

Non-profit Organisations

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Policy

- Policy in favour of tax incentivised PBOs
 - Volunteer organisations are effectively easing the burden on the state
 - Volunteer organisations have the freedom to perform their activities slightly differently, thereby filling the gap
 - Donations are effectively a form of voluntary taxation
- Policy concerns
 - Hard to distinguish what is really a real business versus a social welfare business
 - Risk that the funds are being used for private benefit
 - Taxpayers are individually choosing government policy priorities (governance control)

Income Tax Relief

Core Criteria for Eligibility and Donations

Public Benefit Activities

Exemption

- Welfare and humanitarian
- Health care
- Land housing
- Education and development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment and Animal Welfare
- Research & Consumer Rights
- Sports
- Provision of funds, assets or other resources
- General

Plus Deduction

- Welfare and humanitarian
- Health care
- Education and development, including private schools (in terms of donations, not school fees)
- Conservation, Environment and Animal Welfare
- Land and housing

Trouble Categories

- Churches
 - Cost to the fiscus
 - Definition of religion
- BEE
 - Hard to aim directly at assisting BEE
 - Community development for poor and needy (mitigation)
 - Small business funding (mitigation)
 - Micro-lenders?
- Local communities
 - Mining
 - Farming
- Sport
- Private schools (in competition with government?)
- Foreign assistance

Limits Against Profit Extraction

Limits

- Entity must be a non-profit (no shares or ownership interests), meaning:
 - No sale of shares
 - No operating or liquidating dividends
- Object (Purpose)
 - Must be conducted in a non-profit manner with altruistic and philanthropic intent
 - No compensation for fiduciaries or employees other than “reasonable” compensation
- Beneficiaries
 - Must be for the public at large; or
 - Sectors (other than small and exclusive groups)

Risks

- Salary
 - Benefits go to salary instead of beneficiaries (value-for-money)
 - Bonuses based on profits
 - Do we really care? (salaries are fully taxable)
- Quasi-debt (profit-like dividends): More theoretical than real
- Beneficiaries
 - While the group may be wide, “interested” persons will share in the benefit
 - Hard to distinguish between narrow acceptable versus unacceptable groups

Limits Against Trading

- Policy: Non-profits should not compete against fully taxable businesses
- Rule (section 10(1)(cN)): Permissible income falls into 5 categories
 - Passive income (e.g. receipt of interest, dividends, capital gains)
 - Business/trading if:
 - Integral and directly related to the PBO's sole/principal object
 - The substantial whole of the conduct is directed toward cost recovery (85%)
 - The activity does not result in unfair competition against taxable businesses
 - Business/trading if occasional and with substantial reliance on volunteers
 - Business/trading with Ministerial approval (never used)
 - Any business / trading not greater than 5% of total receipt or R200 000

Trading Concerns

- Theory
 - If the activity is viewed as beneficial, the integral test is hard to policy
 - PBOs will operate on a cost recovery basis if salaries match receipts/accruals
 - What is an unfair practice?
- Reality
 - Little private complaint about unfair practices
 - Small issues
 - Property rentals
 - Café restaurants
 - Second-hand books stores
- Opposing philosophy
 - The modern PBO needs to be self-sustaining (donors eventually suffer donor fatigue)
 - Lack of profits means that only donor funds can accrue / risk of sustainability in troubled years (e.g. unnecessary and expensive borrowing to survive)

Donation Control

- Exemption requirements
 - The donation may not be revocable at the instance of the donor
 - Unless #1: Material failure to utilise the donation as requested (unless the request is for a donor or connected person benefit)
 - Unless #2: There is a misrepresentation on deductibility
- Deductible donation requirements (section 18A)
 - Go to a Part II (9th Schedule) organisation
 - Must be *bona fide*
 - 10% of taxable income (with a special rule for CISs) with a rule for excess carryovers
 - Additional Ministerial regulatory requirements (never applied)
 - Invoice from the PBO of donation receipt
 - Use of funds must be within South Africa
 - If non-cash (i.e. *in specie*) donations are made, the deductible amount is limited to the lower of:
 - The tax cost, or
 - Value
 - Note: Certain business may still be able to claim a deduction under section 11(a)

Donation Concerns

- Theory: Few donations have a pure unattached altruistic intent (e.g. cancer cure)
- Reality:
 - 10% limit
 - Complaints that the limit is too low (US limit is either 30 or 50% / many countries have no limit at all); impacts big chunk donations
 - Contrary policy: Taxpayers should self-select tax only to a limited extent
 - “In specie” donations
 - Lower of rule can be very harsh
 - Valuation abuse is a legitimate concern, but how much of a real concern where value is easy to identify (e.g. land and buildings in developed areas; municipal valuations – see section 37C)

Passive Investments

- General PBOs
 - Passive income can be received freely, allowing a free build-up
 - No limits on gross passive assets
 - Pro: A big donation can sustain a PBO for a long-time
 - Con: Misuse of funds (maybe easier said than done)
- Funding PBOs (viewed with suspicion)
 - Exemption
 - Funds must be by way of donation or assets etc... at cost
 - Must fund other PBOs
 - Deductions
 - 50% of assets must be transferred within 12 months of donation receipt
 - Must be used for deductible donation PBOs
 - Build-up of passive funds are ok

Oversight Issues

- SARS
 - Direct oversight upon application (light ongoing review)
 - Section 18A list (nothing more); long list of schools and training, some health and disability)
 - Standard financial requirements
 - Audit certificate required for section 18A organisations
- Non-profit agency
 - Dysfunctional?
 - Coordination with SARS?
 - NPO List (on the social development website)

Other Taxes

Indirect Tax Impact

Parties Eligible for VAT Relief

- Association not for gain (lesser relief)
 - Any religious institution of a public character
 - Any other non-profit entity which cannot make operating or liquidating distributions and only reasonable salary compensation
 - Any other non-profit educational institution which cannot make operating or liquidating distributions and only reasonable salary compensation
- Welfare organisations (enhanced relief)
 - Any PBO falling into the following headings (seems the same as section 18A)
 - Welfare and humanitarian
 - Health care
 - Land and housing
 - Education and development
 - Conservation, environment and animal welfare

VAT Relief Split

Associations Not for Gain

- Standard VAT registration
- The receipt of donations does not trigger any output tax
- The organisation can use the cash method for VAT (as opposed to the accrual method)
- Certain donated goods are exempt from import VAT
- Certain grants from Government are exempt

Welfare Organisations

- Automatic VAT registration
- A welfare organisation receives all the benefits of an association not for gain
- In addition:
 - Greater list of Government grants are exempt

Others Taxes

- Donations Tax
 - Donations to an exempt PBO are free from Donations Tax
- Estate Duty
 - Estate transfers to an exempt PBO are free from Estate Duty
- Transfer Duty
 - Purchases by a PBO are free from Transfer Duty
- Securities Transfer Tax
 - Purchases by a PBO are free from Securities Transfer Tax
- Custom rebates

Available for cultural, educational, charitable, welfare and youth are entitled to full rebates

Rationalisation?

- Indirect tax relief is confused
 - Is it PBO exempt status or deductible donation status that is a trigger?
 - The association for institutions not for gain may be preferred to Donations tax and Estate Duty because the goal is to prevent family planning in terms of these charges (with a association receipt)
 - Relief from Transfer Duty and Securities Transfer tax in terms of formal PBOs may be appropriate because intermediaries effectively collect the tax; Customs presumably should be the same
- VAT
 - Is the VAT relief sufficient?
 - Should all donations and grants be zero rated? Should they simply be viewed as out of scope (not part of the input formula)

Similar Exempt Institutions

Coordination and Logical Consistency

Member Associations

- Section 30B:
 - Membership based on a class of business, profession or occupation (also unions, chambers of commerce – see section 10(1)(d)(iii) and (iv))
 - Sort of a professional Co-op
- Requirements
 - Similar to a PBO
 - Substantially the whole of the funding should come from membership subscriptions
 - All receipts are exempt
- Relationship with formal co-ops
 - Co-operatives Act?
 - Section 27 benefits?

Recreational Clubs

- Section 30A
 - Non-profit social or recreational club
 - Sort of collective hobby purpose
- Requirements (section 10(1)(cO))
 - Similar to a PBO
 - Must be unified by memberships
 - The following receipts are exempt
 - Membership fees
 - Integral and directly related activities performed on a cost recovery basis and not in unfair competition (hard to say)
 - Occasional fund raising
 - All other sources equal to the lesser of 5% of gross receipts or R120 000
- Relationship to sports and recreational-type PBOs?

Small Business Funding Entity

- Section 30C
 - A form of non-profit designed to fund independent SMMEs
 - A type of funding entity
- Requirements
 - Similar to a PBO
 - Must distribute 25% of annual receipts
 - All funds must be directed toward paying SMMEs
 - The exemption rules mirror PBOs (section 10(1)(cQ))

Other Similar Entities

- Domestic
 - Exemption for quasi-governmental entity exemption (section 10(1)(cA))
 - Sectional / share block levies (section 10(1)(e))
 - Government exempt entities (section 10(1)(t))
- Foreign
 - Official development assistance (section 10(1)(bA)(ii))
 - Multinational donor funding (section (10)(1)(bA)(iii) (relief for multinational loan development aid funders?))