

INTERPRETATION NOTE: 22 (Issue 4)

DATE: 30 January 2018

ACT : TRANSFER DUTY ACT 40 OF 1949
SECTION : SECTIONS 9(1)(c) AND 9(1A)
SUBJECT : TRANSFER DUTY EXEMPTION: PUBLIC BENEFIT ORGANISATIONS AND INSTITUTIONS, BOARDS OR BODIES

CONTENTS

	PAGE
Preamble	2
1. Purpose.....	2
2. Background	3
3. The law.....	3
4. Application of the law.....	3
4.1 Exemption of a public benefit organisation	3
4.1.1 Public benefit organisation.....	4
4.1.2 Public benefit activities	4
4.2 Exemption for an institution, board or body.....	5
4.2.1 An institution, board or body	5
4.2.2 Sole or principal object of an institution, board or body.....	5
4.3 Meaning of “substantially the whole”.....	8
4.4 Non-compliance	10
4.5 Exemption of the transfer of property from a public benefit organisation to any other entity controlled by that organisation	11
5. Application procedure for transfer duty exemption.....	12
6. Application procedure for approval as a public benefit organisation or an institution, board or body	13
7. Conclusion	14
Annexure A – List of public benefit activities in Part I.....	15
Annexure B – Contact details of the Tax Exemption Unit	20

Preamble

In this Note unless the context indicates otherwise –

- **“Companies Act”** means the Companies Act 71 of 2008;
- **“declaration”** means a Transfer Duty (TDC01) Declaration submitted via SARS eFiling;
- **“institution, board or body”** means an institution, board or body which has been approved by the Commissioner under section 10(1)(cA)(i) and which has as its sole or principal object the carrying on of one or more PBAs;
- **“Part I”** means Part I of the Ninth Schedule to the Act;
- **“PBA”** means any “public benefit activity” as defined in section 30(1) which is listed in Part I and any other activity determined by the Minister to be of a benevolent nature, having regard to the needs, interest and well-being of the general public;
- **“PBO”** means a public benefit organisation as defined in paragraph (a) of the definition of “public benefit organisation” in section 30(1) and which has been approved by the Commissioner under section 30(3);
- **“section”** means a section of the Act;
- **“TEU”** means the Tax Exemption Unit which is a dedicated office within SARS dealing with applications for approval or exemption from income tax on behalf of the Commissioner;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“Transfer Duty Act”** means the Transfer Duty Act 40 of 1949; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides, interpretation notes, forms and rulings referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise the latest issue of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of the following sections of the Transfer Duty Act:

- Section 9(1)(c), which exempts from the payment of transfer duty a PBO or any institution, board or body provided the whole or substantially the whole of the property acquired is used for carrying on one or more PBAs.
- Section 9(1A), which exempts from transfer duty the transfer of property by a PBO to any other entity controlled by that PBO.

For purposes of this Note, the transactions do not constitute taxable supplies of fixed property under section 7(1)(a) of the Value-Added Tax Act 89 of 1991.

2. Background

Transfer duty is levied on a sliding scale on the value of any property¹ acquired by any person under a transaction or in any other manner. The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.

All the exemptions from transfer duty are contained in section 9 of the Transfer Duty Act. The exemptions in section 9(1)(c) and section 9(1A) of the Transfer Duty Act apply to PBOs and institutions, boards or bodies meeting the requirements discussed in **4.1**, **4.2**, **4.3** and **4.5**.

3. The law

Section 9(1)(c) of the Transfer Duty Act

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

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

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

Section 9(1A) of the Transfer Duty Act

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

4. Application of the law

4.1 Exemption of a public benefit organisation

In order to qualify for the exemption from the payment of transfer duty for the acquisition of property under section 9(1)(c)(i) of the Transfer Duty Act, the organisation applying for the exemption must be a PBO (see **4.1.1**) and must use the whole or substantially the whole (see **4.3**) of the property acquired for the carrying on of one or more PBAs (see **4.1.2**).

¹ See the definition of “property” in section 1 of the Transfer Duty Act.

4.1.1 Public benefit organisation

A PBO referred to in paragraph (a) of the definition of “public benefit organisation” in section 30(1) means –

- a non-profit company as defined in section 1 of the Companies Act, a trust, or an association of persons incorporated, formed or established in South Africa; or
- any branch within South Africa of any company, association or trust incorporated, formed or established in a country outside South Africa and that is itself exempt from income tax in that other country.

A PBO must have as its sole or principal object the carrying on of one or more PBAs (see 4.1.2).

4.1.2 Public benefit activities

The PBAs are divided into the following categories:

- Welfare and Humanitarian (paragraph 1)
- Health Care (paragraph 2)
- Land and Housing (paragraph 3)
- Education and Development (paragraph 4)
- Religion, Belief or Philosophy (paragraph 5)
- Cultural (paragraph 6)
- Conservation, Environment and Animal Welfare (paragraph 7)
- Research and Consumer Rights (paragraph 8)
- Sport (paragraph 9)
- Providing of Funds, Assets or Other Resources (paragraph 10)
- General (paragraph 11)

Specific activities qualifying as PBAs are listed under each category heading (see **Annexure A**). A PBO that carries on one or more PBAs may qualify for exemption from the payment of transfer duty provided the requirements of section 9(1)(c) of the Transfer Duty Act are met.

Example 1 – PBO providing assets to another PBO

Facts:

Kings Trust, a PBO, has been established to hold immovable property for the benefit of Stuart High School, an independent school carrying on PBA 4(a). The trust has acquired immovable property to be developed as follows:

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

A declaration has been submitted for the acquisition of the property (see 5).

Result:

The acquisition of the immovable property by the trust will qualify for the exemption from the payment of transfer duty, because –

- the trust is a PBO;
- the trust is carrying on PBA 10, namely, the provision of assets to the school which is also a PBO to be used in carrying on its educational PBA; and
- the whole of the property will be used to carry on the PBA.

4.2 Exemption for an institution, board or body

In order to qualify for the exemption from the payment of transfer duty for the acquisition of property under section 9(1)(c)(ii) of the Transfer Duty Act, the organisation applying for the exemption must be an institution, board or body (see **4.2.1**) and must use the whole or substantially the whole (see **4.3**) of the property acquired for the carrying on of one or more PBAs (see **4.1.2**).

4.2.1 An institution, board or body

In order to qualify for exemption under section 10(1)(cA)(i), an organisation must be established by or under law for a specific object (see **4.2.2**). An institution, board or body must be approved by the Commissioner before the exemption will apply.

The following organisations are specifically excluded from qualifying for exemption under section 10(1)(cA)(i):

- A company registered under the Companies Act.
- A co-operative.
- A close corporation.
- A trust.
- A water services provider.²

The exemption from the payment of transfer duty is inapplicable to a wholly owned subsidiary company of an institution, board or body which is exempt under section 10(1)(cA)(ii).

4.2.2 Sole or principal object of an institution, board or body

In order to comply with section 10(1)(cA)(i) the sole or principal object of an institution, board or body must be to –

- conduct scientific, technical or industrial research;
- provide necessary or useful commodities, amenities or services to the State which includes any provincial administration or members of the general public; or
- carry on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof.

² See the definition of “water services provider” in section 1(1).

In order to qualify for the exemption from the payment of transfer duty an institution, board or body must have as its sole or principal object the carrying on of any PBA (see 4.1.2). The sole or principal object of the institution, board or body must therefore be the carrying on of one or more of the activities required in section 10(1)(cA)(i) and those activities must also qualify as a PBA. The concept “sole or principal” denotes that either the “only or the main, most important, chief, predominant”³ object must be the carrying on of one or more of these activities.

This may be illustrated as follows:

Qualifying activities under section 10(1)(cA)(i)	Examples of institutions, boards or bodies carrying on qualifying activities	Reference to applicable PBA
Scientific, technical or industrial research.	Institutions, boards or bodies engaged in medical, water, animal or agricultural research.	PBA 8(a)
The provision of necessary or useful commodities, amenities or services to the State or members of the general public.	Institutions, boards or bodies promoting, establishing, protecting, preserving or maintaining areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums including art galleries, archives and libraries.	PBA 6(a) or (b)
	Institutions, boards or bodies engaging in the conservation, rehabilitation or protection of the natural environment, including flora and fauna.	PBA 7
	<p>The following educational institutions:</p> <ul style="list-style-type: none"> • A “public school” as defined in the South African Schools Act 84 of 1996.⁴ • A “public higher education institution” established or declared as a public higher education institution under the Higher Education Act 101 of 1997.⁵ • A “public centre” defined in the Adult Education and Training Act 52 of 2000 which provides “adult education and training”. 	PBA 4(a) to (d)

³ M Wait, S Hawker and C Soanes *Oxford Dictionary, Thesaurus, and Wordpower Guide* (2001) Oxford University Press meaning of “sole” or “principal”, respectively.

⁴ SARS has not required each public school to apply for formal approval for exemption under section 10(1)(cA)(i). Approval has been given to the National Education Department for each Provincial Education Department to apply for a group registration for public schools registered in its area. See **Example 3**.

⁵ The Minister may by notice in the *Gazette* establish a specific university, university of technology or college.

Qualifying activities under section 10(1)(cA)(i)	Examples of institutions, boards or bodies carrying on qualifying activities	Reference to applicable PBA
	<ul style="list-style-type: none"> A “public college” defined in the Continuing Education and Training Act 16 of 2006 and established by the Minister by notice in the <i>Gazette</i> to provide “continuing education and training”. 	
The promotion of commerce, industry or agriculture.	Sector Education and Training Authorities (SETAs).	PBA 4

Example 2 – An institution, board or body which has as its sole or principal object the carrying on of a PBA

Facts:

An institution, board or body is established by law with the object of conducting research, development and technology transfer to promote agriculture and industry and therefore contributes to the improvement of the quality of life in South Africa.

The institution, board or body complies with all the requirements of section 10(1)(cA)(i). An exemption has been approved by the TEU.

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

A declaration has been submitted for the acquisition of the property (see 5).

Result:

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

- the body is exempt under section 10(1)(cA)(i);
- the sole or principal object of the institution, board or body is to conduct scientific, technical or industrial research which activity qualifies under PBA 8(a); and
- the whole of the property will be used to carry on the PBA.

Example 3 – A public school qualifying as an institution board, or body which has as its sole or principal object the carrying on of a PBA

Facts:

A public school as defined in the South African Schools Act, 1996, is registered as such by the Provincial Education Department. The school does not have a formal letter from the TEU confirming exemption under section 10(1)(cA)(i). It has, however, provided confirmation from the Education Department that it is registered as a public school.

The school has acquired a vacant stand to be developed as a sports ground for its sole use in promoting its sporting activities, which form an integral part of the provision of education to its learners.

A declaration has been submitted for the acquisition of the property (see 5).

Result:

The vacant stand acquired will qualify for exemption from the payment of transfer duty since the following requirements are met:

- The school is registered as a public school and has provided confirmation from the Education Department. It may therefore be accepted that the school qualifies for exemption under section 10(1)(cA)(i).
- The school provides necessary and useful services to the State and members of the general public (see 4.2.2) and its sole or principal object is the carrying on of PBA 4(a).
- The whole of the vacant stand will be used to conduct the PBA.

4.3 Meaning of “substantially the whole”

In order to qualify for exemption from the payment of transfer duty under section 9(1)(c) of the Transfer Duty Act, the whole property, or substantially the whole of the property acquired by a PBO or an institution, board or body must be used for purposes of carrying on a PBA.

The concept “substantially the whole” was introduced into the Act to ensure that the sole or principal object of a PBO remains the carrying on of PBAs, while at the same time allowing certain parameters within which the PBO can carry on its business undertakings or trading activities.⁶ Since PBOs effectively use assets to carry on PBAs as well as business undertakings or trading activities, the legislation dealing with transfer duty was also amended to give effect to the concept of “substantially the whole”.

Although the expression “substantially the whole” is used in various sections it is not defined in the Act. In Binding General Ruling (Income Tax): 20 “Interpretation of the Term ‘Substantially the Whole’ ” it is stated that the expression “substantially the whole” is regarded by SARS to mean 90% or more. PBOs, however, operate in an uncertain environment which makes proper planning difficult therefore in these circumstances SARS accepts a percentage of not less than 85%. If this percentage

⁶ Section 10(1)(cN).

at any time in the future becomes less than 85%, transfer duty will become payable (see 4.4).

The percentage must be determined using a method appropriate to the circumstances. It may therefore be calculated on the use of the property based on time (see **Example 4**) or surface area (see **Example 5**). Any portion of the property not specifically used for PBAs or other purposes, must be excluded from the calculation.

Example 4 – Determination of “substantially the whole” based on time usage

Facts:

Sunrise Church is a PBO which conducts PBA 5(a). On 1 March 2012 the church acquired a manse for occupation by a second resident minister appointed to focus on the youth ministry.

The minister's term of office ended on 31 August 2016 and in view of the decline in the number of young members of the congregation, it was decided not to fill the vacant position.

The manse was let to a third party from 1 September 2016 to 28 February 2017 and sold on 1 March 2017.

Result:

Initial acquisition

The acquisition of the manse on 1 March 2012 for the second resident minister qualifies for the exemption from the payment of transfer duty because –

- the church is a PBO;
- the church carries on a PBA; and
- the whole of the manse is occupied by the second resident minister employed by the church and therefore the manse is used to carry on the PBA.

Subsequent use up to the date of disposal

For the period 1 September 2016 to 28 February 2017 the manse was used for purposes other than carrying on the PBA.

During the period 1 March 2012 to 28 February 2017 the manse was used to carry on a PBA for 54 months and let for six months. PBA usage therefore amounts to 90% (54 months / 60 months × 100) from the date of acquisition until the date of disposal. This percentage exceeds the minimum acceptable percentage of 85%. The PBO has therefore used substantially the whole of the manse in carrying on its PBA.

Example 5 – Determination of “substantially the whole” based on area usage

Facts:

Caring Baby Centre, a PBO that is carrying on PBA 1(a), acquired a residence for the purposes of caring for abandoned babies. The centre confirmed that it will use only a portion of the residence for its PBA and will let the remaining rooms to a third party at a market-related rental. The area of the residence is 420 m² of which 360 m² will be used for its PBA.

Confirmation is submitted that the area of the residence to be let is 60 m² and that this area will not be increased in the future.

Result:

The area the PBO will use for its PBA in relation to the whole residence is taken into account to determine whether substantially the whole of the residence will be used for purposes of carrying on a PBA. The area to be used for the PBA in relation to the whole residence is $360 \text{ m}^2 / 420 \text{ m}^2 \times 100 = 85,7\%$. This percentage exceeds the minimum acceptable percentage of 85%. The PBO will qualify for the exemption from the payment of transfer duty for the acquisition of the residence under section 9(1)(c) of the Transfer Duty Act since substantially the whole of the residence is used to carry on a PBA.

4.4 Non-compliance

If at any time subsequent to the acquisition of property that has qualified for the exemption under section 9(1)(c) of the Transfer Duty Act the whole or substantially the whole of the property is used for a purpose other than for carrying on any PBA, transfer duty becomes payable. The date the property is used for a purpose other than for the carrying on of the PBA is deemed under the proviso to section 9(1)(c) of the Transfer Duty Act to be the date of acquisition for the purposes of section 3(1) of the Transfer Duty Act (by whom, when and to whom duty payable) and section 4 of the Transfer Duty Act (penalty and interest on late payment of duty). The value on which transfer duty is payable is, however, determined under section 2 of the Transfer Duty Act and is not affected by the proviso. It follows that transfer duty will be determined on the original value of the property on the actual date of acquisition, payable at the rate applicable at the deemed date of acquisition.

Should the duty not be paid within six months from the deemed date of acquisition, a penalty⁷ or interest⁸ of 10% a year for each completed month is payable, calculated from the deemed date of acquisition up to the date that the tax is paid.⁹

Example 6 – Transfer duty consequences as a result of subsequent non-compliance with the conditions for exemption

Facts:

Animal Safe Haven, a PBO, acquired residential property (first property) for R750 000 on 18 December 2012 for the purpose of providing a shelter for abandoned and ill-treated animals. It submitted confirmation to SARS of its status as an approved PBO together with a declaration that the whole of the property would be used for the carrying on of PBA 7(b).

On 27 May 2017 the haven acquired a second property which provided larger accommodation facilities to enable it to better carry on its PBA. As with the first property it submitted confirmation of its status as PBO together with a declaration that the whole of the second property would be used for the carrying on of PBA 7(b).

⁷ Section 4(1) of the Transfer Duty Act which is applicable to any transaction entered into before 1 March 2005.

⁸ Section 4(1A) of the Transfer Duty Act which is applicable to any transaction entered into on or after 1 March 2005.

⁹ See *Transfer Duty Guide* in paragraph 9.4.

As from 1 June 2017, the first property was let for commercial purposes and was therefore no longer used in carrying on its PBA.

Result:

Acquisition of first property

The first property qualified for the exemption from the payment of transfer duty because at the time of acquisition the haven –

- submitted confirmation that it is a PBO; and
- confirmed that the whole of the property will be used to carry on PBA 7(b).

Subsequent change in use

On 1 June 2017 the whole property was used for the purpose other than the carrying on of a PBA. Transfer duty is therefore payable on the value of the property at the date of acquisition which is R750 000 at the rate applicable on 1 June 2017. Unless the PBO pays the transfer duty within six months from the date the property is first used for such other purposes, namely, 1 June 2017, interest will become payable. Interest is calculated at the rate of 10% a year for each completed month that the transfer duty remains unpaid, calculated from the date of acquisition up to the date that the tax is paid.

Acquisition of second property

No transfer duty is payable at the time of the acquisition of the second property because the required confirmation of PBO status and intended usage was submitted to SARS.

4.5 Exemption of the transfer of property from a public benefit organisation to any other entity controlled by that organisation

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

- be a PBO; and
- transfer the property to any other entity controlled by that PBO.

The transfer and registration of property from a PBO to a separate entity that is taxable for income tax purposes may qualify for the exemption from the payment of transfer duty provided the transferee is controlled by the PBO. This “controlled by” requirement will be met if the transferee is –

- a company of which all the shares are held by a PBO (no shares may be held by any other person);
- a trust, the sole beneficiary of which is a PBO; or
- an association of persons or a non-profit company of which the sole member is a PBO.

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

Example 7 – Transfer of property from a PBO to any other entity controlled by that PBO

Facts:

Care Bears Community Centre, a PBO, owns the following properties under separate title deeds:

- Improved property in the central business area from where it conducts its activities of caring for homeless and destitute persons.
- Improved property used to care for terminally-ill persons. Part of the property is let for commercial use.
- A property bequeathed to the centre comprising ten flats from which rental income is derived.
- A vacant stand that the centre intends to develop as an orphanage which is currently being used as a parking facility.

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

The company is wholly owned by the centre.

Result:

The transfer of all the above properties from the PBO to the company will qualify for the exemption from the payment of transfer duty because –

- the centre is a PBO; and
- the properties are transferred to another entity which is controlled by the PBO, being the sole shareholder.

5. Application procedure for transfer duty exemption

An exemption from the payment of transfer duty is not a blanket exemption but an exemption for a specific transaction. Each transaction is considered on its own merits. A declaration which is available on eFiling www.sarsefiling.co.za must be submitted for each acquisition of property for which an exemption is required. No supporting documents are required to be submitted with the submission of the declaration. Supporting documents must, however, be retained and submitted when requested in writing by SARS through eFiling.

Supporting documents may include –

- the letter issued by the TEU granting approval to the PBO or an institution, board or body;
- an affidavit setting out 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 carry on one or more PBAs.

6. **Application procedure for approval as a public benefit organisation or an institution, board or body**

A newly established organisation or an organisation that has previously not applied for approval as a PBO or as an institution, board or body which requires exemption from the payment of transfer duty for the acquisition of property must complete the prescribed application form (Form EI 1).

The application form and relevant supporting documentation must be submitted to the TEU (see **Annexure B**). A request may be submitted for the application to receive priority attention if there is a transfer duty exemption pending the approval by the TEU of the applicant as a PBO or as an institution, board or body.

The TEU will issue a letter to inform the organisation whether its application for approval as a PBO or as an institution, board or body has been approved. It is not a requirement that a PBO or an institution, board or body renew its approval annually. The approval will be sustained as long as the PBO or institution, board or body continues to comply with all the requirements for approval. In cases of doubt the TEU should be contacted.

The TEU has discretion to approve an organisation as a PBO with retrospective effect if the TEU is satisfied that the organisation during the period before its application complied with the requirements of a “public benefit organisation” as defined in section 30(1).¹⁰ A PBO approved with retrospective effect may request a refund¹¹ of transfer duty if it is proved to the satisfaction of the Commissioner that transfer duty has been paid for an acquisition of property by a person who is, or has become, entitled to an exemption as at the date of the acquisition. Application for a refund must be made within five years from the date of payments. Information relating to the application for a refund and the relevant information required in order to process a refund application can be obtained from the SARS website.¹²

¹⁰ Section 30(3B).

¹¹ Refunds are dealt with in Chapter 13 of the Tax Administration Act 28 of 2011.

¹² **SARS Home > Types of Tax > Transfer Duty > Refunds.**

7. Conclusion

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

The following guides provide comprehensive information and guidance:

- *Transfer Duty Guide*
- *External Guide: Guide for Transfer Duty via eFiling*
- *Tax Exemption Guide for Public Benefit Organisations in South Africa*
- *Basic Guide to Income Tax for Public Benefit Organisations*
- *VAT 409 – Guide for Fixed Property and Construction*
- *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*

Legal Counsel

SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 11 March 2004
Date of 2nd issue : 9 December 2008
Date of 3rd issue : 22 September 2015

Annexure A – List of public benefit activities in Part I**NINTH SCHEDULE****PUBLIC BENEFIT ACTIVITIES**

(Section 30)

PART I**WELFARE AND HUMANITARIAN**

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

HEALTH CARE

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

LAND AND HOUSING

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

EDUCATION AND DEVELOPMENT

4. (a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- (b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- (c) "Adult education and training", as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.

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

RELIGION, BELIEF OR PHILOSOPHY

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

CULTURAL

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

CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

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

RESEARCH AND CONSUMER RIGHTS

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

SPORT

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

PROVIDING OF FUNDS, ASSETS OR OTHER RESOURCES

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

- (iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
- (iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a).

GENERAL

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

Annexure B – Contact details of the Tax Exemption Unit

Postal address	PO Box 11955 HATFIELD 0028
Physical address	Land Bank Building 271 Veale Street Nieuw Muckleneuk Pretoria 0181
Telephone	012 483 1700
Fax	012 483 1701
Email	teu@sars.gov.za