

Submission File

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South African Revenue Service  
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Dear Sir/Madam

**COMMENTS ON THE SARS DRAFT INTERPRETATION NOTE: SECTION 18A AUDIT  
CERTIFICATE**

1. We herewith present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) National Tax Committee on the Draft Interpretation Note – Section 18A Audit Certificate (the Note), released by the South African Revenue Service (SARS).
2. Our submission in Annexure A, includes a discussion of some of the most pertinent matters, which we believe require SARS' most urgent attention.
3. As always, we thank SARS for the ongoing opportunity to provide constructive comments in relation to draft legislation. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex challenges.
4. Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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**The South African Institute of Chartered Accountants**



## ANNEXURE A

### OBSERVATIONS

#### Appropriate persons to issue certificates

1. Taxpayers currently face uncertainty in respect of how to comply with the requirement in section 18A(2B) of the Income Tax Act, 1962 (the Act). Therefore, the concept of issuing an interpretation note on how to fulfil this requirement is welcomed, as non-compliance with this requirement may give SARS grounds for invoking section 18A(5) and (5B).
  2. In accordance with the Note, the stated purpose of the introduction of the requirement to have an audit certificate was to act as a control measure to ensure that section 18A receipts were issued only for donations received that would be used for PBAs as set out in Part II of the Ninth Schedule to the Act.
  3. Currently the law does not prescribe “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.
  4. The Note states that it 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. Again, none of these requirements are stated expressly in the law and at most may be inferred. In relation to the “independent” requirement, please note our further submission for small organisations.
  5. As such, SARS’ lack of clarification in the Note as to what it views as suitably qualified and experienced, rather than reverting to a “will tell you when we ask on a case by case basis” approach is less than helpful.
  6. 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.
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| 7. <u>Submission:</u> We would request and propose that SARS engage with SAICA and IRBA on updating 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. Furthermore, given the legislative absence of such a requirement, the Note 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. |
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#### Examples of acceptable persons

8. The Note suggests that an organisation could obtain an ‘audit certificate’ for the purposes of section 18A(2B) from amongst others, an independent auditor, an



## ANNEXURE A

independent reviewer, a bookkeeper or an auditor, depending on the nature of the organisation and consequently its statutory requirement to be audited.

9. The distinction of the “acceptable persons” based on the type of entity is not required or inferred by law and it is submitted is nonsensical as the work to be conducted and opinion to be expressed remains exactly the same.

10. **Submission:** It is submitted that if all these people are acceptable in SARS’ view, they are acceptable irrespective of the type of PBO. It would be more useful that SARS provide its views on what it sees as “relevant qualifications and experience”, given the specialised area of taxation, that it would typically expect a person to have to issue such an audit certificate.

### **Cost versus benefit to the public on obtaining an audit certificate specifically with respect to smaller organisations**

11. As noted above, there is no statutory requirement that the person forming such audit certificate opinion must be independent of the organisation, accordingly, we do not see the basis upon which the statement is made by SARS that as a **general** principle the person issuing the certificate should be independent from the approved organisation.

12. **Submission:** If it is the intention of the legislation that the person issuing the audit certificate should be independent of the organisation, then the legislation should be amended accordingly.

13. Taking into account the costs involved in obtaining an audit certificate, holding all organisations accountable to the same level of assurance will negatively impact all organisations financially, but will more severely impact the smaller organisations and take much-needed funds away from worthy causes which funding the state currently cannot supply.

14. To illustrate this, based on recent costs incurred by a member performing related audits, using an independent, IRBA registered auditor would result in costs incurred being in the region of that set out below:

ISQC compliance requirements	R15 000
Planning, risk and internal controls	R20 000
Actual work required	R2 000
Finalisation reporting review	R10 000
IRBA practice review costs	R10 000
<b>Total cost</b>	<b>R57 000</b>

15. Further, whilst we agree that SARS is entitled to institute criminal proceedings in relation to non-compliance, the circumstances of affected PBOs needs to be taken



## ANNEXURE A

into account and the requirements for the audit certificate should be balanced with the need for the ongoing existence of the PBOs who may not be able to comply with the strict requirements whilst providing much needed relief to certain sectors of society.

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| 16. | <u>Submission</u> : As a result of the issues raised above, namely, inequality, inconsistency and costs associated with compliance, we propose that the requirement for an independent third-party to issue an audit certificate is severely burdensome on these organisations and should be removed or at least partly removed for organisations that issue section 18A certificates below a certain threshold.   |
| 17. | We further submit that SARS clarifies the Note to expressly indicate that an audit by an external third party is not necessary for any organisation to obtain an independent third-party opinion (or an organisation that issued section 18A certificates under a certain threshold) and that an internal audit certificate signed off by the relevant governing body of an organisation will suffice to the extent that the procedures specified by SARS have been undertaken by the organisation. In our view, given that no minimum requirements are set for who can issue the audit certificate, the risk would not be mitigated by preference of an independent person. |

### Procedure requirements – International standards

18. In terms of section 18A(2B) ITA, the following must be confirmed in the audit certificate:
- 18.1 That all donations received or accrued during the year of assessment (i.e. completeness, cut-off);
  - 18.2 in respect of which receipts were issued in terms of subsection (2) (i.e. validity; completeness, accuracy);
  - 18.3 were utilised in the manner contemplated in subsection 2A.(i.e. validity).
19. As a point of departure it should be noted that the work to be performed does not in our view currently fall within the Audit Standards and Procedures, though registered auditors commonly used Agreed Upon Procedures (AUP), these do not technically accommodate the legislative requirement.
20. 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.
21. 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, an AUP cannot confirm compliance as required in section 18A(2B) ITA.



## ANNEXURE A

22. "Assurance engagement" means an engagement in which a practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.
  23. 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). In this regard it should also be noted that assurance engagements also rely on materiality and sample substantive testing in addition to the various other procedures such as controls testing, whereas section 18A(2B) requires a statement on compliance of all donations for which receipts were issued i.e. 100% substantive testing.
  24. Furthermore, the said person would also have to confirm that the donations were specifically used solely for Part II PBA's (i.e. 100%).
  25. 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.
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| <ol style="list-style-type: none"><li>26. <u>Submission</u>: It is submitted that the current legislative requirements do not allow for reliance of current auditing and AUP standards to apply and it is unclear in SARS' list of criteria of a statement of international standards relied upon how this could be achieved. It is submitted that a legislative amendment is required to bring these engagements within the scope of any international standards of audit which we would appreciate engagement on.</li><li>27. In addition, even if the required standards could be applied, 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 absolute compliance.</li><li>28. It is submitted that SARS, given the above, should at least indicate the minimum procedures it would consider appropriate to satisfy itself that the risk is managed.</li></ol> |
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### Certificate requirements – Extended scope

29. The current wording of section 18A(2B) only specifies that the audit certificate must confirm the manner in which the donations were utilised.
30. The Note 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 9 – 10 are, however, provided for in section 18A(2B) or 18A(2C).



## ANNEXURE A

31. 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.
32. 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.
33. A specific requirement is for details of section 18A receipts issued by the PBO, for example receipt numbers for which the section 18A certificate was issued, to be disclosed on the audit certificate. For PBOs receiving thousands of donations in any given tax year, it may not be practical to comply with this.

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| <ol style="list-style-type: none"><li>34. <u>Submission</u>: Taxpayers should not be burdened by additional requirements imposed via the Note 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.</li><li>35. Should it be the intention that the above requirements must be met, then the legislation should be amended to reflect this.</li></ol> |
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### Inadvertent error in wording in Example 4

36. The result to Example 4<sup>1</sup> suggests that an audit certificate must confirm that all donations that were received or accrued during a year of assessment had been used in carrying on PBAs listed in Part II, whereas this requirement only applies to donations for which section 18A receipts were issued.

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| <ol style="list-style-type: none"><li>37. <u>Submission</u>: To rectify the oversight, the bold text in square brackets should be deleted, while the underlined text should be added in the following sentence: “<i>The municipality forms part of the local sphere of government contemplated in section 10(1)(a) and as such must obtain an audit certificate from its accounting authority confirming that all donations received or accrued during the year of assessment [in] for which it issued section 18A receipts were used solely in carrying on PBA 1(a) in Part II.</i>”.</li></ol> |
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<sup>1</sup> Para 4.3.2 on page 9