Taxation Laws Amendment Bill, 2019: SARS gets limited discretion to approve tax exemption applications retrospectively

Background

Organisations that carry out certain prescribed activities for the benefit of the public (ie so-called **public benefit activities** or **PBA's**) can apply to the South African Revenue Service (**SARS**) for approval to be treated as a tax exempt public benefit organisation or **PBO**. Once approved as a PBO, the organisation need no longer pay income tax on its receipts and accruals. Additionally, such an organisation may also apply to SARS to enable it to issue special receipts, in a prescribed format, for donations made to it which funds its PBA's. Taxpayers who receive these special receipts from the organisation may claim a tax deduction for their donations. Annually, the organisation will require certificates issued by a registered auditor that demonstrate that it is using the donations received for its PBA's.

Current position

The process to apply for PBO status is lengthy and often takes more than one financial year. Currently, it is possible to obtain retrospective approval for PBO status. This means that that previously taxed receipts and accruals become exempt and SARS has to pay refunds with interest, dating back to when the organisation would have qualified for PBO status.

Proposal in the new Bill

When the new Bill becomes law, retrospective approvals for PBO status will be subject to a more limited SARS discretion. Furthermore such approval will only be possible if the organisation has met all the requirements for tax exempt status during the relevant periods as well as its obligations relating to filing of returns and payments of taxes.

How KPMG can help?

- Assisting with the drafting of incorporation and founding documentation for a PBO;
- Assisting with applications to SARS to obtain PBO status;
- Assisting with applications to SARS to enable PBO's to issue the receipts that allow donors to claim their

donations as tax deductions

- Advising on the specific tax rules and regulations applicable to tax exempt entities.
- Performing due diligence reviews of PBO's for potential donors.
- Auditing the PBO to ensure the donations received were used only for PBA's and issuing the relevant certificate thereafter.

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