

For attention: Mr Franz Tomasek and the SARS Tax Exemption Unit (TEU)

14 June 2022

Dear Sir,

SECTION 18A(2B) AUDIT CERTIFICATES

Background

1. Section 18A of the Income Tax Act, 1962, allows taxpayers to deduct donations made to public benefit organisations (PBOs) from taxable income. When claiming a tax deduction taxpayers must be in the possession of a **receipt** issued by the relevant PBO.
2. PBOs issuing these receipts are required by Section 18A to obtain and retain an **audit certificate** confirming that **all donations** received or accrued in that year in respect of which **receipts were issued**, were utilised in the correct manner as per the Act.
 1. The intention of the Act is to ensure that PBOs spend the monies received for intended charitable purposes. The audit certificate is a mechanism identified for this purpose.
 2. It is primarily the PBOs responsibility to ensure that donations are utilised as prescribed, and it is ultimately only a court of law that would be able to make such an assessment, in the event of a dispute.
 3. Interpretation Note 112 (IN 112) issued in 2019 has brought more clarity in the form of definitions of audit and certificate. It provides additional guidance on the application of section 18A in terms of:
 - 3.1 Definitions of 'audit' and 'certification' taken from a common law perspective rather than using pure audit terminology.
 - "audit" is "an official **inspection** of an organisation's accounts"; and
 - "**certificate**" is "an official document recording a particular fact, event, or level of achievement";
 - Examples of persons that may issue such certificates and the content of the certificates.

Using the common law definition of 'audit' in this case indicates that the nature of the inspection expected does not automatically fall within the ambit of financial statement audits as defined in the Public Audit Act, 2004 or the Auditing Professions Act, 2005. Indeed, there are many instances outside of financial statement audits in which the term audit is used meaning that this term is not restricted to the mentioned Acts.

- 3.2 It clarifies the requirement of 18A. The Section does not require that an audit be performed on all receipts and how they were spent but allows for professional judgment relevant to the circumstances. It accepts that an **independent person**, that is **suitably qualified** can perform appropriate work involving **less than 100% detailed testing**. For example, control and system testing, representative sampling of section 18A receipts, confirmations from the PBO or a combination thereof may constitute appropriate work. Ultimately, whether appropriate work has been conducted can only be assessed on a case-by-case basis.
- 3.3 The minimum content of the audit certificate, including an opinion confirming that donations for which section 18A receipts were issued were used solely for PBAs in Part II.
- 3.4 It does not further specify from whom an approved organisation must obtain an audit certificate. Given the differences and complexities of PBOs a 'one size fits all' solution may not be cost effective for all. Considering who can provide the work on a 'case by case' bases in terms of the person's accounting, audit and tax knowledge and experience, and the agreed procedures to follow in coming to a conclusion. Examples of suitably qualified persons can be accounting practitioners such as bookkeepers, independent reviewers, auditors, or any other persons who will meet the criteria.
4. It is clear both from the Act and the Interpretation Note that the PBO is responsible to obtain an audit certificate. This means the PBO will contract with a suitable person to issue the audit certificate. As a result, the PBO and the independent person will have to agree the terms of the agreement including the work to be performed in reaching a conclusion, and on what grounds a certificate will not be issued or issued in a negative form i.e., an opinion cannot be reached.

Our proposal

5. SAIBA fully supports the requirements for an audit certificate **as it is currently set out in section 18A and in IN 112**, including the wording and provision for the 'case by case' approach.
6. The Act provides an opportunity for SAIBA as a controlling body for business accountants to issue further guidance to suitably qualified SAIBA designation holders to issue audit certificates in terms of Section 18A. Consequently, accounting professionals, tax-, and legal practitioners as well as auditors should be able to perform the certification.

Furthermore, understanding that there is need for further guidance, SAIBA undertakes to issue such guidance to our members, in the form of a factual checklist of recommended procedures and other considerations. Some examples of considerations are listed below.

The critical consideration is that the PBO appoints the independent person and agrees with this person the necessary work to be done. Furthermore, the audit certificate is issued to the PBO and not SARS. It is for SARS to decide if reliance will be placed on the audit certificate. In this way the intention of the interpretation note is adhered to by dealing with issues on a case-by-case basis.

- 6.1 Signing a contract or engagement letter with the PBO agreeing on the purpose and scope of the certification work to be performed.
- 6.2 Identifying the processes and systems used by the PBO to record donations received and expenses paid. This can be done by inspection of minutes of meetings, founding document or any other documents of the PBO containing relevant information. The following aspects need to be considered:
 - The different types of funds received and possible obligations the PBO has undertaken relating to these funds.
 - The systems and processes to account for receipts and related expenses.
- 6.3 Reviewing accounting systems and financial statements to confirm that:
 - Monies received were expensed for the purposes intended. This may require analytical review procedures, for example calculating % funds spent. It also involves a review of the categories of expenses and the nature of transactions for each category. Reasons should be requested to explain the purpose of expenses which cannot be directly linked to the objectives identified for the PBO. A more detailed inspection of the underlying transactions may also be necessary depending on the circumstances.
 - On an overall level the PBO has discharged its obligation with respect of incurring expenses in line with purposes intended as per Part II of Schedule Nine.
- 6.4 Providing regular updates on the correct application of professional judgement as prescribed in the IFAC Code of Ethics applicable to all members of SAIBA. The Code of Ethics sets out requirements for SAIBA members to perform duties with due care and professionalism.
- 6.5 SAIBA also recommends that government institutes a risk-based approach whereby regulatory bodies receive regular, or at least annual feedback on common fraud areas identified for NPOs. This will assist SAIBA and other bodies to provide updated guidance to members.

Conclusion

SAIBA agrees and supports the current wording of section 18A and related interpretation Note 112. We do not believe further clarity is required.

We also understand that there is a need to provide further guidance to practitioners issuing audit certificates to PBO. We propose that in line with the original intention of the Act, controlling bodies provide their membership with appropriate guidance to achieve high quality, value adding services on a cost-effective basis.