



MoneyTalk

Tax Deductibility of Donations

Feeling magnanimous but want a tax deduction?

RECENT amendments to the Income Tax Act mean that taxpayers now need to ensure that their donations are made to organisations that meet the SA Revenue Service's requirements if they want to claim a tax deduction, points out Grant Thornton East London tax manager, Kathy Dixon.

BACKGROUND

Section 18A of the Income Tax Act provides that a deduction will be allowed in the calculation of the taxable income in respect of a donation made to a Public Benefit Organisation (PBO). Dixon explains that the deduction is limited to an amount that does not exceed 5 per cent of the taxable income of the taxpayer before the deductions under this section and any medical deductions.

Furthermore, says Dixon, the relevant institution to which the *bona fide* donation of cash or property in kind is made, must be an approved PBO in terms of section 30 of the Income Tax Act. Such an organisation must carry on any public benefit activity that includes *certain* activities under the following headings:

- Welfare and humanitarian
- Health care
- Education and development
- Conservation, environment and animal welfare
- Land and housing.

It must be noted that certain public entities and municipalities in respect of which the Public Finance Management Act or Local Government: Municipal Finance Management Act applies, could also fall within the ambit of the approved activities and thus obtain PBO status from SARS.

TAX-DEDUCTIBLE DONATIONS

A claim for a tax deduction for any donation must be supported by a receipt issued by the recipient of that donation. Dixon advises that the following details must be reflected on the receipt:

- The reference number of the PBO as issued by SARS
- The name of the PBO
- The date of the receipt of the donation

- The name and address of the donor
- The value of the donation or nature of the donation if not in cash
- A certification that the receipt is issued for the purpose of section 18A.

CHANGES TO THE INCOME TAX ACT

Prior to 1 April 2006, donations were only tax deductible provided that the PBO had distributed or incurred the obligation to distribute 75 per cent of the donations for which receipts were issued in the preceding year of assessment. The intention, explains Dixon, was that 75 per cent of the donations must be distributed within 12 months following the year of assessment when the donation was received.

Under prior legislation, a donor would lose the benefit of a deduction for tax purposes if the PBO failed to satisfy its objectives, even though the failure falls outside the donor's control. According to Dixon, this unfair result towards the donor necessitated a change to the legislation whereby the violation by the PBO would result in taxable income in the hands of the PBO as opposed to disallowing the donor's deduction.

From 1 April 2006, therefore, where the Commissioner: SARS has reasonable grounds for believing that a PBO or groups of PBOs have issued a receipt, utilised a donation or acted in contravention of the requirements of the Income Tax Act, the Commissioner may notify the PBO that donations received during the specified tax year will be treated as taxable income.

If corrective steps are not taken within the period stated, any receipt issued by the PBO from a specified date will not qualify as a basis for a tax-deductible donation in the hands of donors. It is therefore important, when making a donation, to ensure its deductibility. Ensuring that the receipt issued by the PBO contains the necessary information would do this, says Dixon.

DONATIONS TO TRANSFRONTIER PEACE PARKS

Currently, section 18A provides for a tax deduction of donations made to transfrontier peace parks, subject to certain conditions, one being that the donation must be made to the PBO before 1 August 2005. This sunset date has been extended to 31 March 2010, says Dixon.

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