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TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE

Compliance is key: Guidance from SARS on audit certificate provisions applicable to PBOs

When charitable organisations ask members of the public for donations, they often promise donors that the donation will be deductible and that they will issue the donor with a so-called "section 18A certificate". Section 18A of the Income Tax Act, No 58 of 1962 (Act) states that the entities referred to in that section, including certain public benefit organisations (PBOs), can issue receipts to donors which will entitle such donors to a tax deduction.

Customs & Excise Highlights

This week's selected highlights in the Customs & Excise environment since our last instalment.

Compliance is key: Guidance from SARS on audit certificate provisions applicable to PBOs

On 21 June 2019, SARS issued Interpretation Note 112 (IN112), which provides insight regarding the provisions pertaining to audit certificates in s18A(2B) and s18A(2C) of the Act.

When charitable organisations ask members of the public for donations, they often promise donors that the donation will be deductible and that they will issue the donor with a so-called "section 18A certificate". Section 18A of the Income Tax Act, No 58 of 1962 (Act) states that the entities referred to in that section, including certain public benefit organisations (PBOs), can issue receipts to donors which will entitle such donors to a tax deduction.

The entities that can issue a s18A donation are, amongst others:

- entities that are approved PBOs in terms of s30 of the Act and which conduct public benefit activities (PBAs) listed in Part II of the Ninth Schedule to the Act (Activities PBOs). The activities listed in Part II of the Ninth Schedule to the Act are briefly discussed in our [Tax & Exchange Control Alert of 16 March 2018](#);
- entities that are approved PBOs in terms of s30 of the Act and which donate funds or assets to, amongst others, Activities PBOs that conduct activities listed in Part II of the Ninth Schedule to the Act (Conduit PBOs);
- entities that are approved as being tax-exempt in terms of s10(1)(CA) of the Act; and
- the United Nations entities referred to in s18A(1)(bA) of the Act, such as UNICEF.

Section 18A(2B) of the Act states that entities issuing s18A receipts must obtain and retain an audit certificate confirming

that all donations received or accrued in a particular year of assessment in respect of which receipts were issued, were used in the manner prescribed by the Act. On 21 June 2019, SARS issued Interpretation Note 112 (IN112), which provides insight regarding the provisions pertaining to audit certificates in s18A(2B) and s18A(2C) of the Act. IN 112 expressly states that there is uncertainty on how to comply with the audit certificate requirement. In this article, we discuss the audit certificate requirement in s18A and what IN 112 states regarding its application to PBOs.

What is the rationale for the audit certificate requirement?

IN 112 explains that Part I of the Ninth Schedule to the Act lists the activities that are recognised as PBAs for purposes of s30(1). Only some of the activities listed in Part I of the Ninth Schedule also appear in Part II of the Ninth Schedule. As stated in s18A(2A) of the Act, receipts can only be issued to a donor –

- by an Activities PBO, to the extent that the donation will be utilised in carrying on activities contemplated in Part II of the Ninth Schedule to the Act; and
- by a Conduit PBO, to the extent that the Conduit PBO provides the donated funds to an Activities PBO, institution, board or body, which will utilise the funds solely in carrying on activities contemplated in Part II of the Ninth Schedule. (A Conduit PBO must also comply with the requirement to distribute a certain amount of donations received, as stated in s18A(2A)(b)).

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IN 112 states that an audit certificate in the context of s18A(2B), can be defined as a physical document, for example, a form, declaration or letter, that provides an opinion on the use of donations for which an approved organisation or department issued s18A receipts.

As it is possible for an entity to conduct PBAs listed in Part I and Part II of the Ninth Schedule to the Act, but only issue s18A receipts to donors for donations used in carrying on PBAs listed in Part II of the Ninth Schedule, s18A(2B) was introduced as a control measure to ensure that s18A receipts were issued only when permitted. This is a reasonable measure, as a s18A receipt entitles the donor to claim a tax deduction that has a real cost to the *fiscus*, because the donee is normally not subject to tax on the donation received.

What is an audit certificate?

IN 112 states that an audit certificate in the context of s18A, can be defined as a physical document, for example, a form, declaration or letter, that provides an opinion on the use of donations for which an approved organisation or department issued s18A receipts.

Who is required to obtain and retain an audit certificate?

In the case of PBOs, only the following two types of PBOs need to obtain and retain audit certificates:

- an Activities PBO that conducts PBAs listed in both Part I and Part II of the Ninth Schedule to the Act; and
- a Conduit PBO, that provides funds to Activities PBOs, or institutions, boards or bodies carrying on PBAs listed in Part I and Part II of the Ninth Schedule to the Act.

From whom must an audit certificate be obtained and when will the certificate be acceptable?

IN 112 states that although the Act does not specify from whom an audit certificate must be obtained, SARS recommends that the person issuing the audit certificate must be independent of the PBO, suitably qualified and that appropriate work must have been performed to enable that person to express the opinion in the audit certificate. Strictly interpreted, confirmation regarding the use of all donations for which s18A receipts were issued would require detailed testing of every cash flow in respect of which a s18A receipt was issued. However, IN 112 further states that control and system testing, representative sampling of s18A receipts or a combination thereof may constitute appropriate work in the specific case and form the basis of expressing the required opinion.

Whether a person is suitably qualified involves a consideration of the person's qualifications and experience, taking into account, for example, the person's accounting, audit and tax knowledge and experience. For example, where a PBO is a non-profit company that is required to be audited or independently reviewed under the Companies Act, No 71 of 2008 (Companies Act), it can obtain an audit certificate from the independent auditor or independent reviewer appointed in terms of the Companies Act and any applicable regulations to it.

Compliance is key: Guidance from SARS on audit certificate provisions applicable to PBOs...*continued*

In the case of an Activities PBO, the audit certificate must express an opinion confirming that all donations for which s18A receipts were issued were used solely for PBAs in Part II of the Ninth Schedule to the Act.

Content of an audit certificate

In the case of an Activities PBO, the audit certificate must express an opinion confirming that all donations for which s18A receipts were issued were used solely for PBAs in Part II of the Ninth Schedule to the Act. In the case of a Conduit PBO, the audit certificate must express an opinion confirming the donations for which s18A receipts were issued were used solely to provide funds to any PBOs, institutions, boards or bodies that use those funds solely in carrying on PBAs in Part II of the Ninth Schedule. In the case of a Conduit PBO, the audit certificate must also state that all donations received were distributed as required under s18A(2A)(b)(i) of the Act. In addition to the prescribed opinion that must be issued in each case, IN 112 states that the audit certificate should at a minimum contain the following detail:

- The name and address of the approved PBO;
- The reference number issued to the approved PBO by SARS for purposes of s18A;
- The taxpayer reference number of the PBO;
- The year of assessment to which the audit certificate applies;
- Full name, signature and designation of the person responsible for issuing the audit certificate;
- Details of the s18A receipts issued by the PBO, for example the number of s18A receipts issued and the total rand value of the donations for which s18A receipts were issued;

- The date on which the certificate was issued;
- A statement addressing the following:
 - A description of the work performed that formed the basis for the opinion reached, for example, the extent of the personal examination of the books of account and of the documents from which the books of account were written up;
 - Whether the entries in those books and documents disclose the true nature of the transactions in so far as may be ascertained by that examination, and how the linkage between the funds for which a s18A receipt was issued and the application of those funds to carry on PBAs in Part II was tested;
 - Details of the local or international standards and regulations, if applicable, under which the audit was conducted; and
 - Express confirmation that, in the opinion of the person issuing the audit certificate, sufficient and appropriate audit evidence was obtained to provide a basis for the opinion.

Submission of an audit certificate

It is not necessary for a PBO to submit the audit certificate to SARS with its annual income tax return. It only needs to be provided to SARS, upon request. However, IN 112 states that one must consider s18A(5) and s18A(5B), which stipulate

Compliance is key: Guidance from SARS on audit certificate provisions applicable to PBOs...*continued*

Pursuant to the issue of IN 112, a Conduit PBO or Activities PBO, that is approved for purposes of s18A of the Act, now knows with greater certainty how to comply with the audit certificate requirement in s18A of the Act.

various adverse consequences if SARS has reasonable grounds for believing that a s18A receipt was issued in contravention of the Act. Failure to submit an audit certificate may be one of the facts giving SARS reasonable grounds for invoking s18A(5) and s18A(5B).

Retention of an audit certificate

Generally speaking, the audit certificate must be kept and retained for five years from the date of submission of the income tax return for the year of assessment to which it relates. However, there are circumstances in which it may have to be retained for a longer period. IN 112 lists the following two examples:

- Where an income tax return for a particular year of assessment is not submitted as required, the audit certificate must be retained indefinitely until the obligation to submit a return has been complied with. Once a return has been submitted, the audit certificate must be retained for five years from the date of submission; or
- If a person has been notified of or is aware of an audit or investigation by SARS regarding donations received or accrued, the issue of s18A receipts

or the usage of those donations, the audit certificate must be retained until the audit or investigation is concluded or the applicable five-year period has elapsed, whichever is the later.

Comment

The publication of IN 112 and the clarity it provides regarding audit certificates must be welcomed. Pursuant to the issue of IN 112, a Conduit PBO or Activities PBO, that is approved for purposes of s18A of the Act, now knows with greater certainty how to comply with the audit certificate requirement in s18A of the Act. It is also possible that going forward, SARS will more strictly monitor compliance with s18A of the Act and the requirements pertaining to audit certificates. PBOs approved for purposes of s18A of the Act should therefore ensure that they comply with the provisions regarding audit certificates to avoid SARS from invoking the provisions of s18A(5) or s18A(5A) of the Act. In terms of these provisions, SARS can order that any donation is deemed to be taxable income of the PBO in a specific year of assessment, or that s18A receipts issued after a certain date are invalid.

Louis Botha

CHAMBERS GLOBAL 2019 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2019 in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2019 in Band 1: Tax: Indirect Tax.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2019 in Band 3: Tax.

Mark Lington ranked by CHAMBERS GLOBAL 2017- 2019 in Band 1: Tax: Consultants.



CLIFFE DEKKER HOFMEYR

Customs & Excise Highlights

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.

This week's selected highlights in the Customs & Excise environment since our last instalment:

1. Amendments to Rules to the Customs & Excise Act No 91 of 1964 (Act) (certain sections quoted from the SARS website):

Draft amendments in respect of the Rules under s8, s59A and s60 to the Act, which includes proposed consequential amendments to other rules as well as changes to forms DA 185 and DA 8 and their annexures.

The main purpose of the proposed amendments is to make provision for the electronic submission of applications for registration and licensing in respect of certain activities regulated by the Act.

The effect of the proposed amendments is that certain applications may be submitted either electronically or in paper format. However, because development of the electronic system is set to take place in phases, electronic submission will not be available in respect of all applications at this stage.

Draft amended application forms were also published for comment. These are:

- Form DA 8;
- Form DA 8A;
- Form DA 8B;
- Form DA 8C;
- Form DA 185;
- Form DA 185.4A1;
- Form DA 185.4A2;
- Form DA 185.4A3;
- Form DA 185.4A4;
- Form DA 185.4A5;
- Form DA 185.4A6;
- Form DA 185.4A7;
- Form DA 185.4A8;
- Form DA 185.4A9;
- Form DA 185.4A10;
- Form DA 185.4A11;
- Form DA 185.4A12;
- Form DA 185.4A13;
- Form DA 185.4A14;
- Form DA 185.4A15;
- Form DA 185.4A16;
- Form DA 185.4A17;
- Form DA 185.4A18;
- Form DA 185.4A19;

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.

Customs & Excise Highlights...continued

- Form DA 185.4B1;
 - Form DA 185.4B2;
 - Form DA 185.4B3;
 - Form DA 185.4B4;
 - Form DA 185.4B5;
 - Form DA 185.4B6;
 - Form DA 185.4B7;
 - Form DA 185.4B8;
 - Form DA 185.4B9;
 - Form DA 185.4B10;
 - Form DA 185.4B11;
 - Form DA 185.4B12;
 - Form DA 185.4B13;
 - Form DA 185.4B14;
 - Form DA 185.4B15;
 - Form DA 185.4B16;
 - Form DA 185.C; and
 - Form DA 185.D.
2. SARS issued a media release on 28 June 2019 in relation to trade statistics for May 2019 (certain sections quoted from the media release). It (*inter alia*) stated as follows:
 - A trade surplus of R1.74 billion was recorded;
 - The year-to-date (01 January to 31 May 2019) trade deficit of R6.05 billion is an improvement from the R12.08 billion deficit for the comparable period in 2018;
 - Exports increased by 9.4% year-on-year; and
 - Imports for the same period showed an increase of 13.0%.
 3. SARS issued a letter to trade on 1 July 2019 stating that (certain sections quoted from the letter):

SARS is about to embark on roadshows to discuss the New Customs Acts with SARS clients. These will begin on 22 July and end on 1 August, covering every major centre in each region. The purpose of the roadshows is to focus specifically on the new Registration, Licensing and Accreditation (RLA) system, which is expected to be implemented in September 2019.

Bookings may be made electronically (and will close on 8 July) at:

<https://tools.sars.gov.za/SurveyPublic/SurveyWizard/CustomStartupPage>.

Due date for comments is 19 July 2019 and may be sent to:

C&E_legislativecomments@sars.gov.za.

The proposed amendments are generally welcome as it appears the current registration and licensing process will be streamlined, and the new electronic process will enable easier registration and licensing. A welcome change is that only supporting documents reflecting a change in the applicant's particulars will be required to be resubmitted – not the entire pack as is the current case.

Customs & Excise Highlights...continued

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.

4. The International Trade Administration Commission has (certain sections quoted from the notice) issued a notice on 21 June 2019 to the effect that it has received the following applications concerning the Customs Tariff:
- Application for a reduction in the rate of customs duty on:

Other safety headgears, classifiable under tariff subheading 6506.10.90 from 25 per cent *ad valorem* to free of duty, through the creation of an additional 8-digit tariff sub heading, which SARS proposed should read as follows:

“other helmets for motorcyclist or other motorsports (including motorboat activities)”.

Enquiries: ITAC Ref: 01/2019. Mr Chris Sako, at tel: (012) 394-3669, e-mail: csako@itac.org.za or Mrs Ayanda Gandhi, at tel: (012) 394-3672, e-mail: endou@itac.org.za.
 - Increase in the rate of duty on:

Certain coated or plated flat-rolled steel, classifiable under tariff subheadings 7210.20, 7210.30, 7210.50, 7210.69, 7212.20, 7212.50, 7212.60, 7225.91, and 7225.92, from free of duty to 10% *ad valorem*.

Enquiries: ITAC Ref: 15/2018. Ms. Diphetogo Rathete and Ms. Pateka Busika, tel: (012) 394-3683/3595 or alternatively e-mail drathete@itac.org.za or pbusika@itac.org.za.
 - Creation of a rebate provision on:

Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated, or coated, not further worked than cold-rolled (cold reduced), other, with a thickness of 0.30mm or more but not exceeding a thickness of 1.60 mm, with a carbon content by means of 0.5 per cent or more, classifiable in tariff subheading 7211.29, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit; and

Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, painted, varnished or coated with plastics, of a thickness of 0.5mm or more but not exceeding 1mm, with a carbon content by mass of 0.17 per cent or more but not exceeding 0.27 per cent, classifiable in tariff subheading 7212.40, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit.

Enquiries: ITAC Ref: 05/2019. Mr Njabulo Mahlalela and Mr Pardon Hadzhi, tel: (012) 394-3684/3634 and/or alternatively e-mail: nmahlalela@itac.org.za or phadzhi@itac.org.za.

Written representations to all of the above must be made within four weeks of the date of the notice.

Petr Erasmus

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