

A QUICK STEP-BY-STEP GUIDE TO TAX REQUIREMENTS FOR PUBLIC BENEFIT ORGANISATIONS

by

Geraldene Göldner

Student Number
26205841

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Supervisor:

Mrs H Du Preez

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SUMMARY

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By

Geraldene Göldner

STUDY LEADER : HANNEKE DU PREEZ
DEPARTMENT : TAXATION
DEGREE : MAGISTER COMERCII (TAXATION)

When an organisation is registered as a (PBO), the organisation will only qualify for tax exemption to the extent that the profits are derived in furtherance of the main objective of the organisation. There are, however, certain requirements that an organisation has to meet in order to register as a PBO.

When referring to an organisation which does not operate on the basis of profit-making, the two terms: non-profit organisation and public benefit organisation are used. As mentioned by Coetzee (2011) these two terms often cause confusion. To the uninformed these particular terms mean the same thing whereas in the tax community they have different meanings and implications.

Limited research exists for public benefit organisations and a critical analysis of short guides of foreign countries were done to assist with the creation of the quick step-by-step guide for South Africa. The countries selected for the critical analysis are Ireland, China, Switzerland and the United States of America. These four countries were selected by taking South Africa's global position into consideration.

This study is concluded with the creation of the quick step-by-step guide. This quick step-by-step guide will benefit any person who is in the process of registering an organisation for tax exemption. By making this quick step-by-step guide easily accessible and available to the public in general and especially employees at PBOs, these employees will be able

to attend to the application themselves and not be obliged to rely on the services of accounting and law firms which may cause an unnecessary expense for the PBO.

OPSOMMING

A QUICK STEP-BY-STEP GUIDE TO TAX REQUIREMENTS FOR PUBLIC BENEFIT ORGANISATIONS

Deur

Geraldene Göldner

STUDIELEIER : HANNEKE DU PREEZ
DEPARTEMENT : BELASTING
GRAAD : MAGISTER COMERCII (BELASTING)

Waar 'n organisasie as 'n openbare weldaadsorganisasie (OWO) geregistreer is, sal die organisasie slegs vir belasting vrystelling kwalifiseer tot die mate wat die winste gegeneer word ten gunste van die hoof doelwit van die organisasie. Daar is egter sekere vereistes waaraan 'n organisasie moet voldoen om as a OWO te registreer.

Wanneer daar na 'n organisasie verwys word wat nie op 'n basis van winsbejag handel nie, word die volgende terme nie-winsgewende organisasie en openbare weldaadsorganisasie gebruik. Soos deur Coetzee (2011) genoem, kan hierdie twee terme verwarring veroorsaak. Vir die oningeligte kan hierdie twee terme dieselfde betekenis dra, terwyl die terme vir die belastinggemeenskap verskillende betekenis en implikasies het.

'n Beperkte hoeveelheid navorsing is beskikbaar vir OWOs, daarom is 'n kritiese analise gedoen van buitelandse kort handleidings om mee te werk met die skep van die vinnige stap-vir-stap handleiding vir Suid-Afrika. Die lande wat ingesluit is in die kritiese analise is Ierland, China, Switserland en die Verenigde State van Amerika. Die vier lande is gekies deur Suid-Afrika se globale posisie in ag te neem.

Die studie word met die skep van die vinnige stap-vir-stap handleiding afgesluit. Die vinnige stap-vir-stap handleiding sal tot voordeel wees vir enige persoon wat in die proses is om 'n organisasie vir belastingvrystelling te registreer. Deur die vinnige stap-vir-stap handleiding maklik bekombaar en beskikbaar te maak vir die algemene publiek en

werknemers by OWOs, stel dit die werknemers in staat om self die registrasies te doen en nie verplig word om op die dienste van die rekeningkundige- en prokureursfirmas, wat onnodige kostes kan meebring, staat te maak nie.

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A QUICK STEP-BY-STEP GUIDE TO TAX REQUIREMENTS FOR PUBLIC BENEFIT ORGANISATIONS

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

“In this world, nothing can be said to be certain, except death and taxes” (Benjamin Franklin, 1789 in *The phrase finder* 2009).

The collection of taxes has been a reality that has had to be dealt with throughout the ages. Ozrovec (2010:1094) refers to the Gospel of Matthew 17:27 which speaks of the tax collectors asking Peter whether Jesus paid taxes. After discussing the matter, Jesus instructed Peter to pay their tax dues. Furthermore, the South African Council of Churches (2002) agrees that taxes are raised to pay the expenses which arise in public administration and public services.

Although the imposition of taxes is necessary, there are some organisations the sole purpose of which is to operate for the benefit of the general population. These organisations normally do not operate on the basis of profit, but rather attempt to cover the expenditure incurred in the furtherance of their purpose. Organisations such as these are normally reliant on fundraisers and donations from individuals and companies as their only source of income. As the purpose of these organisations is not to make a profit, it would be unfair to tax their profits as they are already making a contribution to the community.

In order to enjoy the possible benefits of tax exemption, an organisation should register for tax exemption at the South African Revenue Service (SARS). After registration, the organisation will be referred to as a public benefit organisation (PBO).

When an organisation is registered as a PBO, the organisation will only qualify for tax exemption to the extent that the profits are derived in furtherance of the main objective of

the organisation. There are, however, certain requirements that an organisation has to meet in order to register as a PBO.

When referring to an organisation which does not operate on the basis of profit-making, the two terms: non-profit organisation (NPO) and public benefit organisation (PBO) are used. As mentioned by Coetzee (2011) these two terms often cause confusion. To the uninformed these particular terms mean the same thing whereas in the tax community they have different meanings and implications.

Although a public benefit organisation (PBO) can be a non-profit organisation (NPO) it is not a given that a non-profit organisation (NPO) is a public benefit organisation (PBO). A NPO is regulated in terms of the Non-profit Organisations Act 71 of 1997 (NPO Act) whereas a PBO is regulated by the Income Tax Act No. 58 of 1962 (the Act). The objective of the NPO Act is to set and maintain satisfactory standards. These standards include governance, accountability and transparency (Honey, 2000).

A NPO is an organisation created for the benefit of the general public and the income is not distributable to the members. Bater (2008) comments that 'where the vast majority of the people have little or no disposable income, exempting PBOs from tax on their income may be more conducive to their development than providing tax incentive to their donors.' Furthermore, Bater (2008) points out that donations are made to PBOs for humanitarian reasons and not for the possible benefit that could be derived from making such a donation. It could be said that the possible benefit to the donor in making a donation can determine the size of that donation.

Dadrawala (2008) explains the term 'non-profit' as (non-profit distributing). This then indicates that the so-called profit will not be distributed to the members as a dividend, but instead be re-invested into the organisation for charitable purposes.

This study creates a step-by-step guide to assist the founders and employees at PBOs in registering and complying with the tax requirements of a PBO.

1.2 PROBLEM STATEMENT

The need for clarity on the registration requirements for PBOs has been identified. It is clear that in registering a company or trust for tax exemption (PBO status) not all founders and employees are aware of the requirements of the registration process. It is doubtful whether employees with administrative and tax responsibilities at NPO's and PBOs are familiar with all the administrative and tax requirements. A further aspect to be considered is whether there are sufficient guidelines available to the employees with tax responsibilities.

1.3 PURPOSE STATEMENT

There are various organisations in South Africa which qualify as PBOs but are unaware of the possible advantages to be enjoyed in registering as such an organisation. There are existing PBOs with staff members who may not be equipped to determine the tax requirements of running the day-to-day operations of a PBO.

The researcher is a tax consultant responsible for tax exemption registrations on a regular basis. Experience obtained by communicating with employees at organisations already registered as PBOs and with employees at organisations in the process of registering, shows that the employees who are responsible for the compilation of the documentation required to accompany the PBO application do not have the required tax knowledge or experience. In most cases, relevant information and documentation is compiled by the organisations' personal assistants.

SARS published a guide in 2007 for PBOs in South Africa. This guide is 66 pages long and is written in academic English and can be difficult to understand if the terminology is not familiar to the reader. The guide does not stipulate the procedures to be followed or the documents required for the application. An employee, with no prior experience, assigned to register an organisation for tax exemption will not necessarily know where to start and what documents need to be submitted to successfully register the organisation for tax exemption.

Assisting these employees in obtaining the relevant knowledge is important. The information should be presented in such a way that it is easily accessible and understandable to employees without their having had any prior experience in the field.

The guide created in this study is a short document written in plain English to assist the inexperienced employee to understand what needs to be done in order to successfully register the organisation for tax exemption. The quick step-by-step guide furthermore states the necessary steps in the registration process and lists all the required documents that need to accompany the application when submitting to SARS.

This study will focus on the different areas in respect of tax requirements for PBOs and identifying possible problem areas in complying with the tax requirements.

As will be shown in this study, the concept of a non-profit or public benefit organisation is not limited to South Africa. Other countries are promoting the existence and furtherance of organisations which operate primarily for the benefit of the public at large. The possible restrictions in complying with all the requirements in registering as a PBO are explored.

In giving a short background of the foreign countries selected to form part of this study and in doing a critical analysis of the short guides of these countries an overview is presented on the way in which PBOs are viewed in these countries. These countries are Ireland, China, Switzerland and the United States of America (USA). The critical analysis should contribute to identifying the advantages of the information included and structure of each of the four short guides selected to form part of this study.

1.4 RESEARCH OBJECTIVES

The study was guided by the following objectives:

- To critically analyse short guides for PBOs from Ireland, China, Switzerland and the USA.
- To determine the relevant South African legislation to be used in the proposed guide.

- To design a quick step-by-step guide to assist founders and employees with the tax requirements of PBOs.

1.5 RESEARCH DESIGN

The first step in designing a quick step-by-step guide was to determine whether other countries already have a quick guide in place. The countries would be selected from the following groups of countries:

- First world country
- Brazil, Russia, Ireland, China and South Africa (BRICS-countries)
- Organisation for economic co-operation and development (OECD-countries)

After obtaining the guides, a critical analysis was done to determine the helpfulness of each guide, and their negative and positive attributes and structure. The relevant South African legislation was identified and applied. This analysis and legislation was used as a basis to create the step-by-step guide for South African PBOs.

1.6 DELIMITATIONS

The subject literature available on PBOs is limited. The critical analysis of this study focuses only on the foreign countries which are in possession of a quick guide to assist with the registration process and the tax requirements of a PBO. Not all countries have a guide for PBOs in place and there are not any quick guides available in the countries identified for use in this study. Consequently, short normal guides are used for the critical analysis.

1.7. ASSUMPTION

The following assumption was made in order to complete the study: that particular selected foreign countries have a short guide for PBOs in place.

1.8. DEFINITION OF KEY TERMS AND ABBREVIATIONS

In discussing the research done in the course of this study various terms and abbreviations are used. The following definitions shed some light on the terms used:

A non-profit organisation is defined in section 1 of the Non-profit Organisations Act No 71 of 1997 as a trust, company or other association of persons:

- a) established for a public purpose; and
- b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered.

A public benefit activity (PBA) is defined in section 30 of the Income Tax Act, No 58 of 1962 as:

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

A public benefit organisation is defined in section 30 of the Income Tax Act, No 58 of 1962 as:

any organisation -

- a) which is-
 - i) a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No 61 of 2008), or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
 - ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;
- b) of which the sole or principal object is carrying on one or more public benefit activities, where-

- i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;
 - ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and
- c) where-
- i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).

The following abbreviations are used throughout this document:

Table 1: Abbreviations used in this document

Abbreviation	Meaning
BRIC	Brazil, Russia, India and China
BRICS	Brazil, Russia, India, China and South Africa
IRS	Inland Revenue Service
NPC	Non-profit Company
NPO	Non-profit Organisation
NPO Act	Non-profit Organisations Act 71 of 1997
OECD	Organisation for Economic Co-operation and Development
PBA	Public Benefit Activity
PBO	Public Benefit Organisation
SARS	South African Revenue Service
The 1973 Companies Act	Companies Act 61 of 1973
The Act	Income Tax Act, No 58 of 1962
The New Companies Act	Companies Act 71 of 2008
The Skills Development Levy Act	Skills Development Levy Act, No. 8 of 1999
The VAT Act	Value Added Tax Act, No. 89 of 1991
USA	United States of America

1.9 OVERVIEW OF THE CHAPTERS IN THIS STUDY

In this chapter, the relevance and the sequence of this study is introduced. Chapter 2 consists of a critical analysis of four different countries which have quick guides on PBOs in place. In chapter 3, the South African legislation is discussed which leads up to chapter 4 in which the quick step-by-step guide is created. The study concludes with chapter 5.

CHAPTER 2

FOREIGN COUNTRIES: CRITICAL ANALYSIS OF GUIDES ON PUBLIC BENEFIT ORGANISATIONS

2.1 INTRODUCTION

The ultimate goal of this study is to create a step-by-step guide to assist employees at PBOs. As a short guide has not yet been published in South Africa, an analytical study of the short guides of foreign countries would assist in determining which information should be included in a step-by-step guide for South Africa.

As the purpose of this critical analysis is not to compare the guides from different countries, but rather to compare the contents of the different guides and identify the common denominators for comparison and discussion. In comparing the common denominators the benefits and detriments can easily be identified. The different advantages identified in the critical analysis of the different guides are applied when creating the quick step-by-step guide for South Africa.

The factors used in determining which countries to include in this study were decided on by taking South Africa's global position into consideration.

In determining which countries to include in this study, the following factors were considered:

- BRICS country
- OECD country
- First-world country

The BRICS concept was introduced by Goldman Sachs in 2001 (BRICS India, nd). Initially this group of countries consisting of Brazil, Russia, India and China was only known as BRIC. South Africa did not form part of the BRIC group of countries at that time.

On 21 September 2010 the BRIC Foreign Ministers decided to invite South Africa to form part of the BRIC group of countries. When South Africa joined the group, the name changed to BRICS (BRICS India, nd).

Since South Africa is included in the BRICS group of countries, and China is a member of the group, China was chosen to form part of the analysis.

The OECD was established in 1961 and its headquarters is currently situated in Paris, France. In their mission statement the OECD sums up their aim in one sentence. 'The common thread of our work is a shared commitment to market economies backed by democratic institutions and focused on the wellbeing of all citizens' (OECD, nd).

South Africa is not currently a member of the OECD. However, South Africa received an invitation to partake in the Emerging Market Economy Forum from 1996 to 2000. Since the closing of the Forum in 2000, South Africa has participated in the OECD events which are open to all non-members (OECD, nd). As members of the OECD, Switzerland and Ireland were chosen to form part of this study.

In attempting to determine which first-world country should be included in this study, the researcher chose the United States of America (USA) as part of the analysis. South Africa is a developing country and can look towards the first-world countries for guidance on economic matters.

A review of the subject literature revealed the following current information on the charities in the foreign countries concerned:

Charities and non-profit organisations in Ireland are becoming more reliant on government funding. According to Grant Thornton's 2012 not-for-profit survey, 60% of charities receive their funding from the government. Furthermore, the firm predicts that 10% of charities or non-profit organisations in Ireland may close down due to a lack of funding (One in 10 charities at risk of folding ..., 2012).

As reported in the *Irish Times* (O'Brien, 2011) non-profit organisations in Ireland showed an income of €5.75 billion in 2009. This income is derived by approximately 8000 non-profit companies. Of these 8000 companies, 3600 are operating on a voluntary basis.

Non-governmental organisations include cooperatives, religious bodies, trade unions, residents' associations, foundations and self-help groups (One in 10 charities at risk of folding ..., 2012). These organisations could be in the form of one of the following:

- Unincorporated association;
- Trust;
- Company limited by guarantee.

In the USA an amount of \$ 1.3 billion was received for the relief efforts after the terrorist attacks on September 11, 2001 (Salamon, 2002). This amount was received within the first two months after the terrorist attacks.

Of the 1 581 111 registered non-profit organisations in the USA, 63% are public charities (National Center for Charitable Statistics, 2010). In partnership with the Foundation Center a number of foundations have agreed to release their grant information to the public (Foundation Centre, 2012). The information will improve the philanthropy sector by increasing the transparency of the grants received (Foundation Centre, 2012).

According to Young and Woo (in McCaughan, 2008) government funding is the greatest source of income for NPOs in China. The not-for-profit sector in China started developing in 1979. China kept on looking for ways in which social services could be assisted.

In 2011, China received 84.5 Yuan from donations and donated material (Dan, 2012). In addition to the millions of companies falling outside the legal regime, the number of non-profit organisations in China reached 500 000 during 2010 (Hauser Center for Nonprofit Organizations, Harvard University, 2011).

The current information on charities in the abovementioned countries highlights the importance of government funding. As this is a common issue for NPOs worldwide, the critical analysis of the guides of each of these countries is of great value.

The headings identified in the short guides of the chosen foreign countries are used as a framework for the critical analysis in this study. The heading 'List of charitable purposes' is included in the analysis because South Africa's PBO registrations are also based on a list of charitable purposes although none of the guides compiled in the relevant foreign countries include a 'List of charitable purposes'.

In this study any references made to the short guides of the foreign countries included in this study are referred to in the text as follows:

Short tax guide, USA (USA. Internal Revenue Service, 2009).

Short tax guide, Hong Kong (Inland Revenue Department ..., 2010).

Short tax guide, Switzerland (Mandat International, 2012)

Short tax guide, Ireland (Irish Tax & Customs. Revenue, 2009).

2.2. WHY APPLY FOR PBO STATUS FOR TAX ADVANTAGES?

An organisation registered as a not-for-profit organisation does not automatically qualify as a PBO. The organisation will only be a PBO once the organisation is registered for tax exemption at SARS. Therefore, it is necessary to determine the benefits of registering for tax exemption.

The USA short guide (USA. Internal Revenue Service, 2009) provides an explanation on the benefits of registering for tax exemption. It then goes on to explain the tax advantages of registering for exemption status. In the China short guide (Inland Revenue Department ..., 2010) the different taxes under which the exemption will apply are explained. The guide states what events and legislation will give rise to the exemption status. The

Switzerland short guide (Mandat International, 2012) lists two requirements for tax exemption to be applied, whereas the Ireland short guide (Irish Tax & Customs. Revenue, 2009) gives a list of taxes according to which the organization will enjoy tax exemption.

When comparing the above, it could be said that the best way for the quick step-by-step guide to commence is with an explanation of PBOs and tax exemption. The guide could then proceed to explain the following:

- the benefits and tax advantages of registering for tax exemption;
- the requirements for registering for tax exemption; and
- the different taxes according to which the tax exemption will apply.

2.3. BACKGROUND AND DEFINITIONS

In each of the four guides there is a short background and, or definitions. In the USA short guide (USA. Internal Revenue Service, 2009) there are many references to sections and forms in the background which may confuse readers. The background may be perceived as very technical. The definitions in this guide are not listed in one section, but terms are defined where applicable throughout the guide. In the China short guide (Inland Revenue Department..., 2010) a short explanation is given on what constitutes a charity. No further definitions are provided and in the background only the role of the Inland Revenue Department is explained.

The Switzerland short guide (Mandat International, 2012) provides explanations on the three main organizations which have relevance to the topic. With the explanations included as part of a definition, there is no need for additional background. The Ireland short guide (Irish Tax & Customs. Revenue, 2009) has a short introductory paragraph which indicates the contents of the guide.

In view of the above, it is suggested that a short introductory paragraph and the relevant definitions should be included in the South African quick step-by-step guide (eg NPO, PBO).

2.4. RESPONSIBILITIES

The responsibilities are explained under two main subcategories:

- Record-keeping; and
- Filing requirements.

Record-keeping refers to the electronic and hardcopy versions of all the documentation used in the course of conducting? the business. These documents should include, but are not limited to, bank statements, invoices and accounting books. When referring to the filing requirements, the actual submission of the income tax returns is explained?

2.4.1. Record-keeping

In the USA short guide (USA. Internal Revenue Service, 2009) a brief summary is given on what documentation needs to be kept and for what period of time. References are made to other publications in respect of further requirements and information. In the China short guide (Inland Revenue Department ..., 2010) no reference is made to any record-keeping. The Switzerland short guide (Mandat International, 2012) describes the manner in which records should be kept and states seven principles to be used as a guide to limit the risks in bookkeeping. In the Ireland short guide (Irish Tax & Customs. Revenue, 2009) one sentence addresses the need for record-keeping and points out that the records should be made available to the Revenue Commissioners.

As a summary, the following should be included:

- The South African legislative requirements with regard to the records which should be kept and for what period of time;
- A practical explanation on what type of records should be kept and for what period of time; and
- What could be done to limit the risks in book-keeping.

2.4.2. Filing requirements

In the USA guide (USA. Internal Revenue Service, 2009) reference is made to the filing requirements. Different filing requirements are applicable in the case of the different circumstances in which the organization finds itself at the end of the year. Each filing requirement is discussed separately. No reference is made to the filing requirements in any of the other guides.

By taking the above into consideration, the quick step-by-step guide for South Africa should include the following:

- Legislative requirements with regard to the submission of the returns explained in practical terms; and
- The filing requirements, and how the filing should be done.

2.5. HOW TO REGISTER AND OBTAIN EXEMPTION STATUS

The USA guide (USA. Internal Revenue Service, 2009) refers to three different forms which need to be submitted in order to obtain exemption status. A short explanation is given with each form and how it should reach the Internal Revenue Service (IRS). The China guide (2010) lists the required documentation which needs to be submitted to the Inland Revenue Department. It also provides details of the location to which the application should be sent. According to the Switzerland guide (Mandat International, 2012) registration is optional as only organisations with an annual turnover from a commercial activity of CHF 100 000 are required to register.

The Ireland guide (Irish Tax & Customs.Revenue, 2009) has a section of six pages containing information on applications for tax exemption. Every aspect of the registration document is discussed in detail. The required documentation is also discussed as well as the manner of submission.

This section of the Ireland guide shows great advantages in respect of the structure and information included in the guide and could, therefore, be used as a guideline for the quick step-by-step guide. The following information should be included in the guide:

- When submission should take place and to whom it should be submitted.
- What documentation should accompany the application.
- The expected turn-around time in which the registration should be finalised.

2.6. DONATIONS

In the USA, China and Switzerland guides reference is made to the tax deductibility of a donation made to a PBO (Inland Revenue Department ..., 2010; USA. Internal Revenue Service, 2009; Mandat International, 2012). The Ireland guide does not refer to the deductibility of the donations made to a charitable entity (Irish Tax & Customs. Revenue, 2009).

In the quick step-by-step guide it should be addressed under the heading for the registration of a PBO with section 18A approval. The following should be noted when discussing the donations:

- When will a donation be a tax advantage?
- What documentary requirements are connected to donations?

2.7. SET-UP AND FUNCTIONING

The Ireland guide (Irish Tax & Customs. Revenue, 2009) has a section attributed to the clauses required in the statutory documents of the company. This section discusses all the relevant details which need to be included in the statutory documents in applications for exempt status.

As schedule nine of the Act is very specific on the requirements for registration, it is important to keep the set-up and functioning in mind. This section of the Ireland guide will serve as a guideline for the quick step-by-step guide.

2.8. LIST OF CHARITABLE PURPOSES

In the USA guide (USA. Internal Revenue Service, 2009) there are three types of organizations listed which may be exempt from tax. Under each of these three categories, there are different types of organisations listed. Annexure A of the Chinese guide lists 11 charitable purposes, whereas the Switzerland guide only shows two requirements (Inland Revenue Department ..., 2010; Mandat International, 2012). The Ireland guide (Irish Tax & Customs. Revenue, 2009) lists four categories according to which an organisation can be registered for tax exemption.

As South Africa has nine categories for which tax exemption can be applied it would be best to list the categories in bulleted form. An organisation in South Africa can only be registered as a PBO once the PBA of that organization falls within the activities as listed in Part 1 of the Ninth Schedule of the Act. As a result it is imperative that the list of nine categories and activities for which tax exemption is allowed should be included.

Within this chapter the critical analysis of the short tax guides of particular foreign countries were identified and explored. The guides chosen to form part of this study were selected by taking South Africa's global position into account.

As South Africa is one of the BRICS countries and has observer status in respect of the OECD countries, China, Ireland and Switzerland were chosen to form part of the analysis. As a first world country, the USA also formed part of the analysis.

2.9. CONCLUSION

This chapter offers a limited insight into the views in respect of PBOs in the four foreign countries selected since only a small part of the background of each country in the relevant guides was subjected to analysis in this study. The advantages of applying for tax exemption? identified in the different guides were compared and used in the framework for designing the South African quick guide.

In order to design a quick guide specifically for South Africa, the South African legislation was also taken into account. In chapter 3, the South African legislation and legislative requirements for the registration of PBOs are explored and explained.

CHAPTER 3

SOUTH AFRICAN LEGISLATION

3.1 INTRODUCTION

When South Africa became a democratic republic, the government appointed the Katz Commission to review the South African tax laws. Nine reports were published, of which the ninth report dealt with non-profit organisations (South African Council of Churches, 2002).

During the budget speech in February 2000, former Finance Minister Trevor Manuel acknowledged the importance of NPOs in the promotion of development and democracy in South Africa (Nelson, 2000). He pointed out that he was aware of the cash flow restrictions of NPOs and that the exemption of PBOs from taxation and the deductibility of donations granted by legislation are not enough to assist with these cash flow restrictions.

Confusion often arises in the use of the terms 'non-profit organisation'(NPO) and 'public benefit organisation' (PBO). The term 'non-profit organisation' is commonly used to refer to an organisation that has been incorporated as a not-for-profit-organisation. A non-profit organisation (NPO) is not exempt from tax, and this is based on the manner in which it was incorporated. A public benefit organisation, on the other hand, is an organisation which meets the requirements of section 30 of the Act and enjoys tax exemption in terms of section 10(1)(cN) of the Act.

3.2 LEGISLATIVE REQUIREMENTS

The exemption of PBO income is governed by section 10(1)(cN) of the Income Tax Act. Section 10(1)(cN) of the Act states:

There shall be exempt from normal tax--
the receipts and accruals of any PBO approved by the Commissioner in terms of
section 30(3) to the extent that the receipts and accruals are derived—

- i) otherwise than from any business undertaking or trading activity; or
- ii) from any business undertaking or trading activity—
 - aa) if the undertaking or activity—
 - (A) is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of ‘public benefit organisation’ in section 30;
 - (B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
 - (C) does not result in unfair competition in relation to taxable entities;
 - bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;
 - cc) if the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to—
 - (A) the scope and benevolent nature of the undertaking or activity;
 - (B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;
 - (C) the profitability of the undertaking or activity; and
 - (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organization carrying out the undertaking or activity; or
 - dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—
 - i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
 - ii) R150 000.

When an organisation meets the requirements as stipulated in paragraph (b) of the definition of PBO in section 30 of the Income Tax Act, the organisation may apply for tax exemption at the Tax Exemption Unit of the South African Revenue Service (SARS). The organisation must carry on a PBA as set out in Part I of the Ninth Schedule to the Income Tax Act. The PBA's are listed under the following headings:

- Welfare & Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment & Animal Welfare
- Research and Consumer Rights
- Sport
- Providing of Funds, Assets or Other Resources
- General

3.3. REGISTERING AS A PUBLIC BENEFIT ORGANISATION

There are a few requirements which must be met in order to submit an application form when registering a company for tax purposes, whether it is for exemption or normal tax.

3.3.1. Procedure to apply for tax exemption status (PBO)

When applying for tax exemption, an EI 1 application form (figure 1) should be completed and submitted together with the founding document and the latest set of financial statements. In the absence of financial statements, copies of the bank statements of the organisation for the last three months must accompany the application.

The application form, together with all the supporting documentation must be sent to the SARS Tax Exemption Unit via post or the documents can be hand-delivered at the Tax

Exemption Unit offices in Pretoria. The current contact details of the Tax Exemption Unit are as follows:

Physical address: 271, Veale Street, Nieuw Muckleneuk, Pretoria

Postal address: The Head: Tax Exemption Unit

PO Box 11955

Hatfield


0028

E-mail address: teu@sars.gov.za

Telephone number: (012) 483 – 1700

The contact details supplied above are valid for 2012, but may be subject to change in future. The telephone number of the National Call Centre for Taxpayers' Numbers is 0860 18 18 18. The operator at the call centre would be able to assist any organisation with the current contact details.

Figure 1: Application form for exemption from income tax (PBO)



INCOME TAX - EXEMPT INSTITUTIONS

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

E1

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

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

A. Is this application in respect of:

Company
Attach a copy of the memorandum and certificate of incorporation, CM29 and articles of association (including copies of all the registered special resolutions amending the memorandum and articles).

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

Trust
Attach a copy of the trust deed, letter of authority and any subsequent deeds of amendment.

Foreign Branch
Attach a copy of the founding document, administering activities within RSA together with a copy of the relevant documentation confirming exemption from tax in respect of the foreign charity in the country of origin. Please attach E2B.

B. Group registration

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

C. Particulars of organisation:

Registered name:

Postal address:

Postal code:

Registered address:

Postal code:

E-mail address:

Trust/Company registration number: Nonprofit Organisation (NPO) registration number:

Income Tax reference number: Website Address:

Employee Tax (PAYE)/Skills Development Levy (SDL) reference number: PBO number quoted on correspondence with this office:

D. Bank particulars:

Name of bank:

Name of account holder:

Type of account: Current Savings Transmission Credit card Home loan

Branch number:

Account number:

-1-

Source: SARS, 2012a

The founding document of an organisation should accompany the tax exemption application when it is submitted. The founding document must state the following in order to apply for tax exemption (Ricardo Wyngaard Attorneys, 2011):

- No less than three unrelated parties should accept fiduciary responsibility.

- All funds of the PBO may only be distributed in the course of its carrying on its PBA and may not be distributed to any other person.
- When terminating the PBO, all assets must be transferred to a PBO similar to itself.
- 'The PBO is not allowed to accept any donation which may be revoked by the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A.'
- Should the founding document be amended in order to qualify as a PBO, the amended founding document should be submitted to SARS.

3.3.2. Implications of registering as a PBO

As pointed out by Campbell (2011) there is a misunderstanding that all PBOs are exempt from income tax. Circumstances may arise resulting in a normal tax liability. Whenever a PBO carries on a trade (other than the PBA) and it is not carried on in a non-profit way) and that trade exceeds 15 percent of the time and resources of the PBO, the profit will be taxed at the normal income tax rates (Campbell, 2011).

If the trading activity is to be exempted from income tax the following requirements should be met (Campbell, 2011):

- The activity relates integrally and directly to the main object of the PBO;
- The activity is conducted mainly to recover expenses; and
- The activity does not result in unfair competition with regard to taxable entities.

In view of the above the conclusion could be drawn that it is not enough to be registered as an association which is not for gain, but that the organisation should still meet all the requirements in respect of an application for tax exemption.

3.4. SECTION 18A OF THE INCOME TAX ACT

Section 18A of the Income Tax Act governs donor deductible contributions. PBOs which meet the requirements as set out in Part II of the Ninth Schedule to the Act are allowed to

issue section 18A certificates which allows the donor a deduction from income tax. Section 18A (1)(c) limits the deductible amount to ten percent of the taxable income of an individual. Companies are allowed a deduction for all donations for which the company has a valid section 18A certificate (Ricardo Wyngaard Attorneys, 2011).

These limitations only came into effect during October 2001 on the introduction of a new tax bill. With the introduction of this bill the section 18A donations deduction became restricted to PBO's that carry on a PBA (Van Blerck, 2002).

According to section 18A (2) the following information must reflect on the section 18A certificate issued by the PBO:

- the PBO reference number issued by the Commissioner;
- the date on which the donation was received;
- the name and address of the PBO to which the donation was made;
- the name and address of the person or organisation making the donation;
- the nature and the amount of the donation; and
- a guarantee that the tax receipt is issued in terms of section 18A and the donation received will be used wholly for the main purpose of the PBO.


In the event that the PBA are carried out outside South Africa, no deduction is allowed for the donor under section 18A regardless of whether a tax receipt was issued or not according to Hofmeyr (2009). He pointed out that it is often not possible to determine whether a donation will qualify as a deduction in view of the fact that there is no requirement that the country in which the donation will be applied should be specified?.

3.5. COMPLIANCE

Although a PBO is exempt from tax, the organisation is still liable to submit an income tax return (IT12EI) as required in terms of section 66(1)(a) of the Income Tax Act. This return consists of two pages. Page one (see Figure 2) contains the particulars of the entity and page two (see Figure 3) contains the financial information.

Figure 2: Income Tax Return (IT12EI) for PBOs (Page 1)


Save
Print
Reset



I declare that:

- I am the duly appointed public officer / representative taxpayer / trustee of the organisation.
- The information furnished in this return is true and correct in every respect.
- I have disclosed in full the total receipts and accounts received by this organisation during the period covered by this return.
- I have the necessary financial records to support all the declarations on this form which I will retain for audit purposes.

SIGNATURE




IT12EI 2010
Year of Assessment

**RETURN OF INCOME
EXEMPT ORGANISATIONS:**
(Income Tax Act, No. 58 of 1962, as amended)

TAX REFERENCE NO.

Date Please consult the SARS guide prior to completing this tax return.



PARTICULARS OF ORGANISATION

Financial Year End Type of Organisation: Company Trust Other

Registered Name

Trade Name

Postal Address

Physical Address

Company / Trust Registration No.

Date of Registration

PARTICULARS OF PERSON RESPONSIBLE FOR THE RETURN

Surname Initials
Designation, Contact E-mail Address (Address for correspondence)

Date of appointment of the representative taxpayer Postal Code

Fax No. Cell No.
 ID No. Other Contact Tel. No.

Email Address

Tax No:

Time Stamp:

Page No: 01/02

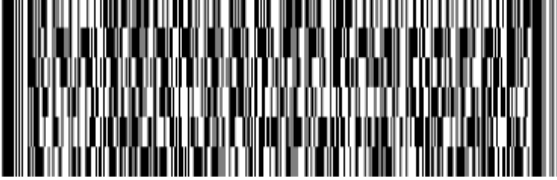

Reg Name:

Form ID: IT12EI

IT12EI_PD 1.0.0 English 2010

Source: SARS, 2012b

Figure 3: Income Tax Return (IT12EI) for PBOs (Page 2)

Save		Print		Reset	
GENERAL FINANCIAL INFORMATION			INFORMATION IN RESPECT OF TAXABLE RECEIPTS		
	Amount (Rands only)	Source Code		Amount (Rands only)	Source Code
Rental income	<input type="text"/>	7 9 1 0	Total receipts and accruals subject to tax	<input type="text"/>	7 9 1 5
Investment income	<input type="text"/>	7 9 1 1	Total receipts and accruals which are integral and directly related to the sole or principal object	<input type="text"/>	7 9 1 6
Donations received	Local	7 9 0 1	Total receipts and accruals from occasional trading activities including fund raising	<input type="text"/>	7 9 1 7
	Foreign	7 9 0 2	Expenditure i.r.o. taxable receipts	<input type="text"/>	7 9 1 8
Membership fees and subscriptions received	<input type="text"/>	7 9 0 7	Expenditure i.r.o. non-taxable income from trading activities	<input type="text"/>	7 9 1 9
Levies received	<input type="text"/>	7 9 0 6	TAXABLE INCOME / LOSS		
Subsidies received	<input type="text"/>	7 9 0 5		Amount (Rands only)	Source Code
Proceeds from disposal of capital assets	<input type="text"/>	7 9 1 2	Taxable income / loss from non-exempt activities	<input type="text"/>	<input type="text"/>
Other income not stated above	<input type="text"/>	7 9 1 3	Capital gain / loss from disposal of assets which do not qualify to be disregarded	<input type="text"/>	<input type="text"/>
Total expenditure of organisation	<input type="text"/>	7 9 1 4			
ADDITIONAL INFORMATION			TAX DEDUCTIBLE RECEIPTS ISSUED IN RESPECT OF DONATIONS (Section 18A)		
Were any amendments effected to the founding document?	<input type="checkbox"/>	<input type="checkbox"/>	Number of section 18A tax deductible receipts issued	<input type="text"/>	
Did any of the objectives or activities change during this year of assessment?	<input type="checkbox"/>	<input type="checkbox"/>	Total rand value of donations for which section 18A tax deductible receipts were issued	R	<input type="text"/>
Audit report qualification?	<input type="checkbox"/>	<input type="checkbox"/>	Were funds expended on both section 18A approved and non section 18A approved activities?	<input type="checkbox"/>	<input type="checkbox"/>
Is the organisation dormant?	<input type="checkbox"/>	<input type="checkbox"/>	If Yes, do you have the required audit certificates?		
If dormant - does the organisation have any assets and / or reserves?			<input type="checkbox"/>	<input type="checkbox"/>	
Gross remuneration paid to office bearers	R	<input type="text"/>	If the fund is approved (i.e. section 18A(1)(c)) did you comply with the requirements to distribute 70% of the donations received for which tax deductible receipts were issued?		
Gross remuneration paid to employees	R	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					
			IT12EI_PD	1.0.0	English 2010
			Tax No:	Page No: 0262	
			Tax Year:	Time Stamp:	Form ID: IT12EI
			Reg Name:		

Source: SARS, 2012b

Should the PBO qualify to issue section 18A certificates, the organisation should keep records of the certificates issued as the certificates have to be audited. The PBO should also keep records of the expenditure for which the section 18A donations were used as this has to be disclosed on the income tax return as well.

3.6. OTHER TAXES

When an organisation receives an exemption status from SARS, the organisation may under certain circumstances qualify for exemption in respect of the following taxes as well:

- Capital gains tax;
- Transfer duty;
- Estate duty; and

- Skills development levy.

In determining whether the exemption will apply, the relevant legislation (the Value Added Tax Act, No 89 of 1991 (VAT Act), Schedule Eight of the Act, the Skills Development Levy Act, No 8 of 1999 (Skills Development Levy Act) should be consulted.

3.7. OTHER LEGISLATION

The New Companies Act No. 71 of 2008 came into effect on 1 May 2011. The New Companies Act has now classified the previously classified “association not for gain” company as a non-profit company. Section 21 companies under the 1973 Companies Act are, therefore, now classified as non-profit companies according to McFadden (2011).

He also points out that the change in the Companies Act will not affect the PBO status granted to particular companies by SARS. These companies, therefore, do not have to re-apply for tax exemption status if it was obtained prior to the promulgation of the New Companies Act.

The following changes apply to the non-profit companies registered prior to the promulgation of the New Companies Act (McFadden, 2011):

- The PBO will preserve the name and company registration number issued with incorporation.
- The acronym ‘NPC’ will be added to the name to refer to a non-profit company.
- Two years will be granted to take up a memorandum of incorporation.
- The PBO will not be classified as a public company.

3.8. CONCLUSION

In preparation for the design of the quick tax guide for South Africa, the South African legislation was explored in this chapter. The South African legislation provides the guidelines according to which an organisation may register as a PBO and which activities

are classified as PBA's. The registration documentation and processes are explored as well as the compliance requirements for registered PBOs.

As most PBOs rely on donations, the advantages, implications and documentary requirements of the donations received are explained. The tax advantages for the donors are explained in cases where the PBO is registered with section 18A approval.

The South African quick tax guide is designed in chapter 4, and is based on all the information obtained in chapters 2 and 3.

CHAPTER 4

QUICK STEP-BY-STEP GUIDE TO TAX REQUIREMENTS FOR PUBLIC BENEFIT ORGANISATIONS

4.1. INTRODUCTION

A quick step-by-step guide to tax requirements for PBOs in South Africa has been designed based on the information obtained in the critical analysis conducted in chapter 2, and taking South African legislation into account.

This quick guide was designed in such a manner as to assist employees at PBOs or any other person who is applying for tax exemption on behalf of an organisation. The guide is structured in a step-by-step manner to assist the person responsible for the application to know exactly what needs to be done and in which order it should be done. By following these steps it is unlikely that any information or documentation will be overlooked.

The tax exemption guide issued by SARS is a comprehensive guide explaining all the tax requirements in detail. However, the guide is very long and written in technical language using legal terminology?. This step-by-step guide is concise and should allow the user to determine what is to be done in order to finalise a registration.

As the target audience for this quick guide includes persons with limited, or no previous experience in respect of tax or registrations, the language and terminology used in the guide could not be academic or difficult to read and understand. Some of the terms and concepts with regard to PBOs can be very technical and confusing.

The quick step-by-step guide is, therefore, written in normal conversational English in order that everyone should understand exactly what requirements should be met for a successful registration.

4.2. THE QUICK STEP-BY-STEP GUIDE

The quick step-by-step guide provides a short explanation of the concepts surrounding not-for-profit organisations. The requirements which have to be met to register an organisation for tax exemption status are the basis of the guide.

The process of registering an organisation for tax exemption can be overwhelming and tedious. This guide was created to assist any organisation with the relevant registration procedures.

The income tax requirements and statutory requirements are explained throughout the guide.

Finally, the guide provides step-by-step instructions on the registration process, as well as the application and the submission requirements.

The registration procedure for obtaining tax exemption is as follows:

Step1: Set-up of founding document.

Step2: Register the organisation with the relevant authorities.

Step 3: Complete the application form (E11).

Step 4: Collect and compile all the required supporting documentation using the checklists.

Step 5: Submit the original documentation to the Tax Exemption Unit. Submissions can be done manually or via post.

The scope of the Public Benefit Organisation (PBO) is not restricted to companies since trusts, associations and branches of foreign charitable organisations can also apply for tax exemption.

4.2.1. Definitions and terms used in the quick guide

CIPC: Companies and Intellectual Property Commission.

CoR39: Notice of Change concerning a Director.

Fiduciary responsibility: A responsible person in a trustworthy post who has the powers to make decisions regarding the business of the organisation.

Founding document: A founding document is a written document which in essence creates the organisation at inception. The founding document sets out the manner in which an organisation will be governed.

Not for profit organisation: An organisation that does not strive to make profits.

Public Benefit Organisation (PBO): An organisation which meets all the requirements under section 30 of the Act and is carrying out a public benefit activity.

Section 18A certificate: A certificate issued by a section 18A approved PBO that will allow the donor a deduction for income tax purposes.

Section 30: Section 30 of the Income Tax Act, No 58 of 1962.

Tax Exemption Unit (TEU): The Tax Exemption Unit is the SARS office that regulates all the tax affairs of PBOs.

4.2.2. Why apply for tax exemption?

An organisation set-up as a not-for-profit organisation is not automatically exempt from tax. By registering as a PBO, the organisation will be exempt from tax. The tax exemption will not only apply to income tax but to provisional tax, a skills development levy, capital gains tax, transfer duty and estate duty. The exemption will allow the organisation to use the money saved on taxes to further the main aim of the organisation.

PBOs generally rely on donations to conduct their normal activities. It is, therefore, important to understand the concept of donations and the documentation relating to donations. The donations received by a PBO for the furtherance of the organisation's

public benefit activity (PBA) will be exempt from tax. As a result the documentation relating to donations are important to consider when operating a PBO.

PBOs can be registered for either one of the following:

- section 10 exemption or
- section 10 exemption and section 18A approval.

A PBO registered with only a section 10 exemption is exempt from tax, whereas a PBO registered for both section 10 exemption and section 18A approval is exempt from tax and may issue a section 18A certificate to any person or organisation making a donation to the organisation.

The section 18A certificate may only be issued by a PBO which has received section 18A approval from SARS, and donors in possession of a valid section 18A certificate are allowed a deduction for income tax purposes.

The following information should be stated on the section 18A certificate in order to be accepted as a valid certificate (see an example of a valid section 18A certificate in Appendix D):

- the PBO reference number issued by the Commissioner;
- the date on which the donation was received;
- the name and address of the PBO to which the donation was made;
- the name and address of the person or organisation making the donation;
- the nature and the amount of the donation; and
- a guarantee that the tax receipt is issued in terms of section 18A and the donation received will be used wholly for the main purpose of the PBO.

The record-keeping of the section 18A certificates which have been issued is of great importance as the section 18A information needs to be disclosed on the income tax return (see Annexure E).

4.2.3. When can an organisation apply to be registered for tax exemption?

An organisation intending to register as a PBO will only be able to register as a PBO if the main objective of the organisation qualifies as a PBA. A PBA is an activity that is carried on for the benefit of the community as a whole. The approved activities are listed in Part 1 of the Ninth Schedule of the Act.

The PBAs are listed under the following headings:

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment & Animal Welfare
- Research and Consumer Rights
- Sport
- Providing of Funds, Assets or Other Resources
- General

In order to obtain section 18A approval, the main objective of the organisation should be listed in part 2 of the Ninth Schedule.

See Annexure A for the full list of PBAs as set out in paragraph 1 and 2 of the Ninth Schedule of the Act.

In order to issue a section 18A certificate to a donor, the organisation should list its main aim in Part 2 of the Ninth Schedule to the Act (see appendix A).

4.2.4. How can the organisation register for tax exemption?

The process will be explained by means of step-by-step instructions.

4.2.4.1 Step1: Set-up of founding document

Every organisation needs a founding document regulating the manner in which the organisation is administered and the business is conducted. Certain regulations and clauses are required to be included in the founding document of an organisation intending to register for tax exemption status in order for it to comply with the tax exemption application requirements. The required information is set out in section 30 of the Act.

4.2.4.2 Step2: Register the organisation with the relevant authorities

When starting out a business, the organisation needs to be registered at the relevant authority. Companies are to be registered at the CIPC and trusts are to be registered at the Master's Office.

4.2.4.3 Step 3: Complete the application form (E1)

To obtain tax exemption status, the organization should complete the necessary application form and submit the required supporting documentation. An organisation will only be exempt from income tax once SARS issues a letter to the organisation confirming that the organisation meets all the requirements of section 30 and is exempt from tax.

All organizations are required to submit the E1 application form (see Appendix B) to SARS.

4.2.4.4 Step 4: Collect and compile all the required supporting documentation

The supporting documentation for the different types of organisation differs from one organisation to another. The supporting documentation required to accompany the application for the different types of organisation are set out below:

Company

A company should be registered electronically at CIPC and the Commission can be contacted at www.cipc.gov.za. The offices of the CIPC are situated at 77 Meintjes Street, Sunnyside, Pretoria.

The following documentation is required to be submitted together with the application form for a company:

- E12 form: written undertaking (see Appendix C);
- Latest set of financial statements, or in the absence of financial statements, bank statements for three months;
- Certificate of incorporation;
- CoR 39 form: CIPC certificate confirming the directors of the company;
- Memorandum and articles of association; and
- Certified copies of the identity documents (IDs) of the three directors who have accepted fiduciary responsibility for the company.

Trust

A trust is registered at the Master's Office and all the information on how to register the trust can be obtained from www.justice.gov.za/services/register-trust.html. The National Office is 22nd Floor, SALU Building, 316 Thabo Sehume Street, Pretoria.

The following documentation is required to be submitted together with the application form for a trust:

- E12 form: written undertaking (Appendix C);
- Trust deed;
- Letter of authority;
- Latest set of financial statements, or in the absence of financial statements, bank statements for three months; and
- Certified copies of the IDs of the three trustees who have accepted fiduciary responsibility for the trust.

Association of persons

The following documentation is required to be submitted together with the application form for an association of persons:

- EI2 form: written undertaking (Appendix C);
- Constitution;
- Latest set of financial statements, or in the absence of financial statements, bank statements for three months; and
- Certified copies of the three trustees who have accepted fiduciary responsibility for the association.

Foreign branch

The following documentation is required to accompany the application form for a foreign branch:

- EI2B form: written undertaking (Appendix C);
- Founding document governing the activities in South Africa;
- Tax exemption document from foreign charity;
- Latest set of financial statements, or in the absence of financial statements, bank statements for three months need to be submitted; and
- Certified copies of the IDs or passports of the three directors who have accepted fiduciary responsibility for the company.

The EI2 form: a written undertaking needs to be signed by three unrelated parties who have accepted fiduciary responsibility.

All the forms can be obtained from the SARS website www.sars.gov.za.

4.2.4.5 Step 5: Submit the original documentation to the Tax Exemption Unit

The application form, together with all the supporting documentation must be sent to the SARS Tax Exemption Unit via post or the documents can be hand-delivered at the Tax Exemption Unit offices in Pretoria. The current contact details of the Tax Exemption Unit are as follows:

Physical address: 271, Veale Street, Nieuw Muckleneuk, Pretoria

Postal address: The Head: Tax Exemption Unit

PO Box 11955

Hatfield

0028

E-mail address: teu@sars.gov.za

Telephone number: (012) 483 1700

The contact details supplied above are the details as at 2012 and might change in future. The number of the National Call Centre for Taxpayers' number is 0860 18 18 18. The operator at the call centre will be able to assist any organisation with the current contact details. Should the taxpayer have any queries during the registration process, the Tax Exemption Unit can be contacted for assistance.

The tax exemption registration may take from 6 to 8 weeks.

4.2.5. Other trading activities

When setting up an organisation, the objectives of the organisation are set out in the founding document. An organisation can have more than one objective.

The objectives in the founding document of an organisation can, therefore, consist of activities that are public benefit activities listed in the Ninth Schedule to The Act as well as normal trading activities. Normal trading activities are those activities that are not listed as a PBA.

If an organisation is a registered PBO and has normal trading activities, these activities will be taxed at the normal South African tax rates. However, the income derived from the

furtherance of those objectives which are linked to public benefit activities will be exempt from taxation.

The profits from other trading activities may be exempt from tax if the trading activity meets all of the following requirements:

- The trading activity is directly or fundamentally related to the main activity of the organisation;
- At least 90% (in some circumstances 85% will be allowed) of the trading activity is directed to cover the costs incurred; and
- The trading activity will not be unfair to an organization which is not exempt from tax.

Should all the requirements not be met, the trading income will be taxed at the normal tax rates. Whenever an organisation earn normal trading income, the organisation will enjoy the benefit of the greater of the following as an exemption:

- Five percent (5%) of the receipts and accruals of the organisation for the tax year; or
- R 150 000.

4.2.6. Compliance with legislation

4.2.6.1. Record-keeping

South African legislation requires all taxpayers to keep all their records in a safe place for a period of four years after the last entry or transaction for that particular year of assessment.

All documents regarding the business are considered 'records'. This includes bank statements, expense invoices, donations received, and section 18A certificates issued.

4.2.6.2. Filing requirements

Although a PBO is exempt from tax, the organization is still liable to submit an income tax return for the relevant year of assessment. The return can be submitted manually to a SARS branch or electronically via e-filing (www.sarsefiling.gov.za).

The IT12EI form: income tax return (see Appendix E) consists of 2 pages. Page 1 contains the details for the organization whereas page 2 contains the information relating to the business activities.

On page 2 a section is allotted to the disclosure of taxable income. The taxable income completed in this section will be taxed at the normal South African tax rates.

4.3. CONCLUSION

During the course of this chapter, the steps to be taken to register an organisation for tax exemption are explained. These steps guide the person responsible for the registration from the initial act of registering the organisation with the necessary authorities to the last step of tax exemption registration itself.

The documents required to accompany a registration are set out in listed form to assist the person responsible for the registration to make sure that the first submission of the application form is carried out successfully. The contact details of the Tax Exemption Unit are supplied for the submission of the application. Should the applicant require any assistance during the course of the registration, the Tax Exemption Unit can be contacted.

The consequences of deriving other trading income are explained and the exemptions in respect of normal trading income which do not qualify as a public benefit activity are stated. Finally, the chapter is concluded with the compliance requirements with the emphasis on the record-keeping and filing requirements of the organisation.

Chapter 5 continues to summarises the contents of this study.

CHAPTER 5

CONCLUSION OF THE STUDY

5.1 INTRODUCTION

The relevant literature available was consulted and used as a guideline to assist in its progress and flow of this study. This particular research method was selected since the literature available on PBOs is very limited.

Owing to the lack of literature available in respect of tax exemption for PBOs in South Africa, a critical analysis was selected as a guideline for the creation of the step-by-step guide. The South African legislation was subsequently applied to the information obtained in the critical analysis and on this basis the step-by-step guide, as set out in chapter 4, was created.

For ease of reference all the documentation required to be submitted was also included in the step-by-step guide as separate annexures. This step-by-step guide should prove to be a helpful tool for employees at PBOs with no previous experience in this field.

5.2 RESEARCH OBJECTIVES

Academic studies are structured and regulated by research objectives. These research objectives govern the research methods and the type of information gathered in the study. For this study, three research objectives were identified as follows:

- To critically analyse the short guides to PBOs of countries other than South Africa.
- To determine the relevant South African legislation to be used in the proposed guide.
- To design a quick step-by-step guide to assist founders and employees with the tax requirements of PBOs.

The research objectives were addressed in each of the chapters in this study.

Chapter 2 of this study deals with the first research objective, namely, to critically analyse short guides to PBOs from countries other than South Africa. South Africa's global position was considered in determining which countries should be included in this study. For the reasons set out in chapter 2, the following countries were chosen to form part of this study:

- Switzerland
- Ireland
- China
- United States of America

The short guides on PBOs of these four countries were used in the critical analysis. By critically analysing the four guides, the advantages of each guide were identified. These particular advantages were used when designing the quick step-by-step guide for South Africa.

The second research objective was to determine the relevant South African legislation to be used in the proposed guide. In chapter 3, the relevant South African legislation requirements were discussed. The registration process, relevant documentation and forms were explored. The compliance requirements and the section 18A donation certificates were also addressed.

The chapter is concluded by dealing with the other taxes affected by the exemption status and other legislation influencing the PBO registration. Upon completion of the examination of the South African legislation in chapter 3, the study proceeds to address the third and final research objective in chapter 4, namely, to design a quick step-by-step guide to assist employees with the tax requirements of PBOs.

In chapter 4 the quick step-by-step guide is designed. The advantages of the information included and structure of the short guides and the structure of these guides identified in chapter 2 and the South African legislation dealt with in chapter 3 are used to determine

the framework for the quick step-by-step guide. The guide is set-up in such a manner as to assist employees who have no knowledge of the registration procedures for PBOs.

Now that the step-by-step guide has been completed the three research objectives have been successfully addressed.

5.3 RECOMMENDATIONS

This quick step-by-step guide designed in chapter 4 will benefit any person who is in the process of registering an organisation for tax exemption. It will be to the best advantage of organisations if the quick step-by-step guide is made available on the internet and the SARS website.

By making this quick step-by-step guide easily accessible and available to the public in general and especially employees at PBOs, these employees will be able to attend to the application themselves and not be obliged to rely on the services of accounting and law firms which may cause an unnecessary expense for the PBO.

5.4 FUTURE RESEARCH

The following future research possibilities were identified:

- An analysis of the PBAs listed in Parts 1 and 2 of the Ninth Schedule to the Act.
- A study on the history and future of PBOs in South Africa.
- Analysis of the most common PBAs carried out for PBO registrations in South Africa.
- Conduct a survey amongst existing PBO's and ask them to critique on the helpfulness of this guide.

5.5 CONCLUSION

This study is concluded with the designing of a quick step-by-step guide to assist employees at PBOs with the registration process. This guide will serve as a tool to give

employees at PBOs the necessary knowledge to attend to the registration process on their own.

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APPENDIX A

- Part I and II of the Ninth Schedule to the Income Tax Act, No 58 of 1962

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Ninth Schedule to the Income Tax Act, No 58 of 1962 Public Benefit Activities

Part I

1. Welfare and Humanitarian

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

2. Health Care

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

3. Land and Housing

- a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R3 500 or any greater amount determined by the Minister of Finance by notice in the Gazette after consultation with the Minister of Housing; and
- b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- c) The provision of residential care for retired persons, where-
 - i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
 - ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost
- d) Building and equipping of-
 - i) clinics or crèches; or
 - ii) community centres, sport facilities or other facilities of a similar nature for the benefit of the poor and needy.
- e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
- f) Granting of loans for purposes of subparagraph (a) or (b), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.
- g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
- h) The provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations.

4. Education and Development

- a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).

- b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.
- d) “Further education and training” provided by a “public college” or “private college” as defined in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.
- e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- f) The training or education of persons with a severe physical or mental disability.
- g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- h) The provision of educare or early childhood development services for pre-school children.
- i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- k) Career guidance and counselling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the Gazette.
- p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

5. Religion, Belief or Philosophy

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

6. Cultural

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

7. Conservation, Environment and Animal Welfare

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

8. Research and consumer rights

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

9. Sport

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

10. Providing of funds, assets or other resources

The provision of-

- a) funds, assets, services or other resources by way of donation;
- b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
- c) funds by way of loan at no charge; or
- d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset, to any-

- i) public benefit organisation which has been approved in terms of section 30;
- ii) institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
- iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
- iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b).

11. General

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

Part II

1. Welfare and Humanitarian

- a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- b) The care or counselling of poor and needy persons where more than 90 per cent of those persons to whom the care or counselling are provided are over the age of 60.

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

2. Health Care

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

3. Education and Development

- a) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).
- b) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).
- c) “Adult basic education and training”, as defined in the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.
- d) “Further education and training” provided by a “public college” or “private college” as defined in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.
- e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- f) The training or education of persons with a severe physical or mental disability.
- g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- h) The provision of educare or early childhood development services for pre-school children.
- i) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- j) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- k) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- l) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- m) Career guidance and counselling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.
- p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

4. Conservation, Environment and Animal Welfare

- a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.

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

5. Land and Housing

- a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R3 500 or any greater amount determined by the Minister of Finance by notice in the Gazette after consultation with the Minister of Housing.
- b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- c) Building and equipping of clinics or crèches for the benefit of the poor and needy.
- d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
- e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

APPENDIX B

- E1 1: Application for exemption from income tax in terms of section 10(1) and/or approval in terms of section 18A of the Income Tax Act, No 58 of 1962

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INCOME TAX - EXEMPT INSTITUTIONS

E 1

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

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

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

A. Is this application in respect of:

- Company**
Attach a copy of the memorandum and certificate of incorporation, OMD9 and articles of association (including copies of all the registered special resolutions amending the memorandum and articles).
- Association of Persons**
Attach a copy of the latest signed constitution.
- Trust**
Attach a copy of the trust deed, letter of authority and any subsequent deeds of amendment.
- Foreign Branch**
Attach a copy of the founding document, administering activities within RSA together with a copy of the relevant documentation confirming exemption from tax in respect of the foreign charity in the country of origin. Please attach E 2B.

B. Group registration

Is this application in respect of a group registration?
If "YES" Part J must be completed.

C. Particulars of organisation:

Registered name											
Postal address											
Postal code											
Registered address											
Postal code											
E-mail address											
Trust/Company registration number						Nonprofit Organisation (NPO) registration number					
Income Tax reference number						Website Address:					
Employment Tax (PAYE)/Skills Development Levy (SDL) reference number						PSO number quoted on correspondence with this office					

D. Bank particulars:

Name of bank										
Name of account holder										
Type of account	Current	<input type="checkbox"/>	Savings	<input type="checkbox"/>	Transmission	<input type="checkbox"/>	Credit card	<input type="checkbox"/>	Home loan	<input type="checkbox"/>
Branch number	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>						
Account number										

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

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

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

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

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

F. The subparagraph of section 10(1) of the Income Tax Act in terms of which the organisation is applying for exemption from income tax as well as approval in terms of section 15A:

Mark the appropriate section your organisation is applying for:

- Section 10(1)(cA)(i): Institution, Board, or Body established by or under any law. Attach a copy of the relevant Government Gazette or Provincial Notice.
- Section 10(1)(cA)(ii): Any South African company of which all the shares are held by a body exempt in terms of section 10(1)(cA)(i).
- Section 10(1)(cM): Promoting or facilitating the distribution of agricultural commodities (Only a company incorporated under section 21 of the Companies Act will qualify).
- Section 10(1)(cN): Public Benefit Organisation. (If this block is applicable, Parts G, H and K must be completed.) (The written undertaking E2 must be dated and undersigned by three unconnected persons accepting fiduciary responsibility for the organisation.)
- Section 10(1)(d):
 - Mutual Loan Association.
 - Fidelity or Indemnity Fund.
 - Trade Union - A copy of the certificate of registration issued in terms of the Labour Relations Act, 1995 must be attached.
 - Chamber of Commerce or Industries (or an Association of such Chambers).
 - Local Publicity Association.
 - Non-Proprietary Stock Exchange.
 - Company, society or other association of persons established to promote the common interest of persons, carrying on any particular kind of business, profession or occupation.
- Section 10(1)(e)(ii): Association of persons formed for managing the collective interests common to all its members in respect of expenditure applicable to the common immovable property.
- Section 10(1)(Co): Company, society or other association of persons established to provide social and recreational amenities or facilities for members. (The written undertaking (E2C) must be added and undersigned by three unconnected persons accepting fiduciary responsibility for the club.)
- Section 15A: Approval for tax deductible donations (If this block is applicable, Parts G, H and K must be completed.) (Only activities indicated in bold will qualify for section 15A approval.)

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

1. Welfare and Humanitarian

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

2. Health Care

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

2. Health Care (continued)

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

3. Land and Housing

- a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R3 500 or any greater amount determined by the Minister of finance by notice in the Gazette after consultation with the Minister of housing.
- b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- c) The provision of residential care for retired persons, where -
 - (i) more than 50 percent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
 - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
- d) Building and equipping of -
 - (i) clinics or creches for the benefit of the poor and needy, or
 - (ii) community centres, sport facilities or other facilities of a similar nature for the benefit of the poor and needy.
- e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
- f) Granting of loans for purposes of subparagraph (a) or (b) subject to such conditions as may be prescribed by the Minister by way of regulation.
- g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

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

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

4. Education and Development (Continued)

- k) Career guidance and counselling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the Gazette.
(The written undertaking (E2) must be added and undersigned by three unconnected persons accepting fiduciary responsibility for the organisation.)

5. Religion, Belief or Philosophy

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

6. Cultural

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

7. Conservation, Environment and Animal Welfare

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

8. Research and Consumer Rights

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

9. Sport

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

10. Providing of funds, assets or other resources

The provision of -

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

11. General

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

H. Information relating to activities and operations:

1. Attach the following information and/or documentation to this application:

A detailed narrative description of all the activities of the organisation - past, present, and planned. Do not merely refer to or repeat the language in the founding document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following:

- a detailed description of the day-to-day activities and how each activity furthers your sole object;
- when the activity was or will be initiated; and
- where and by whom will the activity be conducted.

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

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

I. Financial Statements:

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

Financial year end:

J. Group Registration:

- 1) Does the co-ordinating body control and supervise the individual organisations within the group? YES NO
- 2) Do all organisations within the group share a common purpose and conduct identical approved public benefit activities? YES NO
- 3) Does the co-ordinating body of the group organisations have a common or a similar founding document? YES NO
- 4) Are consolidated financial statements prepared for the group? YES NO
- 5) Attach a list of all organisations within the group on a separate schedule.

K. Public Benefit Organisation:

- 1) Does the organisation carry on all its activities in an on-profit manner and with an altruistic and philanthropic intent? YES NO
- 2) Do any of the activities of the organisation directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration? YES NO
- 3) Does the organisation conduct all its activities within the Republic of South Africa? YES NO
 If 'NO', please state to what extent the activities are conducted outside the Republic as well as the amount of foreign donations received:
- 4) Are the activities carried on by the organisation for the benefit of, or widely accessible to, the general public at large? YES NO
- 5) Are the activities carried on by the organisation for the benefit of, or readily accessible to, the poor and the needy? YES NO
- 6) Is the organisation, at least 85 per cent, funded by donations, grants from any organ of state or any foreign grants? YES NO

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

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

Please ensure that all the relevant documentation is attached.

Signature

Capacity

Date

APPENDIX C

- EI 2: Written undertaking -

- 10 The public benefit organisation will not be a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner.
- 11 No resources will be used, directly or indirectly, to support advance or oppose any political party.
- 12 The public benefit organisation will submit the required returns for income tax together with the relevant supporting documents.
- 13 In the case of any public benefit organisation which provides funds or assets to any association of persons contemplated in paragraph (b)(iii) of the definition of "public benefit activity", reasonable steps will be taken to ensure that the funds are utilised for the purpose for which it has been provided.
- 14 Where the public benefit organisation has been approved in terms of section 18A(1)(b)(i) of the Act, 75% of the funds received by the organisation by way of donations which qualify for a deduction, will be distributed (or an obligation will be incurred to so distribute) within twelve months from the financial year end during which such donations were received.

Signed at this day of 20

<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name	Signature	Capacity
<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name	Signature	Capacity
<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name	Signature	Capacity

APPENDIX D
- Section 18A certificate -



XYZ ASSOCIATION

PRIVATE BAG X 000000, JOHANNESBURG, 1111
 TELEPHONE NUMBER: (011) 888 8888
 TAX EXEMPTION NUMBER: 2000/0000

SECTION 18A DONATION RECEIPT NUMBER: 0000

This receipt is issued in terms of section 18A of the Income Tax Act No. 58 of 1962 for donations received. The donation received will be used wholly for the furtherance of the main objectives of the association.

DATE OF DONATION: _____

NAME OF DONOR: _____

DONOR ADDRESS: _____

NATURE OF DONATION: CASH AMOUNT: _____

NATURE OTHER THAN CASH: _____

Description: _____

Valuation method: _____

Value: R _____

DONATION AMOUNT: _____

I, the undersigned, confirm that the donation from the above donor was received by XYZ Association and will be utilized wholly for the objects of carrying on a public benefit activity as stated in Part II of the Ninth Schedule to the Income Tax Act No. 58 of 1962.

DIRECTOR / SECRETARY _____

DATE: _____

APPENDIX E
- IT12EI Return of income -

Save

Print

Reset

GENERAL FINANCIAL INFORMATION

	Amount (Rands only)	Source Code
Rental income	<input type="text"/>	7 9 1 0
Investment income	<input type="text"/>	7 9 1 1
Donations received <input type="checkbox"/> Local <input type="checkbox"/> Foreign	<input type="text"/>	7 9 0 1
Membership fees and subscriptions received	<input type="text"/>	7 9 0 2
Levies received	<input type="text"/>	7 9 0 7
Subsidies received	<input type="text"/>	7 9 0 6
Proceeds from disposal of capital assets	<input type="text"/>	7 9 0 5
Other income not stated above	<input type="text"/>	7 9 1 2
Total expenditure of organisation	<input type="text"/>	7 9 1 3
	<input type="text"/>	7 9 1 4

INFORMATION IN RESPECT OF TAXABLE RECEIPTS

	Amount (Rands only)	Source Code
Total receipts and accruals subject to tax	<input type="text"/>	7 9 1 5
Total receipts and accruals which are integral and directly related to the sale or principal object	<input type="text"/>	7 9 1 6
Total receipts and accruals from occasional trading activities including fund raising	<input type="text"/>	7 9 1 7
Expenditure i.r.o. taxable receipts	<input type="text"/>	7 9 1 8
Expenditure i.r.o. non-taxable income from trading activities	<input type="text"/>	7 9 1 9

TAXABLE INCOME / LOSS

	Amount (Rands only)	Source Code
Taxable income / loss from non-exempt activities	<input type="text"/>	<input type="text"/>
Capital gain / loss from disposal of assets which do not qualify to be disregarded	<input type="text"/>	<input type="text"/>

ADDITIONAL INFORMATION

Were any amendments effected to the founding document? Y N

Did any of the objectives or activities change during this year of assessment? Y N

Audit report qualification? Y N

Is the organisation dormant? Y N

If dormant - does the organisation have any assets and / or reserves? Y N

Gross remuneration paid to office bearers R

Gross remuneration paid to employees R

TAX DEDUCTIBLE RECEIPTS ISSUED IN RESPECT OF DONATIONS (Section 18A)

Number of section 18A tax deductible receipts issued

Total rand value of donations for which section 18A tax deductible receipts were issued R

Were funds expended on both section 18A approved and non section 18A approved activities? Y N

If Yes, do you have the required audit certificates? Y N

If the fund is approved i.e. section 18A(1)(j) did you comply with the requirements to distribute 70% of the donations received for which tax deductible receipts were issued? Y N



Tax No:
Tax Year:
Reg Name:

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