Non Profit Organisations

Presenters: **Caryn Maitland CA(SA)**
Carmen Westermeyer CA(SA)

16 AUGUST 2022

Ask Questions

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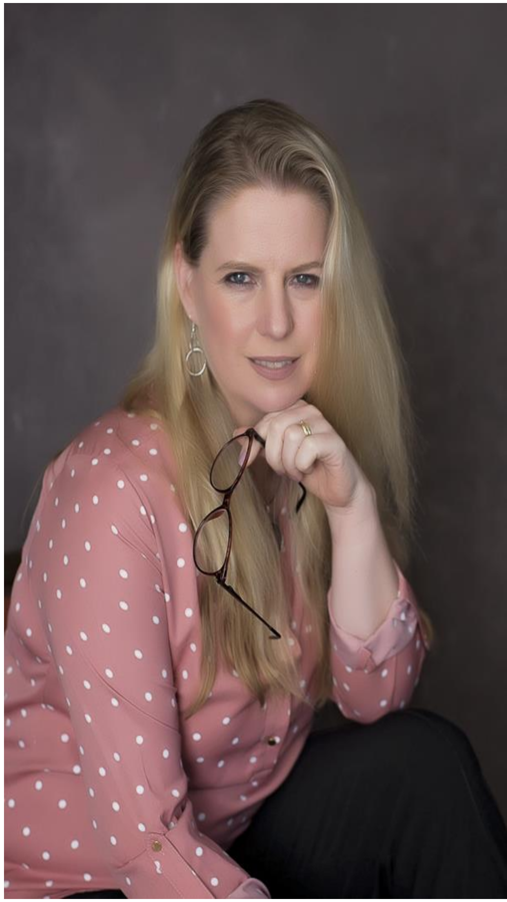
Presenters



Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

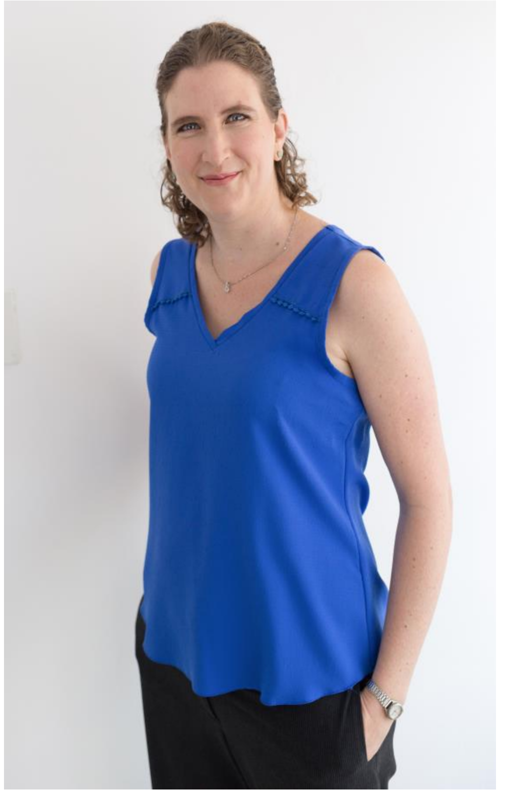
She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.

Presenter



Carmen Westermeyer CA(SA)

Carmen Westermeyer graduated in 2001 from the University of Natal, Durban (now UKZN), with a BCom Honours degree in Accounting and completed her articles with PwC, where she remained until 2006. She has been a member of SAICA since then.

In 2008, she started her academic career at UKZN, where she performed a number of functions, and ultimately taking on the role of Academic Leader for Taxation. On leaving academia in 2013 Carmen has been providing training and consulting services to the profession. She has presented on behalf of various professional bodies, such as SAICA, FASSET, CSSA as well as providing in house training to numerous accounting firms. The topics covered include all aspects of Income Tax, VAT, Estate Duty as well as the Health Levy (Sugar Tax). In addition, she regularly consults on tax matters as well as assisting with SARS disputes.

She is also the chairperson of the SAICA Eastern Region Tax Committee, a member of the SAICA National Tax Operations Committee and is an Accounting Member of the Tax Court.

Agenda

- Categories of NPO's
- Characteristics of entity
- Constitution
- Statutory frameworks
- Accounting challenges
- Assurance challenges

- Tax Implications

Categories of NPO’s

- Public interest or common interest of their members
  - Associations (Charities, Homeowner's)
  - Clubs (Sporting, Hobbies)
  - Religious organisations
  - Scientific research
  - Education
  - Body Corporates
  - …

Characteristics

- Objective
  - Purpose
- Members
  - Or not…
- Fund raising
  - Grants, donations
- Asset base
- Rules of conduct
- Trade vs not for profit activities

What does your Constitution say?

- Objective
- Members
- Governance
  - Board, Meetings etc
- Conduct
- Limitations
- Termination
- Activities

Statutory

- Constitution
  - Freedom of Association
- Non Profit Organisation Act No 71 of 1997
- Companies Act
  - Non Profit Companies – Schedule 1
- Trust Property Control Act
- Sectional Title Management Rules
  - Body Corporates
- Schools Act
  - PFMA
  - Independent or State

Non Profit Organisation Act

- Objective:
  - creating an enabling environment for NPOs and setting and maintaining adequate standards of governance, accountability and transparency by creating a voluntary registration facility for NPOs which are defined as:" a trust, company or other association of persons:
    - established for a public purpose; and
    - the income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered;" (Section 1 (x)).
- Provides a registration facility for the existing South African legal forms for NPOs, Section 21 Companies, Trusts and Voluntary and other non profit Associations,
  - providing that certain minimum establishment requirements and annual reporting requirements are complied with.

- Trust which must be registered with the Master of the High Court and a Section 21 Company which must be registered with CIPC,
    - may also choose to register in terms of the Act with the NPO Directorate of the Department of Welfare. Notably, the Act:
- enables a Trust, which also registers as an NPO, to be a body corporate with a legal personality.
- Trusts, although they are registered with the Master of the High Court, prior to the passing of the Act were not considered to be legal persons other than for certain specific purposes such as tax and insolvency.
- provides a registration facility for a Voluntary Association which is a 'universitas' or incorporated Association under Common Law.
    - Prior to the passing of the Act, Voluntary Associations could not register with a government registry. This created difficulties for Voluntary Associations as usually, donors and third parties with which organisations interact, require a greater measure of legal formality and public accountability.

- The Act's 'mandatory' requirements for the registration of an NPO include the essential requirements necessary for a Voluntary Association, which is a "universitas" or incorporated Association to exist in Common Law.
- The Minister may prescribe benefits or allowances for registered NPOs, (Section 11).
- They will require that NPOs which receive a tax benefit, be registered in terms of the NPO Act.

Registration Requirements

- state the organisation's name;
- state the organisation's main and ancillary objectives;
- **state that the organisation's income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered;**
- make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers;
- make provision for the organisation's continued existence notwithstanding changes in the composition of its membership or office-bearers;
- **ensure that the members or office-bearers have no rights in the property or other assets of the organisation solely by virtue of their being members or office-bearers;**

- specify the powers of the organisation;
- specify the organisational structures and mechanisms for its governance;
- set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings;
- determine the manner in which decisions are to be made;
- provide that the organisation's financial transactions must be conducted by means of a banking account;
- determine a date for the end of the organisation's financial year;
- set out a procedure for changing the constitution;
- set out a procedure by which the organisation may be wound up or dissolved;
- **provide that, when the organisation is being wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another non-profit organisation having similar objectives."**

Accounting and Reporting

- Reflect its registered status and registration number on all its documents (Section 16(3)).
- Keep and preserve accounting records and supporting documentation for the prescribed period. (Sections 17 (1)(a) and (3).
- Within six months of the end of its financial year,
  - draw up financial statements which include a statement of income and expenditure and a balance sheet (Section 17(1)(b)).
- Arrange for an accounting officer to compile a written report within two months after drawing up its financial statements confirming
  - that the financial statements are consistent with the accounting records;
  - the accounting policies are appropriate and applied, and
  - that the organisation has complied with the financial reporting requirements of the Act (Section 17(2)).

- Submit to the Directorate
  - a narrative report in the prescribed form
  - together with its financial statements and
  - the accounting officer's report (Section 18 (1)(a)) within nine months of the end of its financial year.
- Submit to the Directorate
  - the contact details of its office bearers, even if they were reappointed within one month of their appointment;
  - the NPOs physical address for service of documents and notice of any change of address one month before it takes effect,
  - any other prescribed/information reasonably required by the Directorate for the purposes of ascertaining whether the NPO is complying with the material provisions of its constitution and the Act. (Section 18(1)(b-e)).

Code of Good Practice

- Issued by Department of Social Development

Non-profit Organisations Act: Draft Amendment Bill 2021

- The Draft Bill proposes, amongst others,
- - reference updates;
- - facilitating voluntary registration of nonprofit organisations and
- - compulsory registration for foreign organisations operating within SA; and
- - prescribing accounting records and reports.
- Comment deadline 30 calendar days from 10 May 2022.
- Note: Despite the above facilitation statement a proposed amendment in section 12 (requirements for registration) reads that "any nonprofit organisation, including foreign nonprofit organisations that intend to operate business within the Republic must be registered in terms of this Act before they may operate and shall be subjected to the provisions of this Act and any other laws of the Republic".
- Final note: The heading to the notice also refers to a draft victim support services bill, though nothing is further mentioned of such a draft bill in the remainder of the notice.

Accounting Challenges

- Accounting framework
- Language – NOT FOR PROFIT
- Fund accounting
  - Project accounting
  - Trade vs non trade activities
- Equity
  - Donations
  - Reserves
  - Income
  - Seed donations
- Assets
  - Legacy assets
- Distribution to beneficiaries
- Solvency

Assurance challenges

- Do you need to audit?
- Companies Act requirements
- Constitution
- Only auditors can audit….
- Risks
  - Completeness of income
  - Managed in terms of constitution

Companies Act Requirements

- PI Score
- Manages assets in a fiduciary capacity (>R5m)
- Regulations 28 (2)(b):
  - any non-profit company, if it was incorporated
    (i) directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company; or
    (ii) primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of the state, a state-owned company, an international entity, or a foreign state entity, or for a purpose ancillary to any such function;

Tax exemption

- Income Tax

Types of exempt entities

- 3 types of entities
  - Complete exemption
  - Limited exemption (ie: Income should be exempt, but some may not be)
  - Specific exemption (ie: Income generally taxable, but some specific provisions provided)

  - Income Tax and VAT have different rules!
  - NO exemption for PAYE for ANY entity

Income Tax

- Correct terminology?
    - “Non profit company” – Companies Act definition
    - “Tax exempt entity” – no technical definition
    - “Welfare organisation” – VAT definition
    - “Public benefit organisation” (PBO) – Income Tax term
    - “Non profit organisation” (NPO) – Entity registered with under the Non Profit Organisations Act

Entity	Exemption	Administration	Activities Schedule
PBO	Section 10(1)(cN)	Section 30	Ninth Schedule
Recreational clubs	Section 10(1)(cO)	Section 30A	N/A
Trade unions and mutual/indemnity funds	Section 10(1)(d)(iii)	Section 30B	N/A
Common interest associations	Section 10(1)(d)(iv)	Section 30B	N/A
Body corporates, shareblocks and homeowners assocations	Section 10(1)(e)	N/A	N/A
Government	Section 10(1)(a)	N/A	N/A
Institutions and boards	Section 10(1)(cA)	N/A	N/A

Income Tax exemption structure

- Full entity level exemption
  - Government
- Full exemption at entity level, but with restrictions on what they may receive
  - CSIR, SABC, SANRAL, Common interest associations, etc
- Partial exemption
  - PBO's, Recreational clubs, Body Corporates

Common interest associations

- Section 30B

Definitions

“entity” means—

(*a*) any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association; or

(*b*) any—

(i) non-profit company as defined in section 1 of the Companies Act;

(ii) society; or

(iii) other association of persons,

established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation, approved by the Commissioner in accordance with subsection (2);

Criteria

(i) the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;

(ii) no single person may directly or indirectly control the decision-making powers relating to that entity;

(iii) the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;

(iv) the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;

(v) no member may directly or indirectly have any personal or private interest in that entity;

(vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;

(vii) the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;

(viii)the entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;

Criteria

- **(ix) substantially the whole of the entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;**

Criteria

(x) the entity must as part of its dissolution transfer its assets to—

(*aa*) another entity approved by the Commissioner in terms of this section;

(*bb*) a public benefit organisation approved in terms of section 30;

(*cc*) an institution, board or body which is exempt from tax under section 10 (1) (*c*A) (i); or

(*dd*) the government of the Republic in the national, provincial or local sphere;

(xi) the persons contemplated in paragraph (*b*) (i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;

(xii) the entity will comply with such reporting require-ments as may be determined by the Commissioner from time to time; and

(xiii)the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contem-plated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103 (5).

Common interest associations

- Main concern:
  - All or nothing exemption contained in s10(1)(d)
  - Core criteria is to be able to prove that 85% of your income comes from membership fees/subscriptions

Recreational clubs

- Recreational Clubs

Who qualifies?

- Section 30A
  - NPC, society or other
  - Object to provide social/recreational facilities
  - For members

Who can register?

- Constitution must provide:
  - 3 independant persons with fiduciary responsibility
  - Activities must be in a non profit manner
  - Surpluses can’t be transferred
  - On dissolution, assets and funds will be transferred to:
    - Any other approved club
    - A PBO
    - CSIR, etc bodies; or
    - Government

Who can register?

- Constitution must provide:
  - Remuneration may not be excessive or calculated as % of club profits
  - All members must be entitled to annual or seasonal membership
  - Members are not allowed to sell their rights
- Any changes to the Constitution must be submitted to SARS
- The Commissioner must be happy that the Club is not being used for tax avoidance

Other considerations

- Registration can be retrospective s30A(4)
- Registration can be withdrawn at any point if the Commissioner feels that the Club has not been compliant.
    - Must issue corrective suggestions before withdrawing
    - If not taken in time, deregistered from the beginning of that year of assessment
- Within 6 months of the withdrawal the club must transfer its assets to an approved entity
- If this is not done, then an amount of market value of assets less all liabilities is added to taxable income
- The fiduciary persons are guilty of an offence and liable to a fine or imprisonment of up to 24 months if not done.

Exemption in s10(1)(*c*O)

- Full exemption for:
  - Membership fees
  - Business or trading activity that-
    - Is integral to the provision of facilities;
    - Carried out on a cost recovery basis; and
    - Does not result in unfair competition to taxable entities
  - Fundraising if occasional and predominately done on a volunteer basis

Exemption in s10(1)(*c*O)

- Everything else, the greater of:
  - 5% of total memberships/subscriptions in current year of assessment; or
  - R120 000

Some practical considerations?

- What is membership fee?
- What about usage fees?
- Do you run a pub/coffee shop on premises?
- Rental income?

Public Benefit Organisation

- Public Benefit Organisations

Public Benefit Organisations

- Interpretation Note 24 is your new best friend...

- Please keep in mind the 2 schedules:
  - Ninth Schedule Part I: who can be a PBO
  - Ninth Schedule Part II: who can issue s18A certificates

Who qualifies?

- Section 30
  - NPC, society or other (includes branches)
  - Object to carrying on an activity as per Part I
  - Must be in the Republic

Who can register?

- Constitution must provide:
  - 3 independant persons with fiduciary responsibility
  - Activities must be in a non profit manner
  - Activities can't be used to promote the self interest of any fiduciary or employee (other than salary)
  - Activity must be for the general public at large (no small or exclusive groups)
  - Surpluses can't be transferred

Who can register?

- Constitution must provide:
  - On dissolution, assets and funds will be transferred to:
    - Any other approved club
    - A PBO
    - National Finance Housing Corporation
    - CSIR, etc bodies; or
    - Government

Who can register?

- Constitution must provide:
  - Donations can’t be revocable other than a failure to use the donation for the purpose declared.
    - No donor can stipulate that the donation be sued to provide a direct/indirect benefit to them or connected persons
  - Remuneration may not be excessive
  - Will comply with SARS’s reporting requirements
  - Will take reasonable steps to ensure that the funds are used for the designated purpose
  - Can’t use the funds for the benefit of a political party

Who can register?

- Any changes to the Constitution must be submitted to SARS
- The Commissioner must be happy that the PBO is not being used for tax avoidance

Other considerations

- Registration can be retrospective s30(3B)
- Registration can be withdrawn at any point if the Commissioner feels that the PBO has not been compliant.
    - Must issue corrective suggestions before withdrawing
    - If not taken in time, deregistered from the beginning of that year of assessment
- Within 6 months of the withdrawal the PBO must transfer its assets to an approved entity
- If this is not done, then an amount of market value of assets less all liabilities is added to taxable income
- The fiduciary persons are guilty of an offence and liable to a fine or imprisonment of up to 24 months if not done.

Exemption in s10(1)(*c*N)

- Full exemption for:
  - Any non trading or business receipts
  - Business or trading activity that-
    - Is integral to the provision of facilities;
    - Carried out on a cost recovery basis; and
    - Does not result in unfair competition to taxable entities
  - Fundraising if occasional and predominately done on a volunteer basis
  - It is approved by the Minister in a *Gazette*

Exemption in s10(1)(*c*N)

- Everything else, the greater of:
  - 5% of total receipts and accruals in current year of assessment; or
  - R200 000

Some practical considerations?

- What is trading or business?
- How do you explain and monitor your cost recovery?
- Do you run a coffee shop on premises?
- Rental income?

VAT

- Designed to assist non profits
- Don’t care about trading and profits
- Completely different mindset to Income Tax

Different entities

Normal VAT vendor

- No special dispensation or benefits
- Normal VAT rules apply

Association not for gain

- Religious, educational of public character
- Any other, not for purpose of gain
- Limited benefits

Welfare organisation

- Must be PBO
- Carries on PBA's

VAT

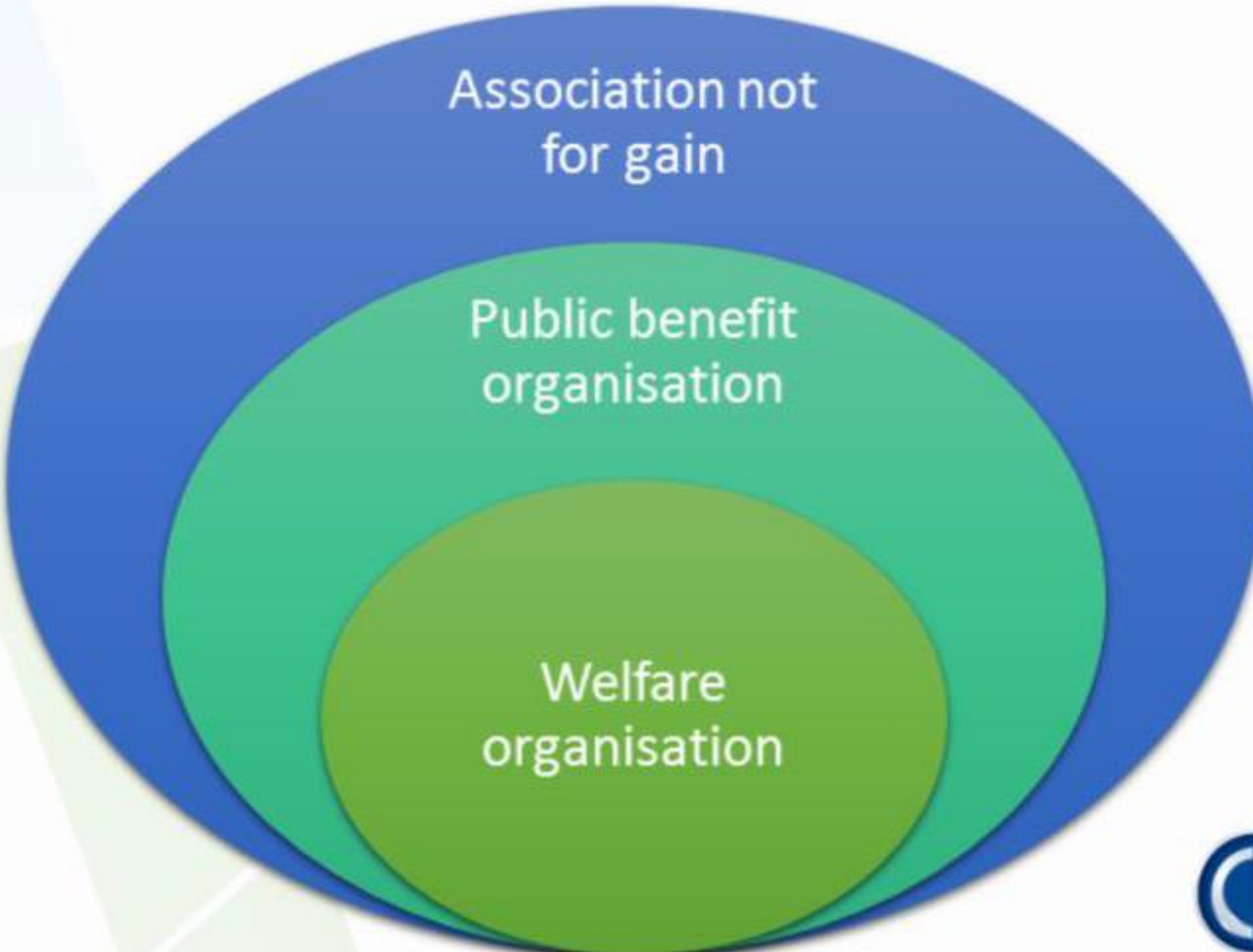
- Association not for gain:
  - Any other organization (except an educational institution (since such organization would generally make exempt supplies under section 12)) which does not carry on its activities for the purposes of profit or gain to any owner, member or shareholder;
  - Any religious institution of a public character; or
  - Educational institutions of a public character.

- Welfare Organisation
  - To qualify as a welfare organization, the entity must be an approved public benefit organisation (in terms of the Income Tax Act); and
  - Carries on public benefit activities in terms of Regulation 112. These activities are similar to those in the Ninth Schedule to the Income Tax Act, but Regulation 112 specifically excludes activities which are regarded as exempt in terms of the VAT Act. These activities include Welfare and Humanitarian, Health Care, Land and Housing, Education and Development and conservation, environment and animal welfare.

VAT

- “designated entity” means any vendor
  - Any public authority which renders service similar to any non public vendor and the entity has been notified
  - Any entity listed Schedule 2 or Part B or Part D of Schedule 3 of the PFMA Act
  - Public Private Partnerships to the extent that the services relate to that agreement
  - Welfare organisations
  - Municipal entities; or
  - Has powers similar to the Water Board

How the different associations interact



Benefits of Association not for gain

- **Extract from VAT 414 Guide:** An association not for gain is treated much like any other business if it makes taxable supplies but, in addition, the following special provisions apply:
  - Different activities of associations not for gain can be regarded as separate persons for VAT purposes (refer to **3.2).**
  - The association not for gain may be registered on the payments basis of accounting for VAT on supplies made. This assists those associations using very basic accounting systems (refer to **3.5).**
  - No output tax is payable on any donations received, for example, where a person donates money to a soccer club to cover the costs of new kit and footballs to be used by the club (refer to **2.3).**
  - The sale of any donated goods or services, or other manufactured goods are exempt from VAT if the donated goods and services constitute at least 80% of the value of the supply (refer to **4.3).**
  - Certain goods imported which are forwarded free of charge to an association not for gain are exempt from VAT on importation if used exclusively for educational, religious or welfare purposes or for medical or scientific research (refer to **5.2).**

Benefits of Welfare organisation

- **Extract from VAT 414 Guide:**In addition to the benefits available to an association not for gain as, a welfare organisation may enjoy the following benefits:
  - There are specific rules that apply to a welfare organisation with regard to registering for VAT. Whereas the normal rules for VAT registration require the supply of goods or services to be made for a consideration, this is not a requirement for a welfare organisation. If an organisation carries on one or more of the listed welfare activities and it is an approved PBO for income tax purposes, it can register for VAT voluntarily and deduct input tax in connection with the carrying on of those welfare activities, even if those supplies are made for no consideration.
  - Generally, vendors are not permitted to deduct input tax in respect of any goods or services acquired for the purpose of supplying entertainment. A welfare organisation is however, entitled to deduct input tax where the entertainment expenses are incurred for the purpose of providing entertainment which is integral to the carrying on of a welfare activity. For example, the provision of food and accommodation to needy children constitutes the supply of “entertainment”. This supply is however also a welfare activity as contemplated in GN112. Input tax may therefore be deducted by the welfare organisation on the VAT-inclusive costs of supplying such entertainment. (Refer to **4.6.1.)**
  - Since the soliciting of donations is an integral part of a welfare organisation’s enterprise activities, it will be allowed to deduct any VAT that it incurs in that regard to the extent that the donations are procured by the welfare organisation for purposes of carrying out its welfare activities. Associations not for gain that do not qualify as welfare organisations are not entitled to the same benefit

Deemed supplies

- Section 8(5)
  - Designated entities are deemed to supply services to public authority/municipality to the extent of any payment made by the public authority/municipality
- Section 8(5A)
  - For the purposes of s11(t), any vendor(excluding designated entities) are deemed to supply services to the extent of any government grant received

Exempt supplies

- Supply by any association not for gain if
  - Donated to recipient(ie: volunteer service)
  - Materials/service is at least 80% funded by donation

Example 7

- *Facts:*
- Mr G took his dog to XYZ, an animal clinic, for immunisation and paid R114. XYZ is an association not for gain which is registered for VAT.
- What is the VAT implication for XYZ?
- *Result:*
- As XYZ is making a taxable supply of services, it must account for R14 output tax (R114 × 14 / 114). The R114 paid by Mr G is not a donation, but consideration for the immunisation services rendered.

- The supply would however constitute an exempt supply if the service supplied consists of donated goods or services, for example the immunisation is performed by a volunteering veterinarian and the product used for the immunisation was donated to XYZ,. In this case, no output tax would be payable by XYZ but XYZ would also not be entitled to make any input tax deductions in respect of any VAT incurred in order to supply the services.
- Note that even if XYZ qualified as a “welfare organisation” under GN 112, it would still be required to charge VAT on the supply and account for output tax in its VAT 201 return for the tax period concerned where it charges a fee in respect of the service.
- Should XYZ however not charge a fee, no output tax would have to be accounted for, although, having regard to the special enterprise rule applicable to welfare organisations, XYZ would still be able to deduct the VAT it incurred in order to make the supply as input tax.

Example 8

- *Facts:*
- A welfare organisation holds a raffle to raise funds to provide food and shelter to refugees. In order to participate in the raffle, persons must buy a ticket for R100. Mrs B buys a ticket for R100, but she also donates an extra amount of R50 to the welfare organisation in support of its cause. Mrs B does not expect anything in return for the donation.
- What is the VAT implication for the welfare organisation?
- *Result:*
- The welfare organisation must pay output tax of R12,28 (R100 × 14 / 114) on the sale of the raffle ticket as the VAT-inclusive price paid for the raffle ticket was R100 (and not R150).
- No additional goods or services have been supplied in regard to the extra R50 donated, and therefore no output tax must be declared on that receipt.

Body Corporates – Exempt supply

- the supply of any services to any of its members in the course of the management of—
  - (i) a body corporate as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986);
  - (ii) a share block company;
  - (iii) any housing development scheme as defined in the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988); or
  - (iv) any association of persons (other than a company registered or deemed to be registered under the Companies Act, 2008 (Act No. 71 of 2008), any co-operative, close corporation or trust, but including a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008)) where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—
    - (A) has been formed solely for purposes of managing the collective interests of residential property use or ownership of all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and
    - (B) is not permitted to distribute any of its funds to any person other than a similar association of persons,
- where the cost of supplying such services is met out of contributions levied by such body corporate, share block company or under such housing development scheme or association, as the case may be: Provided that this paragraph shall not apply or shall apply to a limited extent where such body corporate, share block company, scheme or association applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs with effect from a future date that the provisions of this paragraph shall not apply to that body corporate, share block company, scheme or association or that the provisions of this paragraph shall apply only to a limited extent specified by him: Provided further that this paragraph shall not apply to the services supplied by any body corporate, share block company, scheme or association which manages a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983);

Some considerations

- Only the levy portion is exempt
- What if there are multiple purposes – think retirement cottages with a care centre
- What if the levy includes other services (eg: a meal, free drinks, etc)
- Remember commercial accommodation is vatable

Zero rated supplies

- Any service by a welfare organisation to a public authority (s11(*n*))
- Any service related to s8(5A) (s11(*q*)) – ie: if related to a foreign funded grant
- Payments received under the national housing programme from the Housing Act (s11(s))
- Any service related to s8(5B) (s11(t)) – ie: if related to a government grant

Example 10

- *Facts:*
- ABC is a welfare organisation and a vendor which provides rehabilitation care to drug addicts. It receives a subsidy of R600 000 from a municipality which is used to cover expenses related to the provision of services to patients who are booked into the facility for treatment. In order to generate additional funds the centre also operates a clothing shop from which taxable sales totalling R91 200 (including VAT) were made in the previous 12-month period.
- What is ABC's output tax liability in respect of the above transactions?
- *Result:*
- ABC will account for output tax as follows:
- R
- Standard-rated supplies (clothing shop): R91 200 × 14 / 114 11 200
- Zero-rated supplies (subsidy): R600 000 × 0% nil
- **Total output tax: 11 200**
- As is the case with the standard-rated supplies, any VAT incurred in carrying out the welfare activities for which the subsidy ("grant") was intended may be deducted as input tax.

Example 11

- *Facts:*
- XYZ, a welfare organisation and a vendor, receives a monthly subsidy of R3 000 from the Department of Health to assist it to pay for the medicine supplied for no consideration to homeless children.
- What is the VAT treatment of the above transaction?
- *Result:*
- The deemed supply which arises in respect of the receipt of the subsidy is zero-rated for VAT purposes. XYZ therefore calculates output tax on the amount received at the zero rate. XYZ will nevertheless be entitled to deduct the VAT incurred on any medicines purchased to treat the homeless children, as the expense is incurred in the course of carrying on the welfare activity ("enterprise").

Section 18A certifcates

Who can issue? (s18A(1))

- A PBO or s10(10(cA) body doing Part II (9^{th} Schedule) activities
- Any “conduit” PBO
- Any specialised agency (essentially UN entities)
- Any government exempt under s10(1)(a) doing Part II (9^{th} Schedule) activities

Receipt criteria (s18A(2))

- Commissioner issued reference number
- Date of receipt
- Name of entity that received the cash
- Contact details
- Name and address of donor
- Amount/nature of donation
- Certification that it will only be used for designated purposes

When can it be issued? (s18A(2A))

- Donation will be used solely for PBA's
- Conduit PBO's:
  - At least 50% of all receipts will be passed to eligible entities during the year in which the receipts were issued.

- Entity must obtain and retain an audit certificate stating that all donations for which s18A certificates were issued were used for intended purposes.

for your participation