

# Tax Exemption Guide

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for Public Benefit Organisations  
in South Africa

# Tax Exemption Guide for Public Benefit Organisations in South Africa

This brochure is a general guide dealing with the tax exemption of Public Benefit Organisations in South Africa.

Although fairly comprehensive it does not deal with all the legal detail associated with the exemption of Public Benefit Organisations. It therefore, serves the purpose of a guide only and should not be used as a legal reference.

The brochure is based on the legislation as at 22 December 2003.

Should you require additional information you may:

- Contact your own advisors
- Contact the SARS Tax Exemption Unit
- Visit the SARS website <http://www.sars.gov.za>

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## 1 Introduction

This brochure has been prepared to assist non-profit organisations in SA to understand the tax implications affecting these organisations, with reference specifically to income tax, donations tax, estate duty, transfer duty and the skills development levy in light of the recent changes to the Income Tax Act dealing with public benefit organisations.

The VAT implications affecting these organisations are not discussed in detail. A brief summary is included. A separate brochure dealing with this aspect is available from your local SARS office or on the SARS website.

Non-profit organisations have a significant role to play in society as they accept responsibility for the social and development needs of the country thereby relieving the financial burden, which otherwise falls on the State. Tax benefits are designed to assist non-profit organisations with resources and an enabling environment in which to achieve their objectives.

Even if an organisation has a non-profit motive it does not mean that it is automatically exempt from the payment of income tax. The organisation will, however, only be exempt from income and related taxes if it complies with the relevant requirements and conditions as set out in the Tax Legislation.

## 2 Background

Internationally, non-profit organisations are granted some degree of preferential tax treatment and donor incentives, although the eligibility, criteria and available benefits differ from country to country. In SA, religious, charitable and educational institutions of a public character were traditionally exempt from income and related taxes.

In the absence of comprehensive case law and statutory definitions, the Commissioner was burdened with the interpretation and implementation of these provisions and often unable to accommodate worthy organisations because their activities did not fall within the letter of the Act.

Following recommendations by the Katz-Commission, the Minister of Finance, in his 2000 Budget Speech, announced wide-ranging changes to the legislation regulating the income tax exemption of non-profit organisations. The objective of the new legislation was to cluster certain types of entities together and treat them uniformly and to provide more certainty to taxpayers and the Commissioner on the qualifying requirements of tax exempt entities. The Taxation Laws Amendment Act, No 30 of 2000, introduced the new concept of a "public benefit organisation" carrying on a "public benefit activity."

The Minister may expand the list of public benefit activities by notice in the Gazette. The new provisions are more objective which will result in more certainty. The new provisions also include specific sanction measures if an exemption is misused.

A special dedicated office (Tax Exemption Unit) has been established to deal with the applications for exemption and the annual assessment of exempt organisations to ensure specialised and uniform treatment, and assist in the prevention of abuse.

The list of organisations authorised to issue tax certificates entitling donors to a tax deduction was also broadened, and the

qualifying threshold for individuals was increased from 2% to 5% to bring it in line with companies. (See Chapter 12 - Tax Deductibility of Donations)

## 3 Glossary

### Act

Income Tax Act, 1962 (Act No. 58 of 1962 as amended)

### Commissioner

Commissioner for SARS

### Co-ordinating body

The regulating or co-ordinating body of a group of organisations sharing the same objectives and rules.

### De minimis rule

Monetary exception threshold to the prohibition on trade if a PBO carries on trade on a limited scale.

### Donations Tax

Tax levied at 20% on a donor on the value of property disposed of under a donation. (Levied in terms of Section 54 of the Act).

### Estate duty

Duty payable on the dutiable amount of an estate of a deceased person at a rate of 20%. (Payable in terms of the Estate Duty Act, No.45 of 1955).

### Fiduciary

A person who holds a position of trust or responsibility.

### Founding document

The written document establishing the organisation such as the memorandum and articles of association, a constitution or a trust deed.

### Income and related taxes and duties

Income tax, donations tax, estate duty, transfer duty, stamp duty and skills development levy.

### Minister

Minister of Finance.

### NPO

Non-profit organisation.

### PBA

Public benefit activity.

### Poor and Needy

Impoverished, having little means and few possessions and therefore in need of basic necessities and assistance.

### Public Benefit Activity

Any activity listed in Part 1 of the Ninth Schedule to the Act (See Annexure B) and any other activity determined by the Minister of Finance 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

Any organisation which is a company incorporated under section 21 of the Companies Act, a trust or an association of persons carrying on a public benefit activity and complying with the provisions of section 30 of the Act (See Chapter 5).

### PBO

Public benefit organisation

### SARS

The South African Revenue Service

### Section 10(1)(cN) of the Act

Section granting exemption from income tax to qualifying public

benefit organisations.

### Section 18A of the Act

Section providing for the tax deductibility of donations made to certain approved public benefit organisations, institutions, boards or bodies, or the government, provincial administrations or local authorities, carrying on certain approved activities as listed in Part II of the Ninth Schedule to the Act (see Annexure C).

### Section 18A receipts

Receipts issued to donors in terms of section 18A of the Act entitling the donors to a tax deduction.

### Section 30 of the Act

Section detailing the conditions and requirements to be complied with to be approved as a PBO.

### Transfer Duty

Duty payable on the transfer of property in terms of the Transfer Duty Act No. 40 of 1949.

## 4 Income tax exemption

Preferential tax treatment is granted to non-profit organisations established for the benefit of the general public. However, this preferential treatment will only be available to organisations complying with the provisions of the Act and related legislation, both on application for exemption from taxes and duties, and during the existence of the organisation.

This brochure deals mainly with the requirements relevant to public benefit organisations which will apply to the majority of non-profit organisations qualifying for income tax and related exemptions. A summary of other exempt organisations is provided in Annexure A.

PBOs are exempt from income tax in terms of section 10(1)(cN) of the Act. The requirements to qualify for this exemption are detailed in section 30.

Approved PBOs therefore enjoy the benefit of spending public funds which they generate, whether from the general public or the state, on a tax free basis. SARS must therefore ensure that exempt organisations utilise their funds solely for their objectives, without any personal gain being enjoyed by the founders or fiduciaries. Furthermore, being a non-profit organisation such as a company incorporated under section 21 of the Companies Act, is not, in itself sufficient to justify an income tax exemption. The Commissioner will approve a PBO only if the organisation carries on one or more public benefit activity and complies with the formal requirements of the Act as detailed hereafter.

## 5 Qualifying PBOs

### 5.1 Public Benefit Organisation

#### 5.1.1 Type of organisation

To qualify as a PBO an organisation should be either:

- A company incorporated under section 21 of the Companies Act, which has a memorandum and articles of association as founding document and is registered with the Registrar of Companies.
- A trust which has as founding document, a trust deed which is registered with the Master of the High Court.
- An association of persons which is a voluntary association of persons governed by a constitution.

#### 5.1.2 Object of organisation

The sole object of the organisation must be to carry on one or more PBA (see 5.2) as determined by the Minister in the Ninth

Schedule to the Act or in subsequent Gazettes.

The organisation may, itself conduct the activities or it may provide funds to other approved PBOs carrying on the activities.

#### 5.1.2.1 How must the activities be carried on?

The activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent. An organisation carrying on a PBA as part of a profit-making venture will not qualify as a PBO.

#### 5.1.2.2 No self-interest

No activity may directly or indirectly promote the economic self-interest of any fiduciary or employee. This will not prohibit the payment of reasonable remuneration to employees or office bearers.

#### 5.1.2.3 Where carried on?

At least 85% of the activities of a PBO, measured either in cost or in time spent, must be carried out for the benefit of persons in SA. In special circumstances, the Minister of Finance may grant permission to spend more time and/or money outside SA, without jeopardising the exempt status of an organisation.

#### Example 1

An approved PBO carries on relief work both within South Africa and Mozambique. Expenditure is incurred within South Africa amounting to R60 000.00 and expenditure is incurred within Mozambique amounting to R 80 000.00,

Time spent on the approved activity in South Africa amounts to 86% while the time spent on the activity in Mozambique is 14%.

Although the expenditure incurred by this approved PBO is less than 85% within the Republic, the dual test requires either that 85% of the expenditure must be incurred within the Republic or 85% of the time needs to be spent within the Republic. This PBO would not be in contravention with this provision and would qualify for exemption from income tax.

Funds received from foreign donors will be taken into account for costs incurred for the benefit of persons outside the Republic.

#### Example 2

An approved PBO carries on relief work both within South Africa and Mozambique. It has received donations of R100 000.00 from local donors and R40 000.00 from foreign donors. Expenditure of R90 000.00 is incurred for the benefit of people in South Africa and R50 000.00 is incurred for the benefit of people in Mozambique. The R50 000.00 expenditure incurred for the benefit of people in Mozambique will be reduced by the R40 000.00 in foreign donations for purposes of the 85 per cent cost test. The PBO then passes the test as 90 per cent of its remaining costs are incurred for the benefit of people in South Africa.

#### 5.1.2.4 For whose benefit?

The activities of a PBO must be carried on for the benefit of the general public. This requirement will be met if:

- the activities are widely accessible or for the benefit of the general public at large. (This may include a specific sector of the general public, but may not be a small and exclusive group).

#### Example 3

An organisation engages in an activity which is only available for a select group: A fund which has been established solely

for the benefit of the employees of the specific company would not qualify, while a school established for persons of the Hindu, Muslim or Christian faith would qualify for exemption.

- The activities of the PBO are carried on for the benefit of, or are readily accessible to the poor and needy

#### Example 4

An approved PBO engages in an activity for the benefit of and is readily accessible to the poor and needy, such as:

- soup kitchens;
- home care which is provided to a broad spectrum of the community, such as AIDS sufferers.

- The organisation is 85% funded by donations or grants from the government, foreign states or international organisations.

## 5.2 Public benefit activities

The PBAs determined by The Minister of Finance thus far, are listed in Part 1 of the Ninth Schedule to the Act. The Minister may however determine additional PBAs from time to time by way of a notice in the Government Gazette, which are of a benevolent nature taking into account the needs, interests and well-being of the general public. Parliament must approve the activities within 12 months from publication in the Gazette whereafter it will be incorporated in the Ninth Schedule.

PBAs are categorised as follows:

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment and Animal Welfare
- Research and Consumer Rights
- Sport
- Providing of funds, assets and other resources to approved organisations carrying on PBAs.
- General

A complete list of the activities is available as Annexure B to this Brochure.

## 5.3 Formal requirements to be incorporated in founding document

The Commissioner may approve an organisation as a PBO only if its constitution or founding document clearly states that the activities and resources of the organisation are aimed at the furtherance of its object of conducting one or more approved PBA. A clause must be included which clearly sets out the aims and objectives of the PBO, which must be to carry on one or more PBA. The founding document must also provide for the requirements as set out hereafter. When considering an application for exemption, the founding document as a whole will be examined to ensure that the requirements are complied with, notwithstanding the specific wording used to give effect thereto.

The following requirements must, therefore, specifically be included in the founding document.

### 5.3.1 Fiduciary responsibility

A PBO must have at least three unconnected persons to accept

fiduciary responsibility for the organisation. No single person may have the authority to directly or indirectly control the decision-making powers relating to the organisation.

However, a trust established in terms of a will of any person who died on or before 31 December 2003 will not be subject to this limitation. The reason for this exclusion is that a will establishing a trust does not always make provision for a number of trustees and sufficient time is being granted for persons to amend their wills or to include such a provision in new wills, to ensure compliance with this requirement.

Natural persons will be connected if they are related to one another. Relatives include spouses and anybody related to a person or his spouse within the third degree of consanguinity. An adopted child is deemed to be related to his adoptive parents within the first degree of consanguinity. A fiduciary who intentionally fails to comply with the Act shall be guilty of an offence.

### 5.3.2 Use of funds

#### 5.3.2.1 Solely for object

The tax exempt status of a PBO effectively entitles the PBO the utilisation of public money to achieve objectives for the benefit of the general public. The funds of a PBO must therefore be utilised solely for the objectives as approved or must be invested for such future use.

#### 5.3.2.2 Prohibition from distribution

A PBO may not distribute its funds to any person, unless it is in the course of undertaking a PBA. The payment of reasonable remuneration to employees or office bearers conducting the affairs of the PBO to achieve its objectives, is not limited by this prohibition.

#### 5.3.2.3 Investment of surplus funds

Surplus funds of a PBO may only be invested:

- with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

#### Example 5

Examples of such investments would include:

- Collective Investment Schemes (Unit Trusts)
- Registered Banks- Fixed deposits etc

Excluded:

- Investments in private companies.
- Investments in stokvels etc.
- Pyramid type schemes
- Offshore investments, unless done through a registered financial institution.

- In securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), such as shares listed on the Johannesburg Stock Exchange; or
- In other prudent investments in financial instruments and assets which the Commissioner may determine in consultation with the Executive Officer of the Financial Services Board and the Director of Nonprofit Organisations.

Further notification will be issued in this regard.

If an organisation receives any other investment as a donation, bequest or inheritance, the investment may be retained in such

form, unless it is a business undertaking or trading activity.

Unless such business undertaking or trading activity is transferred to a separate taxable entity, the PBO will lose its exempt status.

### 5.3.3 Dissolution

A PBO which has enjoyed exemption from tax, and has utilised this benefit to carry on approved PBAs, may therefore not, on dissolution, distribute any of its funds to individuals or other tax-paying entities, thus enabling the recipients to share in the benefit of the exemption which it, the PBO, has enjoyed.

The founding document of a PBO must therefore state that on dissolution, the remaining assets must be transferred to:

- A similar PBO approved by the Commissioner as a PBO
- An organisation established by law as envisaged in section 10(1)(cA)(i) of the Act, which carries on an approved PBA
- A department or administration in the national, provincial or local sphere of Government of SA.

### 5.3.4 Trading

Trading or the carrying on of a business undertaking by tax-exempt organisations is a major cause for concern, as exempt entities should not be seen to be in competition with other taxpaying entities, by conducting the same or similar business activities in a tax-free environment, thereby undermining fair competition and eroding the tax base.

It is, however, accepted that certain exempt organisations do engage in trading activities, in order to further the public benefit activity conducted by the PBO, or as part of fund raising activities conducted by the organisation. In these circumstances, trading or business activities may be acceptable.

“Trade” is defined in section 1 of the Act and includes every profession, trade, business, employment, calling, occupation, venture, letting of property and the use of or the grant of permission to use a patent, trademark or copyright.

“Business” has been described as anything which occupies the time, attention and labours of man for profit. Whilst there are no hard and fast rules in determining what is business, a number of factors will be taken into account, such as the intention, motive, frequency and the nature of the activity. The passive investment of funds in shares or loans is not normally regarded as carrying on a business. However, the financing of interest-bearing loans to students, could be regarded as a business.

In terms of the new legislation, PBOs are therefore entitled to carry on business or trading activities within specific parameters. There are four categories where its trading activities will not affect a PBO’s tax-exempt status. Each category has its own conditions and requirements.

The first category, (subparagraph (aa) of section 30(3)(b)(iv)) viz the *de minimus* rule is inclusive and collective to all the trading activities conducted by the PBO.

Subparagraphs (bb) - (related trade); (cc) - (unrelated trade) and (dd) - (Ministerial approval), are applied separately to each trading activity.

#### Example 6

A PBO provides accommodation to aged persons and receives income from the following sources:  
(a) Accommodation charges

- (b) Rent for use of hall
- (c) Annual fête
- (d) Sale of Christmas Cards
- (e) Investment income
- (f) Bequest
- (g) Donations

The *de minimus* rule (aa) is applied collectively to the total income derived from all the trading activities.

The related trade, (bb); unrelated trade (cc); and Ministerial approval (dd) rules are applied separately to each trading activity.

#### 5.3.4.1 The De Minimis rule (subparagraph (aa))

An organisation may carry on business or trading activities if it is on a very small scale in relation to its other activities. Business or trading activities will be acceptable in these circumstances if the gross income from all business or trading activities of the organisation is less than the greater of 15% of the gross receipts of the organisation, or R25 000.

Meaning of:

**Gross Receipts** - includes the total sum of all receipts and accruals from any source, irrespective of whether on capital or income account.

#### Example 7

The gross receipts of a PBO would include the gross income received from all sources such as donations, subsidies, school fees, rent, accommodation charges, fund-raising activities, investment income, sale of capital assets, bequests and investment income.

**Gross Income** - is defined in section 1 of the Act and in respect of a resident includes the total amount in cash or otherwise received by or accrued to or in favour of such resident, but excludes receipts or accruals of a capital nature.

#### Example 8

The gross income of a PBO would include the total amount received from donations, school fees, accommodation, sale of second hand clothing, fund raising activities, rent, investment income, but would exclude grants, proceeds from the sale of capital assets and bequests.

#### Example 9

It is irrelevant to what extent a profit is derived from the trading activities. It may therefore be, that a religious institution could sell books at a profit, or a school let their hall to outside parties, provided the total receipts from all trading activities carried on by the organisation do not exceed the 15% or R25 000 limitation.

#### Example 10

ABC Charity runs a soup kitchen for homeless people, and in order to augment their income, they run a butchery.

Donations received:	R100 000
Butchery income (gross)	R50 000
Interest Income	<u>R100 000</u>
Gross receipts	<u>R250 000</u>

In terms of this provision, gross income from trading may be 15% of the gross receipts. This means that the gross



income from trading for this PBO may not exceed R37500. This PBO would either forfeit its exempt status or have to divest itself of the trading activity.

#### 5.3.4.2 Related trade (subparagraph (bb))

Two requirements must be complied with:

- the trading or business activity must be integral and directly related to the sole object of the PBO. In other words, the trading activity must be directly connected, linked and associated to the approved PBA which is conducted.

#### Example 11

Student fees charged by an educational institution, residential fees received by an old age home; accommodation fees charged by a hostel, would be regarded a trade income which is related to the object of the PBO.

- Substantially the whole of the trading activity must be conducted on a cost recovery basis and will not result in unfair competition with other taxpaying entities.

#### Example 12

Tuck shop at a school; fees charged by a hospice.

In the strict sense the concept "substantially the whole" is regarded by SARS as being 90% or more. In order to conform to the provisions of Section 30 and to overcome certain practical difficulties, SARS will accept a percentage of not less than 85%.

#### 5.3.4.3 Unrelated trade (Subparagraph (cc))

Unrelated trade is interpreted as not being associated with, is unconnected and conducted independently from the approved PBA of the PBO.

To qualify under this subparagraph the trading activity must be:

- of an occasional nature; and
- undertaken substantially with assistance on a voluntary basis with uncompensated assistance.

#### Example 13

Unrelated activities which are not frequently undertaken, and which take place with voluntary assistance will include fundraising activities such as fêtes, cake sales; raffles; sponsored golf events.

#### 5.3.4.4 Ministerial approval (subparagraph (dd))

The Minister may approve a specific undertaking or activity by notice in the Gazette, taking into account the:

- Scope and benevolent nature of the undertaking or activity
- The direct connection and interrelationship of the undertaking or activity with the sole purpose of the PBO
- The profitability of the undertaking or activity
- The level of economic distortion that will be caused by the carrying on of the undertaking or activity by a tax-exempt body

Any submissions in this regard will have to clearly demonstrate and motivate the benefits of the activity for the general public, together with reasons why it will not result in unfair competition with other taxpayers, or erode the tax base. Upto now, no such activities have been approved by the Minister.

#### 5.3.4.5 Practical application of trading rules

The main rule in terms of section 30 is that when the PBO relies on the *de minimus* trading rule set out in section 30(3)(b)(iv)(aa), the gross income of **all** the trading activities must be pooled to determine whether the PBO falls within the 15% or R25,000

threshold. It, therefore, follows that in such circumstances the PBO cannot in addition to the *de minimus* rule also rely on some of the other paragraphs ie. the related trade or unrelated trade rules provided for in this subsection.

#### Example 14

An institution providing approved educational PBAs, receives the following income:

(a) School Fees (Qualifies under 5.3.4.2)	R13,500,000
(b) Aftercare Income (Qualifies under 5.3.4.2)	R350,000
(c) Hiring of Facilities (Trade Income)	R50,000
(d) Uniform Shop (Qualifies under 5.3.4.2)	R40,000
(e) Tuck Shop (Qualifies under 5.3.4.2)	R600,000
(f) Fundraising (Qualifies under 5.3.4.3)	R80,000
(g) Other (non-trade income)	<u>R380,000</u>
Gross receipts	R15,000,000
15% of gross receipts	<u>R2,250,000</u>
Gross income from trading activities	<u>R14,620,000</u>

The PBO will not qualify in terms of the *de minimus* rule.

It is, however, recognised that this rule could have harsh consequences for some PBOs. To alleviate this, the rule will be administratively relaxed under certain circumstances, depending on the specific nature of the case. Where a PBO relies on the related trading and/or unrelated trading rule, the PBO will be allowed to also access the *de minimus* rule up to the greater of 5% of the gross receipts of the PBO or R25,000, provided the trading activities are incidental and are not conducted on a commercial basis resulting in unfair competition.

#### Example 15

An institution providing approved educational PBAs, receives the following income:

(a) School Fees (Qualifies under 5.3.4.2)	R13,500,000
(b) Aftercare Income (Qualifies under 5.3.4.2)	R350,000
(c) Hiring of Facilities (Trade Income)	R50,000
(d) Uniform Shop (Qualifies under 5.3.4.2)	R40,000
(e) Tuck Shop (Qualifies under 5.3.4.2)	R600,000
(f) Fundraising (Qualifies under 5.3.4.3)	R80,000
(g) Other (non-trade income)	<u>R380,000</u>
Gross receipts	R15,000,000
5% of gross receipts	<u>R750,000</u>
Gross income from trading activities	R14,620,000
less: Activities qualifying under subparagraphs (b); (cc) or (dd)	<u>R14,570,000</u>
	<u>R50,000</u>

The PBO may not derive income from trading activities which exceed the greater of: (A) R750,000 or (B) 25,000.

The PBO will qualify in terms of the trading provisions as the gross receipts from "unqualifying" trading activities = R50,000.

#### 5.3.4.6 Transfer of trading assets

A PBO will be allowed to retain any business asset or trading activity acquired before 1 January 2001 for a period of five years from that date in the form it was acquired, notwithstanding the prohibition on trade as discussed above. After the five year transitional period, the PBO must either dispose of the asset or transfer it to a separate taxable entity.

Where the business asset constitutes immovable property, which is transferred to a separate taxable entity, the transaction will not be liable to transfer duty.

### 5.3.5 Non-revocable donations

A PBO may not accept any donation that may be recalled by the donor, except where the recipient fails to abide by the conditions of the donation. Furthermore, a donor may not impose conditions which will entitle the donor or a connected person to obtain some direct or indirect benefit from the application of the donation.

This prohibition is, however, not applicable where the donor is another approved PBO, or an entity established by or under law which is exempt from income tax in terms of Section 10(1)(cA)(i) and which itself is carrying on a PBA. For example, a foundation established to benefit a University.

### 5.3.6 Amendments

A PBO is obliged to submit a copy of all amendments to its founding document to the Commissioner. This requirement must be formally included in the founding document. The amendments must be submitted as soon as they have been effected. It will therefore not be possible to submit a founding document which complies with the provisions of the Act at the time of applying for exemption and subsequently, amending it to include contrary provisions, without jeopardising the income tax exemption of the PBO.

## 5.4 Other requirements

### 5.4.1 Participation in tax avoidance schemes

Once an exemption is approved, it is subject to annual review upon receipt of the income tax return and financial statements. Only if it complies with all the requirements relative to the approval of the exemption, will an exemption be approved, provided also that the organisation is or was not knowingly a party to or permitted itself to be used in any tax avoidance schemes to reduce, postpone or avoid any liability to tax by any person.

### 5.4.2 Remuneration

Employees, office bearers, members or other persons serving a PBO may receive reasonable remuneration for services rendered to a PBO; provided that:-

- The remuneration is not excessive; and
- Such remuneration does not economically benefit any person in a manner which is inconsistent with the objects of PBO.

Reasonable remuneration is determined based on the extent of the service rendered and what is considered fair and reasonable in the specific sector.

### 5.4.3 Funds to associations of persons

In terms of previous legislation, exempt funds were allowed to donate funds only to other exempt institutions, resulting in PBOs not being able to assist deserving informal community projects. The new legislation, provides that a PBO is entitled to donate funds to an association of persons carrying on PBAs, even if the association has not been approved as a PBO.

The Commissioner will allow the provision of funds in these circumstances only if he is satisfied that the PBO has taken reasonable steps to ensure that the funds are utilised for the purpose for which they were provided, namely to promote the PBA carried on by the association of persons. As in the case of a PBO, the funds may not be utilised to economically benefit any single individual person. As it is difficult for the Commissioner to readily monitor such informal associations of persons, or to ensure proper compliance, the donor must satisfy himself that

reasonable steps have been taken to ensure that the funds have been used for the purpose for which they have been provided.

### 5.4.4 NPO Act

A PBO must register in terms of section 13(5) of the Nonprofit Organisations Act, and comply with the requirements of that Act, within such period as the Commissioner may determine. However, where the PBO is unable to register as it does not comply with the requirements of that Act for registration, the Commissioner, in consultation with the Director of Nonprofit Organisations may, on good cause shown, waive this requirement.

### 5.4.5 Political objects

Political objects are not considered to be for the public benefit in the context of PBOs. A PBO may, therefore, not use its resources directly or indirectly to support, advance or oppose any political party.

An exemption is provided for registered political parties in Section 10(1)(cE) of the Act.

### 5.4.6 Written undertaking/Amendments

There are two situations in which an alternative procedure involving a written undertaking will be sufficient.

- An organisation carrying on PBAs may be established in terms of a will or a founding document or under a constitution that cannot be amended. The founding document will often not comply with the requirements that need to be incorporated in terms of section 30, as discussed in 5.3 above. In these circumstances, the persons responsible for the administration of the funds and assets of the organisation may submit a written undertaking that the organisation will be administered in compliance with the provisions of section 30 of the Act. The founding document will then be deemed to comply with the formal requirements of section 30.
- Organisations which enjoyed income tax exemption prior to the introduction of the new legislation, and which comply with the provisions of section 30, but whose founding document does not make provision for these requirements, may also submit a written undertaking to this effect. Such organisations will also be deemed, for a period of five years, to comply with the relevant requirements. The written undertaking will serve the same purpose, and will be similarly binding on the organisation. Non-compliance with the written undertaking will result in the same penalties and actions as if it were the founding document. These implications are discussed in detail in Chapter 11 - Tax avoidance / Non-compliance.

An example of the written undertaking to be submitted to the Commissioner is available as Annexure H (EI 2 - Written undertaking).

## 6 Specific issues in respect of PBOs

### 6.1 Educational institutions: Schools

In terms of the South African Schools Act a school is registered as either a public school or an independent school.

#### 6.1.1 Public Schools

##### 6.1.1.1 Income Tax Exemption

Public schools established in terms of the SA Schools Act, do not have a constitution or other founding document and are also not regarded as a trust or an association of persons as contemplated in section 30. A public school can therefore not

be approved as a PBO and therefore does not qualify for the exemption in section 10(1)(cN). However, being established under law, it qualifies for exemption in terms of section 10(1)(cA)(i) of the Act.

Section 18A specifically provides for organisations established by law, and carrying on PBAs which are approved for section 18A purposes, to be entitled to the same beneficial tax treatment as a PBO. The section 18A status must be formally approved by the Commissioner.

#### 6.1.1.2 Tax deductibility of donations

A public school wishing to apply for approval to issue tax deductible receipts to donors (See Chapter 12 - Tax Deductibility of Donations) must complete an Application for Exemption Form -E11 (See Annexure F) and submit the completed form with the relevant documentation to SARS, clearly indicating that it is a public school.

If a public school does not wish to issue tax-deductible receipts in terms of section 18A, it is at this stage not necessary to apply for exemption from income tax in terms of section 10(1)(cA)(i) of the Act. An arrangement has however, been made for each provincial education authority to apply for group registration for Section 18A tax deductible status in respect of all public schools in their jurisdiction.

#### 6.1.1.3 Trading by public schools

Section 10(1)(cA)(i) currently does not contain a specific provision prohibiting the organisation from carrying on business or trading activities. However, the exemption is subject to approval by the Commissioner who may impose such terms and conditions as are deemed necessary to ensure that the activities of the organisation are wholly or mainly directed to its sole or principal object. The tax exemption of a section 10(1)(cA)(i) public school engaging in trading activities which are not wholly or mainly directed at the furtherance of its sole or principal object of providing education, could therefore be withdrawn. (See Chapter 11 - Tax avoidance/Non-compliance).

There will be no objection to a school itself running a tuck shop, a second hand clothing shop or holding fund raising activities such as fêtes, bazaars, cake sales, fun runs etc.

### 6.1.2 Independent schools

Independent schools which are registered as such in terms of the SA Schools Act, can be established as an association of persons or as a trust or a company incorporated under section 21 of the Companies Act. The school will then have a constitution, trust deed or memorandum and articles of association, falling within the ambit of sections 10(1)(cN) and 30 of the Act. Provided the school complies with the provisions of section 30 and amends its founding document accordingly, the Commissioner may approve the school as a PBO.

The independent school will be subject to the trading provisions of section 30.

## 6.2 Sporting associations

Sporting associations qualifying for exemption from tax can be divided in two categories, namely social and recreational clubs and amateur sporting bodies. Although both categories qualify for tax exemption, they are exempt in terms of different sections of the Act.

### 6.2.1 Social and recreational clubs

Social and recreational clubs are often established exclusively to provide social and recreational amenities or facilities to its members, and not to the general public. Examples of these clubs would include tennis, flying, football, golf, bowls, polo, and recreation and social clubs. The clubs usually indulge in activities which border on the carrying on of a business, such as the provision of meals and liquor or other refreshments.

Social and recreational clubs would apply for exemption in terms of section 10(1)(d)(iv)(aa) of the Act. This section provides that the Minister may, by way of regulation, prescribe conditions that must be complied with before approving an exemption. These regulations are not yet available, but will be issued shortly and will indicate the requirements to be complied with and to which extent business activities may be carried on.

### 6.2.2 Amateur sporting bodies

The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime, is included in the Ninth Schedule as an approved PBA.

Organisations engaged in amateur sporting activities could include regional, provincial or national federations which are formed to administer, develop, co-ordinate or promote a particular sport or code provided the participants partake in the sport as a pastime, on a non-professional basis and are not rewarded financially. Provided the organisation conducts the PBA in a non-profit manner and subject to the provisions of section 30, these organisations will be approved as PBOs and exempt from tax in terms of section 10(1)(cN) of the Act.

## 6.3 Scholarships

Regulations have been published in the Government Gazette. See Annexure I. These regulations set out the conditions which a scholarship, bursary or award must comply with.

## 6.4 Trans-frontier Areas / Peace Parks

The provisions of the regulations issued on 6 September 2002, relating to the transfrontier conservation areas, have been incorporated into section 18A.

## 6.5 Granting of Loans

Regulations relating to the granting of loans relative to Paragraphs 1(p)(iii) and 3(f) of Part I of the Ninth Schedule to the Act, will be published in the Gazette shortly.

# 7 Reporting requirements

## 7.1 Record keeping

Any books of account, records or other documents of an approved PBO must be retained and carefully preserved for a period of four years after the last date of an entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transaction, act or operation to which they relate. It is the responsibility of the person in control of the organisation to ensure that the necessary records are kept. Failure to keep the necessary records is an offence which may result in a fine or imprisonment. (See Chapter 11 - Tax Avoidance/Non-compliance).

## 7.2 Income tax returns

All PBOs are obliged to render annual income tax returns, notwithstanding the exemption resulting in no tax liability for the PBO. The return enables the Commissioner to assess whether the

PBO is operating within the prescribed limits of its exemption. An association of persons (see 5.1.1 above) falls within paragraph (d) of the definition of "company" in section 1 of the Act and is therefore regarded to be a company for income tax purposes.

The financial year end of an association of persons as well as a company incorporated under section 21 of the Companies Act, may be a date other than the last day of February. The year of assessment is the period for which financial statements are drawn up each year. Permission to change the year end must be obtained from the Commissioner.

In the case of a trust, the year of assessment is the last day of February. However, permission may be obtained to draw up financial accounts for periods ending on dates other than the last day of February. For further information in this regard, please refer to Interpretation Note No.19 dated 5 August 2003.

### 7.3 Financial statements

The income tax return must be accompanied by documents to support the information contained in the return. This will include financial statements, constituting an income statement, balance sheet and any other accounts necessary to support the information. The accounts must be signed by the taxpayer (or its fiduciary) and by the person who has prepared them on behalf of the taxpayer.

Where the PBO is a company incorporated under section 21 of the Companies Act, it is a requirement of that Act, that audited annual financial statements be produced.

In the case of a trust or an association of persons, it is not a requirement of SARS that the financial statements must be completed by a qualified auditor. The circumstances of the specific PBO will determine the level of sophistication of the financial statements. If it is a well established and financially sound PBO, proper financial statements prepared by a qualified auditor would be expected. If however, it is a small and underfunded PBO, a lower level of financial statements will suffice.

### 7.4 Information available to SARS

In order to assist the Commissioner in enforcing the provisions of the Act, he or she may require any person to provide, in writing, information relating to an approved PBO by answering questions, make books of account, records or other documents relating to the PBO available for inspection, or to meet with the Commissioner to produce any books of account, records or other documents relating to the PBO for examination.

## 8 Implementation dates

The PBO legislation was inserted by section 35(1) of the Taxation Laws Amendment Act No 30 of 2000, but only came into effect on 15 July 2001. The Commissioner may approve an exemption in respect of a PBO with retroactive effect, where the organisation previously qualified for exemption in terms of the repealed legislation, but did not apply. These entities must apply before the last day of their first year of assessment or, on or before 31 December 2004, whichever is the later.

Organisations that qualified for Section 18A tax deductible donation status under the previous legislation, must re-apply before 31 December 2003 for approval in terms of new legislation. Failure to re-apply means that no receipts may issued for Section 18A purposes as from 1 January 2004.

## 9 Transitional Provisions

### 9.1 Currently exempt institutions

Organisations currently exempt from income tax in terms of the provisions of the previous legislation will continue to enjoy the exemption if they apply for exemption in terms of the new legislation on or before 31 December 2004. If the founding document does not comply with the provisions of section 30, the application must be accompanied by a signed written undertaking (See Annexure G). The previous exemption will continue to apply until such time as notified by the Commissioner of his decision in terms of the new legislation.

The PBO is, however, required to formally amend its founding document to comply with the provisions of section 30 within a period of 5 years from 15 July 2001 or whenever an amendment is effected to the founding document, whichever date occurs first.

Where an organisation previously enjoyed Section 18A status and fails to re-apply before 31 December 2003, the Section 18A approval will no longer be applicable as from 1 January 2004. However, the exemption from income tax in terms of the repealed legislation will be retained provided, the organisation re-applies before 31 December 2004.

### 9.2 New applications

Organisations which are currently not formally exempt from income tax, must submit a completed application form (See Annexure F) together with the required supporting documentation, as well as a signed written undertaking. The Commissioner may approve an application for exemption with retrospective effect, if application is made before the last day of the first year of assessment of the organisation or on or before 31 December 2004, whichever is the later.

## 10 Group registration

### 10.1 General

The Commissioner has authority to grant approval to a group of organisations sharing a common purpose if the group carries on any PBA under the direction and supervision of a regulating or co-ordinating body. The regulating or co-ordinating body must take the necessary steps to ensure that all the affiliated organisations comply with the provisions of section 30.

Group registrations for PBOs must comply with, inter alia, the following requirements:

- All the organisations in the group must share a common purpose and conduct the same approved PBAs
- The founding document of the co-ordinating body and the organisations within the group must be common or similar, and must be amended to comply with the provisions of section 30
- The Commissioner must be informed of all amendments effected to the constitution of the co-ordinating body and of the group organisations
- The co-ordinating body must ensure that the entities within the group comply with the provisions of section 30
- The co-ordinating body must report to the Commissioner any entity within the group which acts contrary to the provisions of section 30
- The group of entities must all fall directly under the direction and supervision of the co-ordinating body
- The consolidated annual financial report of the group of entities must contain a certified report that all the entities within the group complied with the provisions of section 30.

When submitting the application for exemption, the co-ordinating body must submit a list of the names and addresses of all the entities in the group. On approval, only one income tax reference number will be allocated to the group as a whole. Group registrations could apply to religious organisations or, any organisation functioning nationwide under the auspices of a regulating or co-ordinating body and, which would comply with the aforementioned criteria.

## 10.2 Non-compliance

Non-compliance by the regulating or co-ordinating body, intentionally or negligently to exercise the required control over any PBO in the group, or to notify the Commissioner of any material failure of any group entity to comply with any provision of section 30, shall result, after due notice, in the withdrawal of the exemption of the group. The withdrawal will be effective from the beginning of the year of assessment in which the non-compliance or failure occurred, unless the required corrective steps are taken within the period allowed by the Commissioner. Before withdrawal of the exemption, the Commissioner must first give notice of intention to withdraw and it must be clear that no corrective steps have been taken by the organisation.

## 11 Tax Avoidance/Non-compliance

### 11.1 Exemption not granted

A non-profit, organisation not approved as a PBO will be liable for income and other taxes and duties as normal taxpayers.

- A section 21 company not approved as a PBO, will therefore be liable for tax at the company rate of 30% on all taxable income, i.e. gross income less exempt income and allowable deductions. Furthermore secondary tax on companies may be payable on distributions by section 21 companies.
- A trust not approved as a PBO, will be subject to tax on taxable income at a rate of 40%, subject to the concession relating to conduit trusts.
- Any other association of persons is deemed to be a company and will be subject to tax at the company tax rate of 30%.

### 11.2 Offences

Any person responsible for the management or control of the income and assets of an approved PBO who intentionally fails to comply with any provision of section 30 or the founding document of the organisation, shall be guilty of an offence. If a person, with the intent to evade taxation, makes a false statement or entry in a return, or signs any statement without reasonable grounds for believing it to be true, gives any false answer, prepares any false books of account or other records or falsifies any books of account or records or makes use of any fraud, art or contrivance, he or she shall be guilty of an offence. When it is proved that any false statement or entry is made by or on behalf of a taxpayer, the taxpayer shall be presumed, until the contrary is proven, to have knowingly made the false statement or to have allowed it to be made.

### 11.3 Penalties

If a person is guilty of any of the offences as discussed above, he or she shall, on conviction, be liable to a fine, or imprisonment for a period not exceeding 2 years.

### 11.4 Additional tax

A taxpayer who makes default in rendering his return, omits any income from his or her return or makes an incorrect statement in his return which would result in him paying less tax than the tax

properly chargeable, shall be liable to twice the tax chargeable in respect of his income. The Commissioner may remit the additional charge or any part thereof as the Commissioner deems fit if there are extenuating circumstances and the Commissioner is satisfied the act or omission was not done deliberately to evade tax. A PBO will not have any chargeable tax, but upon withdrawal of the approval (see 11.5), the organisation may be liable to additional tax up to twice the chargeable tax levied in terms of section 30(7).

## 11.5 Withdrawal of approval

### 11.5.1 Under which circumstances

The Commissioner must withdraw a PBOs approval if the Commissioner is satisfied that the PBO, in any year of assessment in any material respect or on a continuous or repetitive basis failed to comply with the provisions of section 30 or its founding document as it relates to the provisions of section 30. The approval shall be withdrawn, after due notice is given to the transgressing PBO, with effect from the beginning of the relevant year of assessment, unless the PBO has taken corrective steps within a period specified by the Commissioner in the notice to the PBO.

### 11.5.2 Consequences

Once the approval of the Commissioner is withdrawn, the organisation must, within three months, unless the Commissioner allows a longer period, transfer or take reasonable steps to transfer its remaining assets to another approved PBO that is not connected to the PBO.

If the organisation fails to transfer its remaining assets, the accumulated net revenue which has not been distributed in terms of section 30, will be deemed to be taxable income which accrued to the organisation during the year of assessment in which the approval was withdrawn.

### 11.5.3 Re-application

Once an exemption has been withdrawn, an organisation may re-apply for approval in the year of assessment following the year of the withdrawal. If the Commissioner is satisfied that the non-compliance giving rise to the withdrawal has been rectified, the Commissioner may grant the approval.

## 12 Tax deductibility of Donations

### 12.1 General

It is widely accepted that the tax deductibility of donations influences donor behaviour. Government has recognised this and, to further assist PBOs, donations to a limited number of categories of PBOs may be deducted from the taxable income of the donating taxpayer. A list of the PBAs approved by the Minister for purposes of section 18A, is published in Part II of the Ninth Schedule to the Act. Previously this benefit was limited to donations made to secondary and tertiary educational institutions. A wider range of activities is currently included in the list of approved activities (See Annexure C). This list may be extended from year to year at the discretion of the Minister. Similar to PBOs, the Commissioner may grant approval to a group of organisations under the direction or supervision of a regulating or co-ordinating body that ensures that all organisations in the group comply with the provisions of the Act. (In this regard please see Chapter 10 - "Group Registration.")

## 12.2 Section 18A approved organisations

### 12.2.1 Organisations conducting approved PBAs

A PBO which has been approved in terms of section 30 of the Act or an entity which is exempt in terms of section 10(1)(cA)(i) of the Act (having been approved by the Commissioner), and which carries on any approved PBA as set out in Part II of the Ninth Schedule (See Annexure C), may apply for Section 18A status in respect of donations received which are utilised for Section 18A approved PBAs. This approval is subject to the condition that the Section 18A PBAs are ring-fenced and certification by an auditor that the donations for which tax-deductible receipts were issued were utilised solely in carrying out such PBAs (see 12.6 below). The activities which qualify for Section 18A approval must be carried on in South Africa.

### 12.2.2 Organisations providing funds to PBOs

A PBO approved in terms of section 30 and which provides funds or assets to PBOs or entities referred to in 12.2.1 above, will also be entitled to issue receipts for the deduction of donations to it. This means that conduit funds providing funds or assets to PBOs and entities conducting PBAs listed in Parts I and II of the Ninth Schedule, will also qualify for Section 18A approval, in respect of donations received to fund PBAs approved for Section 18A purposes. This is subject to certain control measures described in 12.6 below.

The PBO is obliged to distribute or incur the obligation to distribute during the following year of assessment, at least 75% of those funds received by it which represent tax deductible donations.

Having regard to the public interest and purpose for which the PBO wishes to accumulate the funds, the Commissioner may, subject to such conditions, waive the obligation to distribute any of the funds received by way of tax deductible donations.

#### Example 16

The ABC Charity Foundation wishes to collect sufficient funds to contribute to an Orphanage (a separate PBO) in order for them to erect a home for abandoned babies. In terms of the Foundation's current income, it will take the foundation three years to raise sufficient funds. In such instances the Commissioner can be approached for a relaxation of the 75% distribution rule.

This will not be relaxed for purposes of merely providing an endowment for the Charity Foundation or for building up capital funds in the Foundation.

### 12.2.3 Government, Provincial Administration and Local Authorities

Donations made to the Government, any provincial administration or local authority, which are utilised for purposes of an activity that is listed as qualifying for tax deductible status in Part II of the Ninth Schedule to the Act, may qualify as deduction by the donor.

The relevant State Department will be required to submit on an annual basis, an audit certificate by the accounting authority as defined in the Public Finance Management Act, 1997, certifying that all the donations for which a receipt was issued, were utilised for an activity listed as qualifying for tax deductible status.

## 12.3 Deduction of donations

A taxpayer making a *bona fide* donation in cash or in kind to a

section 18A approved organisation is entitled to a deduction from his taxable income if the donation:

- is supported by the necessary receipt issued by the organisation; and
- does not exceed five percent of the taxable income of the taxpayer, calculated before allowing any deduction under section 18A or any deduction for medical and dental expenses.

## 12.4 Receipt to be issued

A taxpayer will only be allowed to claim a deduction for a donation to a section 18A approved organisation if it is supported by a receipt issued by the organisation. The receipt issued by the organisation must include at least the following details:

- the reference number of the organisation issued to it by the Commissioner for purposes of section 18A;
- the date of the receipt of the donation;
- the name and address of the organisation in case of any enquiries;
- the name and address of the donor;
- the amount or nature of the donation if not in cash;
- a certification that the receipt is issued for the purpose of section 18A and that the donation will be used exclusively for the activities which are approved for Section 18A purposes.

An example can be found in Annexure H.

## 12.5 Donations in kind

A taxpayer may claim a deduction for donations in kind made to a section 18A approved organisation. The amount of the deduction to be allowed in these circumstances will be, where the property:

- constitutes a financial instrument which is trading stock, the lower of fair market value or the amount taken into account in respect of the value of the trading stock;
- forms part of trading stock of the taxpayer, including livestock or fresh produce of farmers, the lower of the market value of the trading stock or the amount taken into account in respect of the trading stock;
- is an asset used in his trade, the lower of the fair market value or the cost to the taxpayer less any allowance (other than an investment allowance) deducted from the income of the taxpayer for that asset;
- is not trading stock or a business asset, the lower of the fair market value or the cost to the taxpayer less any reasonable depreciation in the case of deterioration of movable property;
- is purchased, manufactured, erected, assembled, installed or constructed, the cost to the taxpayer.

No deduction will be allowed in respect of a donation of an intangible asset or limited interest such as a fiduciary usufruct and intellectual property rights. However, a donation constituting shares in a listed company or a financial instrument issued by a financial institution, as defined in the Financial Services Board Act No. 97 of 1990, will be accepted.

## 12.6 Control Measures

A receipt for a tax deductible donation may only be issued in respect of a donation which is utilised for Section 18A approved PBAs. Entities referred to in paragraphs 12.2.1 and 12.2.2 must, together with their annual income tax return, submit an auditor's certificate certifying that all donations for which tax deductible receipts were issued, were utilised solely in carrying out the public benefit activities as approved in Part II of the Ninth

Schedule to the Act.

In the case of Government, provincial administration or local authority, the accounting officer must submit annually, an audit certificate confirming that the donations received, were solely utilised in carrying out the relevant approved PBA.

### 12.7 Abuse of approval

A donation is a fortuitous receipt where the donor is impoverished and the donee is benefited without any expectation or entitlement by the donor for anything in return. If the Commissioner has reasonable grounds for believing that any person has with intent:

- Failed to carry out the objects of the organisation or has expended the moneys of the organisation for purposes not covered by the objects; or
- Issued section 18A receipts to any taxpayer for any fees or other emoluments payable by the taxpayer to the organisation.

The Commissioner shall give written notice that donations shall not qualify for deduction in any year of assessment specified in the relevant notice. This will have a negative impact on all other donors that *bona fide* contributed to the organisation, which donors will also lose their benefit of a tax deduction.

### 12.8 Re-application for approval

Organisations that enjoyed Section 18A donor deductible status in terms of the previous legislation (prior to the amendment which came into effect on 15 July 2001), should have re-applied before 31 December 2003, for approval in terms of the new amended provisions. Failure to re-apply by the deadline will lead to the loss of Section 18A status as from 1 January 2004.

## 13 Exemption from other taxes and duties

In addition to being exempt from the payment of income tax, PBOs will also enjoy the benefit of being exempt from a number of other taxes and duties. The exemptions are subject to the approval of the organisation as a PBO.

### 13.1 Donations tax

Donations tax is levied at a rate of 20% on any gratuitous disposal of property by one person to another, including the disposal of property at less than its market value. Donations tax is payable by the donor, but if the donor fails to pay the tax timeously, the donor and donee shall be jointly and severally liable for the tax.

Natural persons are exempt from donations tax on the first R30 000 of property donated during any year of assessment, and R10 000 of casual gifts for other persons. Specific exemption is granted for donations made by or to any PBO and any organisation established by or under law. The exemption is also applicable to government, local authorities, political parties and organisations exempt from income tax in terms of sections 10(1)(d) and (e). (See Annexure A).

Public companies are exempt from donations tax.

### 13.2 Estate Duty

Estate duty is levied at a rate of 20% on the net estate of a deceased person. Any property bequeathed to a PBO shall be excluded from the value of the estate and therefore not be subject to estate duty.

### 13.3 Transfer Duty

Transfer duty is levied on a sliding scale on the value of fixed

property acquired by any person. The rates vary from 0% to 8% in the case of natural persons. Legal persons and trusts pay transfer duty at the rate of 10%. A PBO, exempt from income tax in terms of section 10(1)(cN), as well as an institution, board or body exempt from income tax in terms of Section 10(1)(cA)(i) and which has as sole or principal object the carrying on of any public benefit activity, is exempt from the payment of transfer duty on property acquired, provided the whole or substantially the whole of the property will be used for the purpose of carrying on one or more approved PBA. The transfer duty exemption is granted per transaction and will be considered upon receipt of the letter issued by the Commissioner approving the exemption from income tax, together with details of the activities to be carried out on the property and confirmation that the whole or substantially the whole of the property will be used to conduct approved PBAs. The relevant documentation must be submitted to the local SARS office.

Where property is transferred by an exempt PBO to any other entity which is controlled by the PBO in order to comply with the provisions of the proviso to section 30(3), no transfer duty is payable, in terms of section 9(1A) of the Transfer Duty Act.

For further information relating to transfer duty exemption and PBOs please refer to Interpretation Note No. 22, dated 11 March 2004.

### 13.4 Stamp Duty

Stamp duty is levied on certain instruments as defined in the Stamp Duties Act. PBOs are exempt from the payment of stamp duties. The stamp duty exemption applies only if the duty is legally payable and borne by the PBO. The duty on debit entries (cheque and credit card accounts) is, however, exempt if the account holder is a PBO.

### 13.5 Skills Development Levy

A compulsory levy to fund education and training is levied based broadly on 1% of the payroll of employers. An approved PBO is exempt from the payment of the skills development levy if it solely carries on an approved PBA as contemplated in paragraphs 1; 2(a), (b), (c), (d) and 5 of Part I of the Ninth Schedule to the Income Tax Act or a PBO that provides funds solely to such PBO which carries on these PBAs.

For further information please also refer to Interpretation Note No. 10 issued on 24 March 2003.

### 13.6 Capital gains tax

Any taxable capital gain of a person is included in the taxable income of that person. Organisations enjoying exemption from income tax will therefore also be exempt from capital gains tax.

Where a person donates an asset which would have resulted in a liability for CGT, an exemption is provided, if the recipient is an approved PBO.

## 14 Objections and appeals

Any decision of the Commissioner in the exercise of his discretion in section 30 will be subject to objection and appeal. The Commissioner will exercise his discretion to determine whether:

- an organisation is or was knowingly a party to, or knowingly allowed itself to be used as part of a tax avoidance scheme;
- a PBO granting funds to an association of persons not approved as a PBO has taken reasonable steps to ensure that

the funds are utilised for the purpose for which it was provided;

- a PBO has in any material respect, or on a continuous or repetitive basis failed to comply with the provisions of section 30, before giving notice that the exemption will be withdrawn;
- the non-compliance giving rise to withdrawal of a PBO approval has been rectified before considering a re-application for approval as a PBO.

Being subject to objection and appeal, a taxpayer may object against any of the above decisions within 30 days from the date of the decision. The objection must be in writing and specify in detail the grounds upon which it is made. The Commissioner will consider the objection and may alter his decision, or disallow the objection. On disallowance of the objection, an organisation being dissatisfied with the decision may appeal to the Tax Court for hearing Income Tax Appeals. Such appeal must be in writing and lodged with the Commissioner within 30 days of the notice of disallowance of the objection.

New rules regarding objections and appeals have been formulated in terms of Section 107A of the IT Act for assessments issued, objections lodged or appeals noted from 1 April 2003. These rules are available from SARS Online at <http://www.sars.gov.za/dr>. Essentially, they set strict timeframes for both SARS and the taxpayers' adherence in order that objections and appeals may be dealt with in an expeditious manner. It is important to note that objections need to be lodged at the address specified in the assessment in terms of these new rules. Additionally, these new rules make provision for alternative dispute resolution. Further information on alternative dispute resolution will be found on the Dispute Resolution website: <http://www.sars.gov.za/dr/Default.htm>.

## 15 VAT Implications

Associations not for gain and welfare organisations are included in the VAT system. The benefit of this inclusion is that they can claim the VAT that they incur as input tax and, generally speaking, only levy output tax where there is a charge for the supply of goods and services.

For VAT purposes, any person is required to register for VAT if an enterprise is carried on and taxable supplies in excess of R 300 000 per annum are made. A person cannot register in respect of any exempt supplies (e.g. education), however, where the value of taxable supplies is less than R 300 000 per annum, a person may register voluntarily.

The terms "public benefit organisation" and "public benefit activity" which are used for income tax purposes are not used in the VAT Act. Instead this legislation refers to an "association not for gain" and a "welfare organisation". The special provisions applicable to these organisations are dealt with below.

### 15.1 Associations not for gain

An "association not for gain", as defined in section 1 of the VAT Act, is essentially a religious institution or other society, association or organisation (including an educational institution of a public character) which is not carried on for profit and is required to use any property or income solely in the furtherance of its aims and objects. To qualify for voluntary VAT registration, the organisation must have made taxable supplies in excess of R 20 000 in the past 12 month period.

An association not for gain is treated much like any other business if it makes taxable supplies, but the following special provisions will apply:-

- No output tax is payable on any "unconditional gifts" received. *Example:* Where a member of an amateur club donates money to cover the costs of new kit and footballs to be used by the club's soccer side;
- The association may be registered on the payments basis of accounting for VAT on supplies. This assists those associations using simple accounting systems ;
- Certain goods which are forwarded free of charge to an association not for gain are exempt from VAT on importation if used exclusively for educational, religious or welfare purposes or for medical or scientific research;
- Different activities of associations not for gain can be regarded as separate persons for VAT purposes. This can be used to reduce the impact of VAT;
- The sale of any donated goods or services, or other manufactured goods where donated goods and services constitute at least 80% of the value thereof are exempt from VAT; and
- Certain subsidies or grants received from National or Provincial Government (public authority) will be zero-rated.

### 15.2 Welfare organisations

To qualify as a welfare organisation for VAT purposes, the organisation must be an association not for gain which is exempt from income tax in terms of section 10 (1) (cN) of the Income Tax Act. It must carry on welfare activities categorised under the headings: welfare and humanitarian, health care, land and housing, education and development, or conservation, environment and animal welfare (but excludes activities which would qualify for exemption in terms of section 12 of the VAT Act). A welfare organisation is not required to meet the R 20 000 threshold of taxable supplies to qualify for voluntary VAT registration, as is the case with an association not for gain.

In addition to the special concessions described in 15.1 above, welfare organisations also enjoy the following advantages:-

- Even where no charge is made for supplies, the organisation may still register for VAT and obtain input tax relief on its purchases. *Example:* A welfare organisation has a street collection to raise money to buy clothes for street children. The VAT paid on the purchase of the clothing may be claimed as input tax, but as the clothes are supplied free of charge, there will be no output tax ; and
- Subsidies or grants received from the Government (or local authorities) will be zero-rated if it relates to the carrying on of welfare activities.

For more information, refer to the "Guide for Associations not for gain and Welfare" (VAT 414) which is also available on the SARS website.

## 16 Customs and excise implications

No definition of a public benefit organisation currently exists in the Customs and Excise Act 1964 (Act No. 91 of 1964). However, in Part 1 of Schedule No. 4 to the Customs and Excise Act, 1964, provision is made for the partial or full rebate of customs duties on the importation of specific goods under specified circumstances. Some of these goods include goods for cultural, educational, charitable, welfare or youth organisations or purposes.



The following rebates of customs duties in Part 1 to Schedule No. 4 could apply to public benefit or welfare organisations:

Groups	Type of goods included	Special requirements / circumstances	Extent of rebate
<b>Rebate item 405.00 and 408.00</b> (a) Goods for cultural, educational, charitable, welfare or youth organisations or purposes	Goods for the advancement of journalism. (405.01)	<ul style="list-style-type: none"> <li>The institutions / bodies must be approved and their main purpose must be the advancement of journalism</li> <li>The goods must have been forwarded unsolicited and free</li> </ul>	Full duty
	Magnetic video tapes. (405.02)	The body / person must be licensed to conduct a public radio or television service	Full duty
	Goods for disabled persons or the upliftment of indigent persons – <ul style="list-style-type: none"> <li>Goods (excluding motor vehicles) specially designed for use by persons with physical or mental defects. (405.04)</li> <li>Machines, implements and materials for use in the manufacture of goods by persons with physical or mental defects. (405.04)</li> </ul>	Importations in these categories are subject to the production of a certificate from either some or all of the following: <ul style="list-style-type: none"> <li>RSA National Council for the Blind</li> <li>RSA National Council for the Deaf</li> <li>RSA National Council for Mental Health</li> <li>National Council for the Physically Disabled in RSA</li> <li>RSA National Epilepsy League</li> </ul> These certificates must be endorsed by the DTI The goods imported, must be for the exclusive use by such handicapped persons	Full duty
	Goods (excluding clothing) donated to welfare organisations. (405.04)	<ul style="list-style-type: none"> <li>The goods must have been forwarded unsolicited and free to a registered welfare organisation (i.t.o. National Welfare Act, Act 100 of 1978)</li> <li>A specific permit from the International Trade Administration Commission is required</li> <li>the goods must be distributed free of charge by such organisation, or</li> <li>for official use by the organisation</li> </ul>	Full duty
	Recordings known as talking book records and talking book tapes. (405.04)	<ul style="list-style-type: none"> <li>The package must be marked to indicate that it only contains such articles for use by the blind</li> </ul>	Full duty
	Goods (excluding foodstuffs and clothing) donated to any educational organisation, hospital, clinic, welfare organisation, religious organisation or sporting organisation. (405.04)	<ul style="list-style-type: none"> <li>Quantities and conditions are set by the International Trade Administration Commission</li> </ul>	Full duty
	Goods for religious instruction or purposes, including: altars, fonts, lecterns, pulpits, church decorations, vestments and other appointments (excluding furniture). (405.05)	<ul style="list-style-type: none"> <li>For use by a religious body</li> </ul>	Full duty less the duty in Section B of Part 2 of Schedule No. 1
	Apparatus, capable of sound reproduction only, manually operated. (405.05)	<ul style="list-style-type: none"> <li>For use by a religious body or for religious instruction</li> </ul>	Not exceeding the duty in Section B of Part 2 of Schedule No. 1
	Any goods for use by the National Sea Rescue Institute of RSA, the RSA Lifesaving Society and RSA Lifesaving. (405.09)		Full duty
<b>Rebate item 411.00 and 412.00</b> (b) General rebates	Cups, medals and other trophies which have been awarded abroad to persons or imported to be awarded. (408.01)	Various	Full duty
	Various goods, i.e. <ul style="list-style-type: none"> <li>Electric motors for the ringing of church bells. (411.00)</li> <li>Nets treated with insecticides for the control of mosquitoes. (412.02)</li> <li>Bequeathed goods from abroad. (412.03)</li> <li>Used property of a person who died while temporarily outside the Republic. (412.04)</li> <li>Life saving apparatus. (412.05)</li> <li>Fire extinguishing apparatus. (412.05)</li> <li>Food concentrates for infants. (412.06)</li> <li>Colostomy, ileostomy, ureterostomy and ileal bladder appliances, disposable colostomy or ileostomy drainage bags, incontinence under garments and pads. (412.13)</li> <li>Goods for refugees from African Territories. (412.16)</li> </ul>	Various	Various

Kindly note that specific requirements could apply before the rebate of duty will be granted. A full detailed list of the goods, circumstances and the rebates allowed can be obtained from the nearest Customs and Excise Controller's office.

## Annexure A

### Other income tax exemptions

- Section 10(1)(cA)(i) - An institution, board or body established by or under law which:
  - conducts scientific, technical or industrial research;
  - provides necessary or useful commodities to the State or members of the general public; or
  - carries on activities to promote commerce, industry or agriculture.

The exemption is approved, subject to certain conditions.

- Section 10(1)(cA)(ii) - A company, all the shares of which are held by an entity contemplated in Section 10(1)(cA)(i) and whose objects are ancillary or complementary to the object of its shareholder.
- Section 10(1)(cE) - Political Parties
- Section 10(1)(cH) - Mining Rehabilitation Funds
- Section 10(1)(d)
  - (i) Pension, provident and retirement annuity funds;
  - (ii) Benefit funds;
  - (iii) Mutual loan associations, fidelity or indemnity funds, trade unions, chambers of commerce or industry, local publicity associations, non-proprietary stock exchanges.
  - (iv) Any company, society or other association of persons:
    - (aa) providing social and recreational amenities; or facilities for the members of such organisation;
    - (bb) promoting the common interest of persons carrying on a particular kind of business, profession or occupation.
- Section 10(1)(e) - Levies received by:
  - A body corporate;
  - A share block company;
  - Any other association of persons established to manage the collective interests common to all its members in respect of common immovable property.
- Section 10(1)(t) - Specific exemptions:

Due to the nature and extent of their activities, the legislature specifically provides for the exemption of the receipts and accruals of the following organisations:

  - The Council for Scientific and Industrial Research.
  - The South African Inventions Development Corporation.
  - The South African National Roads Agency Ltd.
  - The Armaments Development and Production Corporation of South Africa Limited, and any of its wholly-owned subsidiaries whose objects are ancillary or complementary to the objects of the corporation.
  - The Development Bank of Southern Africa.

## Annexure B - Ninth Schedule Part 1

### Section 30 Approved Public Benefit Activities

*This document is an unofficial consolidation of the Ninth Schedule to the Income Tax Act 58 of 1962, introduced by section 41 of Act 30 of 2002 and the amendments effected by the Revenue Laws Amendment Act 45 of 2003. While care has been taken in its preparation, errors may exist and the original legislation should be consulted in case of doubt.*

## Ninth Schedule PUBLIC BENEFIT ACTIVITIES

### Part I

#### 1. Welfare and Humanitarian

- (a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counselling of poor and needy persons where more than 90 per cent of those persons to whom the care or counselling are provided are over the age of 60.
- (c) The care or counselling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counselling 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.  
[Subparagraph (q) added by section 124 of Act 45 of 2003]

#### 2. Health Care

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

#### 3. Land and Housing

- (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).  
[Subparagraph (a) amended by section 125(1)(a) of Act 45 of 2003]
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) The provision of residential care for retired persons, where—
  - (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and

- (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.

[Subparagraph (c) amended by section 125(1)(b) of Act 45 of 2003]

- (d) Building and equipping of—

- (i) clinics or crèches; or
- (ii) community centres, sport facilities or other facilities of a similar nature, for the benefit of the poor and needy.

[Subparagraph (d) amended by section 125(1)(c) of Act 45 of 2003]

- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
- (f) Granting of loans for purposes of subparagraph (a) or (b) subject to such conditions as may be prescribed by the Minister by way of regulation.
- (g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

#### **4. Education and Development**

- (a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- (d) “Further education and training” provided by a “public further education and training institution” as defined in the Further Education and Training Act 1998, (Act No. 98 of 1998).
- (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 educate or early childhood development services for pre-school children.
- (i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counselling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the Gazette.

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

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

#### **6. Cultural**

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

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

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

understanding between the nations concerned.

#### **8. Research and consumer rights**

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

#### **9. Sport**

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

#### **10. Providing of funds, assets or other resources**

The provision of—

- (a) funds, assets, services or other resources by way of donation;
- (b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
- (c) funds by way of loan at no charge; or
- (d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,  
to any—
  - (i) any public benefit organisation which has been approved in terms of section 30;
  - (ii) any institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
  - (iii) any association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
  - (iv) 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).

#### **11. General**

- (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.
- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—
  - (i) the foreign participation in that event; and
  - (ii) the economic impact that event may have on the country as a whole.[Subparagraph (b) amended by section 126 of Act 45 of 2003]

## Annexure C - Ninth Schedule Part II

### Section 18A Approved PBAs

#### 1. Welfare and Humanitarian

- (a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counselling of poor and needy persons where more than 90 per cent of those persons to whom the care or counselling are provided are over the age of 60.
- (c) The care or counselling 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 counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counselling 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.  
[Subparagraphs (c) to (q) added by section 127 of Act 45 of 2003]

#### 2. Health Care

- (a) The provision of health care services to poor and needy persons.
- (b) The care or counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling 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, counselling or treatment of persons afflicted with HIV/AIDS, including the care or counselling 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.  
[Subparagraphs (e) and (f) inserted by section 128 of Act 45 of 2003]

#### 3. Education and Development

- (a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) "Adult basic education and training", as defined in the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.
- (d) "Further education and training" provided by a "public further education and training institution" as defined in the Further Education and Training Act 1998, (Act No. 98 of 1998).
- (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 counselling services provided to persons for purposes of 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 and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the Gazette.  
[Subparagraphs (l) to (o) added by section 129 of Act 45 of 2003]

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

The establishment and management of a transfrontier area, involving two or more countries, which—

- (a) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and
- (b) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.

#### **5. Land and Housing**

- (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).
- (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.  
[Paragraph 5 added by section 130 of Act 45 of 2003]

## Annexure D

### Section 30 of the Income Tax Act

*This document is an unofficial consolidation of section 30 of the Income Tax Act, 58 of 1962, introduced by the Taxation Laws Amendment Act, 30 of 2000, the amendments effected by the Revenue Laws Amendment Act, 19 of 2001, the amendments effected by the Taxation Laws Amendment Act, 30 of 2002 and the Revenue Laws Amendment Act 45 of 2003. While care has been taken in its preparation, errors may exist and the original legislation should be consulted in case of doubt.*

#### **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;  
[Definition of “public benefit activity” amended by section 22(a) of Act 30 of 2002]
- “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  
[Subparagraph (iii) amended by section 45(1) of Act 45 of 2003]
  - (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 foreign grants;  
[Definition of “public benefit organisation” amended by section 22(b) of Act 30 of 2002]
- (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.  
[Subsection (2) amended by section 22(c) of Act 30 of 2002]
- (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;  
[Subsection (3)(b)(i) amended by section 22(d) of Act 30 of 2002]
    - (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);  
[Subsection 3(b)(ii)(aa) amended by 22(e) of Act 30 of 2002]
      - (bb) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
      - (cc) in 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);
- [Subsection (3)(b)(iii) amended by section 22(f) of Act. 30 of 2002]
- (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;
 [Subsection (3)(b)(iv)(aa) amended by s. 16 (1) of Act 19 of 2001]
  - (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;
- [Subsection (3)(b)(v) amended by section 22(g) of Act 30 of 2002]
- (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;
- [Subsection (3)(d) amended by section 22(h) of Act 30 of 2002]
- (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 I 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
- [Subsection 3(f) amended by section 31(1)(a) of Act 74 of 2002]
- (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 Non-profit Organisations designated in terms of section 8 of the Non-profit Organisations Act, 1997, on good cause shown, otherwise directs; and
- [Subsection (3)(g) amended by section 22(i) of Act 30 of 2002]
- (h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party;
- [Subsection (3)(h) inserted by section 22(j) of Act 30 of 2002]
- 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.
- [As amended by section 22(k) of Act 30 of 2002]

(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 2003 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.

[Subsections (3A) and (3B) inserted by section 22(l) of Act 30 of 2002]

(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.

[Subsection (5) amended by section 22(m) of Act 30 of 2002]

(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.

[Subsection (5A) inserted by section 22(n) of Act 30 of 2002]

(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.

(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).

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

(9) 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.

(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) ... [Subsection 11 deleted by section 31(1)(b) of 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.

[Section 30 inserted by s. 35 (1) of Act 30 of 2000 and amended by section 16(1) of the Revenue Laws Amendment Act 19 of 2001 and section 22 of the Taxation Laws Amendment Act 30 of 2002]

## Annexure E

### Section 18A of the Income Tax Act

*This document is an unofficial consolidation of section 18A of the Income Tax Act 58 of 1962, substituted by section 24 of the Taxation Laws Amendment Act 30 of 2000 and the amendments effected by the Taxation Laws Amendment Act 30 of 2002 and the Revenue Laws Amendment Act 45 of 2003. While care has been taken in its preparation, errors may exist and the original legislation should be consulted in case of doubt.*

#### 18A. Deduction of donations to certain public benefit organisations

- (1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted from 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 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; and
    - (bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);  
[Paragraph (a) amended by section 20(b) of Act 30 of 2002 and section 34(1)(c) of Act 45 of 2003]
- (b) any public benefit organisation approved by the Commissioner under section 30, which—
- (i) provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a); and  
[Subparagraph (i) amended by section 20(c) of Act 30 of 2002]
  - (ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by such organisation by way of donations which qualified for a deduction in terms of this section: 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,  
[Sub-para. (ii) substituted by section 72(1) of Act 30 of 2000 and section 34(1)(e) of Act 45 of 2003]  
[Para (b) amended by section 34(1)(d) of Act 45 of 2003]
- (c) the Government, any provincial administration or local authority as contemplated in section 10(1)(a) or (b) to be used for purposes of any activity contemplated in Part II of the Ninth Schedule;  
[Para (c) added by section 34(1)(b) of Act 45 of 2003]  
as does not exceed five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18  
[Subsection (1) amended by section 20(a) and (d) of Act 30 of 2002 and section 34(1)(a) and (e) of Act 45 of 2003]
- (1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the government, provincial administration or local authority 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 government, provincial administration or local authority shall be allowed as a deduction under subsection (1).  
[Subsection (1A) inserted by section 20(e) of Act 30 of 2002 and amended by section 34(1)(f) of Act 45 of 2003]
- (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.”;  
[Subsection (1B) inserted by section 20(e) of Act 30 of 2002]
- (1C) The Constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4 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, but before 1 August 2005; 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.

[Subsection (1C) inserted by section 34(1)(g) of Act 45 of 2003]

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or local authority concerned, on which the following details are given, namely—

- (a) the reference number of the public benefit organisation, institution, board or body issued by the Commissioner for the purposes of this section;
- (b) the date of the receipt of the donation;
- (c) the name of the public benefit organisation, institution, board or body or the government, provincial administration or local authority which received the donation, together with an address to which enquiries may be directed in connection therewith; (Paragraph (c) amended by section 34(1)(i) of Act 45 of 2003)
- (d) the name and address of the donor;
- (e) the amount of the donation or the nature of the donation (if not made in cash);
- (f) 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 or body concerned or, in the case of the government, provincial administration or local authority in carrying on the relevant public benefit activity.

(Paragraph (f) amended by section 34(1)(j) of Act 45 of 2003)

(Subsection (2) amended by section 34(1) of Act 45 of 2003)

(2A) A public benefit organisation, institution, board, body, government, provincial administration or local authority 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 Part I 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) which provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule; or
- (c) in the case of the government, provincial administration or local authority, 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 together with its annual return for a year of assessment submit to the Commissioner 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 Authority contemplated in the Public Finance Management Act, 1997 (Act No. 1 of 1999) for the government, provincial administration or local authority 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).

(Subsections (2A, 2B and 2C added by section 34(1)(k) of Act 45 of 2003)

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, 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); 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) 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.
- (Subsection (3) amended by section 34(1)(l) of Act 45 of 2003)
- (3A) 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 a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).
- (Subsection 3A added by section 34(1)(m) of Act 45 of 2003)
- (4) The provisions of subsections (9) and (10) of section 30 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 or body has with intent—
- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board or body was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board or body for the purposes not covered by such objects; or
  - (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 such organisation, institution, board or body by such taxpayer, the Commissioner may by notice in writing addressed to that person direct that donations to such fund shall not qualify for deduction under the provisions of this section in respect of any year of assessment specified in such notice, and any claim by any taxpayer for such deduction shall accordingly be disallowed.
- (5A) If the Commissioner has reasonable grounds for believing that any regulating or co-ordinating body of a group of public benefit organisations, contemplated in section 30(3A) or subsection (6)—
- (a) with intent or negligently fails to take any steps contemplated in that section or subsection, to exercise control over any public benefit organisation in that group; or
  - (b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section, the Commissioner may by notice in writing addressed to that regulating or co-ordinating body direct that donations to public benefit organisations, institutions, boards or bodies in that group shall not qualify for deduction under the provisions of this section in respect of any year of assessment specified in such notice and any claim by any taxpayer for such deduction shall accordingly be disallowed.
- [Subsection (5A) inserted by section 20(f) of Act 30 of 2002]
- (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.”.
- [Subsection (6) inserted by section 20(f) of Act 30 of 2002]
- [Section 18A substituted by section 24(1) of Act 30 of 2000 and amended by section 20 of Act 30 of 2002]



**Application for exemption from income tax in terms of section 10(1) and/or approval in terms of section 18A of the Income Tax Act, No. 58 of 1962**

**If all the requested information and relevant documents are not submitted together with this form, your application will be returned.**

The completed form together with the relevant documentation must be submitted to: **The Head: Tax Exemption Unit  
Box 11955  
HATFIELD  
0028**

**A. Is this application in respect of:**

**Company**  
Attach a copy of the memorandum and articles of association (including copies of all the registered special resolutions amending the memorandum and articles).

**Association of Persons**  
Attach a copy of the latest constitution.

**Trust**  
Attach a copy of the trust deed and any subsequent deeds of amendment.

**B. Group registration**

Is this application in respect of a group registration?  
If "YES" Part J must be completed.  YES  NO

**C. Particulars of organisation:**

Registered name

Postal address

Postal code

Registered address

Postal code

E-mail address

Trust/Company registration number

Income Tax reference number

Employees Tax (PAYE)/Skills Development Levy (SDL) reference number

Language  English  Afrikaans

Nonprofit Organisation (NPO) registration number

Regional Services Council (RSC) registration number

Value Added Tax (VAT) reference number

Reference number quoted on correspondence with this office. **18/**

**D. Bank particulars:**

Name of bank

Name of account holder

Type of account  Current  Savings  Transmission  Credit card  Home loan

Branch number

Account number

**E. Particulars of three unconnected directors/ trustees/ office bearers accepting fiduciary responsibility for the organisation:**

1. Full names		
Surname		
Title		
Position held		
Postal address		
Postal code		
Residential address		
Postal code		
Telephone number - Work		
Telephone number - Home		
Fax number		
Cellular phone number		
Income Tax reference no		
Identity number		Date of birth
		- -
E-mail address		
2. Full names		
Surname		
Title		
Position held		
Postal address		
Postal code		
Residential address		
Postal code		
Telephone number - Work		
Telephone number - Home		
Fax number		
Cellular phone number		
Income Tax reference no		
Identity number		Date of birth
		- -
E-mail address		

**E. Particulars of three unconnected directors/ trustees/ office bearers accepting fiduciary responsibility for the organisation: (Continued)**

<b>3. Full names</b>		
Surname		
Title		
Position held		
Postal address		
Postal code		
Residential address		
Postal code		
Telephone number - Work		
Telephone number - Home		
Fax number		
Cellular phone number		
Income Tax reference no		
Identity number		Date of birth <input type="text"/> - <input type="text"/> - <input type="text"/>
E-mail address		

**F. The subparagraph of section 10(1) of the Income Tax Act in terms of which the organisation is applying for exemption from income tax as well as approval in terms of section 18A:**

Mark the appropriate section your organisation is applying for:

Section 10(1)(cA)(i): Institution, Board, or Body established by or under any law.

Section 10(1)(cA)(ii): Any South African company of which all the shares are held by a body exempt in terms of section 10(1)(cA)(i).

Section 10(1)(cM): Promoting or facilitating the distribution of agricultural commodities (Only a company incorporated under section 21 of the Companies Act will qualify).

Section 10(1)(cN): Public Benefit Organisation. (If this block is applicable, Parts G, H and K must be completed.)

Section 10(1)(d):

- Mutual Loan Association.
- Fidelity or Indemnity Fund.
- Trade Union - A copy of the certificate of registration issued in terms of the Labour Relations Act, 1955 must be attached.
- Chamber of Commerce or Industries (or an Association of such Chambers).
- Local Publicity Association.
- Non-Proprietary Stock Exchange.
- Company, society or other association of persons established to provide social and recreational amenities, or facilities for members
- Company, society or other association of persons established to promote the common interest of persons, carrying on any particular kind of business, profession or occupation.

Section 10(1)(e)(iii): Association of persons formed for managing the collective interests common to all its members in respect of expenditure applicable to the common immovable property.

Section 18A: Approval for tax deductible donations (If this block is applicable, Parts G, H and K must be completed.)  
**(Only activities indicated in bold will qualify for section 18A approval.)**



G. Public Benefit Activities - select only the activity/activities which the organisation is mainly carrying on:

1. Welfare and Humanitarian

- a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- d) The provision of disaster relief.
- e) The rescue or care of persons in distress.
- f) The provision of poverty relief.
- g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programs 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.

2. Health Care

- a) The provision of health care services to poor and needy persons.
- b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
- c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
- d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.

2. Health Care (Continued)

- e) **The provision of blood transfusion, organ donor or similar services.**
- f) **The provision of primary health care education, sex education or family planning.**

3. Land and Housing

- a) **The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).**
- b) **The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).**
- c) The provision of residential care for retired persons, where -
  - (i) more than 90 percent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
  - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
- d) **Building and equipping of -**
  - (i) **clinics or creches for the benefit of the poor and needy, or**
  - (ii) **community centres, clinics, sport facilities or other facilities of a similar nature for the benefit of the poor and needy.**
- e) **The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.**
- f) Granting of loans for purposes of subparagraph (a) or (b) subject to such conditions as may be prescribed by the Minister by way of regulation.
- g) **The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.**

4. Education and Development (A copy of the certificate of registration issued by the relevant Education Authority as defined in (a) to (d) below, must be attached)

- a) **The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).**
- b) **The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).**
- c) **"Adult basic education and training", as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000) including literacy and numeracy education.**
- d) **"Further education and training" provided by a "public further education and training institution" as defined in the Further Education and Training Act, 1998, (Act No. 98 of 1998).**
- e) **Training for unemployed persons with the purpose of enabling them to obtain employment.**
- f) **The training or education of persons with a severe physical or mental disability.**
- g) **The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).**
- h) **The provision of educare or early childhood development services for pre-school children.**
- i) **Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.**
- j) **The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).**

#### 4. Education and Development (Continued)

- k) Career guidance and counseling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs (a) and (b).**
- l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).**
- m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).**
- n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.**
- o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the Gazette.**

#### 5. Religion, Belief or Philosophy

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

#### 6. Cultural

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

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

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

#### 8. Research and Consumer Rights

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

#### 9. Sport

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

**10. Providing of funds, assets or other resources**

The provision of -

- a) funds, assets, services or other resources by way of donation;
- b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
- c) funds by way of loan at no charge; or
- d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset, to any -
  - i) public benefit organisation which has been approved in terms of section 30;
  - ii) institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
  - iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
  - iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b).
- e) funds or assets to any public benefit organisation approved in terms of section 30 or an institution, board or body contemplated in section 10(1)(cA)(i) carrying on any public benefit activity approved for section 18A purposes, or to the Government, any provincial administration or local authority, to be used for purposes of any activity to contemplated in Part II of the Ninth Schedule.**

**11. General**

- a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.
- b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to -
  - i) the foreign participation in that event; and
  - ii) the economic impact that event may have on the country as a whole.

**H. Information relating to activities and operations:**

- 1. Attach the following information and/or documentation to this application:  
A detailed narrative description of all the activities of the organisation past, present, and planned. Do not merely refer to or repeat the language in the founding document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following:
  - a detailed description of the day to day activities and how each activity furthers your sole object;
  - when the activity was or will be initiated; and
  - where and by whom will the activity be conducted.


- 2. List the organisation's present and future sources of financial support, listing the largest source first.


- 3. Explain how the assets of the organisation will be distributed on dissolution.


**I. Financial Statements:**

A copy of the latest annual financial statements must be attached to this application form.

Financial year end

**J. Group Registration:**

- |   |                      |                      |                      |                      |
|---|----------------------|----------------------|----------------------|----------------------|
| 1) Does the co-ordinating body control and supervise the individual organisations within the group?                       | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 2) Do all organisations within the group share a common purpose and conduct identical approved public benefit activities? | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 3) Does the co-ordinating body of the group organisations have a common or similar founding document?                     | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 4) Are consolidated financial statements prepared for the group?  | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 5) Attach a list of all organisations within the group on a separate schedule.  |                      |                      |                      |                      |

**K. Public Benefit Organisation:**

- |   |                      |                      |                      |                      |
|---|----------------------|----------------------|----------------------|----------------------|
| 1) Does the organisation carry on all its activities in a non-profit manner and with an altruistic and philanthropic intent?  | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 2) Do any of the activities of the organisation directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration? | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 3) Does the organisation conduct all its activities within the Republic of South Africa?  | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

If 'NO', please state to what extent the activities are conducted outside the Republic as well as the amount of foreign donations received


- |  |                      |                      |                      |                      |
|--|----------------------|----------------------|----------------------|----------------------|
| 4) Are the activities carried on by the organisation for the benefit of, or widely accessible to, the general public at large? | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 5) Are the activities carried on by the organisation for the benefit of, or readily accessible to the poor and the needy?      | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| 6) Is the organisation, at least 85 per cent, funded by donations, grants from any organ of state or any foreign grants?       | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

**L. Particulars of public officer/representative/agent who is responsible for completing the application form:**

Full names																																					
Surname																																					
Title																																					
Position held																																					
Postal address																																					
Tel no. Work/business	<input type="text"/>	-	<input type="text"/>	Cell number	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Fax number	<input type="text"/>	-	<input type="text"/>																																		
E-mail address																																					

Please ensure that all the relevant documentation is attached.

Signature

Capacity

Date



- The funds of the public benefit organisation will be used solely for the objects for which it was established, or shall be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) or in securities listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
- The public benefit organisation will not carry on any business undertaking or trading activity unless specifically permitted in terms of section 30(3)(b)(iv) of the Income Tax Act.
- On dissolution of the public benefit organisation, the remaining assets must be transferred to -
- Any similar public benefit organisation, which has been approved in terms of section 30 of the Act.
- Any institution, board or body which is exempt from the payment of income tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity; or
- 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) of the Act.
- No donation will be accepted 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 any 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.
- A copy of all amendments to the constitution, trust deed, memorandum and articles of association, or other written instrument under which the public benefit organisation was established, will be submitted to the Commissioner for the South African Revenue Service.
- No remuneration will be paid 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.
- 6** Die fondse van die openbare weldaadsorganisasie sal slegs aangewend word vir die oogmerk waarvoor dit ingestel is, of sal belê word by 'n finansiële instelling, soos omskryf in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990) of in aandele genoteer op 'n aandelebeurs soos omskryf in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985).
- 7** Die openbare weldaadsorganisasie sal geen besigheidsonderneming of handelsaktiwiteit bedryf nie, tensy spesifiek toegelaat ingevolge artikel 30(3)(b)(iv) van die Inkomstebelastingwet.
- 8** By ontbinding van die openbare weldaadsorganisasie sal die oorblywende bates oorbetaal word aan -
- (aa)** enige soortgelyke openbare weldaadsorganisasie, wat goedkeuring ingevolge artikel 30 van die Wet geniet;
- (bb)** enige instelling, raad of liggaam wat ingevolge die bepaling van artikel 10(1)(cA)(i) van die betaling van belasting vrygestel is, wat as enigste of vernaamste oogmerk die beoefening van enige openbare weldaadsaktiwiteit het; of
- (cc)** enige staatsdepartement of administrasie in die nasionale of provinsiale of plaaslike regeringsfeer van die Republiek, soos in artikel 10(1)(a) of (b) van die Wet bedoel.
- 9** Die openbare weldaadsorganisasie is verbied om 'n skenking wat herroeplik op aandrang van die skenker is, vir ander redes as die wesenlike versuim om aan die aangewese oogmerke en voorwaardes van bedoelde skenking te voldoen, met inbegrip van enige wanvoorstelling met betrekking tot die belasting-aftrekbaarheid daarvan ingevolge artikel 18A, te aanvaar nie: Met dien verstande dat 'n skenker (behalwe 'n skenker wat 'n goedgekeurde openbare weldaadsorganisasie is of 'n instelling, raad of liggaam is wat ingevolge artikel 10(1)(cA)(i) van belasting vrygestel is en wat as sy enigste of vernaamste oogmerk het die beoefening van enige openbare weldaadsaktiwiteit) nie enige voorwaarde mag opleë wat bedoelde skenker of enige verbonde persoon met betrekking tot bedoelde skenker in staat kan stel om enige direkte of indirekte voordeel uit die aanwending van die skenking te verkry nie.
- 10** 'n Afskrif van enige wysigings aan die konstitusie, trustakte, Akte van Oprigting en Statute, of enige ander geskrewe stuk waarkragtens die openbare weldaadsorganisasie ingestel is, sal aan die Kommissaris van die Suid-Afrikaanse Inkomstediens voorgelê word.
- 11** Geen besoldiging sal aan enige werknemer, amptenaar, lid of ander persoon wat oormatig is, inaggenome wat algemeen as redelik geag word in die sektor en met betrekking tot die diens gelewer, betaal en sal nie enige persoon ekonomies bevoordeel nie op enige wyse wat nie in ooreenstemming met sy oogmerke is nie.

The public benefit organisation will submit the required returns for income tax together with the relevant supporting documents.

In the case of any public benefit organisation which provides funds or assets to any association of persons contemplated in paragraph (b)(iii) of the definition of "public benefit activity", reasonable steps will be taken to ensure that the funds are utilised for the purpose for which it has been provided.

The public benefit organisation will, within such period as the Commissioner may determine, register in terms of section 13(5) of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), and comply with any other requirements imposed in terms of that Act.

Where the public benefit organisation has been approved in terms of section 18A(1)(b)(i) of the Act, 75% of the funds received by the organisation by way of donations which qualify for a deduction, will be distributed (or an obligation will be incurred to so distribute) within twelve months from the financial year end during which such donations were received.

**12** Die openbare weldaadsorganisasie sal die vereiste Inkomstebelastingopgawes tesame met aanvullende dokumentasie in dien.

**13** In die geval van 'n openbare weldaadsorganisasie wat fondse of bates aan enige vereniging van persone in paragraaf (b)(iii) van die omskrywing van "openbare weldaadsaktiwiteit" bedoel, voorsien, redelike stappe sal doen ten einde te verseker dat die fondse vir die doel waarvoor dit voorsien is, aangewend word.

**14** Die openbare weldaadsorganisasie sal, binne die tydperk wat die Kommissaris bepaal, ingevolge artikel 13(5) van die Wet op Organisasies Sonder Winsoogmerk, 1997 (Wet No. 71 van 1997), registreer, en aan enige ander vereistes ingevolge daardie Wet opgelê, voldoen.

**15** 'n Goedgekeurde openbare weldaadsorganisasie ingevolge artikel 18A(1)(b)(i) van die Wet, moet ten minste 75% van die fondse wat ontvang is deur die organisasie by wyse van skenkings wat ingevolge hierdie artikel as 'n aftrekking kwalifiseer, uitkeer (of die verpligting aangaan om aldus uit te keer) binne 'n tydperk van twaalf maande vanaf die einde van die finansiële jaar waartydens bedoelde skenkings verkry is.

Signed at Geteken te	<input type="text"/>	this hierdie	<input type="text"/>	day of dag van	<input type="text"/>	20	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name/Volle name		Signature/Handtekening		Capacity/Hoedanigheid			
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name/Volle name		Signature/Handtekening		Capacity/Hoedanigheid			
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name/Volle name		Signature/Handtekening		Capacity/Hoedanigheid			



**Public Benefit Organisation - Written**

**Undertaking:** Scholarships, bursaries and awards for study research and teaching as provided in paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act, No. 58 of 1962

**Openbare Weldaadsorganisasie - Geskrewe**

**Onderneming:** Studiebeurse en toekennings vir studie, navorsing en onderrig soos voorgeskryf in paragraaf 4(o) van Deel I van die Negende Bylae by die Inkomstebelastingwet, No. 58 van 1962

Income Tax reference number (If available)	<input type="text"/>	Inkomstebelastingverwysingsnommer (Indien beskikbaar)
Exemption reference number (If available)	<input type="text"/>	Vrystellingverwysingsnommer (Indien beskikbaar)
Name of Public Benefit Organisation	<input type="text"/>	Naam van Openbare Weldaads-organisasie

**We, the undersigned persons accepting fiduciary responsibility for the public benefit organisation, hereby undertake to comply with the following requirements:**

All scholarships, bursaries or awards granted by the organisation will be *bona fide* and be granted to an individual on grounds of objective merit or need.

No scholarship, bursary or award granted will be -

revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of the scholarship, bursary or award;

subject to conditions which would enable the donor of the funds of the scholarship, bursary or award or any connected person in relation to the donor, to derive some direct benefit from the application of the scholarship, bursary or award; or

granted to any person who is or will become an employee of the donor of the funds of the scholarship, bursary or award or the organisation (or any associated institution in relation to the donor or organisation) or any relative of the person, unless circumstances indicate that the scholarship, bursary or award would have been granted to the person or his or her relative, even if that person had not been an employee of the donor, organisation or associated institution.

All decisions regarding the granting of scholarships, bursaries and awards will 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.

**Ons, die ondergetekende persone wat die fidusiêre verantwoordelikheid vir die openbare weldaads-organisasie aanvaar, onderneem hiermee om aan die volgende vereistes te voldoen:**

**1** Alle studiebeurse en toekennings deur die organisasie toegestaan *bona fide* is en aan 'n individu toegestaan word gegrond op objektiewe meriete of noodsaak.

**2** Geen studiebeurs of toekenning toegestaan mag -

**2.1** herroep word nie, anders as weens 'n wesentliche nalate om aan die bestemde doel en voorwaardes van die studiebeurs of toekenning te voldoen;

**2.2** onderhewig wees aan voorwaardes wat die skenker van die fondse van die studiebeurs of toekenning, of enige verbonde persoon met betrekking tot die skenker, in staat stel om enige direkte voordeel uit die aanwending van die studiebeurs of toekenning te verkry nie; of

**2.3** toegestaan word aan enige persoon wat 'n werknemer van die skenker van die fondse van die studiebeurs of toekenning, of van die organisasie (of enige verwante organisasies met betrekking tot die skenker of organisasie) is of sal word, of aan enige familielid van die persoon, tensy die omstandighede aandui dat die studiebeurs of toekenning aan die persoon of sy of haar familielid toegestaan sou word, selfs al was die persoon nie 'n werknemer van die skenker, organisasie of verwante organisasie nie.

**3** Alle besluite rakende die toestaan van studiebeurse en toekennings sal deur 'n behoorlik saamgestelde komitee gemaak word, wat bestaan uit minstens drie persone wat nie verbonde persone met betrekking tot die skenkers of die persone aan wie die studiebeurs of toekenning toegeken word, is nie.

All scholarships, bursaries and awards granted 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 -

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

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 (4.1) above.

**4** Alle studiebeurse en toekennings ten opsigte van oorsese studie, navorsing of onderrig sal onderhewig wees aan 'n onderneming deur die persoon aan wie die studiebeurs of toekenning toegestaan is -


**4.1** om die kennis uit die studie, navorsing of onderrig opgedoen, onmiddellik na die voltooiing daarvan in die Republiek aan te wend vir 'n tydperk wat minstens die tydperk is wat daardie studie, navorsing of onderrig deur die organisasie befonds is; of

**4.2** om die volle bedrag van die studiebeurs of toekenning terug te betaal indien hy of sy sou besluit om nie die kennis aan te wend soos in subparagraaf (4.1) hierbo bedoel nie.

Signed at Geteken te	<input type="text"/>	this hierdie	<input type="text"/>	day of dag van	<input type="text"/>	20	<input type="text"/>
	<input type="text"/>		<input type="text"/>		<input type="text"/>		<input type="text"/>
	Full name/Volle name		Signature/Handtekening		Capacity/Hoedanigheid		
	<input type="text"/>		<input type="text"/>		<input type="text"/>		<input type="text"/>
	Full name/Volle name		Signature/Handtekening		Capacity/Hoedanigheid		
	<input type="text"/>		<input type="text"/>		<input type="text"/>		<input type="text"/>
	Full name/Volle name		Signature/Handtekening		Capacity/Hoedanigheid		

Annexure I

Example of section 18A certificate

<p>ABC PRIMARY SCHOOL</p> <p>Oxford Street, Pretoria, 0001 - Telephone 000-0000 Exemption Reference Number: 93/0000</p> 	
<p>DONATIONS RECEIPT: Issued in terms of Section 18A of the Income Tax Act of 1962. The donation received below will be used exclusively for the objects of ABC Primary School in carrying out public benefit activities approved in terms of Section 18A</p>	<p>0001</p>
<p>RECEIPT NO.</p>	<p>0001</p>
<p>NAME OF DONOR</p>	
<p>ADDRESS OF DONOR</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>AMOUNT OF DONATION</p>	<p>R</p>
<p>NATURE OF DONATION</p>	<p>CASH <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER (give description and details how the value was determined)</p> <p>_____</p>
<p>DATE OF DONATION</p>	
<p>I confirm that the above donation was received by ABC Primary School and will be used exclusively for the objects of conducting a public benefit activity approved by the Minister of Finance in Part II of the Ninth Schedule to the Income Tax Act.</p> <p>_____</p> <p>HEADMASTER/SECRETARY/BURSAR <span style="float: right;">_____</span> DATE</p>	

## Annexure J Regulations

The following regulations have been issued.

### Regulation No R302 dated 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.

**T. A. MANUEL**  
**MINISTER OF FINANCE**

#### 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<sup>3/4</sup>
  - (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.



## Contact Details

### **Tax Exemption Unit**

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(On the home page select 'Income Tax'  
and on the income tax menu select  
'Public Benefit Organisations')



