



29 June 2025

To: The South African Revenue Service

Lehae La SARS
299 Bronkhorst Street
PRETORIA
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Via email: SARS policycomments@sars.gov.za

RE: SAIT SUBMISSION_ DRAFT GUIDE TO SECTION 18A APPROVAL FOR SPECIFIC UNITED NATIONS ENTITIES

Dear Colleagues,

We wish to provide commentary on the above draft Guide ("**draft Guide**") that considers the requirements for obtaining and retaining approval for purposes of section 18A of the Income Tax Act 58 of 1962 (the Act) by the eligible United Nations (UN) entities, namely, specialised agencies and the programmes, funds, High Commissioners, offices, entities or organisations listed in section 18A(1)(bA) of the Act.

We have canvassed the draft Guide and have set out our commentary below.

1. Background

We had made a submission to the then Acting Deputy Director General of the National Treasury on 29 November 2024 on behalf of one of our members that acts on behalf of and has been advising the United Nations in respects to the technicalities of section 18A of the Act.

For the sake of brevity our above submission discusses the following:

1. United Nations Country Team (UNCT) in South Africa has raised significant concerns regarding the current wording of Section 18A of the Act. The primary issue lies in the restrictive definition of eligible UN entities. As it stands, Section 18A(bA) of the Act lists only a limited number of UN agencies, excluding many others that are actively involved in development work under the United Nations Sustainable Development Cooperation Framework (UNSDCF). This narrow scope prevents the broader UN system from receiving tax-deductible donations, thereby limiting their ability to mobilise financial support from the public and private sectors – which is often needed to augment and support aid in South Africa.
2. A second concern is the requirement under Section 18A(bA)(bb) of the Act for UN entities to sign a written undertaking to comply with South African tax laws. This poses a legal conflict because UN entities, by virtue of international agreements such as the Convention on the Privileges and Immunities of the United Nations and the Diplomatic Immunities and Privileges Act (DIPA), are not subject to national laws. Signing such an undertaking could be interpreted as a waiver of their internationally recognised immunities, which they are not permitted to do. As a



result, this requirement effectively disqualifies them from obtaining Section 18A status.

3. Additionally, Section 18A(bA)(cc) requires UN entities to waive their diplomatic immunity for tax purposes. This is in direct contradiction with South Africa's international obligations and the legal protections afforded to the UN system. The UN cannot waive immunity in advance through a general written agreement, as doing so would undermine the legal framework that ensures their operational independence and neutrality.

These legal and procedural barriers have consequential implications. Without Section 18A status, UN entities cannot issue tax-deductible receipts, which discourages donations and threatens the financial sustainability of their operations in South Africa. This is particularly concerning given the critical role these entities play in supporting national development goals and delivering humanitarian aid.

To resolve these issues, our aforementioned submission proposed several amendments; which include the following:

1. The definition of eligible UN entities under Section 18A should be broadened to include all entities operating under the UNSDCF and covered by international conventions.
2. The requirement to sign a written undertaking should be removed or revised to align with international legal standards.
3. The clause requiring a waiver of diplomatic immunity should be deleted entirely.

These changes would align South African tax law with international obligations, allowing the UN system to continue its vital work without legal or financial impediments, while also enabling meaningful compliance with the requirements of section 18A of the Act.

2. Current issue at hand: Commentary on draft Guide

Further to our submission to the National Treasury, we note with appreciation the release of the draft Guide. However, we regret to point out that the fundamental issue we raised remains unresolved, and as such, the current draft unfortunately does not assist in addressing the core challenge we identified.

Specifically, the language in the draft Guide under section 6.4, titled "*Waiving of Diplomatic Immunity*", continues to pose the primary obstacle that we had flagged and sought to address through the above referred submission. The draft states:

An eligible specialised agency, programme, fund, High Commissioner, office, entity or organisation under section 18A(1)(bA) must waive diplomatic immunity for purposes of section 18A(5)(i), which provides for liability for income tax due to non-compliance with section 18A (see Chapter 8).

Any specialised agency, programme, fund, High Commissioner, office, entity or organisation is allowed to waive any immunity or privilege if it enjoys any immunity or privilege under the Diplomatic Immunities and Privileges Act (see Chapter 2).



The waiver must be done on behalf of the specialised agency, programme, fund, High Commissioner, office, entity..."

As outlined in detail in our original submission, this provision is fundamentally in conflict with UN policy. UN-affiliated entities cannot waive diplomatic immunity, as they operate under the auspices of the United Nations and are bound by its established legal framework. This requirement therefore renders it impractical for these entities to comply with section 18A as currently drafted and effectively precludes them from benefiting from its provisions.

We had brought this matter to the attention of the National Treasury during the 2024 Annexure C process, and we appreciate that more urgent priorities may have understandably delayed further engagement. However, we remain hopeful that this important issue can still be addressed – particularly in light of the release of this draft Guide.

3. Conclusion, Recommendation and Request

While we are grateful for the opportunity to comment on the draft Guide, the retention of the waiver requirement significantly limits our ability to provide any meaningful input at this stage, given that it presents a non-negotiable legal and operational constraint for affected organisations.

To assist in clarifying the issue, we have annexed our original submission to the National Treasury for your reference. We would also appreciate the opportunity to meet with you at a mutually convenient time to walk you through the core concerns in the hope that these can be discussed further with the National Treasury and potentially reflected in the finalisation of the draft Guide.

Thank you once again for your attention to this matter. We look forward to your response.

Please do not hesitate to contact us should you require any further information or examples hereof.

Yours Sincerely,
SAIT Technical

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