
SOUTH AFRICAN REVENUE SERVICE

**BASIC GUIDE TO
INCOME TAX
FOR PUBLIC BENEFIT
ORGANISATIONS**

Another helpful guide brought to you by the
South African Revenue Service



www.sars.gov.za

BASIC GUIDE TO INCOME TAX FOR PUBLIC BENEFIT ORGANISATIONS

Foreword

This guide provides basic information on public benefit organisations. It does not go into comprehensive technical and legal detail and should therefore not be used as a legal reference.

Should you require additional information you may –

- consult the *Tax Exemption Guide for Public Benefit Organisations in South Africa* which is available on the SARS website;
- visit the SARS website at **www.sars.gov.za**;
- contact your own tax advisor or tax practitioner; or
- contact the SARS Tax Exemption Unit on +27 12 483 1700 or email the unit at teu@sars.gov.za.

Comments on this guide may be sent to **policycomments@sars.gov.za**.

Prepared by

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
8 March 2013

CONTENTS

PAGE

Foreword.....	ii
Glossary.....	1
1. Introduction	2
2. Tax Exemption Unit (TEU).....	2
3. Approval as a PBO.....	2
4. Type of organisation qualifying for approval as a PBO	3
5. Object of organisation.....	3
6. Public benefit activities	3
7. Manner in which the PBAs must be carried on	4
8. No self-interest	4
9. Benefit of the general public	4
10. Founding document.....	4
11. Formal requirements to be incorporated in the founding document	5
11.1 Fiduciary responsibility	5
11.2 Prohibition from distribution	5
11.3 Dissolution.....	5
11.4 Non-revocable donations.....	6
11.5 Amendments to the founding document	6
12. Other requirements.....	6
12.1 Participation in tax-avoidance schemes.....	6
12.2 Remuneration.....	6
12.3 Reporting.....	6
12.4 Funds to associations of persons	7
12.5 Payments to political parties	7
13. Nonprofit Organisations Act.....	7
14. Written undertaking	7
15. Trading or business activities and partial taxation.....	8
15.1 General	8
15.2 Receipts and accruals derived from a business undertaking or trading activity that are exempt	8
15.2.1 Integral and directly related trade [section 10(1)(cN)(ii)(aa)]	8
15.2.2 Occasional nature [section 10(1)(cN)(ii)(bb)]	9
15.2.3 Ministerial approval [section 10(1)(cN)(ii)(cc)].....	9
15.2.4 Basic exemption [section 10(1)(cN)(ii)(dd)].....	9
16. Specific issues in respect of PBOs	10
16.1 Approval to issue receipts for donations under section 18A.....	10
16.2 Tax rates for trading activities of approved PBOs.....	10
16.3 Provisional tax payments.....	10
16.4 Scholarships.....	10
16.5 Granting of loans	11
17. Reporting requirements	11
17.1 Record-keeping	11
17.2 Income tax returns.....	11

17.3	Supporting documentation.....	11
17.4	Information available to SARS.....	11
18.	Group registration.....	12
19.	Non-compliance and penalties applicable to PBOs.....	12
19.1	Dissolution or termination of activities of a PBO or branch of a foreign exempt organisation.....	12
19.2	Withdrawal of approval.....	12
19.2.1	Consequences.....	12
19.2.2	Re-application.....	13
20.	Non-compliance and penalties applicable to person responsible in a fiduciary capacity for the funds and assets of an approved PBO.....	13
21.	Objections and appeals.....	13
22.	Application for approval.....	13
23.	Contact details of the Tax Exemption Unit.....	13

Glossary

In this guide unless the context indicates otherwise –

- **“Act”** means the Income Tax Act 58 of 1962;
- **“Companies Act, 1973”** means the Companies Act 61 of 1973;
- **“Companies Act, 2008”** means the Companies Act 71 of 2008;
- **“fiduciary”** means a person who holds a position of trust or responsibility including decision making powers over the affairs of an organisation;
- **“founding document”** means the written instrument under which an organisation is established and governed such as the constitution, memorandum of incorporation, trust deed or will;
- **“Minister”** means the Minister of Finance;
- **“Ninth Schedule”** means the Ninth Schedule to the Act;
- **“non-profit company”** means a non-profit company as defined in section 1 of the Companies Act, 2008;
- **“PBA”** means a public benefit activity listed in Part I of the Ninth Schedule;¹
- **“PBO”** means a public benefit organisation as defined in section 30(1) of the Act;
- **“SARS”** means the South African Revenue Service;
- **“section”** means a section of the Act unless otherwise stated;
- **“section 18A”** means the section providing for the tax deductibility of donations made to certain approved organisations carrying on PBAs approved in Part II of the Ninth Schedule;
- **“section 30”** means the section setting out the conditions and requirements which must be complied with by PBOs in order to obtain and retain approval as a PBO by the Tax Exemption Unit;
- **“South Africa”** means the Republic of South Africa;
- **“TEU”** means Tax Exemption Unit; and
- any word or expression bears the meaning ascribed to it in the Act.

¹ The Act provides for the Minister to declare additional activities to be public benefit activities by notice in the *Government Gazette*.

1. Introduction

An organisation that has a non-profit motive or is established or registered as a non-profit organisation does not automatically qualify for preferential tax treatment. An organisation will only enjoy preferential tax treatment after it has applied for and been granted approval as a PBO by the TEU. Once approved the PBO must continue to comply with the Act and related legislation throughout its existence.

Approved PBOs have the privilege and responsibility of spending public funds, which they derive from donations or grants, in the public interest on a tax-free basis. The donations or grants may be received from the general public or directly or indirectly from the State. It is therefore important to ensure that exempt organisations use their funds responsibly and solely for their stated objectives, without any personal gain being enjoyed by any person including the founders and the fiduciaries.

The conditions and requirements for an organisation to be approved as a PBO are contained in section 30 while the rules governing the preferential tax treatment of PBOs are contained in section 10(1)(cN). Section 10(1)(cN) provides for the exemption from normal tax of certain receipts and accruals of approved PBOs. Certain receipts and accruals from trading or business activities will nevertheless be taxable.

This guide has been prepared to assist non-profit organisations in South Africa to understand the basic implications relating to PBOs with particular reference to income tax.

The eligibility to issue valid receipts for tax-deductible donations under section 18A and other tax issues affecting PBOs such as capital gains tax, estate duty, securities transfer tax, transfer duty, customs duty, skills development levy and value-added tax are not discussed in this guide. These subjects are dealt with in detail in the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and *A Basic Guide to Tax-Deductible Donations* which are available on the SARS website www.sars.gov.za.

2. Tax Exemption Unit (TEU)

The TEU is a dedicated office within SARS which deals with all applications by non-profit organisations for approval as PBOs. The centralisation of the approval process is intended to promote uniform treatment by SARS.

In order to prevent malpractice and abuse the TEU also monitors compliance by PBOs with the approval requirements. The TEU is also responsible for the assessment function.

Contact details of the TEU are set out in **23**.

3. Approval as a PBO

The TEU, on behalf of the Commissioner, will only approve a PBO if it complies with all of the conditions and requirements of section 30 as detailed in this guide.

The approval as PBO is generally effective from the date the approval is granted by the TEU, unless the TEU advises otherwise. The TEU may approve a PBO with retrospective effect to the extent the TEU is satisfied that the organisation complied with the requirements of section 30 during the period before it lodged its application.

4. Type of organisation qualifying for approval as a PBO

A condition for an organisation to be approved as a PBO is that it must be constituted in one of the following ways:

- A non-profit company as defined in section 1 of the Companies Act, 2008 that has been incorporated in South Africa.
- A trust established in South Africa.
- An association of persons formed or established in South Africa.
- A branch established in South Africa by a foreign organisation that is incorporated, formed or established in a country outside South Africa and that is itself exempt from tax on income in that other country.

Note: A company contemplated in section 21 of the Companies Act, 1973 that has been approved as a PBO will continue to exist under the Companies Act, 2008 and qualify for approval under section 30. There are a number of circumstances which may have resulted in pre-existing companies amending their memoranda and articles of association or in replacing the latter with a memorandum of incorporation under the Companies Act, 2008. In these circumstances the requirements of section 30(3)(b) must remain included in the amended or replacement documents. The TEU must be informed of any changes and a copy of the amended or replacement documents must be submitted to the TEU.

5. Object of organisation

The sole or principal object of the PBO must be to carry on one or more PBAs.

The funds of the PBO must be used solely for carrying on this object. Excess funds may also be accumulated or invested for future use in carrying on this object.

It will not be acceptable for a PBO to have a sole or principal object of conducting a commercial business activity in order to use the profits derived from that business to fund a PBA.

The PBO may itself conduct the PBAs or it may provide funds to enable other approved PBOs or organisations to carry on these activities.

6. Public benefit activities

The PBAs listed in Part I of the Ninth Schedule are categorised as follows:

- Welfare and humanitarian
- Health care
- Land and housing
- Education and development
- Religion, belief or philosophy
- Cultural
- Conservation, environment and animal welfare
- Research and consumer rights
- Sport

- Providing of funds, assets and other resources to approved organisations carrying on PBAs
- General

Further details of the activities falling within each category are listed in Part I of the Ninth Schedule.

7. Manner in which the PBAs must be carried on

The PBAs must be carried on in a non-profit manner and with an altruistic or philanthropic intent. An organisation which carries on a PBA as part of a profit-making venture will not qualify for approval as a PBO, however an organisation which carries on a business undertaking or trading activity as part of a PBA may qualify as a PBO provided it meets all the requirements discussed in this guide.

8. No self-interest

A PBA may not directly or indirectly promote the economic self-interest of any fiduciary or employee. This does not prohibit the payment of reasonable remuneration to a fiduciary or employee for services rendered.

9. Benefit of the general public

The PBAs must be carried on for the benefit of, or be widely accessible to, the general public at large. This may include a specific sector of the general public but may not be for the benefit of a small and exclusive group.

10. Founding document

An organisation that applies for approval as a PBO must have a founding document under which it has been established and is governed. The nature of the founding document will depend on the type of organisation. For example:

- A non-profit company as defined in section 1 of the Companies Act, 2008 will have a memorandum of incorporation.
- A trust will have a trust deed or if established as a testamentary trust, its founding document will be the will.
- An association of persons will have a constitution adopted by its members.
- A branch of a foreign exempt organisation may or may not have a separate founding document to the founding document of the foreign organisation.

Section 30 requires the PBO to be governed in a particular manner and it further requires that the founding document must include particular requirements. These requirements are detailed in 11.

The founding document must be submitted to the TEU as part of the application for approval as a PBO.

11. Formal requirements to be incorporated in the founding document

The conditions set out in **4** to **10** above must be met in order to qualify for approval as a PBO. In addition to those conditions the prescribed requirements set out in section 30(3)(b) must be included in the founding document.

The prescribed requirements are dealt with in **11.1 – 11.5**. When the founding document does not include the provisions of section 30(3)(b), a signed written undertaking may be submitted (see **14**).

The founding document must clearly set out the aims and object of the organisation. This must be done in detail. It is not acceptable to simply state that it is the PBO's object to carry on one or more approved PBAs or to simply list the PBAs as they appear in Part I of the Ninth Schedule.

The founding document must also state that the activities and resources of the organisation must be used solely for the object for which it was established, namely, conducting the PBAs.

11.1 Fiduciary responsibility

A PBO, other than a trust established under a will, is required to have at least three persons who are not connected persons in relation to each other that accept fiduciary responsibility for the organisation. Spouses and anyone related to the person or the person's spouse within the third degree of consanguinity are regarded as connected persons.²

A single person may not have the ability or authority, either directly or indirectly, to control the decision-making powers of the organisation.

11.2 Prohibition from distribution

A PBO may not distribute its funds directly or indirectly to any person unless this occurs in the course of undertaking a PBA and it must use its funds solely for the object for which it was established. The payment of reasonable remuneration to employees or office bearers conducting the affairs of a PBO to enable it to achieve its objective is permitted (see **12.2**).

11.3 Dissolution

An approved PBO that has enjoyed certain tax concessions may not, on dissolution, distribute any of its funds to individuals or other tax-paying entities thereby enabling the recipients to share in the concession which the PBO has enjoyed.

On dissolution an approved PBO must transfer its assets to one or more of the following organisations which in turn are required to use those assets solely for purposes of carrying on one or more PBAs:

- An organisation which has been approved by the Commissioner as a PBO under section 30(3).
- Any institution, board or body established by or under law which is exempt from tax under section 10(1)(cA)(i), whose sole or principal object is the carrying on of any PBA.

² See Interpretation Note No. 67 "Connected Persons" (1 November 2012) for further guidance on connected persons.

- The Government of South Africa in the national, provincial or local sphere.

This condition will only apply to a local branch of a foreign established company, association or trust which is approved as a PBO under section 30 if more than 15% of the receipts and accruals of the branch are derived from a source within South Africa during the period of three years preceding the termination of the local branch's activities in South Africa.

See **19.1** for the consequences of failing to transfer the assets as set out above.

11.4 Non-revocable donations

A PBO may not accept any donation that may be revoked by the donor for reasons other than the PBO failing to abide by the designated purposes and conditions of the donation. For example, a PBO may not accept a donation which may be revoked if the donor falls sick and requires funds to pay for future medical care. However, it is acceptable for the donation to be revocable if the PBO misrepresents the tax deductibility of the donation under section 18A and such tax deductibility was a condition of the donation.

In addition, a donor may not impose conditions which will entitle the donor or a connected person in relation to the donor to obtain some direct or indirect benefit from the application of the donation. This prohibition does not, however, apply when the donor is another approved PBO or an entity established by or under law which is exempt from income tax under section 10(1)(cA)(i) that has as its sole or principal object the carrying on of a PBA.

11.5 Amendments to the founding document

A PBO must submit a copy of any amendment to its founding document to the TEU. The amendment must be submitted as soon as it has been affected. This will enable the TEU to ensure that any amendment is not contradictory to the conditions and requirements for the continued approval of the organisation as a PBO.

12. Other requirements

12.1 Participation in tax-avoidance schemes

A PBO may not be party to or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone or avoid any tax, duty or levy which would otherwise have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner. These taxes, duties or levies include, for example, income tax (including capital gains tax), value-added tax, transfer duty, skills development levies and employees' tax.

12.2 Remuneration

Employees, office bearers, members and other persons may receive remuneration from a PBO for services actually rendered to that PBO provided the remuneration –

- is not excessive taking into account the particular service rendered and what is considered to be reasonable in the particular sector; and
- does not economically benefit any person in a manner inconsistent with the objects of the PBO.

12.3 Reporting

A PBO must comply with any reporting requirements determined by the TEU. See **17**.

12.4 Funds to associations of persons

A PBO that carries on the PBA of providing funds to an association of persons carrying on one or more PBAs (other than the provision of funds, assets or other resources as referred to in Paragraph 10 of Part I of the Ninth Schedule) must take reasonable steps to ensure that the association of persons has used the funds for the purpose for which they were provided.

The “*association of persons*” referred to is an informal group of persons who collectively carry on an approved PBA for the benefit of the community or general public. This informal association of persons may not have a written founding document which incorporates or can be amended to incorporate the requirements required for approval as a PBO and is often unable to comply with the reporting requirements required by SARS. These factors can make it difficult to monitor compliance and to ensure that the funds received by this association of persons from other PBOs are used for purposes of carrying on PBAs. The responsibility has been placed on the approved PBO that provides the funds to such an association of persons to satisfy the TEU that reasonable steps have been taken to ensure that the funds are used for the purpose for which they have been given and are not used to economically benefit any single individual person.

12.5 Payments to political parties

A PBO may not use its resources directly or indirectly to support, advance or oppose any political party.

13. Nonprofit Organisations Act

Registration as a non-profit organisation (NPO) under the Nonprofit Organisations Act 71 of 1997 (NPO Act) is a voluntary commitment and is not a condition for approval as a PBO under section 30.

14. Written undertaking

In certain circumstances the founding document of an organisation applying for approval as a PBO may not comply with the requirements of section 30(3)(b) (as discussed in **11**) at the time when the application is submitted to the TEU.

Provision has accordingly been made for the founding document to be deemed to comply with the requirements of section 30(3)(b) where the person responsible in a fiduciary capacity for the administration of the funds and assets of the organisation submits a written undertaking that the PBO will be administered in compliance with those requirements. The submission of a written undertaking is not required if the founding document complies with the requirements of section 30(3)(b).

In those circumstances in which it is possible to amend the founding document the written undertaking is an interim measure and the relevant requirements of section 30(3)(b) must subsequently be formally incorporated into the PBO's founding document within a specific time frame. This may be either within a period of twelve months from the date of the letter of approval issued by the TEU or whenever any other amendment is effected to the founding document, whichever date occurs first.

In those circumstances, such as in the case of a testamentary trust, in which the founding document is not legally capable of being amended, the written undertaking remains a permanent measure. A testamentary trust is established under the provisions of a will and

can only apply for approval as a PBO when it comes into existence, namely on the death of the testator. The will cannot be amended to comply with the provisions of section 30(3)(b) and in order for the trust to be approved as a PBO, the trustee will need to complete a written undertaking.

The written undertaking forms, which are available on the SARS website, must be completed and submitted together with the application for approval as a PBO.

15. Trading or business activities and partial taxation

15.1 General

Section 10(1)(cN) provides that the receipts and accruals of an approved PBO which arise otherwise than from any business undertaking or trading activity are exempt from tax.

A PBO is permitted to carry on business or trading activities provided the sole or principal object remains the carrying on of PBAs. A PBO may not, however, engage in commercial trading activities and claim that since a portion of the profits are used to carry on approved PBAs, it should qualify for approval as a PBO.

Receipts and accruals which arise from a business undertaking or trading activity will only be exempt from tax if the receipt or accrual falls within one of the four exemptions included in section 10(1)(cN). These are dealt with in **15.2**.

For a comprehensive explanation of the trading provisions refer to Interpretation Note No. 24 (Issue 2) "Public Benefit Organisations (PBOs): Trading Rules – Partial Taxation of Trading Receipts" dated 31 August 2007 which is available on the SARS website.

15.2 Receipts and accruals derived from a business undertaking or trading activity that are exempt

The receipts and accruals from the four categories of business undertakings or trading activities detailed in **15.2.1** to **15.2.4** are exempt from normal tax.

Each category of exemption has its own conditions and requirements and is applied separately.

There is no limit on the amount of receipts and accruals which are exempt from normal tax under the exemptions in **15.2.1** to **15.2.3**. There is, however, a limitation on the amount of the exemption discussed in **15.2.4**.

15.2.1 Integral and directly related trade [section 10(1)(cN)(ii)(aa)]

In order to qualify for this exemption all of the following requirements must be complied with:

- The business undertaking or trading activity must be integral and directly related to the sole or principal object of the PBO.
- Substantially the whole of the business undertaking or trading activity must be conducted on a cost-recovery basis. In other words the goods must not be sold to maximize profits but rather with the intention of recovering direct and reasonable indirect costs.
- The business undertaking or trading activity should not result in unfair competition with other taxable entities. This means that the PBO should not be in a more favourable position or have an unfair advantage over a taxable entity conducting the same business undertaking or trading activity.

Note:

- The concept “substantially the whole” is regarded by SARS as 90% or more. However, in order to overcome certain practical difficulties, SARS will accept a percentage of not less than 85%.
- A PBO that uses its assets to generate income, for example, by letting its parking facilities, a hall or tennis courts to members of the public, will not be regarded as carrying on a related trading activity but a taxable trading activity.

A PBO that claims an exemption under this subparagraph must provide detailed motivation and support for the view that the relevant business undertaking or trading activity complies with all three conditions.

15.2.2 Occasional nature [section 10(1)(cN)(ii)(bb)]

In order to qualify under this item the business undertaking or trading activity must –

- take place on an occasional or infrequent basis; and
- be undertaken substantially with assistance on a voluntary basis without compensation. This excludes the *bona fide* reimbursement of reasonable and necessary out-of-pocket expenditure.

A PBO that claims an exemption under this subparagraph must demonstrate and provide support for the view that the two conditions are met.

15.2.3 Ministerial approval [section 10(1)(cN)(ii)(cc)]

The Minister may approve a business undertaking or trading activity to be exempt by notice in the *Government Gazette* taking into account the following factors –

- the scope and benevolent nature of the undertaking or activity;
- the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the PBO;
- the profitability of the undertaking or activity; and
- the level of economic distortion that will be caused by the tax-exempt status of the PBO carrying out the undertaking or activity.

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

15.2.4 Basic exemption [section 10(1)(cN)(ii)(dd)]

A PBO that carries on business undertakings or trading activities which do not fall within the ambit of the exemptions set out in **15.2.1**, **15.2.2** or **15.2.3**, will be taxed on the receipts and accruals derived from those business undertakings or trading activities. An amount, up to the maximum of the basic exemption, will be deducted from the receipts and accruals derived from those business undertakings or trading activities.

The basic exemption is calculated as the greater of 5% of the total receipts and accruals of the PBO or R200 000. The basic exemption is applied collectively to the total receipts and accruals derived from all such business undertakings or trading activities (namely, those not qualifying for exemption under **15.2.1** to **15.2.3**) and not to each separate business undertaking or trading activity.

16. Specific issues in respect of PBOs

16.1 Approval to issue receipts for donations under section 18A

An approved PBO that was incorporated, formed or established in South Africa and which conducts PBAs listed in Part II of the Ninth Schedule must apply to the TEU for permission to be able to issue section 18A receipts for donations received. The donations for which section 18A receipts are issued must be used solely in carrying on PBAs listed in Part II of the Ninth Schedule. For more information on donations for which receipts are issued refer to “*A Basic Guide to Tax Deductible Donations*” which is available on the SARS website.

16.2 Tax rates for trading activities of approved PBOs

A PBO that has been approved under section 30 of the Act and that becomes liable to tax on its trading income will be taxed at a flat rate of 28%. The flat rate of 28% applies irrespective of whether the PBO is established as a trust, a non-profit company as defined in section 1 of the Companies Act, 2008 or as an association of persons.

16.3 Provisional tax payments

A PBO that has been approved by the Commissioner is exempt from making provisional tax payments and submitting provisional tax returns.

16.4 Scholarships

The provision of scholarships, bursaries, awards and loans for study, research, and teaching is a PBA. The requirements and conditions referred to in paragraph 4(o) of Part I of the Ninth Schedule, which must be complied with, have been prescribed by the Minister in *Regulation Gazette* 24941 of 28 February 2003. These conditions must be included in the founding document of the PBO conducting this PBA. The conditions are:

- The scholarship, bursary or award must be *bona fide* and be granted to an individual on grounds of objective merit or need.
- The scholarship, bursary or award may not be –
 - revocable other than for reasons of a material failure to conform with the designated purpose and condition of the scholarship, bursary or award;
 - subject to conditions which would enable the donor of the funds or any connected person in relation to the donor to derive a direct benefit from the application of the scholarship, bursary or award; and
 - granted to any person who is or will become an employee of the donor or that organisation or an associated institution in relation to the donor or organisation, or any relative of that employee, unless it can be indicated that even if that person had not been an employee the bursary, scholarship or award would have been granted.
- All decisions regarding the granting of the scholarship, bursary or award must be made by a duly constituted committee consisting of three unconnected persons to the donor or the person to whom it will be granted.
- When the scholarship, bursary or award is in respect of overseas study, research or teaching it is subject to an undertaking by the recipient to –
 - apply the knowledge obtained immediately after completion, in South Africa for a period of at least the period that was funded by the organisation; or

- refund the full amount of the scholarship, bursary or award should the recipient decide not to apply the knowledge as set out in the preceding bullet point.

In addition copies of all documents and information relating to the scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award was granted must be made available to the Commissioner on request.

16.5 Granting of loans

Regulations relating to the granting of loans by a PBO carrying on the approved PBAs listed in paragraphs 1(p)(iii) and 3(f) of Part I of the Ninth Schedule have, as yet, not been published.

17. Reporting requirements

17.1 Record-keeping

Any books of account, records or other documents, including financial statements, of an approved PBO must be retained and preserved for a period of at least four years after the last date of an entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transaction, act or operation to which they relate. It is the responsibility of the person in control of the PBO to ensure that the necessary records are kept.

17.2 Income tax returns

An approved PBO must submit annual income tax returns, notwithstanding that the approval may result in no tax liability for the PBO. The prescribed *IT 12EI Return of Income Exempt Organisations* may be submitted electronically via e-filing or manually.

Non-receipt of a return does not affect the obligation to submit a return. A person who wilfully fails or neglects to submit a return as required is guilty of an offence.

17.3 Supporting documentation

It is not a requirement for supporting documents to be submitted together with the income tax return. The TEU will contact the PBO if supporting documentation is required to substantiate any aspect of the income tax return. Supporting documents must be retained for a period of four years (see **17.1**). Supporting documents include financial statements (for example, a statement of comprehensive income and a balance sheet) and any other documents necessary to support the information contained in the income tax return.

17.4 Information available to SARS

To assist in enforcing the provisions of the Act, the TEU may submit a written request to any person to furnish information about any approved PBO and may require that person to –

- answer any questions relating to the PBO;
- make books of account, records or other documents relating to the PBO available for inspection; or
- meet with the Commissioner's representative and produce for examination any documents relating to the PBO.

18. Group registration

The TEU may grant approval to a group of organisations sharing a common purpose provided specific conditions and requirements are met.

For further information in this regard, including the impact on the exemptions discussed in 15, refer to the *Tax Exemption Guide for Public Benefit Organisations in South Africa* available on the SARS website.

19. Non-compliance and penalties applicable to PBOs

19.1 Dissolution or termination of activities of a PBO or branch of a foreign exempt organisation

Failure by a PBO or branch of a foreign exempt organisation to transfer, or to take reasonable steps to transfer, its remaining assets as required in 11.3, will result in an amount equal to the market value of the assets not transferred in accordance with 11.3 less the amount of the *bona fide* liabilities of the PBO, being deemed to be taxable income which accrued to the PBO or branch during the year of assessment in which dissolution or termination of its activities took place.

19.2 Withdrawal of approval

When the TEU is satisfied that a PBO has, in any year of assessment –

- in any material respect; or
- on a continuous or repetitive basis

failed to comply with section 30 or with its founding document (as it relates to section 30), the approval of the PBO may be withdrawn after due notice is given to the transgressing PBO. The approval will be withdrawn with effect from the beginning of the relevant year of assessment during which the non-compliance took place unless the PBO has taken corrective steps within the period specified by the TEU in the notice to the PBO.

19.2.1 Consequences

Once the approval is withdrawn, the PBO must, within six months unless the Commissioner allows a longer period, transfer or take reasonable steps to transfer its remaining assets to –

- another approved PBO;
- an institution, board or body that is exempt from tax under section 10(1)(cA)(i) which has as its sole or principal object the carrying on of any PBA; or
- the government of South Africa.

Any of the above entities that benefit on distribution of the remaining assets are required to use those assets solely for carrying on one or more PBAs.

A PBO that fails to transfer its remaining assets as specified above, will have an amount equal to the market value of the assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the PBO, deemed to be taxable income which accrued to the organisation during the year of assessment in which the approval was withdrawn.

19.2.2 Re-application

An organisation may re-apply for approval in the year of assessment following the year of assessment in which approval was withdrawn. The TEU may grant the approval in that subsequent year if the TEU is satisfied that the non-compliance giving rise to the withdrawal of approval has been rectified.

20. Non-compliance and penalties applicable to person responsible in a fiduciary capacity for the funds and assets of an approved PBO

A person who is in a fiduciary capacity responsible for the management or control of the income and assets of an approved PBO and who intentionally fails to comply with any provision of section 30 or any provision of the founding document under which the PBO has been established (to the extent that it relates to section 30), will be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

21. Objections and appeals

Any decision under section 30 is subject to objection and appeal.

A PBO may also lodge an objection and appeal against an assessment.

22. Application for approval

Organisations that have not been formally approved as PBOs and that seek approval must apply to the TEU and submit a completed application form (EI 1) together with the required supporting documentation, such as a copy of the founding document and a copy of the latest annual financial statements.

A signed written undertaking must be included in the application if the founding document does not comply with section 30(3)(b).

The above forms are available on the SARS website.

23. Contact details of the Tax Exemption Unit

Physical address:

Land Bank Building
271 Veale Street
Nieuw Muckleneuk
Pretoria
0181

Postal address:

PO Box 11955
HATFIELD
0028

Telephone: 012 - 483 1700

Fax: 012 - 483 1701

E- mail: teu@sars.gov.za