**TAX CONSIDERATIONS IN RESPECT OF DONATIONS TO AN INDEPENDENT SCHOOL**

An independent school, which is registered by the Education Department, may apply to the Commissioner for the South African Revenue Service (“SARS”) for approval as a public benefit organisation in terms of section 30 of the Income Tax Act, and for approval under section 18A to enable it to issue receipts for tax deductible donations.

As requested, the tax implications for a donor of donations made to an independent school which is approved as a public benefit organisation and is approved in terms of section 18A are summarised below. Other tax considerations which may be applicable to the school are not included in the scope of this Memo.

1. What is a donation?
   1. In terms of common law, a donation is a gratuitous disposal by the donor out of liberality or generosity, under which the donee is enriched and the donor impoverished. Where there is a *quid pro quo*, or reciprocal obligations or a benefit for the donor, that would not constitute a donation.
   2. A public benefit organisation may not accept donations which are subject to conditions that could enable the donor or any connected person in relation to the donor to derive some direct or indirect benefit from the application of the donation.
   3. A public benefit organisation may not accept donations which are revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation as to the tax deductibility thereof in terms of section 18A.
2. Donations tax exemption
   1. For purposes of donations tax, a donation means any gratuitous disposal of property including any gratuitous waiver or remuneration of a right. Donations to an approved public benefit organisation are exempt from donations tax.
3. Deductibility of donations
   1. Any *bona fide* donations by a taxpayer in cash or of property in kind, which were actually paid or transferred during the year of assessment to any approved public benefit organisation, may be deductible from the taxable income of that taxpayer.
   2. The allowable deduction from the taxable income of a taxpayer may not exceed 10% of the taxable income (excluding any retirement fund lump sums and severance benefits) of the taxpayer as calculated before allowing any deduction for donations.
   3. According to SARS, certain payments or transfers do not qualify as tax deductible donations. These include amounts paid for attending a fundraiser, prizes and sponsorships donated for a fundraising event, amounts paid for school fees, school entrance fees or compulsory school levies, amounts paid for raffle or lottery tickets, and payments of debt owed by the public benefit organisation to the service provider on behalf of the organisation and not paid directly to the organisation.
   4. In order for the donor to claim a deduction for the donation, a receipt must be issued by the school to the donor. An independent school which is registered as an approved public benefit organisation under section 30 and for purposes of section 18A of the Income Tax Act will be able to issue tax receipts to donors.
   5. The receipt must contain specific information including the school’s public benefit organisation reference number, the date of the receipt of the donation, the name of the school, the name and address of the donor, the amount of the donation or the nature of the donation (if not made in cash), and a certification to the effect that the receipt is issued for the purpose of section 18A of the Income Tax Act and that the donation has been or will be used exclusively for the object of the public benefit organisation.
   6. Alternatively, if the donations are made through a payroll deduction, the employee’s IRP5 tax certificate will be sufficient documentary proof to substantiate the deduction of the donations.
   7. Any excess amount of a donation made which is disallowed solely for the reason that it exceeds the amount of the deduction allowable for a year of assessment may be carried forward for purposes of section 18A. The excess amount carried forward will be deemed to be a donation actually paid or transferred in the next succeeding year of assessment, subject to the 10% limitation.
4. Valuation of donations in kind
   1. The amount of the deduction for donations of property in kind will be the value of the property at the date that the donation was made. The value of the property will depend on the nature of the property as follows:
      1. If the property is a financial instrument which is trading stock of the taxpayer, the value will be the lower of fair market value on the date of the donation, or the amount which has been taken into account for that tax year in respect of the value of that trading stock in terms of the Income Tax Act.
      2. If the property constitutes any other trading stock of the taxpayer (including any livestock or produce of a farmer), the value of the donation will be the amount which has been taken into account for that tax year in respect of the value of that trading stock in terms of the Income Tax Act.
      3. In regard to an asset used by the taxpayer for the purposes of his trade, the value of the donation is the lower of the fair market value on the date of donation of the property, or the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of that taxpayer in terms of the Income Tax Act in respect of that asset.
      4. Where the property is not trading stock of the taxpayer or an asset used by him for purposes of trade, the value of the donation is the lower of the fair market value on the date of the donation, or the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition, a depreciation allowance using the 20% reducing balance method.
      5. Where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the donation, the value of the donation is the lower of the fair market value of that property on the date of the donation, or the cost to the taxpayer of such property.
      6. A specific formula applies to the deduction in respect of the donation of immovable property of a capital nature where the lower of market value or municipal value exceeds the cost.
   2. However, no deduction is allowed in respect of the donation of any property in kind 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 either a listed share or is issued by a financial institution.
   3. SARS’ view is that the donation of services is not a donation of property in kind and does not qualify for the tax deduction.
5. Estate duty
   1. Any property which is bequeathed to a public benefit organisation is deductible from the dutiable value of the estate and is not subject to estate duty.
6. Capital gains tax
   1. Any capital gain or capital loss determined in respect of the donation or bequest of an asset to a public benefit organisation must be disregarded by the donor and is not subject to capital gains tax.

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