

Tax & Exchange Control ALERT

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Charity starts at home: Proposed amendments pertaining to public benefit organisations in the 2023 Budget

In our [2023 Special Edition Budget Speech Alert](#) released last week, we discussed several of the proposed amendments affecting individuals, trusts and companies, including businesses in various industries. Some of the amendments that were not discussed relate to public benefit organisations (PBOs) and other tax-exempt entities that are approved under sections 30, 30A, 30B and 30C of the Income Tax Act 58 of 1962 (ITA). We briefly discuss those amendments here, along with an update on the additional requirements that now must be met for the issue of receipts issued under section 18A of the ITA.



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Persons accepting fiduciary responsibility

In terms of section 30 of the ITA, one of the requirements to become an approved PBO is that an organisation must appoint at least three persons, who are not connected persons in relation to each other, to accept fiduciary responsibility for the organisation. Section 30A, dealing with recreational clubs, section 30B, dealing with tax-exempt associations, including trade unions or chambers of commerce, and section 30C, dealing with small business funding entities, also contain this requirement. In practice, this would mean that if the entity takes the form of a trust, there would be at least three unconnected trustees that take fiduciary responsibility, or where it takes the form of a non-profit company, this requirement would be met through the appointment of three unconnected directors. In the case of section 30 of the ITA, it is also expressly stated that no single person may directly or indirectly control the decision-making powers of the entity.

In Annexure C of the 2023 Budget Review, it is stated that because these entities enjoy a special tax dispensation, various rules exist that limit the manner in which these entities operate or require greater accountability and stricter governance. (Although the Budget Review does not specifically refer to section 30C entities, it is possible that this was an accidental omission.) It further notes that at issue is whether the word "person" in each section refers to a natural person or a juristic person and it is proposed that the legislation be amended to clarify that "person" in this context refers to a natural person.

Expanding the general disclosure provisions for section 18A approved organisations

In terms of section 18A of the ITA, PBOs for purposes of this section and certain other listed entities may receive deductible donations from the public. In practice, the entity receiving the donation must issue a certificate

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containing certain information, which the donor will use as proof of the donation made. Annexure C of the Budget Review notes that in terms of the Tax Administration Act 28 of 2011, the South African Revenue Service (SARS) may disclose a list of PBOs approved in terms of section 18A and 30 of the ITA. Considering that there are also other entities that may receive tax-deductible donations and issue receipts in terms of section 18A, it is proposed that SARS be explicitly empowered to disclose all entities with a section 18A approval.

Additional requirements for the issue of receipts under section 18A

In terms of section 18A(2)(a) of the ITA, to claim a donation under section 18A as a deduction, the entity to which the donation is made must issue a receipt, containing certain prescribed information, including the reference number of the entity, date of the

receipt of the donation and certain details regarding the donation and the donor. Section 18A(2)(a) was recently amended to state that in addition to the specific requirements listed in the section, SARS may also require that the receipts include *"such further information as the Commissioner [for SARS] may prescribe by public notice."*

On 24 February 2023, SARS issued a public notice indicating that the following further information must be included in the receipt:

- donor nature of a person (natural person, company, trust etc.);
- donor identification type and country of issue (in case of a natural person);
- identification or registration number of the donor;
- income tax reference number of the donor (if available);
- contact number of the donor;

- electronic email address of the donor;
- a unique receipt number; and
- trading name of the donor (if different from the registered name).

Relevance of the changes

In relation to the issue of persons accepting fiduciary responsibility, it is unclear whether there is any mischief that the legislature seeks to address by defining the meaning of *"person"* in section 30(3) of the ITA. From a practical perspective, there are instances where an international charitable organisation broadens its scope of activities to South Africa or decides to set up a branch in South Africa, where the South African branch or unit could then apply to SARS to become an approved PBO. It is then common for such international organisation to attempt to exercise some oversight

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by making provision in the founding document for it to appoint some of the persons accepting fiduciary responsibility of the local entity. Objectively, this should not create an issue unless the power to appoint resides solely with the international organisation, where the argument could then be made that it controls the entity's decision making powers.

The expansion of the general disclosure provisions should be seen as a positive development. While the issue of taxpayer confidentiality and taxpayer confidential information is an important one, especially in light of the hearing in the case of *Arena Holdings (Pty) Limited t/a Financial Mail and Others v South African Revenue Service and Others* CCT 365/21, where we are awaiting the Constitutional Court's judgment, the proposal here may promote public awareness of all the entities to whom they can make tax-deductible

donations. For example, aside from PBOs approved for purposes of both section 30 and 18A of the ITA, section 18A refers to a number of United Nations entities that may receive deductible donations, as well as entities approved as tax-exempt in terms of section 10(1)(cA)(i) of the ITA.

Finally, the publication of the notice regarding additional information to be included in section 18A receipts, may be an indication that SARS is trying to expand its third-party data collection processes. It is notable that virtually all the additional requirements pertain to donor information. Although audits relating to PBOs and disputes involving them do not often reach the Tax Court, it may be that the SARS Tax Exemption Unit will use the donor information included in the receipts to identify donors who they believe may not be fully compliant with tax laws in general.

In light of South Africa's recent greylisting by the Financial Action Task Force (FATF), it is also interesting to note that FATF Recommendation 8 focuses on the non-profit-organisation (NPO) sector and the potential use of NPOs as vehicles for money laundering and terrorism financing. However, there is no indication in the notice that its publication was in response to FATF Recommendation 8.

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