

Regulatory update 2019/06/25	South Africa: SARS Interpretation Note – Section 18A: Audit Certificate
A Main & sub-category	Tax (Income tax) – audit certificate – donations
B Nutshell	An interpretation note has been published to provide guidance on the application of section 18A of the Income Tax Act, 1962, in relation to the audit certificate that must be obtained and retained in specified circumstances for section 18A receipts issued by an approved organisation or department. The note also provides guidance on what would be regarded as acceptable information on an audit certificate and from whom such a certificate may be obtained.
C Business units affected	Tax; Legal; Compliance; Board
D Regulatory source	South African Revenue Service website, www.sars.gov.za, 21 June 2019
E Executive summary	<p>The South African Revenue Service (“SARS”) has published an interpretation note to provide guidance on the application of section 18A [Deduction of donations to certain organisations] of the Income Tax Act 58 of 1962, as follows: [Please refer to the accompanying document for detailed information.]</p> <p>1) <b>BACKGROUND</b> [Paragraph (“par”) 2]</p> <p>a) Section 18A(1) and (2) potentially provide a taxpayer with a deduction for donations paid or transferred in good faith to any approved organisation, agency, programme, fund, High Commissioner, office, entity, organisation or department, if the donation is supported by a section 18A receipt issued by that approved organisation, agency, programme, fund, High Commissioner, office, entity, organisation or department.</p> <p>b) Section 18A(2B) and (2C) merely refer to an audit certificate. No detailed requirements are prescribed with regards to the information that must be contained on the audit certificate, or from whom the audit certificate must be obtained, with the exception of who must issue it in the case of a department. Thus, uncertainty exists on how to comply with the audit certificate requirement.</p> <p>2) <b>APPLICATION OF THE LAW</b> [par 4]</p> <p>a) <b>What is an audit certificate?</b> [par 4.1]</p> <p>An audit certificate is 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 section 18A receipts.</p> <p>b) <b>Circumstances under which an audit certificate must be obtained and retained</b> [par 4.2]</p> <p>i) <u>Approved organisation</u> [par 4.2.1]</p> <p>(1) An approved organisation carrying on a combination of public benefit activities (“PBAs”) in <i>Part I</i>* and PBAs in <i>Part II</i>** must obtain and retain an audit certificate confirming that all donations received or accrued in the year of assessment for which section 18A receipts were issued were used solely in carrying on PBAs in Part II.</p> <p>*<i>Part I</i> public benefit activities include, welfare and humanitarian; health care; education and development; religion, belief or philosophy; cultural; conservation, environment and animal welfare; Research and consumer rights; Sport; and providing of funds, assets or other resources; and</p> <p>*<i>Part II</i> public benefit activities include, welfare and humanitarian; health care; education and development; conservation, environment and animal welfare; and land and housing.</p> <p>(2) A conduit public benefit organisation (“PBO”) providing funds to PBOs, or institutions, boards or bodies, carrying on PBAs in Part II as well as to PBOs, or institutions, boards or bodies, carrying on PBAs in Part I or other organisations that are not approved by the Commissioner for section 18A purposes, must obtain and retain an audit certificate confirming that all donations received or accrued in the year of assessment for which section 18A receipts were issued were used solely to provide funds to PBOs, or institutions, boards or bodies, which used those funds solely in carrying on PBAs in Part II. Under section 18A(2A)(b)(i), a conduit PBO may retain a certain percentage of the donations received or accrued for which section 18A receipts were issued instead of distributing them. Section 18A(2B) requires the audit certificate to confirm that all donations received or accrued during the year of assessment for which section 18A receipts were issued were used in the manner contemplated in section 18A(2A), which in the case of a conduit PBO includes section 18A(2A)(b)(i) and (ii). Accordingly, the audit certificate would also need to confirm that all donations received were distributed as required under section 18A(2A)(b)(i). The latter confirmation means that despite the retention of any donations by the conduit PBO, it still meets the requirements of section 18A(2A)(b)(i).</p> <p>(3) An approved organisation carrying on only PBAs in Part II and any conduit PBO funding PBOs, or institutions, boards or bodies, carrying on only PBAs in Part II, are not required to obtain and retain an audit certificate.</p> <p>ii) <u>Agency, programme, fund, High Commissioner, office, entity or organisation</u> [par 4.2.3]</p> <p>The activities of an agency, programme, fund, High Commissioner, office, entity or organisation contemplated in section 18A are restricted to PBAs in Part II carried on in South Africa. Accordingly, such an agency, programme, fund, High Commissioner, office, entity or organisation is excluded from the requirement to obtain an audit certificate under section 18A(2B) and (2C).</p> <p>c) <b>Persons from whom an audit certificate must be obtained and the acceptability of such a certificate</b> [par 4.3]</p> <p><u>Approved organisation</u> [par 4.3.1]</p> <p>i) The Act does not specify from whom an approved organisation must obtain an audit certificate and what constitutes an acceptable audit certificate. These matters can be assessed only on a case-by-case basis. Although legislation does not prescribe that the person issuing the audit certificate must be independent, it is a reasonable requirement and implied taking into account that the audit certificate was introduced as a measure of control. SARS therefore recommends that the person issuing the certificate must be independent of the approved organisation and suitably</p>

qualified, and that appropriate work must have been performed to enable that person to express the opinion in the audit certificate.

- ii) It will generally be acceptable to obtain an audit certificate, in the case of –
  - (1) an institution, board or body which is required by law to be audited by the Auditor-General, from the Auditor-General or any person the Auditor-General may appoint to undertake the audit on its behalf;
  - (2) a PBO that is a non-profit company that is required to be audited or independently reviewed under the Companies Act 71 of 2008 (“Companies Act”) taking into account, for example, the category of the company and its public interest score, from the independent auditor or independent reviewer appointed under the Companies Act and applicable regulations, as the case may be; or
  - (3) a trust or an association of persons that is not required to be audited or independently reviewed, from a bookkeeper or auditor who is not employed by the trust or association of persons and who has the necessary capabilities and capacity to provide such confirmation.

d) **Content of an audit certificate** [par 4.4]

The Act prescribes that the audit certificate must, assuming the work performed and the underlying facts permit this to be done, express an opinion confirming that all donations for which section 18A receipts were issued were used solely for PBAs in Part II. An audit certificate for a conduit PBO must express an opinion confirming that donations for which section 18A receipts were issued were used solely to provide funds to any PBOs, or institutions, boards or bodies, that used those funds solely in carrying on PBAs in Part II, and that all donations received were distributed as required under section 18A(2A)(b)(i).

e) **Submission of an audit certificate** [par 4.5]

A person who wilfully and without cause fails or neglects to submit a return or document to SARS, which would include an audit certificate which is required to be submitted, is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 2 years.

f) **Retention of an audit certificate** [par 4.6]

The audit certificate, whether in physical or electronic form, is generally required to be kept and retained for 5 years from the date of submission of the income tax return for the year of assessment to which it relates. There are, however, circumstances in which it may be required to be retained for a longer period. For example, if –

- i) 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 and, once the return has been submitted, for 5 years from the date of submission; or
- ii) a person has been notified of or is aware of an audit or investigation by SARS regarding donations received or accrued, the issue of section 18A receipts or the usage of those donations, the audit certificate must be retained until the audit or investigation is concluded or the applicable 5 year period has elapsed, whichever is the later.

A person who wilfully and without cause fails or neglects to retain records as required is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding 2 years.

3) **CONCLUSION** [par 5]

- a) Strict control measures must be applied to donations received by or accrued to approved organisations, agencies, programmes, funds, High Commissioners, offices, entities, organisations and departments for which section 18A receipts are issued, since such donations may qualify for a tax deduction from the taxable income of taxpayers and as such represent a cost to the fiscus. Approved organisations, agencies, programmes, funds, High Commissioners, offices, entities, organisations and departments are therefore required to maintain proper control over the application and spending of such donations.
- b) Approved organisations and departments must, under the circumstances described in paragraph 4.2, obtain and retain, or submit as appropriate, an audit certificate confirming that such donations were used in conducting PBAs in Part II and, in the case of conduit PBOs, also confirm that donations were distributed in accordance with section 18A(2A)(b)(i).

F	<b>Penalties / offences</b>	Please refer to paragraph E (executive summary) of the Alert.
G	<b>Suggestion / comment</b>	None
H	<b>Effective dates</b>	21 June 2019
I	<b>Regulatory body</b>	South African Revenue Service