programme (UNEP);

(viii) the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women);

(ix) the International Organisation for Migration (IOM);

(x) the Joint United Nations Programme on HIV/AIDS (UNAIDS);

(xi) the Office of the High Commissioner for Human Rights (OHCHR); or

(xii) the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),

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

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

as does not exceed—

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

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

in which formula:

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

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

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

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

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

- (a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—
 - (i) that donation is made by that person on or after 1 August 2002; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in which formula:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Any person who is—

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

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

Annexure C - Part II

NINTH SCHEDULE

PART II

WELFARE AND HUMANITARIAN

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

HEALTH CARE

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

EDUCATION AND DEVELOPMENT

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

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

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

LAND AND HOUSING

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

Annexure D – Regulations issued under paragraph 4(o) in Part I and paragraph 3(o) in Part II

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.

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 E – Example of section 18A receipt



Department X
 REPUBLIC OF SOUTH AFRICA
 Helen Joseph Street, Johannesburg, 2001
 Telephone: (000) 000 0000
 Email: **ibdx@org.za**
 Website: **www.ibdx.com**
 Reference Number: 930000000

Receipt number	0001		
DONOR INFORMATION			
Name			
Physical address			
E-mail address			
Contact number			
Nature	Individual	RSA identification number	
		Passport number	
		Country issued	
	Company/ Trust	Registered name	
		Trade name	
		Registration number	
Income tax reference number			
DONATION INFORMATION			
Amount of donation (if cash)	R		
Nature and value of donation (if property in kind)			
Date donation received			
<p>The receipt is issued for the purposes of section 18A of the Income Tax Act 58 of 1962 (the Act). The donation received has been or will be used solely in carrying on public benefit activities listed in Part II of the Ninth Schedule to the Act.</p>			
Details and signature of person in a fiduciary capacity responsible for the management or control of the income and assets of the department			
Date receipt issued			