

ECD Centres and income-tax exemption¹

This document briefly sets out the processes regarding ECD Centres (hereafter referred as schools) and exemption from income tax, as well as the process to issue tax-deductible receipts to donors.

It is advisable for the school's bookkeeper or auditor to assist the school in this regard.

Section 10(1)(cN) of the Income Tax Act 58 of 1962 (the Act) provides for the exemption from normal tax of certain receipts and accruals of those public-benefit organisations (PBO) that have been approved by the Commissioner for the South African Revenue Service (SARS) in terms of section 30 of the Act, and for the taxation of certain receipts and accruals derived from business activities falling outside the allowable trading rules. The first question that needs to be answered, then, is whether a school can be defined as a PBO. Section 30 of the Act describes PBOs as well as public-benefit activities.

In short, a PBO is any organisation that is:

- a company incorporated in the Republic under section 21 of the Companies Act of 1973;
- a trust formed in the Republic;
- an association of persons established in the Republic; or
- a branch established in the Republic by a charity that has been formed or established in terms of the laws of any country outside the Republic, and which is exempt from income tax in such other country, carries on a public-benefit activity, and complies with the provisions of section 30 of the Act.

¹ This document should be read together with the document: "An overview of the functioning of independent schools in South Africa".

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Many schools believe that because they are non-profit organisations (NPOs), they automatically qualify for exemption. However, the mere fact that an organisation has a non-profit motive or is established or registered as an NPO does not mean that it is automatically exempt from income tax. The organisation will only be exempt from income and related taxes if it is specially approved for this purpose by the Commissioner, and if it complies with the relevant requirements and conditions set out in the Act. The Commissioner must still register the NPO as a PBO and will approve a PBO only if its sole or principal object is to carry on one or more of the listed public-benefit activities, and if it complies with the other prescribed requirements of the Act.

ECD Centres are usually registered as a NPO, trust or private company. An ECD Centre may be established as an association of persons or as a trust or a company incorporated under section 21 of the Companies Act of 1973. The school will therefore have a constitution, trust deed or memorandum and articles of association as a founding document. Provided the activities and the founding document comply with the provisions of section 30, the Commissioner may approve the school as a PBO. If so, the school may also apply for approval in terms of section 18A to issue receipts permitting tax deductibility of donations. An independent school will be subject to the trading provisions provided for in section 10(1)(cN) of the Act.

Tax deductibility of donations

Government has recognised that certain organisations are dependent on the generosity of the public and to encourage that generosity has provided a tax deduction for certain donations made by taxpayers. The eligibility to issue section 18A receipts is restricted to certain Tax Exempt Institutions including public benefit organisations that use the donations to carry on or fund specific Public Benefit Activities in South Africa.

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These institutions must formally apply to the Commissioner for approval under section 18A to issue section 18A receipts for donations received. A section 18A receipt may be issued by a section 18A-approved organisation only from the date SARS has confirmed section 18A approval and has issued a reference number for purposes of section 18A that must appear on such receipts.

An ECD Centre wishing to apply for approval to issue tax-deductible receipts to donors must complete an “Application for Exemption” form EI1 as well as form EI2. Please see **Annexure A** and **Annexure B** to this legal opinion for more information on the Application process.

The completed forms must be dropped off at the nearest SARS branch, by appointment, along with the required additional documentation, which is discussed in more detail in Annexure A of this document.

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Annexure A - Application for Approval of Exemption of Income Tax

The following documentation must be lodged for an application to be considered:

1. [Form E1](#)

This form requires information about the school and the three persons who are taking fiduciary responsibility for the organization. These three persons must not be related to one another and all three must sign the form. Furthermore, the E1 form requires the contact details of the Representative Taxpayer or a Tax Practitioner.

Organisations applying to tax exemption must also indicate under which section of the Act they are applying for exemption, and which public benefit activities are undertaken by the organisation. A detailed description of all the activities of the organisation must be provided. The application also entails providing financial information such as receipts and accrual, expenditure and information regarding the distribution of assets upon dissolution of the organisation. The Commissioner may also request a copy of annual financial statements.

Please note that each school must fill in their own details. Details that are not available or applicable may be left out. We suggest that the details of the chairperson of the governing body, the treasurer and the school principal be provided. The chairperson of the governing body must fill in the form on behalf of the school.

2. [E12 - Written undertaking](#)

A written undertaking must accompany the Form E1. The written undertaking requires the three persons accepting fiduciary (financial) responsibilities for the funds and assets of the organization to sign the undertakings included on the form.

3. The Founding Document

In essence, the founding document incorporates the relevant requirements of section 30 of the Act. A school's founding document will be a copy of the Copy of the Memorandum of Incorporation and Articles of Association (for a non-profit company registered with Company Intellectual Property Commission (CIPC) and the Incorporation Certificate.

4. Other supporting documents

1. Clear legible certified copy of a valid **identity document**, driving licence or passport, temporary identity document, asylum seekers certificate, permit of all **three fiduciary responsible office bearers**.
2. Clear legible certified copy of a valid **identity document**, driving licence or passport, temporary identity document, asylum seekers certificate, permit of **Representative / Public Officer / Tax Practitioner** (if different from that of the three office bearers).
3. **Letter of appointment** authorising the appointed representative to act as a Public Officer on behalf of the organisation, or minutes of the meeting where the resolution was made that the appointed representative should act as the Public Officer of the organization.
4. **Original letter from bank** not older than one month confirming the account holder's legal name; account number, account type; branch code and the date reflecting the date on which the account was opened of which should not be older than one month; or **Original bank statement** or ATM / Internet generated statement or ABSA eStamped statement not more than three months old that confirms the account holder's legal name, bank name, account number, account type and branch code, where applicable, or where a new bank account was opened in the past 30 days and a bank statement cannot be produced, an

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- original letter from the bank not older than one month on the bank letterhead with the original bank stamp reflecting the date the bank account was opened;
5. **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.
 6. Proof of **residential or physical business address**.
 1. For the **organisation**; and
 2. For the **Public Officer** (if not already registered with SARS as a taxpayer).
 7. For an education institution – A copy of the certificate of registration issued by the relevant Education Authority (**EMIS certificate**). This certificate must be obtained from the Member of the Executive Council in the province.

5. Lodging of Application

This application must be lodged at your nearest SARS branch. Please note that an online booking must first be made. The SARS online booking system will require the representative of the school to enter certain information before confirming a date and time. The school will obtain a case number for submitted applications and Tax Exempt Institutions (TEI) will make direct contact with the school while processing the applications.

In cases where information from the applicant is outstanding, the TEI will request the outstanding documents / information, which must be submitted on TEU@sars.gov.za, clearly citing the case number and income tax number of the taxpayer for ease of linking to the original case.

Annexure B – Approved Section 18A PBOs

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If your school has been granted an exemption, it must still submit an [IT12EI](#) – Return of Income Exempt Organisations annually.

Returns of this nature can be done in two ways:

1. Through eFiling; or
2. By making an appointment to visit the TEI office where you will be assisted to register on eFiling.

These returns enable the Commissioner to assess whether the approved PBO is operating within the prescribed limits of the relevant approval granted.

The IT12EI requires that your organisation's financial statements must have been prepared to assist with the completion of the return through eFiling.