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TOP 5
Tax Myth's & Financial Reporting Obligations for non-profit entities

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Top 5 Tax Myth's for non-profit entities:

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Myth 1: Non-profit entities are not taxpayers

1. **Every legal entity must register as a taxpayer** and submit an **annual tax return** within 12 months of year end
2. An entity may **apply for approval** to SARS:
   - **Income tax exemption** as a “PBO”; &
   - **Section 18A status** (if available for your organisation’s activities) – this brings benefits to donors

3. As soon as the organisation pays one employee, the entity must **register as an employer with SARS and DOL.**

Myth 2: PBO = Section 18A

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SECTION 18A

The Income Tax Act allows any taxpayer to deduct from their taxable income, against a **suitable receipt**:

- **bona fide donations** to an approved PBO to carry out specific public benefit activities (listed in Part 11)
- **in cash or property in kind**;
- paid/transferred during year of assessment;
- up to a limit of 10% of the taxpayer's taxable income.

Part 1 and Part 11

Approved public benefit activities are listed Part 1.

Part 11 is a shorter list of public benefit activities that enjoy S18A status.

Part 11 currently excludes the following activities:

- Arts and culture
- Youth development
- Religion and philosophy
- Research

SECTION 18A RECEIPTS

What are the conditions for issuing a Section 18A receipt?

A section 18A receipt can only be issued for **bona fide** donations (ie. donations that are:

- gratuitous disposal out of liberality or generosity; and
- Enabling the donee to be enriched while the donor impoverished)

If the donor (or related party) receives **any consideration or benefit** at all it is not a donation and no Section 18A receipt can be issued.

SECTION 18A ISSUES

There are "donations" that do <u>not</u> qualify for issue of a section 18A receipt:

- *Pro bono* services
- Tickets for fundraising dinner
- Items bought on auction at a fundraising event
- Items donated for auction purposes
- Prizes and sponsorships donated for fundraising event

MYTH 3: PBO's are precluded from, or limited in, generating income from trading activities

INCOME TAX EXEMPTION – trading income of PBO's?

Act exempts "receipts and accruals" from "<u>trading" activity </u>that is:

- integral & directly related to public benefit activities;
- <u>and</u> carried out substantially (90%) on a cost recovery basis;
- <u>and</u> not in unfair competition with taxable entities

OR

- **of an occasional nature <u>and</u> substantially carried out by volunteers**

OR

- has the specific approval of the Minister

INCOME TAX EXEMPTION – trading income of PBO's?

Unrelated trading incl. rental income

- R200 000 or 5% of gross annual receipts, whichever is greater, is exempt.
- Only net after deduction of related expenditure is taxable at 28%

MYTH 4: Once for all time PBO approval

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On-going conditions for PBO approval

- No economic self interest
- No control by a single person
- At least three unconnected persons to carry fiduciary responsibility
- No option for revocable donations
- No excessive remuneration paid

MYTH 5: PBO's are VAT exempt

REGISTRATION AS A VAT VENDOR

- **“Taxable supplies” over R1m** in 12 months from regular enterprise must register (even PBO’s)
- Certain types of supplies are exempt – eg crèche, school fees
- Associations not for gain must have **“taxable supplies” of at least R50,000 per year** may register
- Welfare organisations carrying out **“welfare activities”**; are not required to have taxable supplies and may register

REGISTRATION AS A VAT VENDOR (voluntary)

FOR REFERENCE

SARS issues various guides and other publications:

- **Basic Guide to Income Tax** for Public Benefit Organisations - 19 September 2016
- **Basic Guide to Tax Deductible Donations** –19 September 2016
- **How to** register on eFiling and **complete the IT12EI return**
- **Tax Exemption Guide for Public Benefit Organisations** in South Africa (Issue 5) - 26 January 2017

FOR REFERENCE (continued):

Other related SARS guide & article

- **VAT 414 - Guide** for Associations Not for Gain and Welfare Organisations – 10 March 2016
- **Article** by Chris Eagar (Finvision) on sale of donated goods https://citizen.co.za/business/business-analysis.../**charities-may-have-a-vat-problem/**

FOR REFERENCE (continued):

Other PBO related guides/SARS interpretation notes:

- **Interpretation note 24 (Issue 3)**:
  Income Tax - Public Benefit Organisations:
  Trading Rules – Partial Taxation of Trading Receipts -
  4 February 2014
- **Interpretation note 70:**
  VAT … Supplies made for no consideration –
  14 March 2013

TOP 5 - FINANCIAL REPORTING OBLIGATIONS

of

Non-profit entities

1. MINIMUM FINANCIAL REPORTING OBLIGATIONS?

- Governing documents
- Registered NPO's – NPO Act
  - Proper records
  - Annual Financial Statements (AFS)
  - Accounting officers report
  - Submit with narrative report to DSD within 9 months of year-end

2. EXTRA OBLIGATIONS FOR REGISTERED NPC'S?

- AFS in accordance with IFRS for SME's
- Independent audit or review
- Submit with annual return to CIPC within 6 months of year-end - AFS on request only

3. INDEPENDENT AUDIT?

- Own governing documents
- Funding or other contracts
- Companies Act - only for certain NPC's (high public interest score)
- Voluntary

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4. FINANCIAL REPORTING FRAMEWORK?

- There is currently no financial reporting framework specifically for non-profit entities
- Little consistency

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5. SHORTCOMINGS AND CHALLENGES?

- Little consistency
- Lack of useful information for funders and potential funders

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Thank you for attending this session.

How can we help you?

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