

Submission File Ref: # 773416

19 September 2022

Mr Franz Tomasek and the SARS Tax Exemption Unit (TEU)
South African Revenue Service

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Dear Mr Tomasek and TEU

SECTION 18A(2B) AUDIT CERTIFICATES

Background

1. Section 18A(2B) of the Income Tax Act, 1962, states that *a public benefit organisation contemplated in section (2A), must obtain and retain an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).*
2. Thus in terms of section 18A(2B) of the Act, the following must be confirmed in the **audit certificate**:
 - 2.1 that ALL donations received or accrued for during the year of assessment;
 - 2.2 for which receipts were issued in terms of subsection (2);
 - 2.3 were utilised in the manner contemplated in subsection 2A.

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3. Members of the Recognised Controlling Body Forum (the RCB Forum), currently face uncertainty in respect of how to comply with the requirement in section 18A(2B) of the Income Tax Act, 1962 (the ITA).
4. The issuance of the [Interpretation Note No.112](#) (IN 112) in 2019 (and the recent draft version of Interpretation Note 112 (draft IN) issued on 13 September 2022) on how to fulfil this requirement has not resolved the matter for the reasons set out in [SAICA's submission](#) on the draft version. This is mainly because SARS does not seem to address the actual challenges the legislation creates and also attempts to resolve some of the challenges, such as with sampling, by proposing solutions expressly outside the ambit of the legislation.
5. The impact on taxpayers is considered material, as non-compliance with this requirement may give SARS grounds for invoking section 18A(5) and (5B) and may put the PBO at risk of losing its exemption status.
6. On the same basis the impact on those providing these services is equally detrimental as they face liability towards SARS and/or the taxpayer should the service not meet the standard prescribed in the legislation (even if it would meet the standard in IN112).
7. On behalf of the RCB Forum, with the exception of the South African Institute for Business Accountants (SAIBA), we set out below our ongoing concerns in this regard.

Concern 1 – Persons issuing the “audit certificate”

8. Before discussing the person who can issue the audit certificate, it is pertinent to mention that the term “audit” is defined in the Auditing Profession Act No. 26 of 2005 (APA), as follows:

“audit” means the examination of, in accordance with prescribed or applicable auditing standards -

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(a) financial statements with the objective of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or
 (b) financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information.”

9. The APA continues to state that a person who is not a “registered auditor” may not perform any audit. A “registered auditor” is defined in the APA as an individual or firm registered as an auditor with the Regulatory Board (that is, the Independent Regulatory Board for Auditors (IRBA)).
10. By requiring an audit certificate that provides an opinion and by using terminology associated with an audit engagement, such as “sufficient appropriate audit evidence”, the IN112 implies that the engagement for the issue of the required audit certificate must be performed by a registered auditor. However, the law does not currently prescribe the “qualifying persons” who may issue such audit certificate, and in fact, it may be obtained legally from anyone as no discretion is afforded to SARS to reject an audit certificate issued based on who issued it.
11. It is therefore appreciated that the draft IN 112 expands on the meaning of “audit certificate” in the draft IN and rectifies the terminology used in the current IN 112 by removing reference to “opinion” and “audit evidence”.
12. The IN112 states that the audit certificate should be from an independent person, who must be suitably qualified and perform appropriate work to enable the person to express the opinion in the certificate (in terms of the draft IN the requirement is now “to provide the required confirmation on the use of the donations for which section 18A receipts were issued in the audit *certificate*”). None of these requirements are stated expressly in the law and at most may be inferred.
13. These certificates can thus be issued by professional accountants, tax practitioners, registered auditors as well as other suitable qualified persons.

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14. In the absence of a specific standard as to who is qualified to express such opinions for the control measure, it is uncertain as to how the requirement for an audit certificate would serve its function as a control measure for SARS.
15. Invariably this service should at a minimum be completed by a registered tax practitioner as it is a service rendered in relation to the application of a tax Act and for which a fee is charged. However, the current exemptions to the registration of tax practitioners results in many non-tax practitioners being able to provide this service.
16. Submission: We request that SARS engage with IRBA and the RCBF to gain an understanding on how best to update the law to impose at least some minimum requirements for “qualifying persons” to issue audit certificates as currently the lack of such standard undermines the intention of the requirement.
17. Furthermore, given the legislative absence of such a requirement, the IN112 should at least provide some insights as to what SARS would view as appropriate qualifications and skills, especially given that this area of tax is a specialised field.

Concern 2 – Registered auditors and international standards

18. A problem that currently exists for registered auditors is that the work to be performed in terms of section 18(2B) does not in our view currently fall within the International Standards on Auditing (ISAs) issued by the International Auditing and Assurance Standards Board (IAASB). Although registered auditors commonly perform Agreed-Upon Procedures (AUP) engagements, these do not technically accommodate the legislative requirement.
19. There are two distinct types of engagements covered by the standards of the IAASB, namely assurance engagements and related services engagements with an AUP engagement falling within the scope of the latter type of engagement (see IFAC’s guidance in this regard – Choosing the right service: [Comparing audit, review, compilation and agreed-upon procedure services](#)).

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20. An important distinction between an AUP engagement and assurance engagements is that under an AUP engagement, no assurance is expressed; instead the user of the AUP report is required to draw their own conclusion based on the procedures performed and findings thereof as reported on by the practitioner. Therefore, a practitioner that performs an AUP engagement cannot confirm compliance as required in section 18A(2B) of the ITA.
21. “Assurance engagement” means (in very simplistic terms) an engagement in which a practitioner aims to obtain sufficient appropriate evidence in order to expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the subject matter information (that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria). Each assurance engagement is classified on two dimensions: Either a reasonable assurance engagement or a limited assurance engagement; and is either an attestation engagement or a direct engagement.
22. Given the formalistic requirements of this type of engagement and the nature of the opinion expressed, it is seldom viable or appropriate to perform an assurance engagement in satisfaction of section 18A(2B).
23. Submission: It is submitted that the current requirements in section 18A(2B) do not allow for application of current auditing and AUP standards.
24. It is submitted that in order for SARS to achieve its desired outcome, a legislative amendment is required to bring the section 18A(2B) engagements within the scope of the applicable IAASB standards, which we would appreciate further engagement on.
25. We suggest that a workgroup be set up with the purpose of discussing and agreeing on an IAASB standards (that is currently not prescribed) to be inserted in the legislation to replace the “appropriate work” that must be performed to enable the suitably qualified person to express an opinion in the audit certificate as required per IN 112 (or to provide the necessary confirmation on the use of the donations for which section 18A certificates were issued as stipulated in the draft IN).

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Concern 3 – “Audit certificate” requirements

26. The use of the word “audit” in “audit certificates” is problematic as the term “audit” is defined in the APA (see point 8 above) and could be read to imply that the engagement for the issue of the required audit certificate must be performed by a registered auditor. The concerns with this have been discussed in Concern 1 above.

27. The word “certificate” is also problematic as it is not defined in the IAASB standards. In terms of the IAASB standards, “reports” are issued at the conclusion of the relevant engagement.

28. Submission: Although the draft IN does try to address the meaning of the words “audit certificate” by referring to the rules of interpreting statutes and case law in this regard, we still are of the view that consideration should be given to changing the word “audit” certificate to “assurance” certificate and to changing the word “certificate” to “report”.

29. With regard to the content of the audit certificate, section 18A(2B) requires the audit certificate to include a statement on compliance of all donations for which receipts were issued i.e. 100% substantive testing. However, assurance engagements are planned and performed by utilising the concept of materiality. Substantive testing is done on a sample basis, in addition to various other procedures such as controls testing.

30. Though we acknowledge that SARS accepts and directs in IN 112 (and the draft IN) at 4.3.1 (also in the that the 100% sampling cannot be practically achieved and therefore lesser sampling can be applied, this is in direct contradiction to the unambiguous requirements of the law.

31. In our view a SAICA member or any registered auditor who performs the service to the lesser standard knowing that the law imposes a higher standard would risk failing the SAICA *Code of Professional Conduct* or the IRBA *Code of Professional Conduct for Registered Auditors*.

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32. Furthermore, the said person would also have to confirm that the donations were specifically used solely for Part II PBA's (i.e. 100%). Even more problematic is confirmation in respect of section 18A(2A)(b)(ii) which requires that the certificate of a funding PBO must confirm that the funds will be utilised by a recipient PBO which carries on Part II PBA's and utilises those funds solely for PART II PBA's.
33. The current wording of section 18A(2B) specifies that the audit certificate must confirm the manner in which the donations were utilised. However, the IN112 seeks to introduce detailed requirements around the content of the required audit certificates. None of the detailed requirements listed in the bullet points on pages 10 – 11 of the [IN112](#) (and on page 12 – 13 of the draft IN) are, however, provided for in section 18A(2B) or 18A(2C).
34. Section 18A(2B) merely requires an audit certificate confirming that the relevant donations were utilised as per subsection 18A(2A). However, we agree that the information stated may be relevant for SARS to determine the veracity of the audit certificate, though such request may need to be one for relevant information.
35. A further requirement of the audit certificate is the disclosure on the audit certificate of specific details of section 18A receipts issued by the PBO, for example receipt numbers for which the section 18A certificate was issued. For PBOs receiving thousands of donations in any given tax year, it may not be practical to comply with this.
36. Submission: Taxpayers should not be burdened by additional requirements imposed via IN112 where those requirements are not already provided for in the relevant legislation, as this creates uncertainty and may unduly burden taxpayers from a tax compliance perspective.
37. Should it be the intention that the above requirements must be met, then the legislation should be amended to reflect this. Thus the prescribed content of the "audit" certificate should be clarified in the relevant legislation in a similar vein to section 18A(2)(a) which lists the information that should be contained in a section 18A receipt.

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38. Furthermore, it is highly questionable that assurance could be expressed on either a 100% sample or for funding PBO's, that a recipient PBO (i.e. third party) was in fact carrying on Part II activities and solely utilising such funds for Part II PBA activities, without exclusively relying on their statement of compliance.
39. We are happy to engage further with SARS to ensure that a suitable methodology is found that will allow auditors and other independent persons to comply with the law and to give SARS reasonable comfort that these audit certificates can be relied upon.

Yours sincerely

Somaya Khaki
Chairperson: RCB Forum

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