

Guidelines Pertaining to Tax Exemption in Terms of the Income Tax Act No 58 of 1962 for a Public Benefit Organisation

Preamble

Historically, non-profit organisations were granted some degree of preferential tax treatment and donor incentives. Religious, charitable and educational institutions were specifically exempt from income and related taxes.

Following recommendations by the Katz Commission, the Minister of Finance, in his 2000 Budget Speech, announced wide-ranging changes to the legislation regulating the tax exemption of non-profit organisations. These laws are bound to impact on every Masjid, Madrasah, Muslim School, Darul Uloom and other community organisations.

Tax exemption will now only be granted to organisations that qualify as a Public Benefit Organisation (PBO).

What is a PBO?

A PBO is any organisation that has the sole objective of providing one or more of Public Benefit Activities (PBAs) in a non-profit manner as defined by the Minister, provided that 85% of its activities both in terms of time and money are carried out in South Africa. It may either be:

- ✿ A Section 21 Company
- ✿ A Trust
- ✿ An Association of Persons established in terms of a constitution

What are Public Benefit Activities (PBAs)?

PBAs are categorised as the following activities:

- ✿ Welfare & Humanitarian
- ✿ Health Care
- ✿ Land & Housing Education
- ✿ Religion/Belief/Philosophy
- ✿ Conservation/Environment/Animal Welfare
- ✿ Research & Consumer Rights
- ✿ Sports
- ✿ Providing of funds to an association carrying on PBAs

The Minister may however determine additional PBA's from time to time.

What are the Requirements for Registration as a PBO?

1. The constitution or founding document of the organisation must clearly state that the organisations activities and resources are aimed at the furtherance of conducting one or more of the approved PBA.
2. At least three unconnected persons (not related to one another) must accept fiduciary responsibility for the organisation.
3. Funds of a PBO must be used solely for the stated objectives. Surplus funds must

be invested with a financial institution as defined in section 1 of the Financial Services Board Act of 1990. This would include Registered Banks and Unit trusts but preclude investment in private companies.

4. The constitution or founding document of the organisation must state that on dissolution the remaining assets will be transferred to a similar PBO or an organisation that carries on approved PBA.
5. PBOs are allowed to trade provided that: The gross income from all business or trading activities of the organisation is less than the greater of 15% of gross receipts or R25000. Related trade activities such as fees charged by an educational institute or accommodation income by a hostel, etc. activities that are integral and directly related to the sole object of the PBO will be acceptable. Unrelated trading activities may be carried out on an occasional basis such as fetes, cake sales, etc. provided they are undertaken with mainly voluntary or uncompensated assistance.
6. A PBO will be allowed to retain any business assets or trading activity acquired before 1 January 2001 for a period of five years notwithstanding the prohibition on trade. After five years the PBO must either dispose of the asset or transfer it to a separate taxable entity.
7. A PBO may only accept non-revocable donations except where the recipient fails to abide by the conditions of the donation.

8. A PBO is obliged to submit a copy of all amendments to its founding document or constitution to the Commissioner. This requirement must be formally included in the founding document or constitution.
9. Employees, office bearers, or other persons serving the PBO may receive reasonable remuneration for services provided.
10. A PBO must also register in terms of section 13(5) as a NPO with the Directorate of Non-Profit Organisations.

What are the Requirements for Registration as a NPO?

The founding document or constitution must include the following:

1. The main and ancillary objectives
2. Members or office bearers have no rights in the property and assets of the organisation
3. Mechanisms of governance and manner in which decisions are made
4. Procedure for convening meetings
5. Operation of a banking account
6. Date for financial year-end
7. Procedure for changing founding document
8. Procedure for dissolution and transfer of assets upon dissolution
9. Proper accounting records and reports
10. Financial records to be kept for a period of four years

The organisation will within nine months after the end of its financial year submit to the Directorate a narrative report on a prescribed form together with its financial statements.

What are the Benefits of Registering as a PBO?

1. Exemption from income tax
2. A donor is exempt from the 20% donation tax

3. An estate is exempt from the 20% estate duty on property bequeathed to a PBO
4. Exemption from transfer duty
5. Exemption from stamp duty
6. Exemption from skills development levy
7. Exemption from capital gains tax

What if an organisation already enjoys tax exemption status?

Organisations currently exempt from income tax have to reapply for exemption in terms of the new legislation on or before 31 December 2003.

What if an organisation does currently enjoy tax exemption but cannot comply with the various provisions of the new legislation and is unable to effect compliance before the due date?

If the founding document does not comply the new provisions, the application must be accompanied by a signed written undertaking on the prescribed form. The PBO is however required to formally amend its founding document to comply with the new provisions within a period of five years from 15 July 2001.

What if a non-profit organisation does not register as a PBO?

It will be liable for income tax and other taxes and duties as normal taxpayers.

Where can we get more information or obtain the prescribed forms for registration?

You may visit the South African Revenue Services website: <http://www.sars.gov.za> and download a booklet entitled "Tax Exemption Guide for Public Benefit Organisations in South Africa" which contains detailed information as well as the necessary forms.

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