

INTERPRETATION NOTE 44 (Issue 3)

DATE: 21 February 2020

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 63A OF THE EIGHTH SCHEDULE
SUBJECT : PUBLIC BENEFIT ORGANISATIONS: CAPITAL GAINS TAX

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Preamble

In this Note unless the context indicates otherwise –

- “**CGT**” means capital gains tax, being the portion of normal tax attributable to the inclusion in taxable income of a taxable capital gain;
- “**Eighth Schedule**” means the Eighth Schedule to the Act;
- “**paragraph**” means a paragraph of the Eighth Schedule;
- “**PBA**” means a public benefit activity as defined in section 30(1);
- “**PBO**” means a public benefit organisation as defined in section 30(1);
- “**section**” means a section of the Act;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides, interpretation notes and rulings referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest issues of these documents should be consulted.

1. Purpose

This Note –

- provides guidance on the application and interpretation of paragraph 63A which deals with the disregarding of a capital gain or capital loss on the disposal of an asset by a PBO; and
- must be read with Interpretation Note 24 “Income Tax: Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts”.

2. Background

PBOs became subject to a system of partial taxation with effect from years of assessment commencing on or after 1 April 2006. Under this system a PBO conducting trading activities falling outside the parameters of the prescribed exemptions in section 10(1)(cN), is taxable on receipts and accruals from those activities but retains exemption for its PBAs.

For earlier years of assessment PBOs, once approved under section 30, were generally fully exempt from normal tax on their receipts and accruals and taxable capital gains, regardless of the source from which they were derived. The two key provisions giving effect to the system of partial taxation are section 10(1)(cN) and paragraph 63A (capital gains and capital losses). For more information on the background to CGT and PBOs before the insertion of paragraph 63A, see issue 1 of this Note which can be found on the SARS website under Legal Counsel / Legal Counsel Archive / Interpretation Notes.

Any capital gain or capital loss made on the disposal of an asset, substantially the whole of which has not been used in the carrying on of a PBA, must be taken into account for CGT purposes.¹

¹ Paragraph 63A.

3. The law

Section 10 and the paragraphs of the Eighth Schedule are quoted in the **Annexure**.

4. Meaning of “substantially the whole”

In the strict sense the expression “substantially the whole” is regarded by SARS to mean 90% or more. However, since PBOs operate in an uncertain environment making proper planning difficult, SARS will accept a percentage of not less than 85%. See Binding General Ruling (Income Tax) 20 “Interpretation of the Expression ‘Substantially the Whole’ ”.

The percentage usage is determined using a method appropriate to the circumstances which may be based either on time or area.

Example 1 – “Substantially the whole”

Facts:

A PBO operates a home at which it cares for orphaned children. The PBO has a hall which is used for social and other functions for the residents. During the year of assessment under review the hall was let occasionally for a total of 48 days.

Result:

The 48 days during which the hall was let represents 13,2% of the total usage for the year ($48 / 365 \times 100$). The balance of 86,8% represents the days when the hall was used for conducting PBAs. This usage means that substantially the whole of the hall (85% or more), was used to conduct PBAs.

5. Application of the law

5.1 Valuation date

The valuation date of a person who ceases to be an exempt person under paragraph 63, is the date on which that person ceases to be an exempt person.²

Since all PBOs fall outside paragraph 63 with effect from the introduction of partial taxation of PBOs, the valuation date of PBOs in existence on 1 April 2006 will be the first day of their first year of assessment commencing on or after 1 April 2006. For example, a PBO with a financial year ending on 31 March will have a valuation date of 1 April 2006, which is the commencement of its 2007 year of assessment.

The valuation date value of a pre-valuation date asset forms part of the base cost of that asset and ensures that any pre-valuation date growth or decline in value is disregarded for CGT purposes.

² Paragraph (a) of the definition of “valuation date” in paragraph 1.

5.2 Base cost

The following methods of determining the base cost of an asset on valuation date are available:

- The market value of the asset on valuation date.³
- Twenty per cent (20%) of the proceeds from the disposal of the asset, after first deducting from the proceeds an amount equal to the expenditure allowable as part of the base cost incurred on or after valuation date.⁴
- The time-apportionment base cost of an asset.⁵
- The weighted-average method.⁶ This method is available only for the four categories⁷ of identical assets listed in paragraph 32(3A). These methods are unlikely to be of much relevance to a PBO in view of the disregarding of capital gains and losses on such assets under paragraph 63A(a) discussed in **5.3.1**.

5.2.1 Market value

A PBO may not adopt or determine the market value of an asset unless it has valued the asset within two years from the valuation date.⁸ There is, however, no time limit for the valuation of financial instruments listed on a “recognised exchange”⁹ and participatory interests in South African collective investment schemes.

A PBO that comes into existence after 1 April 2006 does not need a valuation date because the base cost of its assets is determined at cost under paragraph 20. Assets acquired by donation are deemed to have been acquired at a cost equal to their market value on the date of donation.¹⁰ Assets acquired by bequest are treated as being acquired for an expenditure equal to the expenditure incurred by the deceased estate, which would usually be equal to the market value of the asset on the date of death plus any further expenditure incurred by the executor.¹¹ Assets acquired by distribution in specie from a company are deemed to be acquired for expenditure equal to their market value on the date of distribution.¹²

The table below summarises the valuation dates for PBOs in existence on 1 April 2006 and the final date by which they should have completed their valuations in order to be able to use the market-value method.

³ Paragraphs 26, 27, 29 and 31.

⁴ Paragraph 26.

⁵ Paragraph 30.

⁶ Paragraph 32(3A).

⁷ The four categories include listed shares, participatory interests in collective investment schemes, gold and platinum coins whose prices are published in a newspaper, and listed section 24J instruments.

⁸ Paragraph 29(4)(b)(i).

⁹ Definition of “recognised exchange” in paragraph 1.

¹⁰ Paragraph 38(1)(b).

¹¹ Section 25(3)(b).

¹² Paragraph 75(1)(b).

Table 1 – Summary of valuation dates for PBOs in existence on 1 April 2006

Year of assessment ending on the last day of	Valuation date	Final day for completion of valuation
March	1 April 2006	31 March 2008
April	1 May 2006	30 April 2008
May	1 June 2006	31 May 2008
June	1 July 2006	30 June 2008
July	1 August 2006	31 July 2008
August	1 September 2006	31 August 2008
September	30 September 2008	1 October 2006
October	1 November 2006	31 October 2008
November	1 December 2006	30 November 2008
December	1 January 2007	31 December 2008
January	1 February 2007	31 January 2009
February	1 March 2007	28 February 2009

The two-year valuation period does not apply to the assets set out in the table below.

Table 2 – Assets which do not have to be valued within two years by PBOs

Paragraph 31(1)	Description	Market value on valuation date
(a)	Financial instrument listed on a recognised exchange for which a price was quoted on that exchange.	Ruling price on last business day before valuation date.
(c)(i)	<ul style="list-style-type: none"> • A participatory interest in a local collective investment scheme in securities. • A participatory interest in a local collective investment scheme in property. 	Price at which a participatory interest can be sold to the management company of the scheme on valuation date.

Participatory interests in listed foreign collective investment schemes fall under paragraph 31(1)(a) in the above table. However, when they are unlisted, the PBO must, in theory at least, establish their market value within two years of its valuation date under paragraph 29(1)(b)(ii), namely –

- the last price published before valuation date at which a unit could be sold to the management company of the scheme; or
- when there is not a management company, the price which could have been obtained on a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market on that date.

However, in practice a capital gain or capital loss arising from the disposal of an unlisted participatory interest in a foreign collective investment scheme is likely to be disregarded under paragraph 63A(a). The failure by a PBO to value such an interest is therefore unlikely to have any adverse CGT consequences while the PBO remains approved by the Commissioner under section 30(3).

The valuation submission requirements for the high-value assets listed in paragraph 29(5) do not apply where the valuation date is after 1 October 2001.¹³ These requirements therefore do not apply to PBOs, which are simply required to retain proof of the valuation under paragraph 29(6) for a period of five years from the date of submission of the return of income reflecting the disposal.¹⁴ Records which are relevant to an audit or investigation or an objection or appeal must be retained until the audit or investigation is concluded or until the assessment or the decision becomes final in the case of an objection or appeal (in case the five year retention period is exceeded).¹⁵

5.2.2 Time-apportionment base cost

The detailed workings of the time-apportionment base cost method are explained in the *Comprehensive Guide to Capital Gains Tax*.

SARS has published a calculator for determining the time-apportionment base cost of an asset on its website under Types of Tax / Capital Gains Tax / Calculators / TAB Calculator for PBOs and Recreational Clubs. The calculator uses an Excel spreadsheet.

An asset acquired by a PBO before the valuation date for no consideration, for example, by donation or inheritance will have an acquisition cost equal to the market value of the asset at the time of its acquisition for the purposes of determining “B” in the time-apportionment formula.¹⁶

5.2.3 “Twenty per cent of proceeds” method

This method is explained in detail in the *Comprehensive Guide to Capital Gains Tax* in 8.29.

¹³ Paragraph 29(8).

¹⁴ Section 29 of the Tax Administration Act 28 of 2011.

¹⁵ Section 32 of the Tax Administration Act 28 of 2011.

¹⁶ See *Comprehensive Guide to Capital Gains Tax* in paragraph 8.5A.

5.3 Exclusions

A PBO approved by the Commissioner under section 30(3) must disregard a capital gain or capital loss arising on the disposal of three categories of assets as set out below.¹⁷

5.3.1 Category 1: Non-trading assets

This category applies to assets which have not been used by the PBO on or after valuation date in carrying on any business undertaking or trading activity. Such assets include those which have been used exclusively for non-trade purposes such as carrying on a PBA.¹⁸ Only the usage of the asset on or after the valuation date is taken into account. Any trade usage before that date is ignored.

Also included in this non-trade category are assets which are not “used” but “held”. Such assets include investments in the nature of shares and participatory interests in collective investment schemes.

Example 2 – Asset used exclusively on or after valuation date in carrying on a PBA

Facts:

The financial year of a PBO which provides health care services to poor and needy persons ends on 30 April. The PBO acquired immovable property on 30 June 2003 from which it conducts its PBA of providing health care services. During the period 30 June 2003 to 30 April 2006, 30% of the property was let to third parties while the remaining usage was in respect of PBAs. As from the PBO’s valuation date the property was used exclusively in carrying on PBAs. The property was sold on 30 September 2019 resulting in a capital gain of R100 000.

Result:

The PBO’s valuation date is 1 May 2006, being the first day of its first year of assessment commencing on or after 1 April 2006. Under paragraph 63A(a) the capital gain of R100 000 must be disregarded, since the asset was used exclusively on or after the valuation date of 1 May 2006 to carry on PBAs. Any trade usage before valuation date is disregarded.

Example 3 – Asset “held” not “used”

Facts:

An approved PBO conducts the sole activity of caring for homeless children. It invested surplus funds in a collective investment scheme. The PBO subsequently disposed of its participatory interest in the collective investment scheme at a capital gain to fund the purchase of additional accommodation.

¹⁷ Paragraph 63A.

¹⁸ Paragraph 63A(a).

Result:

The capital gain must be disregarded under paragraph 63A(a), since the participatory interest was “held” by the PBO and not “used” in carrying on a business undertaking or trading activity.

5.3.2 Category 2: Minimal trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after valuation date was directed at a purpose other than carrying on a business undertaking or trading activity.¹⁹ An example of such an asset is one that is used 10% of the time for trading purposes and 90% of the time to conduct PBAs. Of critical importance are the words “substantially the whole of the use”.

As explained in 4, the expression “substantially the whole of” is interpreted by SARS to mean 90% or more. However, SARS is prepared to accept a usage of not less than 85%. The assets referred to in this category are excluded from the first category (see 5.3.1) as they are used, albeit to a limited extent, in carrying on a business undertaking or trading activity.

The percentage of the asset used for trade or business purposes must be determined using a method appropriate to the circumstances, for example, one based on time or floor area.

Example 4 – Determination of “substantially the whole of the use” on a time basis*Facts:*

The financial year of a religious institution ends on 30 April. The institution has been approved as a PBO under section 30. It acquired a manse in 1995 for occupation by its resident minister. The minister’s term of office ended on 30 June 2006 and the manse was let to a third party from 1 July 2006 to 31 December 2007.

The newly appointed minister took occupation on 1 January 2008 and continued to occupy the manse until it was sold on 30 April 2019.

Result:

The PBO’s valuation date is 1 May 2006, being the first day of its first year of assessment commencing on or after 1 April 2006. The asset was held for 156 months from valuation date to the date of sale (1 May 2006 to 30 April 2019). During this period the manse was used to carry on PBAs for 138 months (2 + 136) and let for 18 months. These figures represent a usage of 88,4% ($138 / 156 \times 100$) for carrying on PBAs from the valuation date. The PBO has therefore used substantially the whole (85% or more) of the manse from the valuation date in carrying on its PBAs. Paragraph 63A(b)(i) applies and the PBO must accordingly disregard any capital gain or capital loss on the disposal of the manse.

¹⁹ Paragraph 63A(b)(i).

5.3.3 Category 3: Permissible trading assets

This category applies when substantially the whole of the use of the asset by the PBO on or after valuation date was directed at carrying on a business undertaking or trading activity which qualifies for exemption under items (aa), (bb), or (cc) of section 10(1)(cN)(ii).²⁰

Note: Any capital gain or capital loss made on the disposal of an asset used in a trading activity or business undertaking as contemplated in the basic exemption rule described in section 10(1)(cN)(ii)(dd) will not be disregarded.²¹

The permissible business undertakings or trading activities are as follows:

(a) Related trade

Under this exclusion rule the receipts and accruals derived from a trading activity or business undertaking of a PBO will not be subject to income tax if the trading or business activity –²²

- is integral and directly related to the sole or principal object of the PBO;
- is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
- does not result in unfair competition with taxable entities.

Example 5 – Asset used to carry on a permissible trading activity contemplated in section 10(1)(cN)(ii)(aa)

Facts:

An approved PBO conducts PBAs of providing facilities for the care of disabled persons. As a therapeutic and remedial activity, the PBO acquired land on which the residents were taught to grow vegetables. The produce was primarily used for own consumption and any surplus was sold to a local home industry. All the labour was undertaken by the residents. The PBO disposed of the land on which the vegetable gardening took place resulting in a capital gain.

Result:

The vegetable gardening activity falls within the permissible trading rules of section 10(1)(cN)(ii)(aa), since it forms part of the PBA of caring for and providing training for the residents. The capital gain realised on the sale of the property is disregarded for CGT purposes.

²⁰ Paragraph 63A(b)(ii).

²¹ The receipts and accruals referred to in section 10(1)(cN) are those which have been included in gross income and therefore exclude amounts falling within proceeds for CGT purposes by virtue of paragraph 35(3)(a). See the definition of “income”, which is defined to mean the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II. Part I covers sections 5 to 37G and thus incorporates the exemptions in section 10.

²² Section 10(1)(cN)(ii)(aa).

(b) Occasional trade

In order to qualify under this category, the trading activity must –²³

- take place on an occasional basis; and
- be undertaken substantially with assistance on a voluntary basis without compensation.

Example 6 – Asset used to carry on a permissible trading activity contemplated in section 10(1)(cN)(ii)(bb)*Facts:*

A PBO conducts PBAs of caring for poor and needy persons 60 years and older. The PBO held an annual fete as a fundraising event for which it acquired a marquee. The fundraising event was undertaken with assistance from volunteers and the items sold were all donated.

Result:

This event qualifies as an occasional trading activity which falls within the ambit of section 10(1)(cN)(ii)(bb). Any capital gain or capital loss on the sale of the marquee must be disregarded for CGT purposes.

(c) Ministerial approval

Under this category the Minister of Finance may approve a specific business undertaking or trading activity by notice in the *Gazette* having regard to factors such as –²⁴

- the scope and benevolent nature of the activity;
- its relationship with the sole or principal object of the PBO;
- its profitability; and
- the economic distortion that may result from the exemption.

To date the Minister has not approved any such an undertaking or activity.

Any capital gain or capital loss made on the disposal of assets used in carrying on the specific trade or business as approved by the Minister must be disregarded.

6. Practical examples**Example 7 – Determination of valuation date values***Facts:*

A PBO with a financial year ending on 31 March owns immovable property on which it carries on its PBAs. The property was acquired on 1 June 1992 at a cost of R40 000. No expenditure was incurred on improvements to the property from date of acquisition. The PBO determined that the market value of the property on 1 April 2006 was R80 000.

²³ Section 10(1)(cN)(ii)(bb).

²⁴ Section 10(1)(cN)(ii)(cc).

With effect from 1 June 2006 the PBO let 20% of its property to a commercial business at an arm's length rental.

On 31 December 2019 the PBO disposed of the property for proceeds of R110 000. The PBO paid estate agent's commission of R7 000.

Determine:

The capital gain or loss on disposal of the property assuming that the valuation was performed on –

- 31 March 2008; or
- 31 August 2008.

Result:

The valuation date of the PBO is 1 April 2006, being the first day of its first year of assessment commencing on or after 1 April 2006.

A PBO wishing to adopt the market-value method for determining the valuation date value of an asset must have performed the valuation within two years of its valuation date. In the instant case the valuation should have been done on or before 31 March 2008.

It follows that –

- the valuation performed on 31 March 2008 was determined within two years of valuation date and the PBO may therefore adopt the market value of the property on 1 April 2006 as the valuation date value of the property. The PBO is also entitled to use the time-apportionment or "20% of proceeds" method if it so chooses; and
- the valuation done on 31 August 2008 was done outside the prescribed period of two years from the valuation date and the PBO must accordingly resort to the time-apportionment or the "20% of proceeds" method to determine the valuation date value of the property as at 1 April 2006.

Time-apportionment method

Valuation date = 1 April 2006 (Note 1)

N = Number of years before valuation date (1 June 1992 to 31 March 2006), determined as follows:

1 June 1992 to 31 May 2005 = 13 years

1 June 2005 to 31 March 2006 = 10 months (treated as a full year)

N = 13 + 1 = 14

T = Number of years after valuation date (1 April 2006 to 31 December 2019)

1 April 2006 to 31 March 2019 = 13 years

1 April 2019 to 31 December 2019 = 9 months (treated as a full year)

T = 13 + 1 = 14

$$\begin{aligned}
 P &= \text{Amount received or accrued reduced by selling expenses (Note 2)} \\
 &= R110\,000 - R7\,000 = R103\,000
 \end{aligned}$$

$$\begin{aligned}
 Y &= B + [(P - B) \times N / (N + T)] \\
 &= R40\,000 + [(R103\,000 - R40\,000) \times 14 / (14 + 14)] \\
 &= R40\,000 + (R63\,000 \times 14 / 28) \\
 &= R40\,000 + 31\,500 \\
 &= R71\,500
 \end{aligned}$$

$$\begin{aligned}
 \text{Base cost} &= \text{valuation date value} + \text{post-valuation date costs} \\
 &= R71\,500 + R7\,000 \\
 &= R78\,500
 \end{aligned}$$

$$\begin{aligned}
 \text{Capital gain} &= \text{Proceeds} - \text{base cost} \\
 &= R110\,000 - R78\,500 \\
 &= R31\,500
 \end{aligned}$$

Note:

1. The TAB Calculator for PBOs and Recreational Clubs can be used to determine the time-apportionment base cost for a PBO. The standard "TAB Calculator" should not be used for this purpose because it assumes a valuation date of 1 October 2001 and will give an incorrect result.
2. This example assumes that no improvements were made on or after the valuation date. Had such improvements been made, the proceeds formula in paragraph 30(2) would have had to be applied to determine 'P'.

20% of proceeds method

$$\begin{aligned}
 \text{Valuation date value} &= 20\% \times (\text{proceeds less post-valuation date expenditure}) \\
 &= 20\% \times (R110\,000 - R7\,000) \\
 &= 20\% \times R103\,000 \\
 &= R20\,600
 \end{aligned}$$

$$\begin{aligned}
 \text{Base cost} &= \text{valuation date value} + \text{post-valuation date expenditure} \\
 &= R20\,600 + R7\,000 \\
 &= R27\,600
 \end{aligned}$$

$$\begin{aligned}
 \text{Capital gain} &= \text{Proceeds} - \text{base cost} \\
 &= R110\,000 - R27\,600 \\
 &= R82\,400
 \end{aligned}$$

Market-value method (valuation done on or before 31 March 2008)

$$\begin{aligned}
 \text{Base cost} &= \text{Market value on 1 April 2006} + \text{post-valuation date expenditure} \\
 &= R80\,000 + R7\,000 \\
 &= R87\,000
 \end{aligned}$$

<p>Capital gain = Proceeds – base cost</p> <p>= R110 000 – R87 000</p> <p>= R23 000</p>

Example 8 – Determining “substantially the whole of the use” of the asset on area usage [paragraph 63A(b)]

Facts:

An approved PBO provides counselling services to prisoners from a residential house which it owns. The PBO uses only a portion of the house for counselling services and lets the remaining rooms to third parties at a market-related rental. The area of the house is 210 sq metres. The area of the property which is let is 30 sq metres and the balance of 180 sq metres is used for PBAs. The financial year of the PBO ends on 28 February. The property was valued on 1 March 2007 and sold on 30 June 2019 realising a capital gain.

Result:

As from its first year of assessment commencing on or after 1 April 2006, the PBO is subject to paragraph 63A in determining whether any portion of a capital gain or capital loss on disposal of its assets must be disregarded. For the paragraph to apply it is necessary to determine whether the property was substantially used on or after the valuation date to conduct PBAs. On the facts it is appropriate to have regard to the area which was used for PBAs in relation to the whole property, namely, $180 / 210 \times 100 = 85,7\%$. The capital gain made on the sale of the property must be disregarded, since substantially the whole of the use of the property, more than 85%, was directed at carrying on PBAs.

Example 9 – Determination of “substantially the whole of the use” on an hourly usage basis [paragraph 63A(b)]

Facts:

An educational institution approved under section 30 has acquired a separate property for the purposes of developing sports grounds. Hockey fields and tennis courts were subsequently constructed on the property. During school holidays and over periods when the facilities were not used by the PBO, they were let to outside sports clubs, coaches and other third parties at market-related rates on which the PBO was partially taxed with effect from the commencement of its financial year ending 31 December 2007. The PBO was obliged to dispose of the property on 8 March 2019 as a result of a commercial development on the adjoining properties and a capital gain was made on the transaction. Hourly usage of the property by third parties was 12%, with PBA usage being 88%.

Result:

The PBO has used substantially the whole of the property from the valuation date in carrying out its PBAs (85% or more). The capital gain on the disposal of the property must accordingly be disregarded under paragraph 63A(b)(i).

7. Donations and bequests to public benefit organisations

Any capital gain or capital loss determined on an asset donated or bequeathed to a PBO which has been approved by the Commissioner under section 30(3) must be disregarded by the donor or deceased person.²⁵

8. Transfer duty

Transfer duty will become payable on a property which qualified for an exemption from transfer duty if the whole of the property or substantially the whole of that property is used for purposes other than the carrying on of any PBA. The transfer duty becomes payable at the time the property is used for any purpose other than for the purpose of carrying on one or more PBAs.²⁶ For further information in this regard see Interpretation Note 22 "Transfer Duty Exemption: Public Benefit Organisations and Institutions, Boards or Bodies".

9. General

Detailed information relating to CGT can be found in the various CGT guides.

10. Conclusion

This Note applies broad principles in interpreting the legislation. Since the facts and circumstances pertaining to specific PBOs may differ, each case must be considered on its own merits.

SOUTH AFRICAN REVENUE SERVICE

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²⁵ Paragraph 62(b).

²⁶ Section 9(1)(c) of the Transfer Duty Act 40 of 1949.

Annexure – The law

Section 10(1)(cN)

10. Exemptions.—(1) There shall be exempt from normal tax—

- (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;

The Eighth Schedule

Paragraph 1 – Definitions

1. **Definitions.**—In this Schedule, unless the context indicates otherwise, any meaning ascribed to any word or expression in section 1 of this Act must bear the meaning so ascribed, and—

“**asset**” includes—

- (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and
- (b) a right or interest of whatever nature to or in such property;

“**base cost**” means the amount to be determined in terms of Part V;

“valuation date” means—

- (a) in the case of any person who after 1 October 2001 ceases to be an exempt person for purposes of paragraph 63, the date on which that person so ceases to be an exempt person; or
- (b) in any other case, 1 October 2001;

Paragraph 29

29. Market value on valuation date.—

(1) to (3) [not shown]

(4) For the purposes of paragraphs 26(1)(a) and 27(3), a person may only adopt or determine the market value as the valuation date value of that asset if—

- (a) in the case where the valuation date is 1 October 2001—
 - (i) to (iii)
- (b) in the case where the valuation date is after 1 October 2001—
 - (i) that person has valued that asset within two years after valuation date; or
 - (ii) that asset is one contemplated in paragraph 31(1)(a) or (c)(i) and the market value of that asset on valuation date is determined in terms of one of those paragraphs.
 - (i) that person has valued that asset within two years after valuation date; or

(5) to (7) [not shown]

(8) Where the valuation date of a person is after 1 October 2001 the provisions of subparagraphs (1)(a), (1)(b)(i), (2), (2A), (3), (5) and (6)(a) do not apply.

Paragraph 30

30. Time-apportionment base cost.—(1) Subject to subparagraph (3), the time-apportionment base cost of a pre-valuation date asset is determined in accordance with the formula—

$$Y = B + \frac{[(P - B) \times N]}{T + N}$$

where—

- (a) “Y” represents the amount to be determined;
- (b) “B” represents the amount of expenditure incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20;
- (c) “P” represents the proceeds as determined in terms of paragraph 35, in respect of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in “B” as determined in accordance with subparagraph (2);
- (d) “N” represents the number of years determined from the date that the asset was acquired to the day before valuation date, which number of years may not exceed 20 in the case where the expenditure allowable in terms of paragraph 20 in respect of that asset was incurred in more than one year of assessment prior to the valuation date;
- (e) “T” represents the number of years determined from valuation date until the date the asset was disposed of after valuation date:

Provided that for purposes of items (d) and (e) a part of a year must be treated as a full year.

(2) [This provision contains a proceeds formula that applies when expenditure is incurred on or after the valuation date.]

(3) and (4) [These provisions contain special formulae that generally apply to allowance assets.]

(5) [This provision deals with selling expenses, which are treated as a reduction in proceeds for the purposes of paragraph 30.]

Paragraph 63A

63A. Public benefit organisations.—A public benefit organisation approved by the Commissioner in terms of section 30(3) must disregard any capital gain or capital loss determined in respect of the disposal of an asset if—

- (a) that public benefit organisation did not use that asset on or after valuation date in carrying on any business undertaking or trading activity; or
- (b) substantially the whole of the use of that asset by that public benefit organisation on and after valuation date was directed at—
 - (i) a purpose other than carrying on a business undertaking or trading activity; or
 - (ii) carrying on a business undertaking or trading activity contemplated in section 10(1)(cN)(ii)(aa), (bb) or (cc).