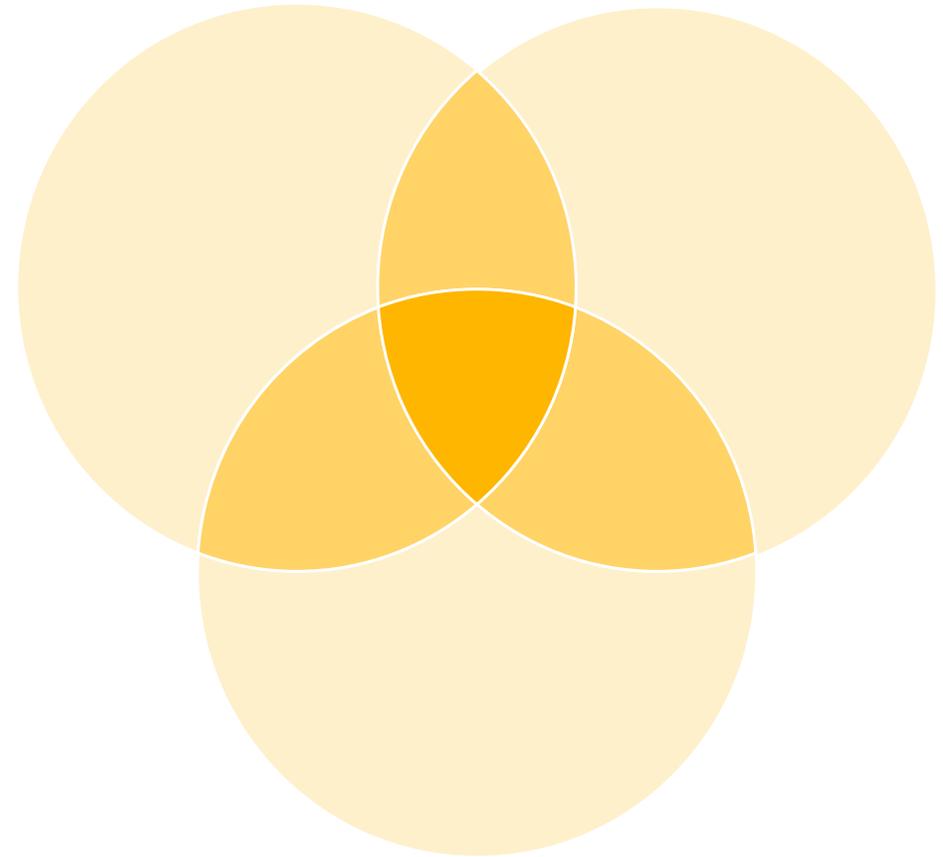


Fiduciary responsibilities in respect of PBO

Understanding the tax rules applicable to Public Benefit Organisation and the consequences of non-compliance

Framework for a PBO



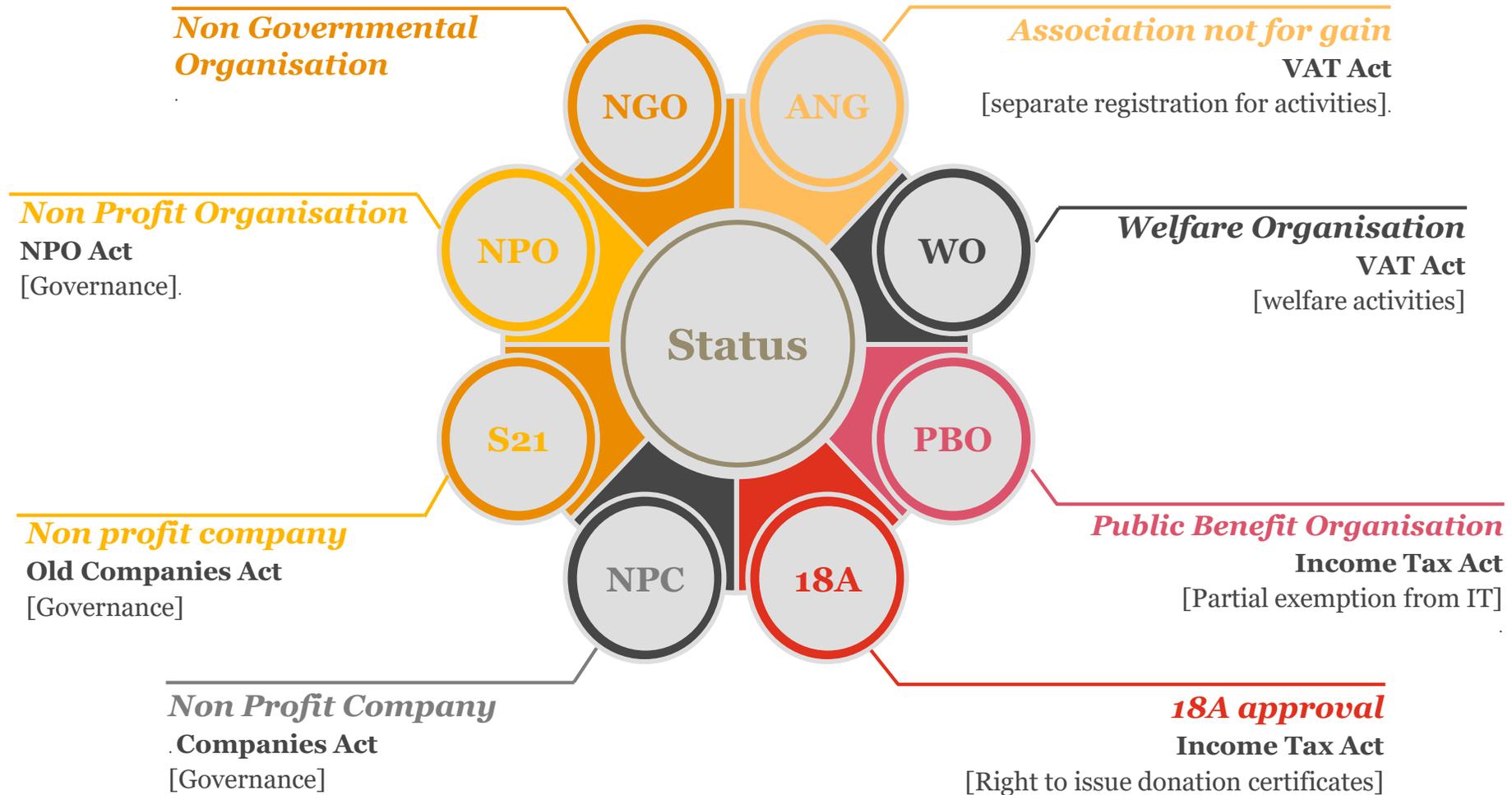
Agenda

- Setting the scene – what is a public benefit organisation
- Understanding the tax status
- Tax exemption conditions
- Consequences of non-compliance with tax conditions

1

- What is the tax status of the organisation?
- Has it formally been approved by or confirmed with SARS?

Terminology



The definition of a PBO

SA registered

NPC, Trust or
Association of Persons

SA Branch of
Foreign exempt entity

Sole or principal object

to carry on public
benefit activities (“PBA”)

Carried out in a **non-
profit manner** with
altruistic or
philanthropic intent

Public benefit activities

- Approved PBA
- Apply to Minister

Activities not intended
to directly or indirectly
promote **economic
self interest**

For the benefit of or
widely accessible to
the **public at
large**

The organisation's tax exempt status

Tax Exemption Unit

Office
Head Office

Enquiries
Mrs R Julius

Telephone
(012) 483 1708

Facsimile
0102083301

PBO no
930 PBO no

Income Tax Reference no
Income tax ref

Date
27 September 2016



South African Revenue Service

271 Veale Street
Brooklyn, Pretoria
PO Box 11955, Hatfield, 0028
Tel. +27 (12) 483-1700
www.sars.gov.za
teu@sars.gov.za

The Public Representative

Organisation name

Address

Sandton

2146

Dear Sir / Madam

APPLICATION FOR INCOME TAX EXEMPTION APPROVED: Organisation name

PBO NO 930 PBO no

The South African Revenue Service (SARS) would like to confirm that your application for exemption from income tax has been approved as you meet the requirements of a Public Benefit Organisation (PBO) set out in section 30(3) of the Income Tax Act No 58 of 1962 (the Act). Your income tax exemption has been granted in terms of section 10(1)(cN) of the Act with effect from 17 June 2014. Annual receipts and accruals will therefore be subject to the provisions of section 10(1)(cN) of the Act and accruals and receipts from trading or business activities which fall outside the parameters of section 10(1)(cN) will be subject to tax.

The following exemptions also apply and are limited to:

1. The public benefit organisation has been approved for purposes of section 18A(1)(a) of the Act and donations to the organisation will be tax deductible in the hands of the donors in terms of and subject to the limitations prescribed in section 18A of the Act with effect from 23 July 2014.
2. Donations made to or by the PBO are exempt from Donations Tax in terms of section 56(1)(h) of the Income Tax Act.
3. Exemption from the payment of Estate Duty in terms of section 4(h) of the Estate Duty Act No.45 of 1955.

In order to maintain your exempt status, the following conditions must be complied with:

1. Where applicable, amend the founding document stipulating the requirements of the exemption approved. A signed copy of the amended founding document must be submitted to the Tax Exemption Unit (TEU) within 12 months by:
 - Scanning and emailing the document to teu@sars.gov.za or
 - Posting these to: PO Box 11955, Hatfield, 0028.
2. When issuing a tax deductible receipt it must include the following information:
 - a) The reference number (the PBO number quoted on this letter).
 - b) The date of the receipt of the donation.

Approval as a PBO

SARS approval

Written letter

Retrospective

Withdrawal

Approval as a PBO

The organisation's tax exempt status

Approval for the purposes of section 18A

SARS approval

Approved PBO

Written letter

Retrospective

Withdrawal

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The following exemptions also apply and are limited to:

1. The public benefit organisation has been approved for purposes of section 18A(1)(a) of the Act and donations to the organisation will be tax deductible in the hands of the donors in terms of and subject to the limitations prescribed in section 18A of the Act with effect from 23 July 2014.
2. Donations made to or by the PBO are exempt from Donations Tax in terms of section 56(1)(h) of the Income Tax Act.
3. Exemption from the payment of Estate Duty in terms of section 4(h) of the Estate Duty Act No.45 of 1955.

In order to maintain your exempt status, the following conditions must be complied with:

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 - Posting these to: PO Box 11955, Hatfield, 0028.
2. When issuing a tax deductible receipt it must include the following information:
 - a) The reference number (the PBO number quoted on this letter).
 - b) The date of the receipt of the donation.

Distinguishing between PBO and 18A status

The two approvals stand separate from each other and have different requirements, rights, obligations and conditions.

PBO status

Income tax exemption
Disregard disposal (CGT)
Donations tax exemption
Dividends' tax exemption

Other exemptions from taxes or levies

18A status

Right to issue 18A donor certificates if:

Conducts
Part II
PBA

Funds
Part II
PBA

2

- Was the PBO status granted subject to specific conditions?
- Does the organisation meet the section 30 and section 18A* conditions?

PBO status conditions

- Conditions as listed in the **SARS exemption letter** issued to the organisation
- Conditions as set out in **section 30** of the Income Tax Act

PBO status conditions

Utilisation of funds

All funds will be used **solely** for the object for which the PBO has been established

Distribution of funds

No funds will be directly or indirectly distributed to any person, otherwise than **in the course of undertaking any PBA.**

Monitor unregistered AoP fund utilisation

Donations

No donation will be accepted which is **revocable** at the instance of the donor for reasons other than a material failure to conform to the designated purposes and **conditions***.

PBO status conditions

No tax scheme participation

No tax scheme participation irrespective of whether the PBO itself or any other person benefited from the reduction, postponement or avoidance of any applicable tax, duty or levy.

Reasonable remuneration

Remuneration may not be excessive taking into account the particular service rendered and what is considered to be reasonable in the particular sector

No politics

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

PBO status conditions

Transfers on dissolution

Reserves and assets to remain in tax exempt space.
Recipient must be an approved PBO, 10(1)(cA)(i) institution, the National Housing Corp or government

Amendments and changes

Notify SARS of any amendment to the founding document;

Notify SARS TEU of any changes to activities or fiduciaries

Reporting

Annual tax returns

Additional reporting per exemption letter

Reportable transactions

Conditions of section 18A status

Bona fide donation

Monetary ✓ (Rand value)

Property ✓ (description)

Services X

Designated for 18A approved PBA only (Part II PBA)

Actually paid or transferred
In year of assessment

18A receipt
Prescribed contents

Conditions of section 18A status

18A funds utilisation

Approved for s18A(1)(a)
For Part II PBA activities only

18A Fund distribution
to fund Part II PBA of s18A(1)(a)
approved organisations

Approved PBO

Section 10(1)(cA)(i)
Institution, body, board

Government

The consequences of non-compliance

3

- What is the consequences of non-compliance with the conditions of tax exemption?

Consequences of non-compliance

Withdraw PBO status

- SARS may withdraw PBO status if it is satisfied that the PBO has during any year of assessment in any **material respect**, or has on a **continuous or repetitive basis** failed to comply with the provisions of section 30 or its founding document, if no corrective steps were taken subsequent to the notice of intention to withdraw the approval.

→ **18A status is lost**

→ **Compulsory transfer of assets to another PBO**

→ **Deemed taxable income on market value of assets no transferred within 6 months**

Consequences of non-compliance

Withdraw 18 status

- If the fiduciary has in any material way failed to ensure that the objects for which the PBO was established are carried out, or expended funds for purposes not covered by such objects;
- If the fiduciary issued or allowed a section 18A receipt to be issued to a taxpayer in respect of fees or other emoluments;
- If the fiduciary issued or allowed a section 18A receipt to be issued in contravention with section 18A(2A) of the Income Tax Act

→ If corrective steps are not taken ... deemed taxable income

Consequences of non-compliance

Offence

- Any person in a fiduciary capacity responsible for the management or control of the income and assets of a PBO who intentionally fails to comply with any provision of section 30 and/or section 18A of the Income tax Act or of the founding document to the extent that it relates to section 30, is guilty of an offence and liable on conviction to a **fine or to imprisonment** for a period not exceeding 24 months.

Conclusion

As a fiduciary of a PBO:

- You have to ensure that the provisions of the founding document (which include the PBO rules) are adhered to at all times;
- You (likely) have signed a written undertaking to ensure that the organisation is at all times managed in accordance with the provisions of section 30 of the Income Tax Act

Therefore ...

Conclusion

- Confirm the organisation's **tax status** and ensure that you fully understand the tax classification of the public benefit activities for which it was approved;
- Approve only the **distribution and the utilisation of funds** if the project constitutes an approved public benefit activity;
- Monitor the projects to ensure that only **qualifying beneficiaries** benefit;
- Only invest access funds in **prudent investments**;

Conclusion

- Monitor and control the receipt and utilisation of all **donations** and ensure that section 18A receipts are only issued in respect of bona fide donations
- **100% compliance** with all SARS reporting requirements
- Clear matters of potential non-compliance with the SARS Tax Exemption Unit

Thank you



Tanja Potgieter (Non-Profit Tax Specialist)

011 2870178

082 784 9002

tanja.potgieter@pwc.com

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