Possible further red tape around 18A receipts

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A common misconception is that taxpayers may deduct donations made to any charity organisation or a non-profit organisation ("NPO"). This is incorrect. Rather, a taxpayer may in certain circumstances deduct donations made to public benefit organisations ("PBOs") approved in terms of section 18A of the Income Tax Act No. 58 of 1962 ("the Act") upon the issue of a section 18A receipt (adhering to certain requirements) by that PBO.

PBOs are charitable organisations that are approved by SARS. All approved PBOs are exempt from income tax, but only certain PBOs have the additional necessary approval to issue 18A receipts entitling a donor to a tax deduction. The following demonstrates this diagrammatically:

SARS will approve an organisation in terms of section 18A of the Act depending *inter alia* on the activities carried on by the organisation. A limited and closed list of public benefit activities (as contained in Part II of the Ninth Schedule) are eligible for approval in terms of section 18A ("18A Activities").

Certain charity organisations may accordingly have the requisite approval to issue such a section 18A receipt, but not all charity organisations (or all PBOs for that matter) are entitled to issue section 18A receipts which entitle the donor to a deduction.

In instances where a PBO carries on 18A Activities and other activities (not contained in Part II of the Ninth Schedule), such PBO may only issue an 18A certificate to the extent that it utilises the donation received for purposes of an 18A Activity, and the PBO is to obtain an audit certificate confirming that the donated funds were applied solely for 18A Activities.

Despite the various legislative requirements for an entity to be in a position to issue section 18A receipts, SARS indicated in the Draft Memorandum on the Objects of the Tax Administration Bill, 2021 ("the Draft Admin Bill") that it has detected that section 18A receipts are being issued by entities that are not approved to do so, and accordingly section 18A deductions are incorrectly being claimed by the donor taxpayers.

For this reason, the Draft Admin Bill proposes to expand the information requirements of section 18A receipts to extend to such information as the Commissioner may prescribe by public notice from time-to-time. It appears as though the intention of SARS may be to ensure that only valid donations are deducted by requiring third party data from PBOs so as to enhance the ability of SARS to pre-populate the returns of donors. Potentially, this could therefore mean that section 18A approved PBOs may have to provide information to SARS in relation to all donors to which they issue section 18A receipts.

Although the misconceptions surrounding the issuing of 18A certificates should be addressed to ensure that deductions are not incorrectly claimed, of concern is that the proposed third-party requirements that may be in the pipeline for 18A approved PBOs may be of an onerous and complex nature. Often, PBOs do not have the capacity to satisfactorily attend to procedures of this nature, nor the funds to obtain professional advice in this regard - potentially the reason why some charity organisations are currently incorrectly (but innocently) issuing 18A receipts in the first place.

It will be interesting to see how this issue is addressed by SARS and National Treasury going forward to balance the interests of PBOs as well as guard the fiscus against incorrect section 18A deductions.

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