

**THE CHALLENGES OF VALUE-ADDED TAX COMPLIANCE
PROVISIONS FOR NON-PROFIT ORGANISATIONS: AN
EXPLORATIVE STUDY**

by

Ms. Isél Barnard

Student number: 29636958

Submitted in partial fulfilment of the requirements for the degree

MCom in Taxation

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA

Study leader:

Ms. Anculien Schoeman

Date of submission:

2017-08-20

Abstract

The non-profit sector plays a vital role in addressing developmental challenges including poverty, unemployment and inequality. To enable the developmental mandate of the non-profit sector, Government incorporates tax reliefs in legislation as behavioural incentives. But, despite government's objective to create an empowering platform for NPOs through tax incentives, the legal framework for the taxation of non-profit organisations, especially in terms of VAT, is complex and multi-layered. The complexities of current legislation relevant to NPOs paired with the inherent limitation of financial and technical resources is limiting government's aim to create an enabling environment for these entities to flourish. The challenges are a result of both the inherent nature of the NPO sector as well as legislative challenges and shortcomings and includes limitations in terms of technical and financial resources, tax policy intent, classification of project activities, definition of income and related VAT treatment and claiming of inputs and allocation.

Abstrak

Die nie-winsgewende sektor speel 'n belangrike rol in die stryd teen ontwikkelingsuitdagings, insluitende armoede, werkloosheid en ongelykheid. Om die ontwikkelingsmandaat van die nie-winsgewende sektor te stimuleer, stel die regering deur wetgewing belastingverligting vir die sektor in. Maar ten spyte van die regering se doel om 'n bemagtigingsplatform vir die nie-winsgewende sektor te skep deur belasting vrystellings, is die wetlike raamwerk vir belasting van nie-winsgewende organisasies, veral ten opsigte van BTW, kompleks. Die kompleksiteit van huidige wetgewing in terme van BTW, wat gepaard gaan met die inherente beperking van finansiële en tegniese hulpbronne, beperk die regering se doel om 'n bemagtigende omgewing te skep vir hierdie entiteite om te floreer. Die uitdagings is die gevolg van beide die inherente aard van die nie-winsgewende sektor, sowel as wetgewende uitdagings en tekortkominge en sluit in beperkings ten opsigte van tegniese en finansiële hulpbronne, belastingbeleid, indeling van projekaktiwiteite, definisie van inkomste en verwante BTW-behandeling en aanspraak making op insette en toekennings.

Key words

- Tax
- NPO
- SARS
- VAT
- Compliance
- Non-Profit Organisation
- Public Benefit Activity
- Public Benefit Organisation
- Welfare Activities

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES AND FACULTY OF LAW

Declaration Regarding Plagiarism

The Faculties of Economic and Management Sciences and Law emphasises integrity and ethical behaviour with regard to the preparation of all written assignments.

Although the lecturer will provide you with information regarding reference techniques, as well as ways to avoid plagiarism, you also have a responsibility to fulfil in this regard. Should you at any time feel unsure about the requirements, you must consult the lecturer concerned before submitting an assignment.

You are guilty of plagiarism when you extract information from a book, article, web page or any other information source without acknowledging the source and pretend that it is your own work. This does not only apply to cases where you quote the source directly, but also when you present someone else's work in a somewhat amended (paraphrased) format or when you use someone else's arguments or ideas without the necessary acknowledgement. You are also guilty of plagiarism if you copy and paste information directly from an electronic source (e.g., a web site, e-mail message, electronic journal article, or CD-ROM) without paraphrasing it or placing it in quotation marks, even if you acknowledge the source.

You are not allowed to submit another student's previous work as your own. You are furthermore not allowed to let anyone copy or use your work with the intention of presenting it as his/her own.

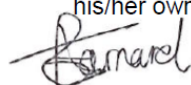
Students who are guilty of plagiarism will forfeit all credits for the work concerned. In addition, the matter will be referred to the Committee for Discipline (Students) for a ruling. Plagiarism is considered a serious violation of the University's regulations and may lead to your suspension from the University. The University's policy regarding plagiarism is available on the Internet at <http://www.library.up.ac.za/plagiarism/index.htm>.

The following declaration must accompany **all** written work that is submitted for evaluation. No written work will be accepted unless the declaration has been completed and is included in the particular assignment.

I (full names & surname):	Isél Barnard
Student number:	29636958

Declare the following:

1. I understand what plagiarism entails and am aware of the University's policy in this regard.
2. I declare that this assignment is my own, original work. Where someone else's work was used (whether from a printed source, the Internet or any other source) due acknowledgement was given and reference was made according to departmental requirements.
3. I did not copy and paste any information directly from an electronic source (e.g., a web page, electronic journal article or CD ROM) into this document.
4. I did not make use of another student's previous work and submitted it as my own.
5. I did not allow and will not allow anyone to copy my work with the intention of presenting it as his/her own work.



Signature

30 July 2017

Date

TABLE OF CONTENTS

LIST OF FIGURES AND TABLES	8
ACRONYMS USED IN THIS STUDY	9
CHAPTER 1: INTRODUCTION.....	10
1. BACKGROUND	10
2. PROBLEM STATEMENT	11
3. RATIONALE AND RESEARCH QUESTION.....	11
4. RESEARCH OBJECTIVES.....	12
5. STRUCTURE.....	12
CHAPTER 2: THEORETICAL FRAMEWORK	13
1. INTRODUCTION	13
2. OVERVIEW OF VAT.....	13
3. OVERVIEW OF NPOS IN SOUTH AFRICA	14
4. TAXATION OF NPOS.....	15
4.1. INTRODUCTION	15
4.2. DEFINING NPOS.....	15
4.2.1. NON-PROFIT COMPANIES AND NON-PROFIT ORGANISATIONS.....	16
4.2.2. ASSOCIATION NOT FOR GAIN.....	16
4.2.3. PUBLIC BENEFIT ORGANISATION	17
4.2.4. WELFARE ORGANISATION	17
4.3. PUBLIC BENEFIT ACTIVITIES AND WELFARE ACTIVITIES	18
4.3.1. WELFARE AND HUMANITARIAN	20
4.3.2. HEALTHCARE	20
4.3.3. LAND AND HOUSING	20

4.3.4. EDUCATION AND DEVELOPMENT	21
4.3.5. CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE.....	23
4.4. WELFARE ACTIVITIES AND TRADING ACTIVITIES	23
4.5. SPECIFIC VAT PROVISIONS	24
4.5.1. VENDORS	25
4.5.2. SUPPLY.....	27
4.5.3. GOODS AND SERVICES	29
4.5.4. IN THE COURSE OR FURTHERANCE OF AN ENTERPRISE.....	29
4.6. CONCLUSION	31
CHAPTER 3: METHODOLOGY	32
1. INTRODUCTION	32
2. RATIONALE FOR AN EXPLORATORY QUALITATIVE STUDY	32
3. RESEARCH DESIGN	33
4. DATA GATHERING	34
4.1. UNSTRUCTURED INTERVIEWS.....	34
4.2. SAMPLING	36
5. DATA ANALYSIS.....	37
6. ETHICAL CONSIDERATIONS.....	38
7. CONCLUSION	39
CHAPTER 4: EMPIRICAL FINDINGS.....	40
1. INTRODUCTION	40
2. THEMES IDENTIFIED	40
3. CHALLENGES IDENTIFIED	41
3.1.1 LIMITATION IN TERMS OF TECHNICAL AND FINANCIAL RESOURCES	41
3.2.1 CLASSIFICATION OF PROJECT ACTIVITIES	43

3.2.2	DEFINITION OF INCOME AND RELATED VAT TREATMENT	44
3.2.3	CLAIMING INPUTS – ALLOCATION	46
3.2.4	REALISATION OF TAX POLICY INTENT	47
4.	CONCLUSION	48
CHAPTER 5: CONCLUSION		49
1.	INTRODUCTION	49
2.	RECOMMENDATIONS.....	49
3.	CONCLUSION	50
LIST OF REFERENCES		52
ANNEXURE A: DEFINITIONS AND KEY TERMS		55
ANNEXURE B: PBO VS WELFARE ACTIVITIES		57
ANNEXURE C: DETAILED COMPARISON OF PBA AND WELFARE ORGANISATION ACTIVITIES.....		58
ANNEXURE D: VAT PROVISIONS SPECIFIC TO NOT FOR GAIN ASSOCIATIONS.....		67
ANNEXURE E: VAT PROVISIONS SPECIFIC TO WELFARE ORGANISATIONS		74
ANNEXURE F: INTERVIEW SCHEDULES		76

LIST OF FIGURES AND TABLES

Figure/ Table	Description	Page
Figure 1	NPO Sectorial Distribution	5
Figure 2	Framework for Terminology and definitions of NPC's	7
Figure 3	VAT Building Blocks	16
Figure 4	Research Design	24
Table 1	Public Benefit Activities and Welfare Activities	9

ACRONYMS USED IN THIS STUDY

ITA	Income Tax Act No 58 of 1962
ITAC	International Trade Administration Commission
NPC	Non-Profit Company
NDP	The National Development Plan
NPO	Non-Profit Organisation
OECD	Organisation for Economic Co-operation and Development
PBA	Public Benefit Activity
PBO	Public Benefit Organisation
SARS	South Africa Revenue Service
TAA	Tax Administration Act No 28 of 2011
TB	Tuberculosis
VAT	Value Added Tax
VAT Act	Value Added Tax Act No 89 of 1991

CHAPTER 1: INTRODUCTION

1. BACKGROUND

It is more than two decades since the advent of democracy in 1994, and there are still many developmental challenges facing South Africa, including poverty, unemployment and inequality (Loayza, Teran & Rigolini, 2013; Akukwe, 2013; Smith, 2007). The Constitution of South African has rooted a number of such vital civil liberties in the Bill of Rights, which are designed to secure a quality life for all South Africans (Wyngaard, 2014). With waves of protests beckoning these rights over the last decade throughout South Africa (Steyn, 2015), it is now more than ever imperative to identify ways to overcome these trials.

Socio-economic rights would remain unattainable for many South Africans without the impact of a functional non-profit sector (Wyngaard, 2014). Subsequently, the National Development Plan (NDP), which is South Africa's blueprint policy to address these challenges by 2030, specifically highlights the vital role that non-profit organisations (NPOs) must play in achieving these goals (The Presidency, 2013).

The government has accordingly implemented a partnership model with NPOs and depends heavily on their services in addressing these developmental challenges (Springveldt, 2009). The tax system is one of the key tools used by government to influence the behaviour of individuals and businesses (Congdon, Kling & Mullainathan, 2009; Weber, Fooker & Herrmann, 2014). One of these behavioural incentives is tax benefits given to NPOs in order to create an enabling environment for these organisations to achieve objectives addressing social and development needs (South African Revenue Service (SARS), 2016). By means of these incentives, NPOs contribute to easing the financial burden borne by government by providing basic goods and developmental services to the general public which will normally fall within the ambit of responsibility of government.

2. PROBLEM STATEMENT

Despite government's objective to create an empowering platform for NPOs through tax incentives, the legal framework for the taxation of non-profit, welfare and public benefit organisations is complex and multi-layered. The complexity and lack of understanding of the provisions relevant to non-profit organisations specifically in terms of Value Added Tax (VAT) as well as the interaction, or rather non-interaction, with income tax legislation, can result in non-compliance by these organisations, especially in the context of VAT compliance.

For example, if an NPO applies specific favourable provisions while not qualifying for it as per legislation, it can result in additional taxes, penalties and interest. On the other hand, organisations can also fail to benefit from tax reliefs, which will inhibit their developmental impact, which is in contrast with the aim of government to support these organisations through tax reliefs. Furthermore, the technicality and complexity can result in a significant administrative burden for these organisations, which overshadows the intended positive impacts.

3. RATIONALE AND RESEARCH QUESTION

If one takes into account the complexity of VAT legislation for NPOs in South Africa, and the need for a clear understanding of the challenges that influence compliance in order to improve the developmental impact of these organisations, it is clear that further research in this study area is vital. Taking into account the problem statement discussed above, the aim of the report is to answer the following research question:

What are the key challenges for NPOs in South Africa to
comply with VAT legislation and regulations?

While literature broadly identifies this issue, no in-depth study has been commissioned that explores the technical complexities and practical compliance challenges for these entities. The aim of the study is thus to fill the abovementioned gap in framing a clear understanding of the issues that NPOs face in terms of VAT compliance.

4. RESEARCH OBJECTIVES

Although the theme certainly suggests a fertile area of research, the specific research objectives include:

- exploring the legislative environment that guides the taxation of NPOs in South Africa;
- identifying the challenges that NPOs face in terms of VAT compliance;
- unpacking the challenges in the light of the current legislative framework; and
- identifying areas where further guidance is needed.

5. STRUCTURE

After the current introductory background chapter which commenced with the background information, problem statement and rationale of the study (Chapter One), the research report will focus on the theoretical framework and key literature findings (Chapter Two). In Chapter Three, the report will focus on the research methodology followed throughout the study before describing the empirical finding and the challenges identified in terms of VAT compliance for NPOs through the interviews conducted (Chapter Four). The study will conclude with the concluding arguments and recommendations regarding the research question (Chapter Five).

CHAPTER 2: THEORETICAL FRAMEWORK

1. INTRODUCTION

In Chapter One, a broad background on the research question was presented to support the research objective of the study, and general definitions and concepts referred to in the study were provided. In the second chapter, the researcher will present a brief background on VAT, both internationally and locally, where after the chapter will continue with a concise outlook on the role that NPOs play in South Africa. The chapter will conclude with an outline of the VAT provisions according to South African legislation, specifically focused on provisions forming the compliance framework for NPOs.

2. OVERVIEW OF VAT

VAT is an indirect tax imposed on the consumption of goods and services (Lang, Melz & Kristoffersson, 2009) and is imposed at each stage of production collected on behalf of the government by businesses that are required to register as agents or vendors (James, 2011). Internationally, VAT is one of the most common forms of consumption taxes (Lang et al., 2009).

Research by the Organisation for Economic Co-operation and Development (OECD, 2015) on tax revenue trends over 50 years indicates general consumption taxes as one of the fastest growing sources of revenue, especially VAT, which is used in 33 of the 34 member countries.

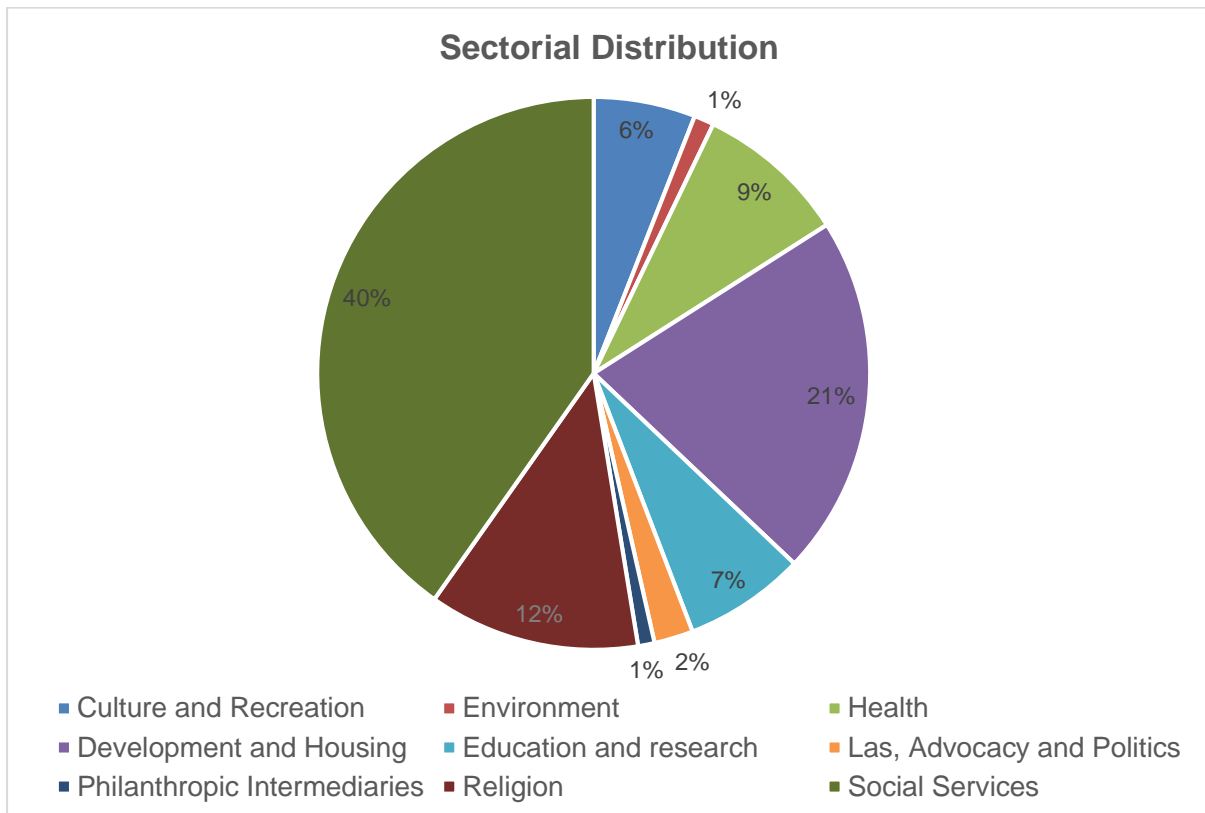
In South Africa, VAT is levied in terms of the Value-Added Tax Act No 89 of 1991 (VAT Act) on the domestic supply and import of goods and services, while exported goods and services are zero-rated. To address the regressive impact of VAT on the poor, selected basic foods (such as maize meal, milk and unprocessed vegetables) are zero-rated (Delfin, Kearney & Robinson, 2005).

3. OVERVIEW OF NPOs IN SOUTH AFRICA

NPOs collectively represent a diverse range of organisations across political, economic and social boundaries adding up to approximately 150 000 registered NPOs on the national database (Department of Social Development (DSD), 2016). The South African non-profit sector is estimated to be worth more than R40 billion in 2017, including cash and in-kind payments (Stats SA, 2015). Of the abovementioned R40 billion, volunteer labour contributed 40% to the market, private sector 25% and self-generated income contributed 35% to the non-profit sector. The sector further employs in excess of 650 000 full-time workers, which represents roughly 7% of the total non-agricultural workforce in South Africa (Swilling & Russell, 2002:16, Stats SA, 2015).

From Figure 1 below, it is clear that in terms of the sectorial distribution, the biggest sectors in terms of non-profit activity are Social Services (40%), Development and Housing (21%) and religious activities (12%).

Figure 1: NPO Sectorial Distribution



Source: Stats SA, 2015

4. TAXATION OF NPOs

4.1. INTRODUCTION

In terms of literature, the general taxation of NPOs has been thoroughly discussed both internationally (Moore, Hadzi-Miceva & Bullain, 2005; Steinberg, 2006; Hansmann, 1981) and locally (Habib, 2005; Lieberman, 2001). However, in-depth research is scarce with regard to the legislative provisions of VAT for NPOs in South Africa and the practical implication on VAT compliance. Guidance is given by non-academic sources such as the VAT 414 Guide (SARS, 2016), but these papers have a broad focus and do not unpack the technical requirements in adequate detail, nor do they provide clarity on dealing with critical issues in practice.

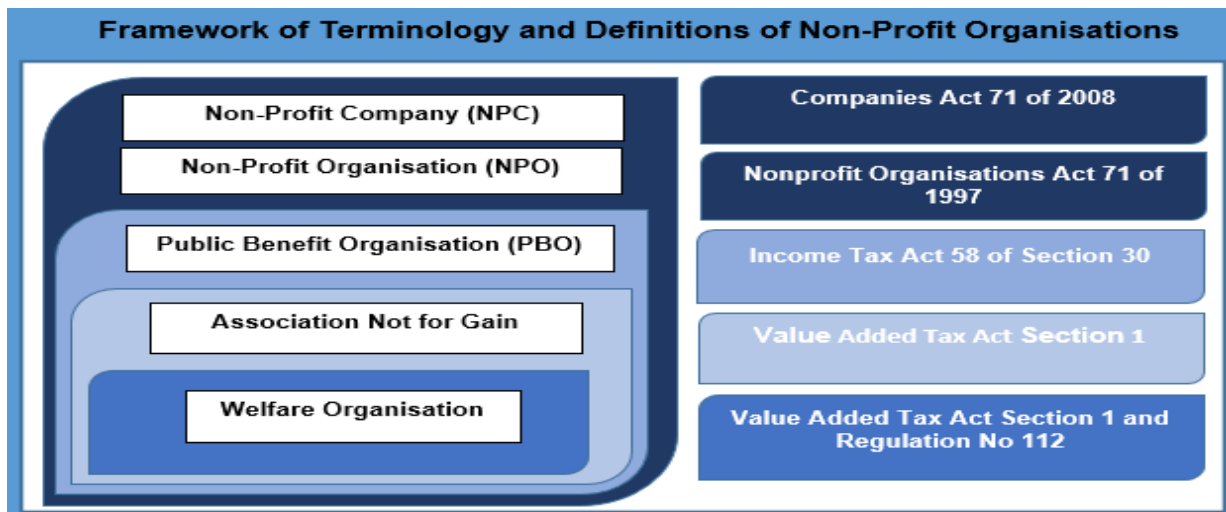
Although NPOs play a major role in addressing development challenges in South Africa (Springveldt, 2009; The Presidency, 2013), they make up less than 1% of all registered VAT vendors in South Africa (SARS, 2015). NPOs can qualify for certain preferential tax provisions if they satisfy the definitions and requirements set out in tax legislation. However, there is often a misperception that all non-profit organisations that fulfil a philanthropic or benevolent purpose automatically have tax-exempt and donor deductibility status (Brewis, 2004).

4.2. DEFINING NPOs

Varied terminology and definitions are used in legislation to define entities that qualify for tax benefits. For income tax purposes, the term Public Benefit Organisation (PBO) is defined in Section 30 and 30A of the Income Tax Act (58 of 1962) (ITA), while the VAT Act classifies organisations as either “association not for gain” or “welfare organisation”.

Figure 2 on the following page illustrates the complexity of defining non-profit organisations.

Figure 2: Framework for terminology and definitions of NPCs



As highlighted in the figure above, there are different types of non-profit organisations. The following section defines each of these forms of organisations to clarify the context in which these definitions are used in this study.

4.2.1. NON-PROFIT COMPANIES AND NON-PROFIT ORGANISATIONS

There are different forms of NPOs. A non-profit company (NPC) is a company, as defined in the Companies Act 71 of 2008, to be “incorporated for public benefit or other object relating to one or more cultural or social activities or communal or group interest” (CIPC, 2016). Organisations other than companies (trusts and any associations of persons), established for a public purpose can register under the Non-profit Organisations Act, 1997 with the Department of Social Development (Honey, 2014).

4.2.2. ASSOCIATION NOT FOR GAIN

The definition of “association not for gain” as set out in Section 1 of the VAT Act includes “any other society, association or organization, whether incorporated or not (other than an educational institution in respect of which the provisions of paragraph (c) apply), which is carried on otherwise than for the purposes of profit or gain to any proprietor, member or shareholder and is, in terms of its memorandum, articles of

association, written rules or other document constituting or governing the activities of that society, association or organization—

- (aa) required to utilize any property or income solely in the furtherance of its aims and objects; and
- (bb) prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of the payment in good faith of reasonable remuneration to any officer or employee of the society, association or organization for any services actually rendered to such society, association or organization; and
- (cc) upon the winding-up or liquidation of such society, association or organization, obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other society, association or organization with objects similar to those of the said society, association or organization.”

4.2.3. PUBLIC BENEFIT ORGANISATION

For income tax purposes, the term PBO is defined in Section 30 and 30A of the Income Tax Act (58 of 1962) (ITA) and is an organisation which is an NPO, trust or association of persons, that complies with Section 30 of the ITA and operates with the principle objective to carry on one or more public benefit activities (own emphasis) (defined in Part I of the Ninth Schedule) where these activities are carried on in a non-profit manner, with an altruistic or philanthropic intent and no such activity promotes direct or indirect economic self-interest and the activity is for the benefit or accessible to the general public at large.

4.2.4. WELFARE ORGANISATION

A “welfare organisation” is defined in the VAT Act to mean “any public benefit organisation contemplated in paragraph (a) of the definition of “public benefit organisation” in Section 30 (1) of the Income Tax Act that has been approved by the

Commissioner in terms of Section 30 (3) of that Act, if it carries on or intends to carry on any welfare activity (own emphasis) determined by the Minister for purposes of this Act”.

4.3. PUBLIC BENEFIT ACTIVITIES AND WELFARE ACTIVITIES

In this regard, it should be noted that not all approved public benefit organisations conducting public benefit activities for income tax purposes, are per se “welfare organisations” for VAT purposes. In order to be afforded “welfare organisation” status for VAT purposes, the organisation should not only be approved as a PBO, but must also conduct at least one “welfare activity” listed by the Minister in Regulation No. 112 (SARS, 2016).

The table below refers to the listing of headings of “PBO activities” listed in Part I of the Ninth Schedule for income tax purposes compared to the headings of “welfare activities” listed by the Minister in Regulation No. 112 for VAT purposes.

Table 1: Public Benefit Activities and Welfare Activities

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

As noted in **Table 1** above, there are 11 public benefit activities headings. The listing of public benefit activities is then further refined for PBOs seeking Section 18A status and only five of these headings are listed in Part II of the ninth schedule as Section 18A activities, being:

- (a) welfare and humanitarian;
- (b) healthcare;
- (c) land and housing;
- (d) education and development; or
- (e) conservation, environment and animal welfare.

Section 18A provides for further income tax relief provisions, not available to PBOs which do not perform these specific activities. The most protruding distinction is the fact that Section 18A-approved PBOs can issue Section 18A tax exemption certificates to donors, which entitles donors to claim their contributions as tax deductions.

The five headings listed as public benefit activities for Section 18A purposes are also listed as the welfare activity headings listed in Regulation No. 112 for VAT purposes. It should be emphasised, however, that there are differences between the detailed activities listed under the headings in the Ninth Schedule and Regulation No. 112. In order to be afforded “welfare organisation” status for VAT purposes, an entity should not only be approved as a PBO, but must also conduct “welfare activities” that are specifically listed in Regulation No. 112.

A comparison of the public benefit activities listed under the five activity headings as per Part II of the Ninth Schedule and the detailed welfare activities listed in Regulation No. 112 have been performed to note the main similarities and differences between the activities. The main differences under each of the headings have been summarised in the following subsections:

4.3.1. WELFARE AND HUMANITARIAN

In terms of Regulation No. 112, activities relating to the “provision of facilities for the protection and care of children under school-going age of poor and needy parents”, should be *other than* the services contemplated in Section 12(j) of the VAT Act in order to qualify as a welfare activity. The service of caring for children by a crèche or an after-school care centre is an exempt supply in terms of Section 12(j) and is specifically excluded from being classified as a welfare activity.

4.3.2. HEALTHCARE

No evident differences are noted between the activities listed as public benefit activities and welfare activities.

4.3.3. LAND AND HOUSING

To qualify as welfare activities, land and housing activities in terms of Regulation No. 112 include the “development, construction, upgrading, conversion or procurement of housing units must be 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)”. To qualify as a public benefit activity, Part II of the Ninth Schedule requires that the activities must be “to 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”.

Public benefit activities per Regulation No. 112 further include the “provision of residential care for retired persons, promoting official land reform programmes, granting of loans for housing projects listed and lastly the provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations”, which are not included in the scope of welfare activities.

4.3.4. EDUCATION AND DEVELOPMENT

The welfare activities listed in the regulation exclude the educational supplies listed as exempt supplies in terms of section 12(h) of the VAT Act. The educational supplies qualifying as exempt supplies as per section 12(h) include:

“(i) the supply of educational services–

- (aa) provided by the State or a school registered under the South African Schools Act, 1996 (Act No. 84 of 1996), or a public college or private college established, declared or registered as such under the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);
- (bb) by an institution that provides higher education on a full time, part-time or distance basis and which is established or deemed to be established as a public higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or is declared as a public higher education institution under that Act, or is registered or conditionally registered as a private higher education institution under that Act; or
- (cc) by any public benefit organisation as contemplated in paragraph (a) of the definition of “public benefit organisation” contained in section 30 (1) of the Income Tax Act that has been approved by the Commissioner in terms of section 30 (3) of that Act and which has been formed for-
 - (A) adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), vocational training or technical education;
 - (B) education and training of religious or social workers;
 - (C) training or education of persons with a permanent physical or mental impairment;
 - (D)
 - (E) provision of bridging courses to enable indigent persons to enter a higher education institution as envisaged in subparagraph (bb);

(ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and

services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or payment for lodging or board and lodging; or

(iii) the supply of services to learners or students or intended learners or students by the Joint Matriculation Board referred to in section 15 of the Universities Act, 1955 (Act No. 61 of 1955):

Provided that vocational or technical training provided by an employer to his employees and employees of an employer who is a connected person in relation to that employer does not constitute the supply of an educational service for the purposes of this paragraph;”

There are quite a few exemptions listed for educational services in the VAT Act and detailed consideration of the welfare activity listing relating to educational services is necessary as these activities focus on a wider net of activities not necessarily exempt in terms of section 12(h). The following activities are specifically included as welfare activities relating to educational services:

(a) Public benefit activities refer to the provision of *education* by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996), where the welfare activities refer to the provision of *school buildings or equipment* for public schools and educational institutions engaged in exempt activities as contemplated in section 12(h) of the VAT Act, for the benefit of the poor and needy and physically disabled.

(b) In respect of higher education, public benefit activities refer to provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997). The welfare activity listing includes *career guidance and counselling services* provided to persons for purposes of attending any school or higher education institution as envisaged in section 12(h)(i)(aa) and (bb) of the VAT Act.

(c) Public benefit activities refer to the provision of “adult education and training”, as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education, where welfare activities include programmes addressing *life skills needs* of children at schools, pre-schools or educational institutions as envisaged in section 12(h).

(d) Public benefit activities refer to the provision of “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, where welfare activities include educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.

4.3.5. CONSERVATION, ENVIRONMENT AND ANIMAL WELFARE

Public benefit activities include the establishment and management of a transfrontier which 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, which are not listed as welfare activities.

4.4. WELFARE ACTIVITIES AND TRADING ACTIVITIES

Even though a certain activity performed by an organisation might be listed as a welfare activity, not all activities performed by welfare organisations are necessarily welfare activities. Some activities performed by NPOs may be similar or the same as trading activities carried on by ordinary businesses, in which case normal VAT rules have to be applied. This is one of the more complex aspects to consider in order to determine the correct VAT treatment of supplies made by NPOs (Brewis, 2004).

This particular problem was emphasised in a recent Supreme Court of Appeal (SCA) case *George Marshall N.O & Others v CSARS, 2016 (816/2015) ZASCA 158*. The trust received payments from government for the supply of aero-medical services (rescue and caring of persons in distress) rendered on behalf of provincial health

departments. The trust is a VAT vendor and welfare organisation for VAT purposes. The issue for consideration in this case was whether the payments received by the trust constituted consideration for a “deemed” as opposed to an “actual” supply of services by the trust to Government. An actual supply of services to government would be subject to VAT at the standard rate (14%) and a deemed supply would be subject to VAT at the zero rate (0%). In the judgement, it was stated that there is no reason why PBOs that engage in commercial activities should be treated differently from commercial entities. This judgement in effect results in services rendered to government being 14% more expensive and that this money could have been used for additional service delivery.

4.5. SPECIFIC VAT PROVISIONS

Once the appropriate definition has been ascribed to an organisation in terms of the ITA and VAT Act and if the applicable welfare activities have been identified, the relevant VAT provisions can be considered.

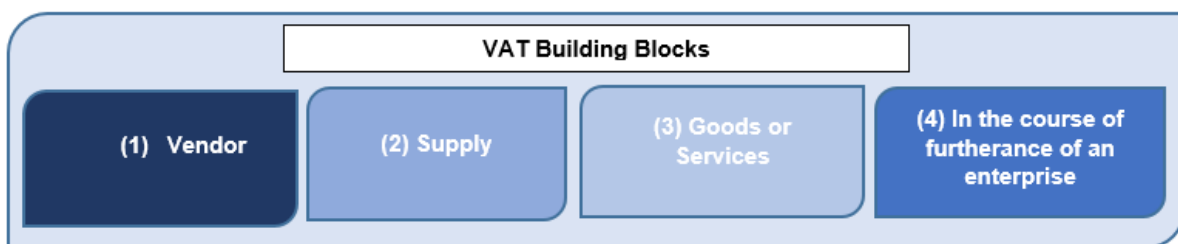
South African VAT legislation contains certain special provisions that are only available to a person qualifying as an “association not for gain” or a “welfare organisation”. A welfare organisation is, in essence, an association not for gain which carries on one or more of the welfare activities as discussed in the previous sections. Please refer to Annexure D for a summary of provisions specifically relevant to an association not for gain and Annexure E for provisions relating to qualifying welfare organisations.

Even though there are certain special VAT provisions for associations not for gain and welfare organisations, most of the principles regulating the VAT treatment of these entities are embedded in the general basic principles of the VAT legislation. These basic principles provide a framework of application. These basic principles are not necessarily defined in detail in the VAT Act and legal interpretation is required in some facets. Legal interpretation implies the comprehension of legislation and case law, as well as the guidelines and values used to construct the judicial meaning (Botha, 2010).

The charging provision in terms of the VAT Act is set out in section 7(1). This section stipulates that subject to certain exemptions, exceptions, deductions and adjustments, a tax to be known as value-added tax is to be imposed on (1) vendors, registered in terms of the VAT Act, on the (2) supply by any vendor of (3) goods or services supplied by him on or after the commencement date in the (4) course of furtherance of any enterprise carried on by him. The terms noted in (1) – (4) are the building blocks of VAT-charging provisions.

In figure 3 below, a brief description of each of the building blocks of the VAT-charging provision and how this applies to associations not for gain and welfare organisations is depicted. This serves as a basis for the NPO VAT compliance framework.

Figure 3: VAT Building Blocks



Source: Section 7(1) VAT Act

4.5.1. VENDORS

A person that is required to register as a VAT vendor in terms of the VAT Act has to levy VAT on the supply of taxable supplies and an input tax credit may be claimed on qualifying expenses. Compulsory VAT registration is required in terms of section 23, 24, 26, 50 and 50A of the VAT Act, read with section 22 and 23 of the Tax Administration Act No. 28 of 2011 (TAA). A person is required to register as a VAT vendor if the taxable supplies made in the course or furtherance of an enterprise for a consideration in the preceding 12 months have exceeded R1 million, or if it is anticipated that the total value of taxable supplies will exceed R1million in terms of a contractual obligation within the following 12 months.

An entity can apply for voluntary VAT registration in terms of section 23(3), 24(5), (6) and (7), which will result in the entity charging VAT on all taxable supplies, but then also enabling the entity to claim input VAT on qualifying expenses. Voluntary application can be submitted by a person conducting an enterprise and the value of taxable supplies have exceeded R50 000 in the preceding 12 months or it can be reasonably expected that this threshold will be met within the first 12 months from date of registration.

Section 23(3)(a) of the VAT Act allows for automatic qualification for voluntary registration of welfare organisations. Welfare organisations can therefore register as VAT vendors whether or not they make any taxable supplies for a consideration.

In section 23(5) an association not for gain which carries on its enterprise in branches, divisions, or as separate enterprises, may apply in writing to SARS for any of those branches, divisions or enterprises to be regarded as separate persons for VAT purposes. This can be used to reduce the impact of VAT for associations not for gain, as each branch division or separate enterprise will be deemed to be a separate person and measured separately against the VAT registration requirements. Only those exceeding the voluntary or compulsory registration thresholds will be required to register for VAT. This provision is not available to other vendors.

With certain exceptions, vendors are required to account for VAT on an invoice basis in terms of section 15 of the VAT Act. On invoice base, a vendor is required to account for VAT when an invoice is issued or any payment is received. Section 15(2)(a)(vi) of the VAT Act allows for an association not for gain to apply to SARS in writing to make use of the payment basis of accounting. The payment basis of accounting allows the association to account for VAT when payments are made on purchases and when payments are received for sales. However, if the consideration in money for the supply of goods or services is R100 000 or more, the vendor must account for the supply on invoice basis. The payment basis of accounting provides for a better cash flow management for associations not for gain.

4.5.2. SUPPLY

A transaction should constitute a “supply” in order to attract VAT. The term “supply” is defined in section 1 of the VAT Act and includes a “sale, rental, agreement, an instalment credit agreement and any other form of supply whether voluntary, compulsory or by operation of law” and includes barter transactions.

Barter transactions

Per implication of the definition of supply, any transactions where goods are supplied for consideration other than “money” (barter transactions), will also qualify as a supply. In *South Atlantic Jazz Festival (Pty) v CSARS (2015) ZAWCHC 8*, the taxpayer staged an annual jazz festival. Sponsorship agreements were concluded and the sponsors (SAA, City of Cape Town, SABC and Telkom) provided money, goods and services in return for goods and services in the form of marketing and branding, delivered by the taxpayer. The court found that the exchange of sponsorship for marketing and branding services is a barter transaction and VAT had to be accounted for despite the sponsorship agreements that all supplies excluded VAT.

This concept is important in order to identify any reciprocal services that might trigger a VAT supply, especially in the context of NPOs where donations can also be in consideration, other than money.

Deemed supplies

There are certain deeming provisions set out in section 8 and 18(3) of the VAT Act. These provisions specifically include certain transactions not satisfying the definition of “supply” as “deemed supplies”.

In terms of section 8(5), a designated entity, which includes a welfare organisation, is deemed to supply services to a public authority or municipality to the extent that it receives any payment (i.e. government funding) from these entities in the course or

furtherance of its welfare activities. This is relevant for purposes of claiming an input tax deduction in respect of VAT incurred on expenses.

The VAT legislation specifically provides that supply of services under section 8(5) mentioned above are deemed to be taxable supplies, subject to VAT at a rate of 0% in terms of section 11(2)(n). An association not for gain should therefore account for output tax at the rate of 0% on any government funding received for purposes of conducting its welfare activities subject to having required supporting documentation.

In terms of section 8(5A), a vendor (excluding designated entities as referred to in section 8(5)) is deemed to supply services to a public authority, municipality and certain constitutional institutions to the extent that it receives any *grant* from these entities in the course or furtherance of a taxable enterprise carried on by it. Grants received by associations not for gain will qualify for this section and the application is an important consideration for purposes of claiming an input tax deduction in respect of VAT incurred on expenses.

The VAT legislation specifically provides that a supply of services under section 8(5A) mentioned above are deemed to be taxable supplies, and are subject to VAT at a rate of 0% in terms of section 11(2)(t). An association not for gain should therefore account for output tax at the rate of 0% on any grant received from a South African public authority, municipality or constitutional institution for the purposes of making taxable supplies for a consideration subject to having required supporting documentation.

Exempt supplies

There also certain supplies exempt from VAT in terms of section 12 of the VAT Act. If a supply is exempt from tax, no output tax will be levied on the supply, but then also no input tax can be claimed on expenses incurred in relation to the exempt supply.

Supply of donated goods or services are exempt from VAT in terms of section 12(b). The exemption includes the supply of any other goods made or manufactured by such

association, provided that at least 80% of the value of the materials used to make or manufacture the goods consist of donated goods.

Exemption in terms of importation VAT

Section 13(3), read with para. 5 of Schedule 1 to the VAT Act further provides that goods donated (i.e. goods forwarded unsolicited and free of charge) by a non-resident of South Africa to an association not for gain and imported by that association under conditions prescribed by the International Trade Administration Commission (ITAC), are exempt from VAT on importation.

4.5.3. GOODS AND SERVICES

Goods are defined in section 1 as “corporeal movable things, fixed property and any real right and electricity”. Goods explicitly exclude money (excluding coins made from precious metal) and revenue stamps.

Services are very widely defined in section 1 and include “granting, session or surrender of any right of making available any facility or advantage”. Certain goods and services are deemed to be a supply in terms of section 8 (refer to the “supply” definition).

4.5.4. IN THE COURSE OR FURTHERANCE OF AN ENTERPRISE

An “enterprise” is defined in section 1 as any *enterprise* or activity continuously or regularly carried on by any person in South Africa in the course or furtherance of which goods or services are supplied for *consideration*, whether for a profit or not.

Welfare activities of welfare organisations specifically included in the “enterprise” definition

Without limiting the application of the enterprise definition in paragraph (a), paragraph (b) of the definition further makes specific inclusion, including activities of welfare organisations. This includes supplies made by welfare organisations in the ambit of VAT provisions, even if the definition of “enterprise” is not satisfied. As welfare organisations do not generally supply goods or services for “consideration”, welfare organisations would fall short of the definition and therefore not be able to claim any inputs on expenses incurred to conduct their welfare activities, making this inclusion in the definition of “enterprise” one of the most beneficial provisions for welfare organisations.

Donation to association not for gain excluded from “consideration” definition

The term “consideration” is defined in section 1 and includes any payment made or to be made, whether money or otherwise, in response to or for the supply of goods and services, and explicitly excludes any payment made by a person as a “donation” to an association not for gain. Therefore, any payment made to an association not for gain which constitutes a “donation” as defined, falls outside the scope of VAT and no output tax is payable on the receipt thereof.

If, however, the requirements contained in the definition of “donation” are not met, the association not for gain will be required to account for output tax equal to the tax fraction of any cash amount or the open market value of any goods and/or services received.

The term “donation” is defined in section 1 and means payment whether in money or otherwise voluntarily made to any association not for gain for the carrying out of the purpose of the association and in respect of which no identifiable direct valuable benefit arises or may arise from the supply of goods and services. These payments do not include payment made by a public authority or municipality.

Therefore, provided the supply of goods or services made by an association not for gain does not provide any identifiable direct valuable benefit in return, no output tax will be payable on the receipt of any donations as it is not regarded as “consideration” for the supply of goods or services by the association.

As the definition of “donation” specifically excludes payments made by a public authority or municipality, an association not for gain is required to account for output tax at either the standard rate of 14% or 0% on any payments it receives from public authorities and municipalities.

4.6. CONCLUSION

This section formulated the framework of definitions and special provisions relating to NPOs contained in the ITA and VAT Act, in the context of VAT compliance. Correctly defining an organisation and understanding the basic principles of VAT is at the heart of ensuring VAT compliance of NPOs.

The next chapter provides an overview of the research methodology applied in conducting an exploratory qualitative study into the challenges faced by NPOs in the context of VAT compliance.

CHAPTER 3: METHODOLOGY

1. INTRODUCTION

The following section provides an overview of the proposed research methodology. The section commences with the rationale for the choice of an exploratory qualitative study, where after the research design is unpacked in more detail, including the data gathering and analysis processes. The section concludes with an overview of the ethical considerations and scope of the study.

2. RATIONALE FOR AN EXPLORATORY QUALITATIVE STUDY

The primary goal of exploratory qualitative research is to attain some form of understanding in terms of a particular phenomenon (Verstehen, 2000). Exploratory research is thus typically used when accurate information is inadequate and the data hard to gather. From the previous chapter, it is evident that even though the topic has been addressed to a degree by practice notes by SARS, to date no author has focused on the complexities of VAT compliance in non-profit organisations on an academic front. As exploratory studies generally make use of qualitative research (used to achieve an understanding of fundamental motives, sentiments, and drives) as a result of the lack of quality numerical data in an exploratory environment (Babbie, 2007; Shields & Hassan, 2006), the study accordingly made use of interviews in order to source qualitative data.

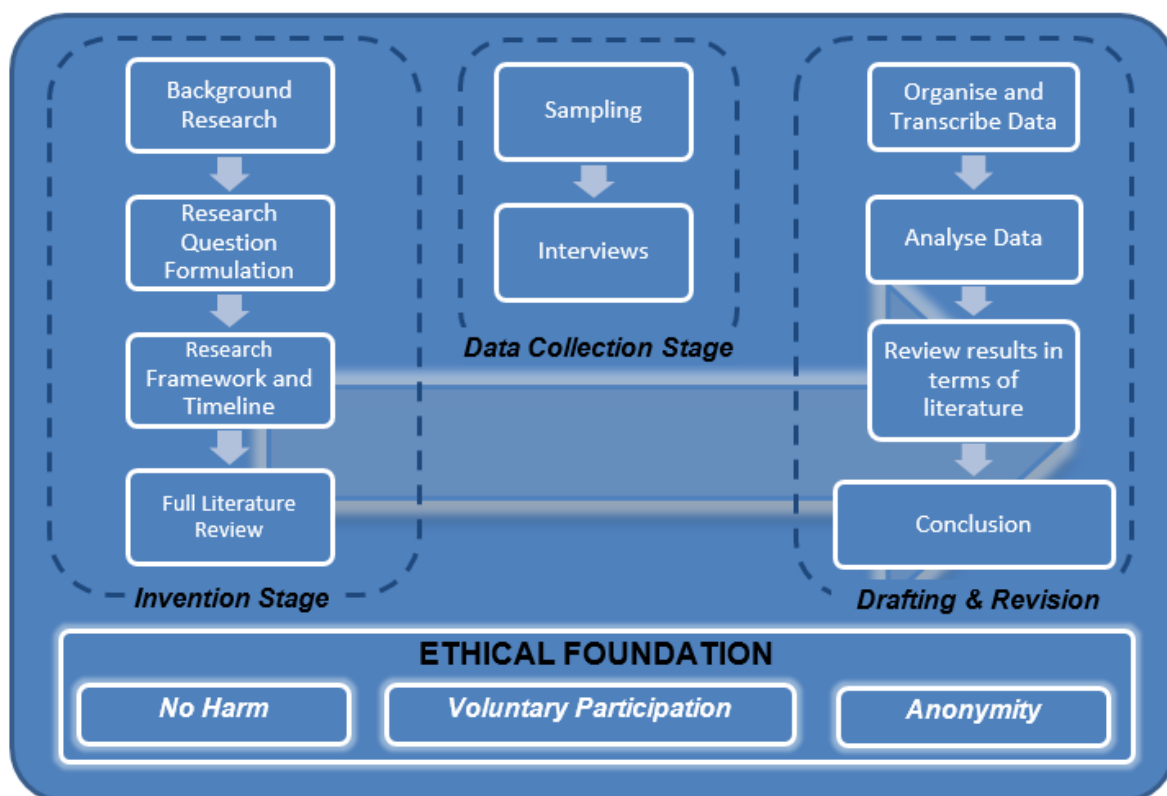
Even though the report depended on a large volume of secondary data sources, including case studies, technical notes and legislation, the report made use of a qualitative deductive approach to test the theory (Blaikie, 2007). Berg (1989:6) and Creswell (as cited in Masha, 2000:5) both argue that qualitative techniques allow the researcher to obtain personal opinions and perceptions of people, which could not be obtained in a quantitative environment.

3. RESEARCH DESIGN

As discussed above, the study will follow an exploratory approach. From the preliminary literature review, it is clear that although the topic has been addressed to a degree in the VAT414 SARS Guide and in case law, to date no author has focused on the complexities of VAT compliance in non-profit organisations on an academic front. The primary goal of exploratory qualitative research is to attain some form of understanding of a particular phenomenon (Verstehen, 2000). Exploratory studies generally make use of qualitative research as a result of the lack of quality numerical data in an exploratory environment (Babbie, 2007; Shields & Hassan, 2006).

The following figure graphically illustrates the research process, based loosely on a research model proposed by Driscoll (2010):

Figure 4: Research design



Source: Driscoll, 2010

From the figure above it is clear that the research framework is designed in terms of three distinctive phases. The first phase consists of the collection of background data, the formulation of the research question and the literature review. The second phase in the research framework is the data gathering phase in which respondents were interviewed in order to generate new primary data. The third phase is structured around the data analysis process and includes the transcribing, coding and validation of the data. This phase will also entail an analysis of the results of the primary data of the legislation reviewed in the literature review. As illustrated in the figure, the entire research framework is based on an ethical foundation, which will be described in more detail later in the chapter.

4. DATA GATHERING

As identified in the research framework in Figure 4, the study predominantly made use of primary data. The interviews were conducted in a longitudinal manner over a period of two months. This section will focus on the data gathering method (unstructured interviews), the sampling process (non-probability purposive sampling), the unit of analysis (groups) and the sampling size.

4.1. UNSTRUCTURED INTERVIEWS

Based on a combination of a number of definitions regarding interviews (Masha, 2000; Babbie, 2013; Berg, 1989), the report defines an interview as a formal, focused conversation with the aim to gather specific data that will allow the researcher to solve the research problem. The researcher used unstructured interviews with open-style questions in order to provide a flexible approach (Babbie, 2013; Nichols, 1991).

The amount of structure that the researcher imposes on the respondent is one of the major differences that exist among interviews (Chadwick, 1984). Interviews can range from highly structured to largely unstructured, where in a highly structured interview there is very little deviation. Although specific questions were asked in the interviews, respondents were given the freedom to answer the questions in the manner they choose.

One of the key qualities of open-ended questions is that the researcher can use the answers evolved by initial question to shape the next question (Babbie, 2013). Although the use of open-ended questions can have serious time considerations, it allows for a deeper probing into the specific issues pertaining to the topic, provides a high response and completion rate and creates a platform to probe complex answers (Driscoll, 2010; Wimmer & Dominick, 1997; Bailey, 1987:175).

An interview schedule was developed to not just guide the interviews, but to ensure consistency throughout the study. The questions were tailored to accommodate the point of view of the different respondents. One schedule was formulated for employees that work for NPOs and then another schedule for the tax consultants and employees of SARS (the interview schedules are attached as Annexure F). The format, themes and questions addressed in both schedules were consistent. Both close- and open-ended questions were asked. The interviews were started with close-ended questions which were aimed at getting a basic understanding of the organisation and the interviewee. After this initial phase, open-ended questions were formulated based on certain themes. Open-ended questions were asked with the aim of allowing the respondent's point of view and encouraging the respondent to elaborate on topics. The interviewee comments were not only limited to the questions in the interview schedule and the respondents were encouraged to make any comments on the subject throughout the interview. The interviews were concluded with a final opportunity awarded to respondents to list any comments or concerns regarding VAT compliance.

As the aim of the study was to identify challenges specifically in the context of non-profit organisations, the interviews were structured based on themes in order to focus the respondent's comments on specific aspects of VAT compliance. Interviews commenced with interviewee or organisational background. After the initial background questions, the questions were aimed at aspects of tax status. The aim of these open-ended questions was to gain an understanding of the challenges (if any) around the different organisational legislative definitions for tax purposes and the application thereof. After discussing the legislative definitions and classifications,

further open-ended questions were aimed at the details of the organisation's activities, income streams and expenses. These questions were aimed at identifying any challenges (if any) in respect of classifying project activities and compliance with specific VAT provisions.

As respondents were located in various locations, interviews were conducted through face-to-face meetings as well as conference calls. The interviews were conducted at a time and place convenient to the respondents and the duration of the interviews ranged from 45 minutes to an hour. The interview schedule was circulated to the respondents before the interview and this was used by the respondents to prepare responses and further comments. The interview schedules gave a good framework for the interview, but respondents were encouraged to ask questions and make additional comments throughout the process.

After each interview, the respondents' comments were reviewed and compared to the results of interviews already conducted and any new comments were then added to the list of questions to be raised at the next interview. After the first two interviews, no additional comments were added to the interview questions as the comments raised by the respondents were repetitive. This served as confirmation that the interview questions raised were sufficient to cover the stated aim of the study.

4.2. SAMPLING

As evident in most qualitative studies, the researcher made use of a non-probability purposive sampling technique (Wilmot, 2004; Babbie, 2013). The emphasis of the sampling was to identify interviewees with comprehensive knowledge of the study area, and not necessarily to achieve a representative population. To identify the interviewees, a purposive snowball sampling method was utilised. Snowball sampling is especially effective in cases where the number of possible respondents is very low, and initial interviewees can assist the researcher in identifying further participants (Babbie, 2013).

In terms of the unit of analysis, the aim of the study was not to gather the opinions of individuals, but to assess the views of three specific groups identified as the key role players in the phenomenon analysed.

The three groups that have been identified are (1) employees of SARS, (2) professional consultants, and (3) employees that work for NPOs. If the three study groups are analysed in terms of a structural functionalist approach (Babbie, 2013), the first group in the structure is SARS, which has a constitutional mandate to collect revenue for government. Even though the researcher set out to interview employees within the revenue service, it is policy for SARS employees not to participate in research projects as publication of the responses of individuals within SARS can place the agency in an incriminating position. The researcher, however, did interview respondents who were previously employed within SARS and have a comprehensive understanding of the authority and subject. The second group is professionals in the accounting, taxation and auditing field with in-depth knowledge of the phenomenon, and who play a major intermediary role between SARS and the NPCs. And lastly, NPCs whose mandate is to have a developmental impact.

Two interviews were conducted with each of the study groups identified. First, the comments of the two interviewees from the same group were comparable. Also, there were no noteworthy additional comments added by the second interviewees from each group. Third, the comments of the interviewees from different groups on the same topic were comparable. The fact that comments of interviewees of the same group as well as the comments from different groups were comparable, provides satisfaction that the challenges identified are in fact relevant. The fact that additional comments raised by interviewees were repetitive, provides satisfaction that the challenges identified are complete for purposes of this study. No additional interviews were deemed necessary and the selected sample of six was deemed sufficient.

5. DATA ANALYSIS

The analysis of qualitative data is one of the most difficult parts of an exploratory study, because even though the conclusions in exploratory studies can be indicative, the

analysis of the data should still be systematic and organised (Sofaer, 2002). In each interview, the researcher transcribed both the answers and additional expressions (Babbie, 2013). As soon as possible after the interview, the researcher transcribed the data from the interview memos, which formed the basis of the data analysis.

The researcher used a coding model to detect patterns in the data during the data analysis (Babbie, 2013). Coding is used in many qualitative studies to path and manage the qualitative data (Sofaer, 2002). The coding procedure (by hand) started with open-coding (to find themes in the data), where after an axial coding model was used to identify the essential challenges (disaggregation of core themes). These findings were finally compared to applicable legislation in order to establish a complete comprehension of the topic.

6. ETHICAL CONSIDERATIONS

The ethical considerations are based on three critical ethical foundations, as identified by Babbie (2013), and will form the basis of the ethical foundation as identified in the research framework. The three foundations are: (1) voluntary participation, (2) no harm to participants, and (3) anonymity.

Voluntary participation involves consent from participants to be part of the research project (Driscoll, 2010; Kajornboon, 2008), and was explained to participants on the initial interview request as well as at the formal interview. Throughout the study, the researcher aimed to not cause any harm to the image of the individuals and institutions that were being interviewed, which was largely possible on the basis of confidentiality. Anonymity was not be possible as the researcher conducted the interviews in person, but confidentiality was ensured by only referring to the three main groups that took part in the study (Babbie, 2013; Kajornboon, 2004), and not divulging any personal information throughout the study.

7. CONCLUSION

This section of the report presented an overview of the research framework. It is clear that the researcher argues that in-depth interviews are the most appropriate method of data collection as the topic is still largely experimental. The following chapter will present the empirical findings of the study.

CHAPTER 4: EMPIRICAL FINDINGS

1. INTRODUCTION

The following chapter will set out the key research findings as derived from the interviews. The chapter is structured in terms of the themes noted in the responses of interviewees and then sets out the specific challenges identified through the empirical fieldwork. Each challenge is then further explored in terms of the practical issues identified by the interviewees. Where necessary, issues are further unpacked by means of legislation and regulations pertaining to these challenges.

2. THEMES IDENTIFIED

The respondents had comparable comments on challenges, but the focus of the comments did vary, based on the background of the respondent. This resulted in viewing the same challenge from different perspectives. The challenges identified in the study are the result of both the *inherent nature* of the NPO sector as well as *legislative challenges* and shortcomings.

The word “inherent” is defined in the Oxford Dictionary as “something that is a permanent, essential, or characteristic attribute” (Oxford Dictionaries, 2017). The NPO sector has certain characteristics that are unique to the nature of the sector and are inseparable from the sector itself. For example, where the main objective of profit companies is to maximise shareholder value, non-profit organisations inherently lack such simplicity of purpose as the objective of these entities varies and addresses a wide spectrum of needs and social issues.

The aim of this study is not to identify the inherent risk of the NPO sector. The challenges noted from a VAT compliance perspective, specifically relating to the inherent nature of the NPO sector, is distinguished from legislative challenges to show the complexities from both sides.

3. CHALLENGES IDENTIFIED

3.1 INHERENT

3.1.1 LIMITATION IN TERMS OF TECHNICAL AND FINANCIAL RESOURCES

All of the respondents highlighted the limitation of technical and financial resources as the most pertinent challenge. This is a challenge inherent to the NPO sector as the technical and financial resources of NPOs are mainly allocated to address the needs and objectives of their cause and sponsors and funders do not prioritise resources and budget to consultants to assist in addressing financial and specifically tax issues.

The respondents heading NPOs specifically referred to the risk in the day-to-day processing and accounting capacity constraints. As VAT is a transactional-based tax, each transaction affects the compliance status of the financial information in whole. The personnel involved in the day-to-day processing of transactions do not necessarily have the technical expertise to accurately process transactions for VAT purposes based on their true nature. The accuracy of tax processing is therefore reliant on the system and processing controls put in place by the organisation.

Further inherent to the NPO sector is a general misperception that a NPO does not make profit and therefore does not have to pay taxes. This misperception precludes sponsors, donors and management to allocate the necessary attention to tax structuring and management. The problem is that most of these entities rely on their reputation for support and funding and any non-compliance issue can result in reputational damage, and can also result in additional taxes and penalties which can have a devastating impact on the allocated resources.

The interviewees in heading NPOs noted that NPOs are very dependent on their reputation for funding, and NPOs that can afford tax consulting services do make use of tax consultants, for example to apply for exemptions or if SARS has to be approached in defining the project activities conducted by the organisation. The big consulting firms do take on some NPO assignments as community outreach projects,

but consulting firms cannot take on all NPOs as pro bono assignments. NPOs are not necessarily focus areas for consultants in public practice, therefore engaging with consultants that have extensive experience at a technical level in the NPO sector, can be scarce.

The limitation of technical and financial resources can, however, be addressed by both businesses and government. First, businesses and government should acknowledge the important role that NPOs play in our society. If business and government realise the vital role of these organisations, they will allocate appropriate resources, both technically and financially, to assist these organisations to be viable in the long term. Any investor aims to realise an optimal return, which in the case of NPOs is a sustainable social impact. In order to realise sustainable social impact, NPOs need to be managed and funded with the same strategic focus as any other profitable entity. Allocating sufficient technical resources to these organisations will enable them to give the necessary attention to compliance with rules and regulations, including tax planning and compliance.

3.2 LEGISLATIVE

The challenges noted, other than the inherent nature of the NPO sector discussed in 3.1, arise due to complexities and/or shortcomings in terms of current VAT legislation, specifically in terms VAT compliance for NPOs.

It should be noted that the aim of this study was not to carry out an in-depth analysis of the general complexities of VAT legislation, but to broadly describe the challenges encountered by NPOs. With the exception of the challenge relating to the classification of project activities, the challenges noted for NPOs are generally the same or similar to challenges that profit entities may experience due to the ambiguity of the VAT legislation.

The following areas were noted by the interviewees as being legislative challenges. This is where legislation is perceived to be either too ambiguous, too vague, complex or not in line with policy intent:

- Classification of project activities
- Defining income and related VAT treatment thereof
- Claiming inputs – allocation
- Realisation of tax policy intent

3.2.1 CLASSIFICATION OF PROJECT ACTIVITIES

As noted under the inherent limitation of the NPO sector, there is sometimes a general misperception that non-profit entities are exempt from all taxes. People do not realise that NPOs must first fulfil all the legislative definitions in order to qualify for tax reliefs, specifically in the context of VAT.

Defining organisations according to provisions set out in the VAT legislation and specifically the classification of project activities, was noted as an area of concern by all interviewees. Defining an organisation in terms of legislation as well as the classification of project activities determines whether or not an organisation falls within the ambit of special provisions available to non-profit organisations.

The first step is to determine if an NPO qualifies as a PBO based on the definition in section 30 of the ITA and the qualifying activities set out in Schedule 9 of the ITA. If an organisation qualifies as a PBO for income tax purposes, it should then be considered whether the entity is a welfare organisation as defined in the VAT Act. If an organisation qualifies as a welfare organisation in terms of the VAT Act, it should be determined if the project activities conducted by the welfare organisation qualify as “welfare activities” listed in Regulation No. 112, in order to benefit from further special provisions for VAT purposes.

Apart from the differences noted between the descriptions of the PBO activities in the 9th Schedule compared to the welfare activities in Regulation No. 112, as per the comparison performed in Chapter 4, the general evaluation of whether or not an activity qualifies can be complex due to the ambiguity of the descriptions of activities

listed in legislation. This was illustrated by the example noted by an interviewee of the word “promotion”, referred to under Welfare and humanitarian activities. The word “promotion” opens up the question whether actual goods and services need to be rendered or if this includes funding of these activities.

Welfare organisations that can afford it or have managed to secure pro bono services, make use of tax consultants to assist in evaluating and classifying both PBO and welfare activities. However, not all organisations have the resources to engage specialists in this area. This opens them up to the risk of taxes, penalties and interest if special tax reliefs are applied to project activities that do not satisfy the legislative requirements.

Apart from the ambiguity of the activities listed in both the 9th Schedule and Regulation No. 112, it was noted that the activities that qualify for special tax reliefs do not necessarily address current pressing social issues. The example of tuberculosis (TB) not being included along with HIV under Healthcare was used to illustrate the shortcoming of the current activity listing. Taking into consideration that the initial listing of welfare activities was published in 2005, and have since not been updated, there will be many more similar examples that can be considered to be added to the list.

3.2.2 DEFINITION OF INCOME AND RELATED VAT TREATMENT

The nature of income is imperative for VAT purposes as this drives not only when output VAT should be charged, but also whether or not input VAT relating to that income can be claimed.

Different challenges were noted by the interviewees, associated with different income streams, which are briefly discussed below:

Grant funding – government

Grant funding should be distinguished from donations. There are specific provisions in terms of deemed supplies made by an “association not for gain” and by a “welfare organisation” to a “public authority” or “municipality”. The zero rating under section 11(2)(n) and (t) only applies in the case of a *deemed supply* of services. A deemed supply can only arise if the payment concerned does not constitute consideration for an actual supply of goods or services under section 7(1)(a). The implication, therefore, is that the payment concerned must be unreciprocated.

Interviewees noted the identification of “actual supplies” as an area of concern. This issue was also at the heart of the Alan George Marshall case, as referred to in the discussion of “supply”.

Grant funding – other

Funding should be distinguished from government funding and donations. Grants from entities other than referred to in the “grant” definition do not fall within the ambit of the VAT “grant” provisions. Treatment of these grants depends on nature supplies.

Donations

Defining a “donation” is not a simple task as it is one of the most complex income streams. This is specifically relevant to VAT provisions, as the term “consideration” with regard to VAT specifically excludes any payment made as a donation. A donation is defined in the VAT Act and specifically requires that “no identifiable direct valuable benefit” should arise from the payment. This is only one aspect of the definition of a donation, but this poses a real challenge as many donations are made to which some sort of “benefit” is attached. The definition and valuation of this “benefit” is the challenge.

In the classification of a donation, the legal principle of substance over form should be considered. A payment is only a donation if it has been made “gratuitously”. If there

are any provisions made in a contract or an agreement that refer to some kind of “quid pro quo”, this might jeopardise the “gratuity” of the donation. The “gratuity” will not only be jeopardised in the case where some kind of “benefit” is contractually stipulated, but it can be a natural outflow of the agreement.

In terms of standard valuation rules, the value of supply will be equal to the amount of money payable, but in the case where consideration is not in money, consideration will be the open market value. This poses the question what the actual benefit is and then what the open market value of that benefit is.

Lastly, there is no specified time of supply rules for donations. The general time of supply rule is applied in this instance.

Interest

Interest income was one not identified as a difficult income stream, but entities miss the fact that these are exempt supplies and related inputs cannot be deductible. This is not an issue if interest is incidental/minimal, but in instances where large amounts of project funding earn interest, this can become an issue.

Sale of goods and services

The sale of goods and services links to the distinction between actual and deemed supplies. Actual supplies do not qualify for section 11(2)(n) and (t) exemptions. Transactions of commercial nature are standard rated supplies.

3.2.3 CLAIMING INPUTS – ALLOCATION

VAT inputs can only be claimed on goods and services acquired for purposes of making taxable supplies, with the exception of an association not for gain being able to claim an input deduction in respect of VAT on expenses incurred to solicit donations or funding from public authorities, municipalities or constitutional institutions.

If an organisation incurs expenses relating to donations, grants, and other exempt and taxable supplies, the expenses must be apportioned.

At this stage, the only pre-approved method of apportionment is the turnover-based method, which may be used to apportion VAT incurred for mixed purposes. The turnover-based method is inappropriate for organisations receiving donations because it does not result in a fair approximation of the extent of the taxable portion of the enterprise's VAT-inclusive expenses. Organisations must approach SARS to obtain a ruling to be applied on the allocation base, which can only be applied from the date of the ruling. In most cases, the portion of allowable inputs are very small and organisations do not find it worth the effort to apply for rulings, resulting in inputs not being claimed.

3.2.4 REALISATION OF TAX POLICY INTENT

As noted in the NDP, government acknowledges the role that NPOs play in addressing social development needs as these organisations provide basic goods and developmental services to the general public. Government provides tax reliefs as behavioural incentives in order to create an enabling environment for these organisations to achieve social impact objectives. The intent of tax policy is ultimately to provide relief to these entities that are fulfilling certain functions of government.

Organisations that can benefit from this relief are sometimes either not aware of the possible relief or do not have the necessary infrastructure to register for VAT and claim the inputs. NPOs, especially small community projects, have limited resources and a lack of technical resources can result in possible tax planning opportunities not being utilised.

In the context of VAT, certain specific provisions are available to non-profit organisations, and specifically welfare organisations conducting welfare activities, but the qualifying definitions and relevant provisions in legislation are ambiguous and complex, which creates room for interpretation from both the side of the public and

SARS. This “uncertainty” can lead to the tax policy intent not reaching full potential and providing the necessary relief to organisation as identified by government.

Finally, if tax incentives are the behavioural incentives used by government to support and encourage the private sector to engage in social upliftment, it should be considered whether tax reliefs really achieve behavioural change. For example, if we look at the educational sector, the supply of educational services are exempt supplies, meaning no input tax can be claimed. Although no VAT is payable on educational services, no VAT input tax claims exist either, putting the organisations in a zero position. The question is what the “incentive” is and how this drives any behavioural change.

4. CONCLUSION

Through conducting in-depth interviews with different role players, being people working for NPOs, professionals previously employed by SARS and tax consultants, challenges faced by NPOs in the context of VAT compliance were identified. The majority of the challenges that were identified, were noted by all of the role players. The repetitive identification of the challenges noted by the different role players not only confirmed the validity of the specific challenges noted for the purpose of this study, but also indicate that these are areas of further research and study. These noted challenges may indicate areas where legalisation can be clarified or where SARS can issue further guidance material to assist the NPO sector to apply the tax relief provisions as intended by policy whilst being fully tax compliant.

CHAPTER 5: CONCLUSION

1. INTRODUCTION

This research assignment set out to explore the existing legislative provisions in terms of VAT compliance, specifically in the context of NPOs and by conducting in-depth interviews with critical role players in the industry, framing a clear understanding of the issues that NPOs face in terms of VAT compliance in South Africa.

The initial aim of the study was to identify specific provisions in the VAT Act that NPOs struggle to apply in practice. The study attained the objectives as to explore the legislative environment that guides the taxation of NPOs in South Africa; identify the challenges that NPOs face in terms of VAT compliance; unpack the challenges in the light of the current legislative framework; and identify areas where further guidance is needed. The study, however, indicated that even though there are some specific provisions in the VAT Act that apply to NPOs, the main challenges faced by NPOs are not necessarily related to the specific provisions, but to the application of general principles of VAT.

2. RECOMMENDATIONS

The inherent limitation of financial and technical resources in the NPO sector provides government and public resources with a greater responsibility to assist the NPO sector with publications and technical resources in order to ensure full tax compliance.

In terms of legislative challenges, the current published VAT guides can be updated and expanded to include more detail and address some of the technical aspects mentioned in this document. The VAT forms (VAT201) can be updated to include more questions on project activities and income in order to prompt accuracy of applying certain welfare provisions or VAT treatment of certain income streams.

As the current Regulation No. 112 was last updated in 2005, a task team can be assembled by government to evaluate the relevance of the activities currently listed and new activities that might better serve the social impact objective.

3. CONCLUSION

In a country like South Africa, the non-profit sector plays a vital role in addressing developmental challenges like poverty, unemployment and inequality. Government incorporates tax reliefs in legislation as behavioural incentives with the aim of creating an enabling environment for these organisations to achieve objectives addressing social and development needs.

The study focused on the challenges posed in the context of VAT compliance of NPOs in the light of these tax reliefs provided. The main challenge in terms of NPO's VAT compliance is the limitation of technical and financial resources, which is inherent to the NPO sector. The majority of compliance challenges noted for NPOs relates to the ambiguity of the VAT legislation, which is embedded in the basic principles of VAT. These challenges are likely not isolated to the NPO sector, but will be faced by all entities.

The complexities of current legislation relevant to NPOs paired with the inherent limitation of financial and technical resources poses the question whether tax incentives in the context of VAT really achieves government's purpose to create an enabling environment for these entities to flourish. Non-compliance with relevant provisions poses a greater risk for these entities, as most of these entities do not have the means to settle any additional taxes, penalties or interest as a result of incorrect interpretation of VAT provisions and incorrectly making use of one or two favourable provisions.

This study identified specific challenges faced by NPOs in the context of VAT compliance. These empirical findings indicate further areas of research to determine whether VAT provisions can be further defined or clarified to enable simplicity of compliance, especially for entities with no or limited technical resources. Furthermore,

the utilisation of legislative provisions in terms VAT can further be investigated. This can be linked to further research on whether tax policy intent is achieved in the context of NPOs.

LIST OF REFERENCES

- Akukwe, C. 2013. *What political and developmental challenges are likely to confront Africa over the next 12 months?* Think Africa Press. 16 January 2013.
- Babbie, E. 2007. *The Practice of Social Research*. 11th edition. Belmont CA: Thompson – Wadsworth.
- Babbie, E. 2013. *The Practice of Social Research*. 13th edition. Belmont CA: Thompson – Wadsworth.
- Bailey K.D. 1987. *Methods of Social Research*. Third edition. Collier Macmillan Publishers London.
- Berg B.L. 1989. *Qualitative Research Methods for the social sciences*. Indiana University of Pennsylvania. Allan and Bacon.
- Blaikie, N. 2007. *Approaches to Social Inquiry*, 2nd edition, Cambridge: Polity.
- Botha, C. 2010. *Statutory Interpretation: An introduction for students*. 4th ed. Juta and Company Ltd.
- Brewis. 2004. *Laws and Regulations Governing Non-Profit Organisations in South Africa*. International Charity Law: Comparative Seminar - Beijing, China. October 12–14.
- CIPC. 2016. *Companies and Intellectual Property Commission - Register a Non-Profit Company*. Available at <http://www.cipc.co.za/index.php/register-your-business/companies/register-non-profit-company/>. Accessed on 2017-03-16 21:00.
- Chadwick, B. A. (1984). *Survey Research: Interview Studies*. In B. A. Chadwick (Ed.), *Social Research Methods* (pp. 100-132). Englewood Cliffs, New Jersey: Prentice Hall.
- Congdon, W., Kling, J.R. & Mullainathan, S. 2009. *Behavioural Economics and Tax Policy*. NBER Working Paper No. 15328.
- Delfin, S., Kearney, M. & Robinson, S. 2005. *An Analysis of South Africa's Value Added Tax*. The World Bank. Washington (DC).
- Department of Social Development. 2009. *Developing Good Governance Practices within the South African NPO Sector: Benchmark Study Report*.
- Department of Social Development. 2016. *State of South African registered non-profit organisations issued in terms of the non-profit organisations act 71 of 1997*.
- Driscoll, D. L. 2010. *Introduction to Primary Research: Observations, Surveys, and Interviews*. Parlor Press. ISBN 978-1-60235-185-1 (adobe e-book).
- George Marshall N.O & Others v CSARS, 2016 (816/2015) ZASCA 158.
- Habib, A. 2005. *State-Civil Society Relations in Post-Apartheid South Africa*. *Social Research*, Vol. 72, No. 3, South Africa: The Second Decade (FALL 2005), pp. 671–692. The New School.
- Hansmann, H. 1981. *The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation*. *The Yale Law Journal*. Vol. 91, No. 1 (Nov., 1981), pp. 54–100.

- Honey, M. 2014. *Legal Structures commonly used by Non-Profit Organisations*. Education and Training Unit.
- James, K. E. 2011. *Exploring the Origins and Global Rise of VAT*. The VAT Reader (Tax Analysts), 15–22.
- Kajornboon, A. B. (2004) *Creating Useful Knowledge: A Case Study of Policy Development in E-learning at Chulalongkorn University Language Institute*. Dissertation. University of Melbourne: Australia.
- Lang, M., Melz, P. & Kristoffersson, E. 2009. *Value Added Tax and Direct Taxation: Similarities OECD, 2015 Revenue Statistics 2015, OECD Publishing and Differences*. IBFD, The Netherlands.
- Lieberman, E.S. 2001. *National Political Community and the Politics of Income Taxation in Brazil and South Africa in the Twentieth Century*. Politics & Society December, vol. 29 no. 4 pp. 515–555.
- Loayza N., Teran A. M. & Rigolini. J. 2013. *Policy Research Working Paper 6366*. Poverty, Inequality, and the Local Natural Resource Curse. The World Bank. Washington (DC)
- Masha H. A. 2000. *The Germiston-Daveyton Activity Corridor as a Restructuring Device: The Study of the Planning Process*. University of Pretoria
- Moore, DA., Hadzi-Miceva K. & Bullain N. 2005. *A Comparative Overview Public Benefit Status in Europe*. European Center for Not-for-Profit Law.
- Nichols, P. 1991. *Social Survey Methods*. Oxford: Oxfam.
- OECD, 2015. *Revenue Statistics 2015*, OECD Publishers. ISBN: 978-0765800039.
- Oxford Dictionaries. 2017. *Inherent*. [Online] Available from: <https://en.oxforddictionaries.com/definition/inherent> [Accessed: 2017-08-17].
- Regulation No. 112. Government Gazette No. 27235 of 11 February 2005.
- Sankey J. 1998. *Zen and the Art of Stand-Up Comedy* (Paperback). Published by Taylor Francis Ltd, United Kingdom, accessed on 12/02/2017.
- SARS. 2015. *South African Revenue Service and National Treasury 2015 Tax Statistics*. Revenue Planning, Analysis Reporting and Research Unit.
- SARS. 2016. *South African Revenue Authority. VAT 414 - Guide Value Added Tax: Guide for Associations not for Gain and Welfare Organisations*. Government Printers. RSA
- Shields, P. and Hassan T. 2006. *Intermediate Theory: The Missing Link in Successful Student Scholarship*. *Journal of Public Affairs Education*. Vol. 12, No. 3. Pp. 313–334. <http://ecommons.txstate.edu/polsfacp/39/>
- Smith, B. 2007. *Finding solutions to complex social problems in South Africa*. The Synergos Institute and Social Change Assistance Trust.
- Sofaer, S., 2002. *Qualitative research methods*, 14(4), pp.329–336.
- South Africa. 1962. *Income Tax Act. Act 58 of 1962*. Government Printers.
- South Africa. 1991. *Value-added Tax. Act 89 of 1991*. Government Printers.

- South Africa. 2008. *Companies Act. Act 71 of 2008*. Government Printers.
- South Africa. 2011. *Tax Administration Act No 28 of 2011*. Government Printers.
- South Atlantic Jazz Festival (Pty) Ltd v CSARS – HC A129/2014 WC 6 February 2015.
- Springveldt, I.C. 2009. *The relationship between local government and welfare organizations in Eersterust*. Master of Arts in Social Science (Mental Health). The University of South Africa.
- Stats SA, 2015. Statistics of the non-profit sector for South Africa. Government Printers. RSA.
- Steinberg, R. 2006. *The Nonprofit Sector: A Research Handbook*, Second Edition 2nd ed. Yale University Press.
- Steyn, J. 2015. *Community Protest: Local Government Perceptions*, SALGA Publishing. ISBN: 978-0-621-44215-1.
- Swilling, M., Russell, B. 2002. *The size and scope of the non-profit sector in South Africa*. Monograph – HSRC Press.
- The Presidency. 2013. *National Development Plan*. National Planning Commission. RSA. Government Printers.
- Verstehen, M. 2000. *The Uses of Understanding in the Social Sciences*. Brunswick Transaction Publishers.
- Weber, T.O., Fookan, J. & Herrmann, B. 2014. *European Commission Behavioural Economics and Taxation*, Taxation Working Paper N.41 – 2014.
- Wilmot A. 2004. Designing sampling strategies for qualitative social research: with particular reference to the Office for National Statistics' Qualitative Respondent Register. *Survey Methodology Bulletin-Office for National Statistics*, 56, 53.
- Wimmer, R. D., & Dominick, J. R. 1997. *Mass media research: An introduction*. Belmont [Calif.: Wadsworth Pub].
- Wyngaard, R. G. 2014. *The South African NPO Crisis – time to join hands*. Non-profit Lawyers.

ANNEXURE A: DEFINITIONS AND KEY TERMS

<p>Association not for gain <i>Section 1, VAT Act</i></p>	<p>Any religious institution, society or organization which is carried on, otherwise than for profit and in terms of its written constitution which governs it –</p> <ul style="list-style-type: none"> • is required to use any property or income solely in the furtherance of its aims; • is prohibited to transfer any portion of property or income to any person, except as reasonable remuneration for services provided; and • is obliged, at its winding-up or liquidation to give or transfer its assets after satisfaction of debts, to another similar society. <p>It can also be an educational institution of a public character which –</p> <ul style="list-style-type: none"> • is carried on not for profit; • is in terms of its memorandum which governs it required to use any property or income solely in the furtherance of its aims; and • is prohibited to transfer any portion of property or income to any person, except as reasonable remuneration for services rendered. <p>Welfare organisations and PBOs are types of associations not for gain.</p>
<p>Non-Profit Company <i>Section 1, Companies Act</i></p>	<p>A company, as defined in the Companies Act 71 of 2008, to be “incorporated for public benefit or other object relating to one or more cultural or social activities or communal or group interest”.</p>
<p>Supply <i>Section 1, VAT Act</i></p>	<p>Supply includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is affected.</p>

<p>Taxable supplies <i>Section 7, VAT Act</i></p>	<p>These are supplies which are chargeable with tax under the VAT Act. There are two types of taxable supplies, namely –</p> <ul style="list-style-type: none"> • those which attract the zero rate (listed in section 11 of the VAT Act); and • those on which the standard rate of 14% must be charged. <p>A taxable supply does not include any exempt supply listed in section 12 of the VAT Act, even if supplied by a registered vendor.</p>
<p>Welfare activities <i>Regulation 112</i></p>	<p>Welfare activities for VAT purposes are listed in the Regulation No. 112 in the Government Gazette No. 27235 issued on 11 February 2005. Welfare activities must be carried on by an association not for gain which is an approved PBO for income tax purposes before the organisation may qualify as a welfare organisation.</p>
<p>Welfare organisation <i>Section 1, VAT Act</i></p>	<p>This is any public benefit organisation that has been approved by the Commissioner in terms of section 30(3) of the Income Tax Act, 1962 which carries on a welfare activity determined by the Minister to be of a philanthropic or benevolent nature, under the following headings:</p> <ol style="list-style-type: none"> (a) Welfare and humanitarian. (b) Health care. (c) Land and housing. (d) Education and development. (e) Conservation, environment and animal welfare. <p>The VAT Act contains specific benefits which apply to welfare organisations. The main benefit is that it can register for VAT and obtain a refund of VAT that it incurs to the extent that it carries on welfare activities, even if those supplies are made for no consideration.</p>

(SARS, 2016)

ANNEXURE B: PBO VS WELFARE ACTIVITIES

Public benefit activities (PBAs) are listed in Part I	Approved welfare activities which allow an association not for gain to qualify as a “welfare organisation” are listed in Government Notice 112 in Government Gazette 27235 of 11 February 2005.
Welfare and Humanitarian (paragraph 1)	Welfare and Humanitarian
Land and Housing (paragraph 3)	Land and Housing
Religion, Belief or Philosophy (paragraph 5)	
Conservation, Environment and Animal Welfare (paragraph 7)	Conservation, Environment and Animal Welfare
Sport (paragraph 9)	
General (paragraph 11)	
Health Care (paragraph 2)	Health Care
Education and Development (paragraph 4)	Education and Development
Cultural (paragraph 6)	
Research and Consumer Rights (paragraph 8)	
Providing of Funds, Assets and Other Resources (paragraph 10)	

ANNEXURE C: DETAILED COMPARISON OF PBA AND WELFARE ORGANISATION ACTIVITIES

Welfare and Humanitarian

Public Benefit Activity <i>Public benefit activities (PBAs) listed in Part II, Ninth Schedule, ITA</i>	Welfare Activity <i>Government Notice 112 in Government Gazette 27235 of 11 February 2005</i>
(a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.	(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.	(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.	(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.	(d) The provision of disaster relief.
(e) The rescue or care of persons in distress.	(e) The rescue or care of persons in distress.
(f) The provision of poverty relief.	(f) The provision of poverty relief.
(g) Rehabilitative care or counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.	(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.	(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.	(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.	(j) The promotion or advocacy of human rights and democracy.
(k) The protection of the safety of the general public.	(k) The protection of the safety of the general public.
(l) The promotion or protection of family stability.	(l) The promotion or protection of family stability.
(m) The provision of legal services for poor and needy persons.	(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.	(n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents, other than the services contemplated in section 12(j) of the Value-Added Tax Act, 1991.
(o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.	(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,	(p) Community development for poor and needy persons and anti-poverty initiatives, including— (i) the promotion of community-based projects relating to self-help,

<p>empowerment, capacity building, skills development or anti-poverty;</p> <p>(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or</p> <p>(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.</p>	<p>empowerment, capacity building, skills development or anti-poverty;</p> <p>(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or</p> <p>(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.</p>
<p>(q) The promotion of access to media and a free press.</p>	<p>(q) The promotion of access to media and a free press.</p>

Land and Housing (paragraph 3)

Public Benefit Activity	Welfare Activity
<p>(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.</p>	<p>(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).</p>
<p>(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).</p> <p>(i) more than 90 per cent of the persons to whom the residential care is provided</p>	<p>(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).</p>

<p>are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and</p> <p>(ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.</p>	
<p>(c) Building and equipping of—</p> <p>(i) clinics or crèches; or</p> <p>(ii) community centres, sport facilities or other facilities of a similar nature, for the benefit of the poor and needy.</p>	<p>(c) Building and equipping of clinics, crèches, community centres, sports facilities or other facilities of a similar nature for the benefit of the poor and needy.</p>
<p>(d) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes</p>	<p>(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.</p>
<p>(e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.</p>	
<p>(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.</p>	
<p>(g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or</p>	

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.	

Conservation, Environment and Animal Welfare (paragraph 7)

Public Benefit Activity	Welfare Activity
(a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.	(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.	(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.	(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 trans frontier 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.	
--	--

Health Care (paragraph 2)

Public Benefit Activity	Welfare Activity
(a) The provision of health care services to poor and needy persons.	(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.	(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.	(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.	(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.	(e) The provision of blood transfusion, organ donor or similar services.
(f) The provision of primary health care education, sex education or family planning.	(f) The provision of primary health care education, sex education or family planning.

Education and Development (paragraph 4)

Public Benefit Activity	Welfare Activity
(a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).	(a) The provision of school buildings or equipment for public schools and educational institutions engaged in

	exempt activities contemplated in section 12(h) of the Value-Added Tax Act, 1991, for the benefit of the poor and needy and physically disabled.
(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).	(b) Career guidance and counselling services provided to persons for purposes of attending any school or higher-education institution as envisaged in section 12(h)(i)(aa) and (bb) of the Value-Added Tax Act, 1991.
(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.	(c) Programmes addressing life skill needs of children at schools, pre-schools or educational institutions as envisaged in section 12(h) of the Value-Added Tax Act, 1991.
(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.	(d) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
(e) Training for unemployed persons with the purpose of enabling them to obtain employment.	(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).	

<p>(h) The provision of education or early childhood development services for pre-school children.</p>	
<p>(i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.</p>	
<p>(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).</p>	
<p>(k) Career guidance and counselling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).</p>	
<p>(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).</p>	
<p>(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).</p>	
<p>(n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.</p>	

<p>(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>	
<p>(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.</p>	
<p>(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).</p>	
<p>(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).</p>	

ANNEXURE D: VAT PROVISIONS SPECIFIC TO NOT FOR GAIN ASSOCIATIONS

<i>Association not for gain</i>	
Benefit	Description
<p>Separate branch registrations allowed <i>Section 23(5) VAT Act</i></p>	<p>An association not for gain, which carries on its enterprise in branches or divisions, or carries on separate enterprises, may apply in writing to SARS for any of those branches, divisions or enterprises to be regarded as separate persons for VAT purposes. This can be used to reduce the impact of VAT, as (being separate persons) each branch, division or separate enterprise will be measured separately against the VAT registration requirements and only those exceeding the voluntary or compulsory registration thresholds will be allowed, or required, to register for VAT. This provision is not available to other vendors.</p> <p>A written application to SARS in this regard will only be allowed where the separate branch, division or enterprise:</p> <ul style="list-style-type: none"> - maintains an independent accounting system; and - can be separately identified by the nature of its activities or its geographic location (e.g. physical, separate office).
<p>Payment basis of accounting permitted <i>Section 15(2)(a)(vi)</i></p>	<p>Generally, vendors are required to account for VAT on an invoice basis. In this regard, a vendor is generally required to report output tax (i.e. VAT charged on supplies made by a vendor) and to claim input tax deductions in the vendor's VAT return for the tax period in which the sales invoice or supplier's invoice in respect of the supply was issued or received, regardless of when payment for the supply was received or paid.</p> <p>The VAT legislation, however, allows an association not for gain to apply to SARS (in writing) to make use of the payment basis of accounting, which allows the association to i) declare output tax on supplies made by it, only when</p>

	<p>payment for the supply is received from the customer; and</p> <p>ii) claim an input tax deduction for VAT incurred on expenses only when payment is made to the supplier. This provision provides better cash flow management to associations not for gain.</p>
<p>No VAT on Donations Received</p> <p><i>Section 1 definition of “donation” and “consideration”.</i></p>	<p>Subject to the exemptions, exceptions, deductions and adjustments provided for in the VAT legislation, VAT is generally imposed (whether at a rate of 14% or 0%) on the supply of goods or services by a vendor for a consideration, whether or not for profit, in the course or furtherance of an enterprise carried on by that vendor in, or partly in, South Africa.</p> <p>The term “consideration” is defined in section 1 of the VAT Act and explicitly excludes any payment made by a person as a “donation” to an association not for gain. Therefore, any payment (whether in money or otherwise, e.g. goods or services) made to an association not for gain which constitutes a “donation” as defined in the VAT Act, falls outside the scope of VAT, i.e. no output tax is payable on the receipt thereof. If, however, the requirements contained in the definition (see below) are not met, the association not for gain will be required to account for output tax equal to the tax fraction of any cash amount or the open market value of any goods and/or services received.</p> <p>The term “donation” is defined as follows in section 1 of the VAT Act and incorporates several conditions (underlined emphasis and numbering added below) that must all be met before a payment will qualify as a “donation” for VAT purposes. Therefore, provided an association not for gain does not provide any identifiable direct valuable benefit in the form of a supply of goods or services in return, no output tax will be payable on the receipt of any “donations” (whether monies, goods or services, but excluding</p>

	<p>payments received from public authorities and municipalities), as it is not regarded as “consideration” for the supply of goods or services by the association.</p> <p>An association not for gain is, however, not allowed to claim an input tax deduction on expenses incurred to solicit any “donations” as defined for VAT purposes. Further, an association not for gain is required to account for output tax at either the standard rate of 14% or 0% on any payments it receives from public authorities and municipalities.</p>
<p>Deemed Supplies <i>Section 8(5A)</i></p>	<p>An association not for gain is deemed (for VAT purposes) to supply services to a South African “public authority” (which includes the Department of Basic Education), “municipality” and certain “constitutional institutions” to the extent that it receives any “grant” from these entities in the course or furtherance of a (taxable) enterprise carried on by it. This is relevant for purposes of claiming an input tax deduction in respect of VAT incurred on expenses.</p>
<p>Zero-rating of government funding received <i>Section 11(2)(t)</i></p>	<p>The VAT legislation specifically provides that the deemed supply of services under section 8(5A) mentioned above, is subject to VAT at a rate of 0% (and by implication therefore deemed to be a taxable supply for VAT purposes).</p> <p><i>Zero-rating (tax at 0%)</i></p> <p>An association not for gain should therefore account for output tax at the rate of 0% on any grant received from a South African public authority, municipality or constitutional institution for the purposes of making taxable supplies for a consideration. The association must, however, be in possession of the following required supporting documentation to substantiate the zero-rating of these funds:</p> <ul style="list-style-type: none"> - The association not for gain’s copy of the zero-rated tax invoice; and

	<ul style="list-style-type: none"> - A copy of the agreement or any other applicable documentation/correspondence between the association and the public authority, municipality or constitutional institution pertaining to the payment of the grant. <p><i>Standard rating (tax at 14%)</i></p> <p>The association must account for VAT at 14% on any grant received from a South African public authority, municipality or constitutional institution in the following instances:</p> <ul style="list-style-type: none"> - A grant received for any non-taxable purposes, i.e. not for purposes of making actual or deemed taxable supplies; or for making any supplies free of charge (i.e. for nil consideration); or - The association does not have the required supporting documentation as explained above. <p>That said, the association will be entitled to claim an input tax deduction in respect of VAT incurred on expenses that relates to the making of any taxable supplies (whether taxed at 14% or 0%, as explained above), provided the relevant supporting documentation is held, e.g. valid tax invoice (discussed in further detail below, under the heading “Input tax documentation requirements”).</p>
<p>Supply of donated goods or services exempt from VAT <i>Section 12(b)</i></p>	<p>The supply of any donated goods or services by an association not for gain is exempt from VAT. This includes goods made or manufactured by such association if at least 80% of the value of the materials used in making or manufacturing those goods consists of goods donated to the association.</p> <p>An association is therefore not required to charge VAT (whether at 14% or 0%) on these supplies. However, the association will not be entitled to recover any VAT incurred on expenses it incurred for purposes of making these exempt supplies (see below).</p>

<p>Input tax deductions <i>Section 16(3)</i></p>	<p>A vendor is generally allowed to claim an input tax deduction in respect of VAT incurred on goods and/or services it acquired for the purposes of making taxable supplies.</p> <p><i>Allowable input tax deductions</i></p> <p>Section 8(5A), read with section 11(2)(t) of the VAT Act as explained above, therefore allows an association not for gain to claim an input tax deduction in respect of VAT on expenses incurred to solicit donations or funding from public authorities, municipalities or constitutional institutions.</p> <p>An association not for gain is also allowed to claim input tax deductions under the “normal rules” contained in the VAT legislation, in respect of VAT on expenses it incurred in relation to any other taxable business activities it might be carrying on.</p> <p><i>Input tax deductions disallowed</i></p> <p>An association not for gain is not allowed to claim an input tax deduction on VAT incurred in respect of the following expenses:</p> <ul style="list-style-type: none"> - Expenses incurred to solicit any “donations” as defined for VAT purposes (i.e. other than government funding subject to VAT at 14% or 0% as explained above); - Expenses incurred for the purposes of making exempt supplies (see above) or other non-taxable supplies; and - Input tax deductions specifically disallowed under the VAT legislation (refer to “Prohibited input tax deductions”)
<p>Goods imported exempt from import VAT <i>Section 13(3), read with para. 5 of</i></p>	<p>Goods donated (i.e. goods forwarded unsolicited and free of charge) by a non-resident of South Africa to an association not for gain and imported by that association under conditions prescribed by the International Trade</p>

<p><i>Schedule 1 to the VAT Act.</i></p>	<p>Administration Commission (“ITAC”), are exempt from VAT on importation.</p> <p>In order for the exemption to apply, all of the following conditions must be satisfied:</p> <p>(1) The association not for gain must satisfy SARS that the goods will be used exclusively:</p> <ul style="list-style-type: none"> - for educational, religious or welfare purposes; - in the furtherance of that association’s objectives relating to the provision of educational, medical or welfare services, or medical or scientific research; or - for issue to, or treatment of, indigent persons; and <p>(2) The association not for gain (the recipient of the goods responsible for the distribution) must furnish an undertaking to SARS that:</p> <ul style="list-style-type: none"> - the goods are for the exclusive use by the organisation or for free distribution; - the goods will not be sold, leased, hired or otherwise disposed of for gain; and - no consideration or other counter-performance may be accepted by any person in respect of the goods. <p>(3) All of the following documents and information must be submitted to SARS in respect of each donation received:</p> <ul style="list-style-type: none"> - A letter from the donor confirming that the goods were donated; - A letter from the recipient organisation confirming the donation, stating how the goods will be used and that the goods are not for resale; - Proof that the organisation to whom the donation is made is an association not for gain, e.g. proof of registration as a “section 21 company”; - A copy of the relevant shipping documentation (for example, the Post Office Collection Slip, Air Waybill or Bill of Lading);
--	---

	<ul style="list-style-type: none">- In the case of second-hand goods, a copy of the specific import permit issued by ITAC;- The nature, volume and mass of the goods; and- The estimated commercial value thereof.
--	--

ANNEXURE E: VAT PROVISIONS SPECIFIC TO WELFARE ORGANISATIONS

<i>Welfare organisations</i>	
Voluntary VAT registration <i>Section 23(3)(a)</i>	<p>A person qualifying as a welfare organisation automatically qualifies for voluntary VAT registration, whether or not it makes any taxable supplies for a consideration. The voluntary and compulsory registration thresholds at this stage is R50,000 and R1 million, respectively.</p>
Deemed Supplies <i>Section 8(5)</i>	<p>A welfare organisation is deemed to supply services to a South African “public authority” or “municipality” to the extent that it receives any payment (i.e. government funding) from these entities in the course or furtherance of its welfare activities. This is relevant for purposes of claiming an input tax deduction in respect of VAT incurred on expenses.</p>
Zero-rating of Government funding received <i>Section 11(2)(n)</i>	<p>The VAT legislation specifically provides that the deemed supply of services under section 8(5) is subject to VAT at the rate of 0% (and by implication therefore deemed to be a taxable supply for VAT purposes).</p> <p>A welfare organisation should therefore account for output tax at the rate of 0% on any government funding received for purposes of conducting its welfare activities, provided it is in possession of the required supporting documentation to substantiate the zero-rating of funds received.</p>
Input tax deductions <i>Section 16(3)</i>	<p>A vendor is generally allowed to claim an input tax deduction in respect of VAT incurred on goods and/or services it acquired for the purpose of making taxable supplies.</p> <p>Since a welfare organisation is deemed to be making taxable supplies (taxed at a rate of 0%) to the extent of</p>

	<p>government funding received as explained above, it is entitled to claim an input tax deduction of the VAT paid on expenses incurred in relation to its welfare activities. Therefore, other than in the case of associations not for gain as explained above, a welfare organisation is entitled to claim an input tax deduction in respect of VAT on expenses incurred to solicit “donations” as defined for VAT purposes. The welfare organisation must, however, be in possession of the relevant supporting documentation (e.g. supplier’s invoice) in order to claim an input tax deduction.</p>
<p>Certain prohibited Input tax deductions, specifically allowed <i>Section 17(2)(a)(vi)</i></p>	<p>Subject to certain exemptions, the VAT legislation specifically prohibits an input tax deduction of VAT incurred in respect of goods and/or services acquired for the purposes of entertainment.</p> <p>The term “entertainment” is defined in section 1 of the VAT Act to mean the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him.</p> <p>The exemption contained in section 17(2)(a)(vi) of the VAT Act specifically allows a welfare organisation to claim an input tax deduction in respect of VAT incurred on entertainment related expenses acquired for the purposes of carrying out its welfare activities. For example, the provision of food and accommodation to needy children.</p>

ANNEXURE F: INTERVIEW SCHEDULES



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Economic and Management Sciences: MCom (Taxation)

The Challenges of Value-Added Tax Compliance Provisions for Non-Profit Organisations: An Explorative Study

Research conducted by:

Ms I Barnard (Student Number 29636958)

Cell: 084 336 5566

Dear Participant

You are invited to participate in an academic research study conducted by Isél Barnard, Masters Student from the Department of Taxation at the University of Pretoria.

The purpose of the study is to identify challenges encountered by Non-Profit organisations in terms of Value-Added Tax (VAT) Compliance.

Please note the following:

- This is an anonymous survey as your name will not appear on the questionnaire. The answers you give will be treated as strictly confidential as you cannot be identified in person based on the answers you give.
- Your participation in this study is very important to us. You may, however, choose not to participate and you may also stop participating at any time without any negative consequences.
- Please answer the questions proposed in the interview as completely and honestly as possible.
- The results of the study will be used for academic purposes only and may be published in an academic journal. We will provide you with a summary of our findings on request.
- Please contact my study leader, Ms Anculien Schoeman at anculien.schoeman@up.ac.za if you have any questions or comments regarding the study.
- The interview is expected to last 30 minutes.

Please sign the form to indicate that:

- You have read and understand the information provided above.
- You give your consent to participate in the study on a voluntary basis.

Participant's signature

Date

Organisational Information

1. What is the type of the organisation (association, organisation, trust, company)?

Non Profit Company

Non-Profit Organisation

Please specify _____

2. What is the main focus of the organisation?

3. Since when has this organisation been in operation?

4. What is the composition of the admin and finance team (Head Count and Job Titles)?

Tax Status Information

5. Is this organisation approved as a Public Benefit Organisation for Income Tax Purposes?

6. Please list the public benefit activities conducted by the entity (Refer to detailed listings attached):

Public Activity Description (Part I 9 th Schedule)		Details of Activity
• Welfare and Humanitarian		
• Land and Housing		
• Religion, Belief or Philosophy		
• Conservation, Environment and Animal Welfare		
• Sport		
• General		
• Health Care		
• Education and Development		
• Cultural		

• Research and Consumer Rights		
• Providing of Funds, Assets and Other Resources		

7. Have you made use of consultants or tax specialists to assist with the PBO application process? If Yes, why were their services required?

8. Does the entity qualify as an Association Not for Gain in terms of the VAT Act (Section 1)?

9. Does the entity qualify as Welfare Organisation for VAT purposes?

10. Is there any current issues/pending matters with SARS or disputes with SARS in the past?

11. Is the organisation generally in a VAT payable or VAT refund position?

12. Do you have long outstanding refunds due from SARS?

Details of Organisations Activities, Income Streams and Expenses

13. If the organisation is conducting approved public benefit activities as listed (please refer point 6), specifically note if these public benefit activities also qualifies as welfare activities in terms of Regulation 112 for VAT purposes. Although the headings of the public benefit activities and the welfare organisation activities may overlap, please state if the activities conducted specifically qualifies as 'welfare activities' as approved for VAT purposes.

Welfare Organisation (Regulation112)		Details of Activity
• Welfare and Humanitarian		
• Health Care		
• Land and Housing		
• Education and Development		

• Conservation, Environment and Animal Welfare		
--	--	--

14. Please confirm if specific provisions available to welfare organisations to the extent that welfare activities are conducted (as listed above), are considered and applied in completion of VAT returns? Please give details what provisions are provided for.

15. Please list the entity's income streams and indicate approximate contribution to total income. Also indicate what the VAT treatment is for each of the income streams listed:

Income Stream	Details of Activity related to Income Stream	VAT Treatment
Donations		
Grant Funding (Government)		
Grant Funding (Other)		
Interest Income		
Sale of Goods		
Rendering of Services		

16. Please indicate if you have made use of consultants or tax specialist to do an evaluation on the entity's activity classification and/or analysis of revenue streams for VAT purposes, including the related VAT treatment thereof? If Yes, why were the services required.

17. What is the nature of expenses incurred?

18. Please confirm if all VAT inputs are claimed? If not, what inputs are claimed and if an allocation basis is used, how is the allocation basis determined:

- Are all VAT Inputs claimed? YES NO
- Are VAT Inputs claimed based on an allocation basis? YES NO

- Please give detail on the allocation basis applied:

Further Comments

19. Please list any areas of concern in terms of VAT Compliance & VAT Administration

20. In your view, do you think the VAT provisions available to non-profit organisations provide an enabling environment for organisations as yourselves to achieve objectives addressing social and development needs, taking into account some of the practical challenges discussed?



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Economic and Management Sciences: MCom (Taxation)

**The Challenges of Value-Added Tax Compliance Provisions for Non- Profit Organisations:
An Explorative Study**

Research conducted by:

Ms I Barnard (Student Number 29636958)

Cell: 084 336 5566

Dear Participant

You are invited to participate in an academic research study conducted by Isél Barnard, Masters Student from the Department Economic and Management Science at the University of Pretoria.

The purpose of the study is to identify challenges encountered by Non-Profit organisations in terms of Value Added Tax (VAT) Compliance.

Please note the following:

- This is an anonymous study survey as your name will not appear on the questionnaire. The answers you give will be treated as strictly confidential as you cannot be identified in person based on the answers you give.
- Your participation in this study is very important to us. You may, however, choose not to participate and you may also stop participating at any time without any negative consequences.
- Please answer the questions proposed in the interview as completely and honestly as possible.
- The results of the study will be used for academic purposes only and may be published in an academic journal. We will provide you with a summary of our findings on request.
- Please contact my study leader, Ms Anculien Schoeman at anculien.schoeman@up.ac.za if you have any questions or comments regarding the study.
- The interview is expected to last 30 minutes.

Please sign the form to indicate that:

- You have read and understand the information provided above.
- You give your consent to participate in the study on a voluntary basis.

Participant's signature

Date

Interviewee Information

1. What is the nature of your job?

Tax Consultant: Public Sector

Tax Consultant: Private Sector

Tax Consultant: SARS

Other

2. What is your focus area of expertise?

Interviewee's experience in the area of Tax Status Information

3. We have asked Non-profit Organisations if they are approved Public Benefit Organisations (PBO's) for Income Tax purposes. In your experience, do non-profit organisations understand the concept of approved PBO's or is there sometimes a misperception that all non-profit organisations are automatically 'exempt entities'?

4. We have asked Non-profit Organisations what public benefit activities are being conducted by the entity. In your experience, can non-profit organisations clearly define the activities conducted by the organisation and are these activities easily aligned with the approved public benefit activities as defined in Part I of the 9th Schedule?

5. In your opinion, do Non-profit Organisations make use of tax consultants on a regular basis to define the activities conducted by the organisation and to seek advice on whether these activities qualify as public benefit activities for purposes of income tax?

- -----
6. We have asked non-profit organisation if they qualify as an Association Not for Gain and if the organisation qualifies as Welfare Organisations in terms of the VAT Act. In your experience, do non-profit organisations understand the distinction between the term PBO for Income Tax and the terms Association not for Gain and Welfare Organisation for VAT purposes?
- -----

Details of Organisations Activities, Income Streams and Expenses

7. We have asked the non-profit organisations to list the welfare organisation activities conducted by the organisation. In your experience, can non-profit organisations clearly define the activities conducted by the organisation and are these activities easily aligned with the welfare activities as listed in Regulation 112 (Government Gazette 27235)?
- -----

8. Please confirm if specific provisions available to welfare organisations to the extent that welfare activities are conducted (as listed above), are considered and applied in completion of VAT returns? Please give details what provisions are provided for.
- -----

9. In your experience, do non-profit organisations accurately identify the different income streams and apply the relevant treatment for VAT purposes? Please refer the list of income streams and discuss common challenges experienced in the VAT treatment of these income streams:

Income Stream	VAT Treatment
Donations	

Grant Funding (Government)	
Grant Funding (Other)	
Interest Income	
Sale of Goods	
Rendering of Services	

10. Does Non-profit Organisations make use of tax consultants on a regular basis to do an evaluation on the entity's activity classification and/or analysis of revenue streams for VAT purposes and the related VAT treatment thereof?

.....
.....

11. What is your experience in terms of attribution methods applied by non-profit organisations in allocating input VAT that can be claimed: Do they accurately use the revenue contribution as basis? In the case where revenue contribution is not an accurate basis, do organisations approach SARS for a Ruling on the allocation basis?

.....
.....
.....

12. How many cases did you attend to in the past five years for non-profit organisations to apply for a VAT Ruling in respect of the attribution percentages to be applied? In your experience, what is the general ratio of non-profit organisations that have to apply for ruling applications to determine the attribution percentage to be applied?

.....
.....
.....

13. In cases where revenue contribution is not an accurate basis of input allocation, are there any alternatives that can be considered in terms of legislative provisions to regulate the allocation basis instead of a Ruling application?

.....
.....
.....