

BINDING GENERAL RULING (INCOME TAX) 71

DATE: 16 May 2024

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 18A(2)
SUBJECT : SECTION 18A RECEIPT: DONATION OF PROPERTY IN KIND

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the TA Act;
- “**donation of property in kind**” means a donation of property made in a form other than cash but excludes a donation, which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is a share in a listed company, or issued by an “eligible financial institution” as defined in the Financial Sector Regulation Act;¹
- “**public notice**” means the Public Notice 3631 in *Government Gazette* 48867 of 30 June 2023;
- “**section**” means a section of the Act;
- “**section 18A-approved organisation**” means any public benefit organisation, conduit public benefit organisation, institution, board or body, agency, programme, fund, High Commissioner, office, entity, organisation, or the government approved by the Commissioner for purposes of section 18A envisaged in section 18A(1)(a) to (c);
- “**section 18A receipt**” means a receipt with mandatory information issued under section 18A(2) by a section 18A-approved organisation potentially entitling the donor taxpayer to an income tax deduction for *bona fide* donations made;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR provides clarity on the detail that must appear on a section 18A receipt issued by a section 18A-approved organisation to a donor taxpayer for a donation of any property in kind to comply with section 18A(2), and third-party reporting requirements under the TA Act.

¹ Section 18A(3B).

2. Background

Section 18A(1) and (2) provide a donor taxpayer² with a deduction in the determination of taxable income subject to the stated income limitation³ for the sum of any *bona fide* donations in cash or of property made in kind, actually paid, or transferred to any section 18A-approved organisation during the year of assessment.⁴

Any claim for a deduction by a donor taxpayer will, however, be allowed only if supported by a section 18A receipt issued by the section 18A-approved organisation containing mandatory information.⁵ The amount of the donation or the nature of the donation, if not in cash, is mandatory information that must appear on a section 18A receipt.⁶

Uncertainty exists whether only the nature of the donation of property in kind must appear on the section 18A receipt or whether the amount of such a donation determined under section 18A(3) or (3A) must also be contained on a section 18A receipt.

3. Discussion

SARS is responsible for the administration of the TA Act under the control or direction of the Commissioner.⁷ The Commissioner may, in order to administer a tax Act, obtain full information relating to anything that may affect the liability of a person for tax for any tax period,⁸ tax event,⁹ or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act.¹⁰ The Commissioner may also perform any other administrative function necessary to carry out the provisions of the tax Act.¹¹

To give effect to the above responsibility, the Commissioner may by public notice, at the time and place and by the due date specified, require a person that employs, pays amounts to, receives amounts on behalf of, or otherwise transacts with another person, or has control over assets of another person, to submit a third-party return by the date specified in the notice.¹² A person required to submit a third-party return must do so in the prescribed form and manner and the third-party return must, amongst other things, contain the information prescribed by the Commissioner.¹³

² The term “taxpayer” as defined in section 1(1) means any person chargeable with any tax under the Act.

³ Section 18A(1)(A) and (B).

⁴ The term “year of assessment” as defined in section 1(1) generally means any year or other period in respect of which any tax or duty leviable under the Act is chargeable.

⁵ Section 18A(2)(a).

⁶ Section 18A(2)(a)(v).

⁷ Section 3(1) of the TA Act.

⁸ Section 3(2)(a)(i) of the TA Act.

⁹ Section 3(2)(a)(ii) of the TA Act. The term “tax event” as defined in section 1 of the TA Act means an occurrence which affects or may affect the liability of a person to tax.

¹⁰ Section 3(2)(a)(iii) of the TA Act.

¹¹ Section 3(2)(h) of the TA Act.

¹² Section 26(1) of the TA Act.

¹³ Section 26(2)(a) of the TA Act.

A section 18A-approved organisation that issued a section 18A receipt from 1 March 2024 must submit to SARS a return¹⁴ of any amount¹⁵ donated for which such a receipt has been issued.¹⁶ The public notice does not distinguish between a donation in cash or a donation of property in kind. The requirement is therefore that a third-party return must be submitted on information relating to “any amount donated”.

The third-party return containing all the prescribed information for the period from –¹⁷

- 1 March to 31 August, must be submitted by 31 October of each year; and
- 1 March to the end of February, must be submitted by 31 May of each year.

A deduction claimed by any donor taxpayer for any donation of property in kind is deemed to be an amount determined under section 18A(3). A deduction claimed by any donor taxpayer for a donation of immovable property of a capital nature if the lower of market value or municipal value exceeds cost, will be determined in accordance with the formula provided in section 18A(3A).

The amount of the deduction, deemed to be an amount determined under section 18A(3) or (3A) of a donation of property in kind, is therefore required to enable a donor taxpayer to calculate the allowable deduction subject to the income limit to be claimed from taxable income during a particular year of assessment under section 18A(1). SARS may for purposes of the administration of a tax Act require a taxpayer to submit relevant material that SARS may require.¹⁸ Thus, SARS may require evidence to support the determination of the deemed amount of the donation under section 18A(3) or (3A).¹⁹

The amount of the deduction deemed to be an amount determined under section 18A(3) or (3A) of a donation of property in kind is also required for purposes of third-party reporting by section 18A-approved organisations.²⁰ The sum of the amount of the deduction deemed to be an amount determined under section 18A(3) or (3A) claimed on submission of the donor taxpayer’s income tax return must therefore match the amount contained on the section 18A receipt issued by a section 18A-approved organisation and reported to SARS on submission of the third-party return.

¹⁴ The return to be submitted is an IT3(d) or data compiled in accordance with the *Business Requirement Specification: IT 3 Data Submission* available online at www.sars.gov.za. See Column 3: Form in paragraph 3 of the public notice.

¹⁵ See Column 2: Information concerning in paragraph 3 of the public notice. Any “amount” need not be an actual amount of money but may be every form of property whether corporeal or incorporeal, which has a money value. See *C: SARS v Brummeria Renaissance (Pty) Ltd and Others* 69 SATC 205 at 215.

¹⁶ See paragraph 2.14 of the public notice.

¹⁷ See paragraph 4.1.1 of the public notice.

¹⁸ Section 46 of the TA Act.

¹⁹ The burden of proof contemplated in section 102 of the TA Act will be on the donor taxpayer on assessment to motivate and substantiate the determination of the amount under section 18A(3) or (3A) claimed for purposes of section 18A(1).

²⁰ See paragraph 3 of the public notice.

4. Ruling

Having regard to the provisions of section 18A(1), (2), (3), and (3A), and the purpose of third-party reporting requirement under the TA Act, the information relating to a donation of property in kind that must, in addition to the other mandatory information, be contained on a section 18A receipt is the –

- nature of the donation, which is an adequate and accurate description of the donation of property in kind; and
- amount deemed to be an amount of the deduction of the donation of property in kind determined under section 18A(3) or (3A).

This ruling constitutes a BGR issued under section 89 of the TA Act.

5. Period for which ruling applies

This ruling applies from date of issue until it is withdrawn, amended or the relevant legislation amended.

**Senior Manager: Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE**