**Guidance for ELCSA (N-T) congregations regarding Public Benefit Organisation [PBO]**

In accordance with section 63 of the Congregational Code-“Requirements by SARS”

(10) The congregation should register as a Public Benefit Organisation [PBO] in terms of Section 30(3) of the Income Tax Act 1962 (Act No. 58 of 1962) and should comply with Section 10(1)(cN) of the Income Tax Act 1962 (Act No. 58 of 1962).

1. **What is a public benefit organisation (PBO)?**

A PBO is an organisation that meets the requirements prescribed in section 30 of the Income Tax Act (the IT Act) and which may apply for approval to the Commissioner of the South African Revenue Service (the Commissioner), to enjoy the benefit of certain tax concessions.

|  |
| --- |
| 1. **What type of organisation can apply for approval as a PBO?**

The concept PBO is defined in the IT Act and means any organisation which is: * A non-profit company (NPC) as defined in section 1 of the Companies Act, 2008(previously associations not for gain incorporated under section 21 of the Companies Act, 1973).
* A trust formed in the Republic.
* An association of persons formed or established in the Republic as a voluntary association of persons.
* A branch established in the Republic by a foreign organisation that is incorporated, formed or established in a country outside of the Republic and that is itself exempt from income tax in its country of origin.

A ELCSA[N-T ] Congregation is seen as “an association of persons formed or established in the Republic as a voluntary association of persons” and Qualifies under Part I of the Ninth Schedule:**RELIGION, BELIEF OR PHILOSOPHY** *5. (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.* *(b) The promotion and/or practice of a belief.* *(c) The promotion of, or engaging in, philosophical activities.**NB: The type of legal entity does not impact the nature of your exemption. The nature of your activities does.**NNB: If your congregation has a Trust (or any other entity) in addition to the Association of Persons, that Trust may need to register separately for a PBO number.* |
|  |

1. **But we already have a Non-Profit Organisation [NPO] number? Do we have to be registered as a Non-Profit Organisation [NPO]?**

Unfortunately this doesn’t impact your tax status with SARS. All a NPO number designates is that your entity is registered with the Department of Social Welfare as a Non- Profit Organisation. These are different registration criteria to the PBO designation, which is administered by SARS.

You do not have to register as a NPO with the department of Social Welfare.

If Officials at SARS tells you that you have to be a NPO to register for a PBO, it is incorrect and you should not accept this from them.

**Aren’t churches automatically exempt?**

No – without the PBO registration, the entity is not exempt.

**But we’ve never had to do this in the past?**

National Treasury revamped the requirements for PBO’s significantly from 2006 – 2008, one of the major changes was creating a designation specific to Income Tax and not linked to the Department of Social Welfare definitions.

1. **How do I apply for Income Tax Exemption as a Public benefit organisation (PBO)?**

**How do I apply?**

* On an [EI 1 Application form](http://www.sars.gov.za/AllDocs/OpsDocs/SARSForms/EI1%20-%20Application%20for%20Exemption%20from%20Income%20Tax%20-%20External%20Form.pdf) (to be completed by all organisations).
* This application form must:
	+ Contain the details of three unconnected persons i.e. three people who are not related to each other. People are considered to be connected if they are close relatives to one another.
	+ Be signed by the organisation’s Public Officer / Public Representative or agent.
* A [written undertaking](http://www.sars.gov.za/FAQs/Pages/277.aspx) accompanying the EI 1. Depending on the nature of your organisation, it will be one of the following:
	+ [El 2 - Written undertaking](http://www.sars.gov.za/AllDocs/OpsDocs/SARSForms/EI2%20-%20Public%20Benefit%20Organisation%20Written%20Undertaking%20-%20External%20Form.pdf) (only for public benefit organisations to ensure compliance with
	section 30 of the Income Tax Act)
	+ [EI 2 B – Written undertaking](http://www.sars.gov.za/AllDocs/OpsDocs/SARSForms/EI2B%20-%20Foreign%20Branch%20Approved%20as%20a%20Public%20Benefit%20Organisation%20-%20External%20Form.pdf) (only for foreign branches to ensure compliance with section 30 of
	the Income Tax Act)
	+ [EI 2 C - Written undertaking](http://www.sars.gov.za/AllDocs/OpsDocs/SARSForms/EI2C%20-%20Income%20Tax%20Exemption%20Recreational%20Clubs%20-%20External%20Form.pdf) (only for recreational clubs to ensure compliance with section 30A of the Income Tax Act)

**Top tip**: The EI 2, EI 2 B, or EI 2 C must be signed by the three unconnected office bearers contained in the EI 1
application form.

**What supporting documents do I need?**

* A [Founding Document](http://www.sars.gov.za/FAQs/Pages/279.aspx) – which is either of the following:
	+ Signed and Dated Constitution (if you are an Association of Persons)
	+ Signed copy of the Trust deed from the Master’s Office and Letter of Authority from the Master of High Court (if you are a Trust)
	+ Copy of the Memorandum of Incorporation and Articles of Association (if you are a non-profit company registered with Company Intellectual Property Commission (CIPC).
* Legible certified copies of a valid identity document of all three fiduciary responsible office bearers as well as the Public Officer / Representative (if different from that of the three office bearers).
* A copy of a bank statement with original bank stamp or ABSA eStamped statement not more than three months old that confirms the account holder’s legal name, account number, account type and branch code where applicable; or if a taxpayer has opened a new bank account (less than a month old) and cannot produce a bank statement, they will need an original letter from the bank on the bank letterhead with the original bank stamp confirming the account holder’s legal name, account number, account type, branch code and reflecting the date the bank account was opened.
* Financial Statements must be submitted if the organisation has been in existence for longer than a year (and for each financial year that it has been in existence). If the organisation has been in existence for more than a year, but it has not been in operation (dormant), it must submit an affidavit with its bank statements.
* Proof of residential or physical business address.
	+ For the organisation; and
	+ For the Public Officer (if not already registered with SARS as a taxpayer).
	+ To see which documents are acceptable as proof of residential address, see our [Relevant material/supporting documents page and look at specifically 'How to update my residential or business address section'.](http://www.sars.gov.za/ClientSegments/Pages/Relevant-Material-or-Supporting-Documents.aspx)

**How do I submit my application?**

* All of the above should be submitted at your nearest [SARS branch](http://www.sars.gov.za/Contact/Branch-Finder/Pages/default.aspx).

**Since the introduction of SARS’s new electronic registration system on 12 May 2014, applications can no longer be submitted via post or fax.**

Under exceptional circumstances e.g. if the applicant is incapacitated or lives more than 200km from their nearest [SARS branch](http://www.sars.gov.za/Contact/Branch-Finder/Pages/default.aspx), they can ask a representative person to hand in their registration application at a [SARS branch](http://www.sars.gov.za/Contact/Branch-Finder/Pages/default.aspx). However, that representative person will firstly need to register with SARS as a legal entity (they will need to bring their ID and power of attorney/ appointment letter to show that they are representing their client).
* If you are already registered as a Non-Profit Company (NPC) with the Companies and Intellectual Property Commission (CIPC), then you will automatically be registered with SARS for Income Tax purposes.
* Once you are registered with SARS, this does not mean that you have been approved for tax exemption. This
will entail a further approval process. Also, even if exemption from income tax is granted, all PBOs must still complete an annual Income Tax Return on an IT12EI form.
* The exemption approval process takes approximately 36 working days from the day that all the required
information has been submitted.
1. **What records is an approved PBO required to keep?**
* Any books of accounts, records or other documents, including financial statements, of any approved PBO must be retained and preserved for a period of at least 4 years after the last date of an entry in any book or, if kept in electronic or any other form, for a period of 4 years after completion of the transaction, act or operation to which they relate. Failure or neglect to retain records is a criminal offence.
1. **What are the requirements that must be complied with by an approved PBO?**

An organisation approved by the Commissioner as a PBO will be required to:

* The founding document must be amended, within a period of 12 months (or any other period prescribed) from the date of the letter issued by the TEU confirming PBO approval, or whenever any other amendment is effected to the founding document, whichever date occurs first.
* Render annual income tax returns via SARS eFiling or manually.
* Submit a copy of all amendments to its founding document to the Commissioner, as soon as they have been affected. Inform the Commissioner of any address change for correspondence within 60 days after the address change takes place.
* Inform the Commissioner of any change in persons accepting fiduciary responsibility for the organisation or office bearers (resignations or new appointments). Inform the Commissioner if the PBO is no longer carrying on approved PBAs or ceases to exist.
* Retain all books of accounts, records and other documents for a period of 4 years and if requested by SARS submit copies of such documents. Ensure that at all times the PBO complies with the requirements relative to the PBO approval.
1. **Must PBO’s submit a tax return as an exempt organisation?**

Yes All PBOs must submit annual Income Tax returns on an IT12EI, despite the exemption.

1. **Is all income of a PBO Exempt from Income tax?**

**No-read below:**

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)(*c*N). Section 10(1)(*c*N) 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.** Please see: Tax Exemption Guide for Public Benefit Organisations in South Africa issued by SARS for a detailed explanation

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.

Approved PBO’s must continue to comply with the Act and related legislation throughout their existence. This includes the submission of annual income tax returns on an [IT12EI form](http://www.sars.gov.za/AllDocs/OpsDocs/SARSForms/IT12EI%20-%20Return%20of%20Income%20Exempt%20Organisations%20-%20External%20Form.pdf). The income tax return enables the Commissioner to assess whether the approved PBO is operating within the prescribed limits of the relevant approval granted and to determine whether the partial taxation principles must be applied to receipts and accruals derived from a trading activity or business undertaking which does not qualify for exemption.

In essence, s10(1)(cN) gives two types of exemptions, full and partial.

1. **Full exemptions**

These exemptions apply irrespective of the quantum of the amounts received, and will be entirely exempt.

1. **Exemption One**: Items derived not from trading or business activities. Examples would include Tithes, Donations, Gratuities or any other voluntary contribution.
2. **Exemption Two**: Items derived from business/trading activities if they are directly related to the principal object of the PBO; are done on a cost recovery basis and do not unfairly compete with taxable entities. A good example here would be a retirement home such as APN. It is a PBO charged with care of the elderly. It does charge a fee to cover operational costs, but it is a cost recovery and it is not competing with for-profit retirement homes. All amounts paid to the care centre for the care of an individual is therefore exempt. Please note that this only applies if it’s DIRECTLY related to the principal object of the PBO – for example: Rentals received for the rental of land and Cell phone towers would not be directly linked to the principal object and would therefore not be exempt under this provision.

Income derived from Plantation or maize projects would not be directly linked to the principal object and would therefore not be exempt under this provision.

1. **Exemption Three**: Items derived from trade done occasionally and primarily staffed with volunteers. This would be most once off fundraising events, such as Bazaars, Fete’s, etc. Please note however that if your church operates a coffee shop on it’s premises on a regular and continual basis that it would not be exempt.
2. **Exemption Four**: If the Minister of Finance says so – this is not going to apply to any of our congregations.
3. **Partial exemption:**

If your earnings are not exempted under the provisions above, then they may still get a partial exemption. This is calculated as the greater of:

R200 000; or

5% of the total receipts and accruals of the PBO (taxable or fully exempt)

Any income in excess of this exemption would then be subject to Income Tax at 28%.

**SECTION 10(1)(cN)**

*the receipts and accruals of any public benefit organisation approved by the Commissioner in terms of section 30 (3), to the extent that the receipts and accruals are derived—*

*(i) otherwise than from any business undertaking or trading activity; or*

*(ii) from any business undertaking or trading activity—*

*(aa) if the undertaking or activity—*

*(A )is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of “public benefit organisation” in section 30;*

*(B )is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and*

*(C) does not result in unfair competition in relation to taxable entities;*

*(bb)if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;*

*(cc) if the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to—*

*(A) the scope and benevolent nature of the undertaking or activity;*

*(B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;*

 *(C)the profitability of the undertaking or activity; and*

*(D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or*

*(dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—*

*(i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or*

*(ii) R200 000;*