

PBO provisions and S.10 exemptions:

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.

There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.

Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments may be submitted to either:

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Amendment of section 9 of Act 40 of 1949

. Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (c) of the following subparagraph:

“(c)(i) a public benefit organisation which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, 1962 (Act No. 58 of 1962) or which continues to enjoy exemption under section 21(2)(a) of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or”;

Amendment of section 4 of Act 45 of 1955

. Section 4 of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph (h) for subparagraph (i) of the following subparagraph:

- “(i) any public benefit organisation which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, 1962 (Act No. 58 of 1962) or which continues to enjoy exemption under section 21(2)(a) of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or”.

Amendment of section 10 of Act 58 of 1962

. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

- “(a) the **[revenues]** receipts and accruals of the Government, any provincial administration or of any other state;

- (b) the **[revenues]** receipts and accruals of local authorities;”;

- (b) by the deletion in subsection (1) of paragraph (s); and

- (c) by the substitution in subsection (1) for the words in paragraph (x) preceding the proviso of the following words:

“so much of any amount (being a lump sum) referred to in paragraph (d) of the definition of 'gross income' in section 1 or in section 7A(4A) **[or (5)]** as does not exceed R30 000 less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph, whether in the current or any previous year of assessment.”; and

- (d) by the substitution for subsection (3) of the following subsection:

“(3) The exemptions from tax provided by any paragraph of subsection (1) shall not extend to—

- (a) any payments out of the revenues, receipts, accruals or profits mentioned in such paragraph; or

(b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule.”.

(2) Subsection (1)(b) shall come into operation on 1 January 2004 and shall apply in respect of years of assessment commencing after that date.

Amendment of section 18A of Act 58 of 1962

. Section 18A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind [made by such taxpayer and] (other than property which constitutes or is subject to any fiduciary right, usufruct or other similar right or which constitutes an intangible asset or financial instrument, unless that financial instrument is a share in a listed company), which was actually paid or transferred during the year of assessment to—”;

(b) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) public benefit organisation approved by the Commissioner under section 30 or which continues to enjoy exemption under section 21(2)(a) of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or”;

(c) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(c) the Government, any provincial administration or local authority as contemplated in section 10(1)(a) or (b);”;

(d) by the substitution in subsection (1) for subitem (bb) of paragraph (a) of the following subitem:

“(bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);” and

(e) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:

“(i) provides funds or assets **[solely]** to any public benefit organisation, institution, board or body contemplated in paragraph (a); and”;

(f) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) and the words following subparagraph (ii) of the following subparagraph and words:

“(ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by such organisation by way of donations which qualified for a deduction in terms of this section: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds,

as does not exceed **[the greater of—**

(aa)] five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18

[or

(bb) R1 000:

Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds as contemplated in paragraph (b) (ii), having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds].”;

(g) by the insertion after subsection (1B) of the following subsection:

“(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4 of Part II of the Ninth Schedule, must expressly provide that the organisation—

(a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—

(i) that donation is made by that person on or after 1 August 2002, but before 1 August 2005; and

(ii) that person has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;

(b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and

(c) must utilise the amount of—

(i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and

(ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or on a transfrontier conservation area of which the Republic forms part.”;

(h) by the insertion after subsection (2) of the following subsections:

“(2A) A public benefit organisation, institution, board or body may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—

(a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)(a) which carries on activities contemplated in Parts I and Part II of the Ninth Schedule, that donation will be utilised solely in carrying on

activities contemplated in Part II of the Ninth Schedule; or

(b) in the case of a public benefit organisation contemplated in subsection (1)(b) which provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule.

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must together with its annual return for a year of assessment submit to the Commissioner an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).”;

(i) by the substitution in subsection (3) for paragraphs (a), (b), (c) and (d) of the following paragraphs:

“(a) where such property constitutes—

(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instruments on the date of that donation or the amount which has been taken into account for the purposes of section 22(8); or

(ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or

(b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of—

- (i) the fair market value of that property on the date of that donation; or
- (ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or
- (c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of —
- (i) the fair market value of that property on the date of that donation; or
- (ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or
- (d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—
- (i) the fair market value of that property on the date of that donation; or
- (ii) the cost to the taxpayer of such property.”.

Amendment of section 22 of Act 58 of 1962

. Section 22 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (8) for item (B) of paragraph (b) of the following item:
- “(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) (otherwise than in the manner contemplated in item (C)) or ceases to be held as trading stock, an amount equal to the

market value of such trading stock;”;

(b) by the addition in subsection (8) after item (B) of paragraph (b) of the following item:

“(C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock in terms of subsection (2).”.

Amendment of section 30 of Act 58 of 1962

. Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the definition of “public benefit organisation” of the following subparagraph:

“(iii) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless—

(aa) at least 90 per cent of all donations received by or accrued to that organisation are derived by way of receipts and accruals from persons who are not residents; or

(bb) the Minister, having regard to the circumstances of the case, directs otherwise; and”.

Amendment of section 64B of Act 58 of 1962

. (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) dividends declared by any company the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the provisions of section 10: Provided that the provisions of this paragraph shall not apply to a

company [(other than a company referred to in section 10(1)(s))] which is exempt from tax under the said provisions solely because it derives gross income of a particular nature;”.

(2) Subsection (1) shall come into operation on 1 January 2004 and shall apply in respect of any dividend declared by any company during any year of assessment commencing after that date.

Amendment of paragraph 3 of Part I of Ninth Schedule to Act 58 of 1962

. Paragraph 3 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (c) of the following subparagraph:

“(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 **[regular meals 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 provided by that organisation without recovery of cost.”;

(b) by the substitution for subparagraph (d) of the following subparagraph:

“(d) Building and equipping of—

- (i) **[community centres,]** clinics **[sport facilities]** or crèches; or
- (ii) community centres, sport facilities or other facilities of a similar nature,

for the benefit of the poor and needy.”;

(b) by the addition of the following subparagraph:

“(h) The administration of collective housing projects comprising housing units that have been developed, constructed, upgraded, converted or procured for the benefit of poor and needy persons as contemplated in subparagraph (a).”.

Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962

. Paragraph 4 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(p) the provision of experiential business related life skills programmes and business development assistance to young and unemployed persons.”.

Amendment of paragraph 11 of Part I of Ninth Schedule to Act 58 of 1962

. Paragraph 11 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (b) for the words preceding item (i) of the following words:

“The hosting of any international event approved by the Minister for purposes of **[these regulations]** this paragraph, having regard to—
“;

(b) by the substitution in subparagraph (b) for the words preceding item (ii) of the following words:

“The bid to host or hosting of any international event approved by the Minister **[for purposes of these regulations]**, having regard to—”.

Amendment of paragraph 1 of Part II of Ninth Schedule to act 58 of 1962

. Paragraph 1 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

“(c) The care or counseling 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 counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling 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.”.

Amendment of paragraph 2 of Part II of Ninth Schedule to Act 58 of 1962

. Paragraph 2 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

“(e) The provision of blood transfusion, organ donor or similar services.

“(f) The provision of primary health care education, sex education or family planning.”.

Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962

. Paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

“(l) The provision of scholarships, bursaries and awards to poor and needy persons for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the Gazette.

“(m) the provision of experiential business related life skills programmes and business development assistance to young and unemployed persons.”.

Addition of paragraph 5 to Part II of Ninth Schedule to Act 58 of 1962

. The following paragraph is hereby added to Part II of the Ninth Schedule to the Income Tax Act, 1962:

“LAND AND HOUSING

5.(a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of poor and needy persons.

- (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.”.

Amendment of section 4 of Act 77 of 1968

- . Section 4 of the Stamp Duties Act, 1968, is hereby amended—
- (a) by the substitution in subsection (1) for subparagraph (i) of paragraph (f) of the following subparagraph:
 - “(i) public benefit organisation which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, 1962 (Act 58 of 1962) or which continues to enjoy exemption under section 21(2)(a) of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or”; and
 - (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
 - “(h) any instrument transferred by any public benefit organisation, which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, 1962, or which continues to enjoy exemption under section 21(2)(a) of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000), to any other entity which is controlled by such public benefit organisation in order to comply with the provisions of the proviso to section 30(3) of that Act.”.

Amendment of section 4 of Act 9 of 1999

. Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph (c) of the following paragraph:

- “(c) any public benefit organisation contemplated in section 10(1)(cN) of the Income Tax Act, which—
- (i) solely carries on any public benefit activity contemplated in paragraphs 1, 2 (a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to that Act; or
 - (ii) **[any public benefit organisation which] solely** provides funds **[solely]** to **[such]** public benefit **[organisation which so carries on any such public benefit activity]** organisations contemplated in subparagraph (i); or”.

Amendment of section 21 of Act 30 of 2000, as amended by section 78 of Act 19 of 2001 and amended by section 63 of Act 30 of 2002

. Section 21 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution in subsection (2) for the first proviso to paragraph (a) of the following proviso:

“Provided that any company, society, trust, institution, union, chamber, exchange, other association of persons or fund whose receipts and accruals were exempt from tax in terms of the provisions of paragraphs (cB), (cC), (cD), (cF), (cI), (cJ), (f) and (fA) of section 10(1) of the Income Tax, 1962, prior to the amendment thereof by this section, which company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)(d)(iii) or (iv) of that Act before 31 December 2004 or in terms of section 30 of that Act before 31 December 2003, or submit a written undertaking as provided for in the said section 30 before that date, shall continue to enjoy exemption until written notification by the Commissioner of his decision in terms of the said section 10(1)(d)(iii) or (iv) or section 30:”.

Transitional provisions relating to gold bullion and shares acquired from funds transferred to Republic

. A company contemplated in section 10(1)(s) of the Income Tax Act, 1962, must disregard any capital gain or capital loss in respect of the disposal during any year of assessment of that company commencing on or before 1 January 2004 of any asset consisting of gold bullion or shares as contemplated in section 10(1)(s).