

## SOUTH AFRICA INCOME TAX ACT

### §30 Public Benefit Organisations

1) For the purposes of this Act--

**‘public benefit activity’** means--

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

**‘public benefit organisation’** means any organisation -

- a) which is a company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons;
- b) of which the sole object is carrying on one or more public benefit activities (including any undertakings or activities which are not prohibited under subsection (3)(b)(iv)), where-
  - i) all such activities are carried on in a non- profit manner and with an altruistic or philanthropic intent;
  - ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and
  - iii) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise: Provided that cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by that organisation from persons who are not resident and receipts and accruals derived directly or indirectly therefrom which donations, receipts and accruals have not previously been taken into account for purposes of this proviso; and
- c) where-

- i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
  - ii) each such activity carried on by that organisation is for the benefit of, or is readily accessible to, the poor and needy; or
  - iii) that organisation is at least 85 per cent funded by donations, grants from any organ of state or any foreign grants;”;
- 2) Any activity determined by the Minister in terms of paragraph (b) of the definition of ‘public benefit activity’ in subsection (1) or any conditions prescribed by the Minister in terms of subsection (3)(a) must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those conditions in the Gazette, for incorporation into this Act.
- 3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which--
  - a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;
  - b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is--
    - i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person who died on or before 31 December 2003;
    - ii) prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds--
      - (aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); or

- (bb) in any listed financial instrument of a company contemplated in paragraph (a) of the definition of "listed company," or such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:

Provided that the provisions of this subparagraph shall not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;

- iii) required on dissolution to transfer its assets to-
  - (aa) any similar public benefit organisation which has been approved in terms of this section;
  - (bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or
  - (cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b);
- iv) prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that—
  - (aa) the gross income derived from all such business undertakings or trading activities do not in total exceed the greater of—
    - (A) 15 per cent of the gross receipts of such public benefit organisation; or
    - (B) R25 000;
  - (bb) the undertaking or activity is—
    - (A) integral and directly related to the sole object of such public benefit organisation; and
    - (B) carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;

- (cc) the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in item (bb), is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
    - (dd) the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to—
      - (A) the scope and benevolent nature of the undertaking or activity;
      - (B) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
      - (C) the profitability of the undertaking or activity; and
      - (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;
  - v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
  - vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- d) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;

- e) complies with such reporting requirements as may be determined by the Commissioner;
- f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and
- g) has, within such period as the Commissioner may determine, been registered in terms of section 13(5) of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997), and complied with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, on good cause shown, otherwise directs; and
- h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party:

Provided that notwithstanding subparagraph (iv) of paragraph (b), any business undertaking or trading activity, or asset used in such undertaking or activity, acquired by such organisation before 1 January 2001 may be retained or continued, as the case may be, in the form so acquired for a period of five years after that date.

- 3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.
- 3B) Where an organisation applies for approval before the later of 31 December 2004 or the last day of its first year of assessment, the Commissioner may approve that organisation for the purposes of this section, or for the purposes of any provision contained in section 10 which was repealed on 15 July 2001, with retrospective effect.
- 4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply--
  - a) in the case of a public benefit organisation established under the terms of a will, or under a constitution or other written instrument which cannot be amended to comply with the said subsection; or

b) in any other case, for a period not exceeding five years, if the person responsible in a fiduciary capacity for the funds and assets of such organisation furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

5) Where the Commissioner is--

a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or

b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,

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

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

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

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

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

6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other organisation which is--

a) approved in terms of this section; and

- b) not a connected person in relation to such organisation.
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- 7) Where any such organisation fails so to transfer, or so to take reasonable steps to transfer, its remaining assets, the accumulated net revenue which has not been distributed in terms of this section shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment referred to in subsection (5).
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- 8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.
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- 9) Any books of account, records or other documents relating to any approved public benefit organisation shall--
    - a) where kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after the date of the last entry in any book; or
    - b) where not kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after completion of the transactions, acts or operations to which they relate.
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- 10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation--
    - a) to answer any questions relating to such organisation; or
    - b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or
    - c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

- 11) Deleted by the Revenue Laws Amendment Act, 74 of 2002.
- 12) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years.

### **§ 10 - Exemption**

1. There shall be exempt from the tax--
    - a. the revenues of the Government, any provincial administration or of any other state;
    - b. the revenues of local authorities;
    - c.
      - i. [Sub-para. (i) deleted by s. 9 (1) (a) of Act No. 21 of 1994]
      - ii. any pension payable to any person or his surviving spouse by reason of such person having occupied the office of State President or Vice State President: Provided that the provisions of this subparagraph shall not apply to any amount payable to any person or his surviving spouse by reason of such person having occupied the office of President as elected in terms of section 77 of the Constitution;
      - iii. the salary and emoluments payable to any person who holds office in the Republic as an official of any government, other than the Government of the Republic, provided such person is stationed in the Republic for that purpose and is not ordinarily resident in the Republic;
      - iv. any salary and emoluments payable to any domestic or private servant of any person referred to in subparagraph (iii) in respect of domestic or private services rendered or to be rendered by such servant to such person if such servant is not a South African citizen and is not ordinarily resident in the Republic;
      - v. any salary and emoluments payable to any subject of a foreign state who is temporarily employed in the Republic, provided the exemption of such salary and emoluments is authorized by an agreement entered into by the governments of such foreign state and the Republic;
- (cA) the receipts and accruals of--
  - i. any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or under any law repealed by that Act and any co-operative formed and incorporated or deemed to be formed and incorporated under the Cooperatives Act, 1981 (Act No. 91 of

1981), and any close corporation and any trust) established by or under any law and which, in the furtherance of its sole or principal object--

(aa) conducts scientific, technical or industrial research;

(bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or

(cc) carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;

- ii. any South African company all the shares of which are held by any such institution, board or body, if the operations of such company are ancillary or complementary to the object of such institution, board or body:

Provided that such institution, board, body or company--

- a. has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;
- b. is by law or under its constitution--
  - i. not permitted to distribute any of its profits or gains to any person, other than, in the case of such company, to its shareholders;
  - ii. required to utilize its funds solely for investment or the object for which it has been established; and
  - iii. required on dissolution--

(aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(bb) where the institution, board, or body is established by law, to transfer its assets to--

(A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(B) to the State:

Provided further that--

- a. where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;
- b. where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b)(ii) of the first proviso, the

- accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and
- c. any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;
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2. Notwithstanding the exemptions provided for in paragraphs (h) and (k) of subsection (1)-
    - a. all amounts falling within the scope of the said paragraphs shall be set out by the taxpayer in the return rendered by him; and
    - b. the said exemptions shall not apply in respect of any portion of an annuity.
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3. The exemptions provided by any paragraph of subsection (1) shall not extend to any payments out of the revenues, receipts, accruals or profits mentioned in such paragraph.