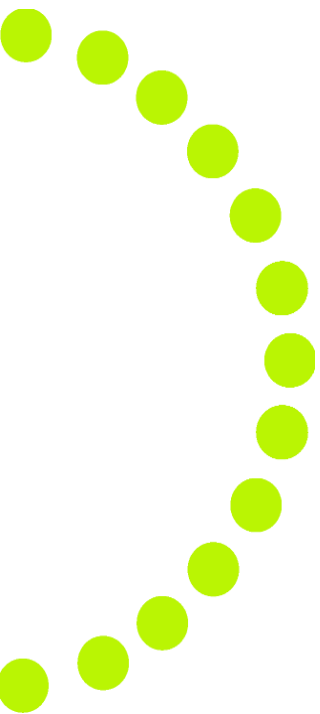
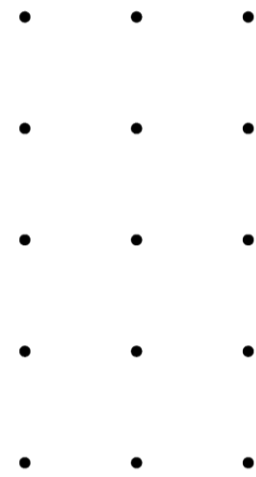


tax happy hour



Personal Services Providers Independent contractors Turnover tax

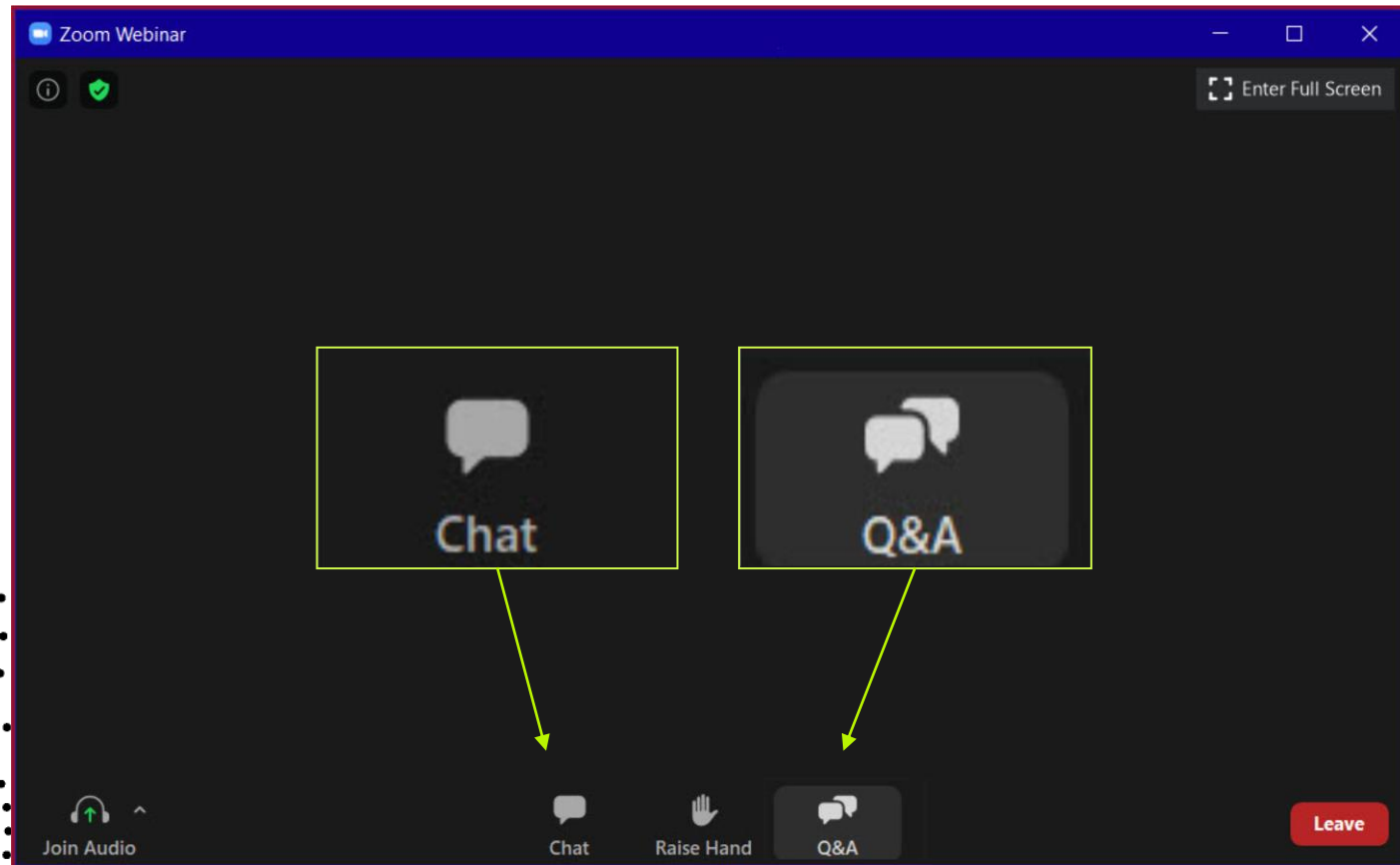
23 March 2022

PRESENTED BY

Kreston South Africa

Johan Heydenrych: Director Tax Services

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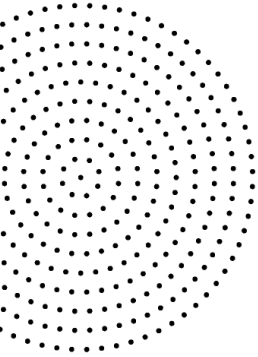
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ABOUT THE PRESENTER

Johan Heydenrych Kreston South Africa



Johan is a Chartered Accountant who specialised in taxation since 1991. He holds the following qualifications:

- B. Com (Accounting) (Cum Laude)
- B. Com (Accounting) (Hons) (Cum Laude) (Award: "Best student in Audit 700")
- Certificate in the Theory of Accounting
- M. Com (Taxation) (Cum Laude) (Award: "Best M. Com (Tax) student")
- Chartered Accountant (Specialising in Taxation)
- Member of SAICA
- Registered Tax Practitioner

Johan was a tax partner at KPMG from 1997 to 2020 and is currently a partner in the Kreston SA network specialising in taxation. He provides a wide range of tax services to various clients across industries. These include but are not limited to the following:

- Advice on Tax Risk Management and Tax Governance.
- Tax compliance services including but not limited to ITR 14 and IT 14SD
- Dealing with tax disputes including representing clients at Alternative Dispute Resolution (ADR) hearings.
- Submission of documentation and revised returns under the Voluntary Disclosure Programme.
- Issuing of tax technical opinions on Income Tax, VAT and PAYE. This include preparing briefs to Senior Counsel and submissions of requests for Binding Opinions from SARS.
- Audit support services that includes Normal Tax and Deferred Tax disclosure and disclosure of uncertain tax positions.
- Assistance with implementation of tax reporting for new accounting standards such as IFRIC 23, IFRS 9, IFRS 15 and IFRS 16.
- Facilitation of tax diagnostic sessions with existing and prospective clients.
- Advice on mergers, acquisitions and reorganizations.
- Tax due diligences
- Advice on tax implications of recapitalization transactions, debt restructures, liquidations and deregistration's



TAX HAPPY HOUR INDEX

1. Introduction
2. Personal Service Providers
3. Independent Contractors
4. Turnover Tax

1.

Introduction

tax happy hour



1. Introduction

- Every large organisation needs to implement procedures to ensure that the organisation complies with Tax Acts whenever suppliers are appointed.
- The following risks are relevant:
 - General
 - It is generally advised that the organisation obtains tax clearance certificates on an annual basis to ensure that it deals with tax compliant suppliers only.
 - VAT
 - If the vendor is registered for VAT:
 - Ensure that the vendor is properly registered by doing a “VAT vendor search”
 - Ensure that valid tax invoices are received to support each input tax claim
 - If the vendor is not registered for VAT:
 - Be aware that the position may change if the vendor makes taxable supplies over R1 million that will result in the supplier being deemed to be registered for VAT
 - PAYE
 - If the supplier is an individual, ensure that the services are supplied independently. If not, deduct PAYE at 25% or in accordance with the tax tables
 - If the supplier is a company, establish whether or not the company qualifies as a Personal Services Provider (“PSP”). If the company is a PSP, then PAYE at 28% must be withheld.

2.

Personal Services Providers

tax happy hour



2. Personal Service Providers (continue)



INTERPRETATION NOTE 35 (ISSUE 4)

DATE: 26 March 2018

ACT : INCOME TAX ACT 58 OF 1962

SECTION : PARAGRAPHS 1, 2(1A) AND 2(5) OF THE FOURTH SCHEDULE AND SECTION 23(k)

SUBJECT : EMPLOYEES' TAX: PERSONAL SERVICE PROVIDERS AND LABOUR BROKERS

2. Personal Service Providers

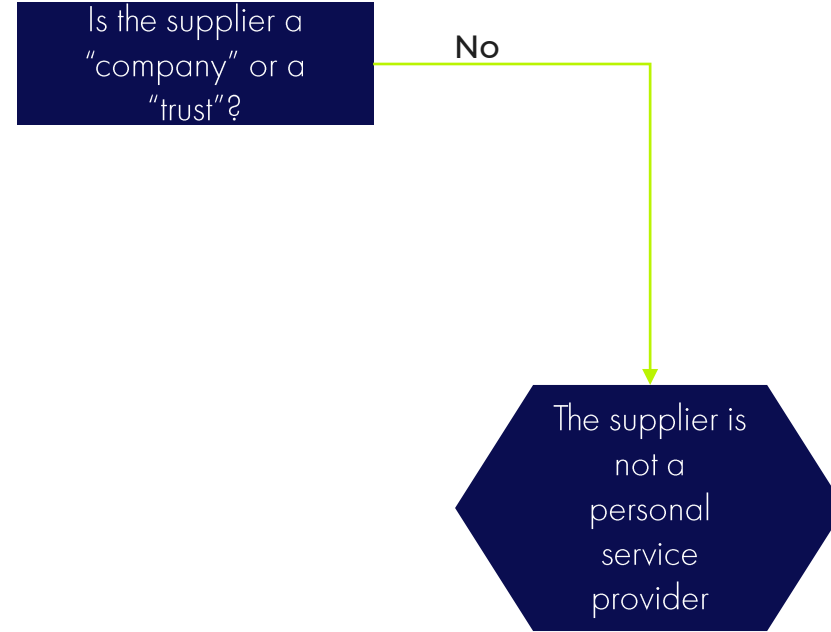
Definitions

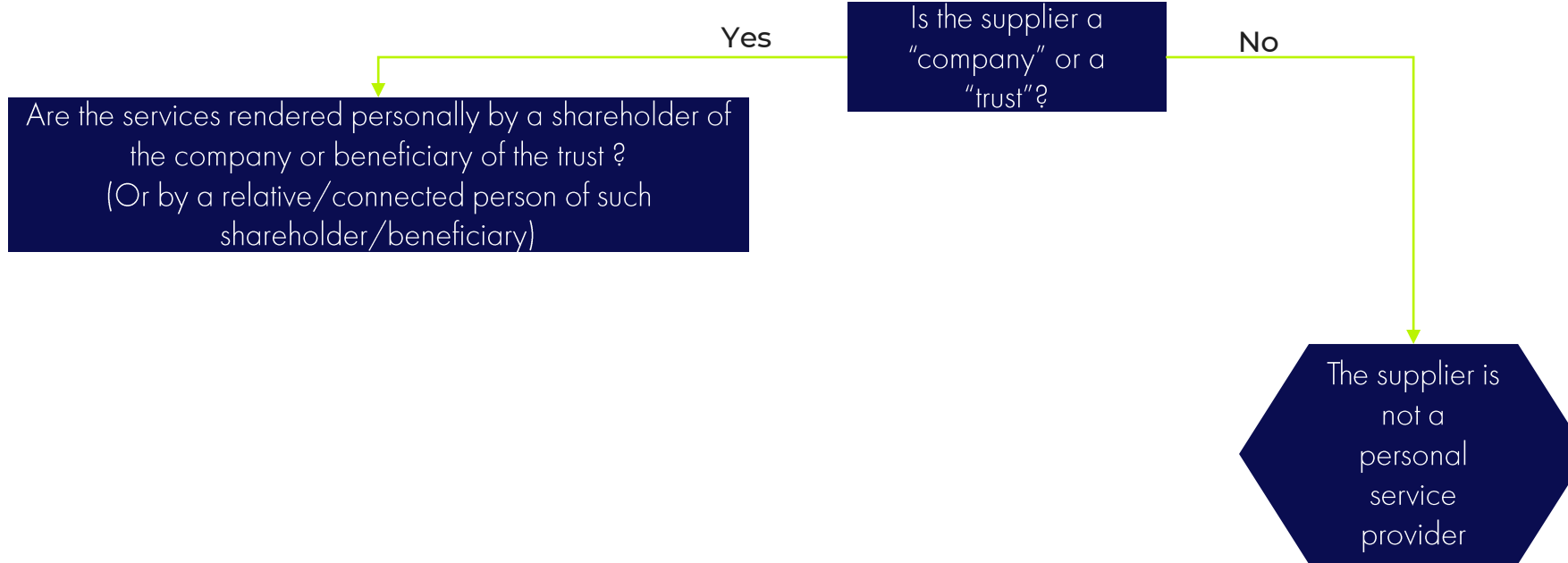
“personal service provider” means any company or trust, where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and—

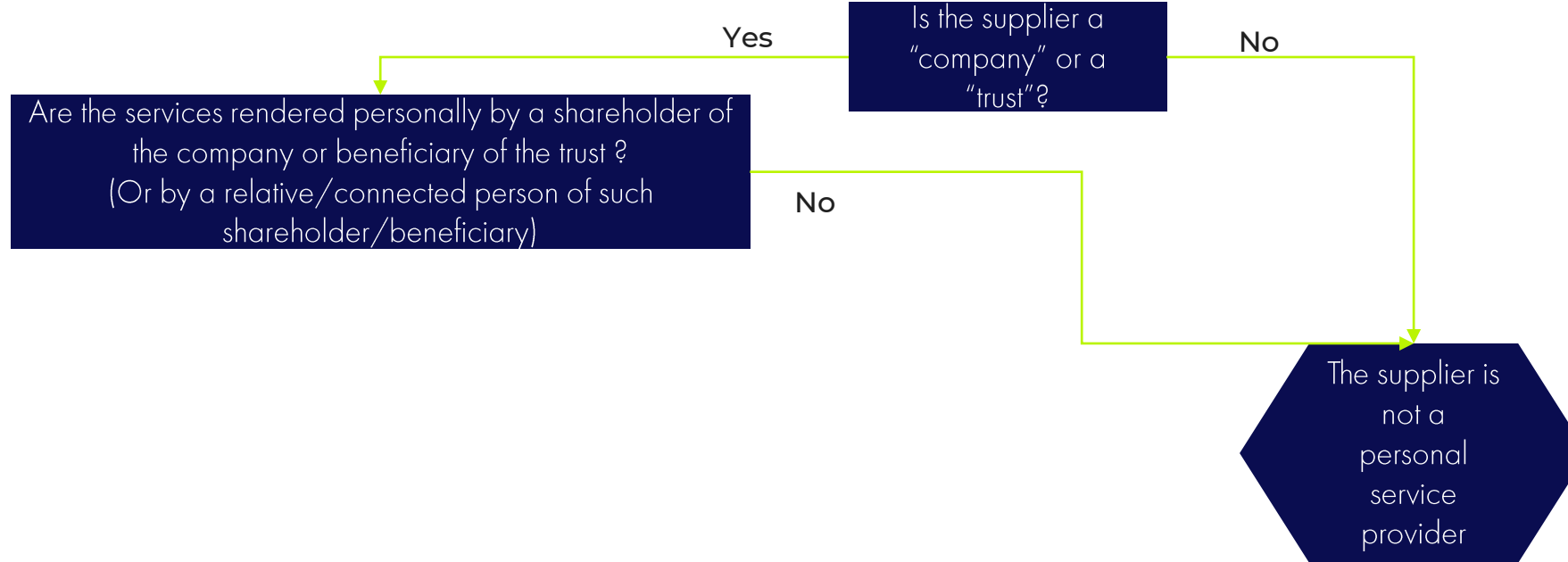
- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or*
- (b) where those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or*
- (c) where more than 80 per cent of the income of such company or trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution as defined in the Seventh Schedule to this Act, in relation to such client,*

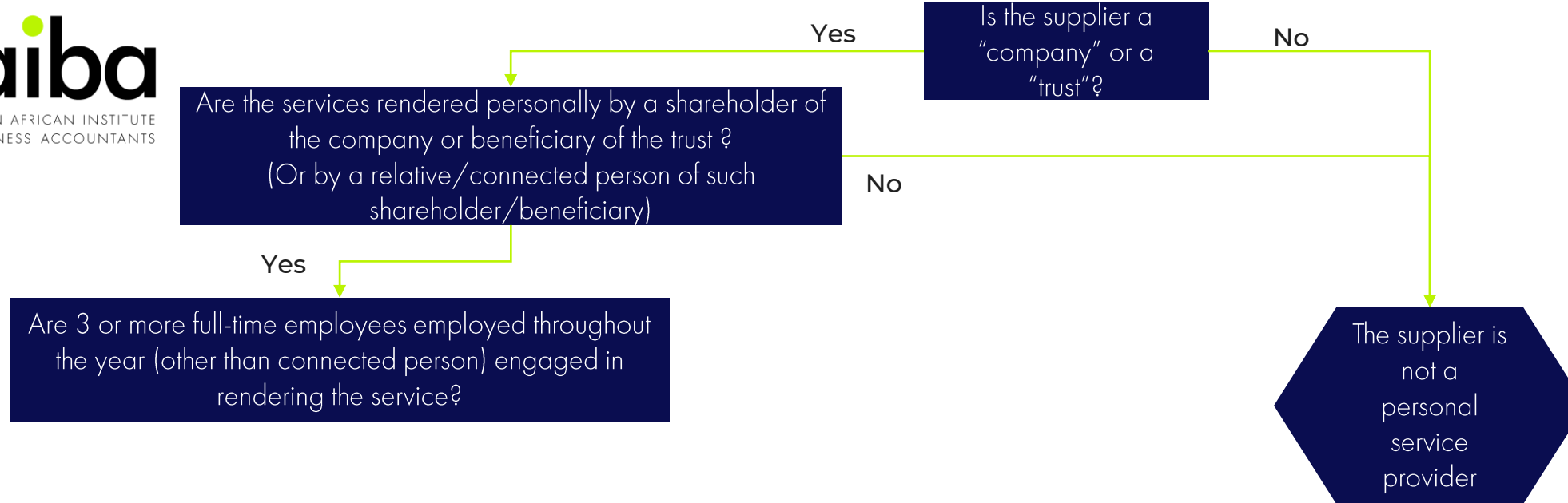
except where such company or trust throughout the year of assessment employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a holder of a share in the company or settlor or beneficiary of the trust or is a connected person in relation to such person;

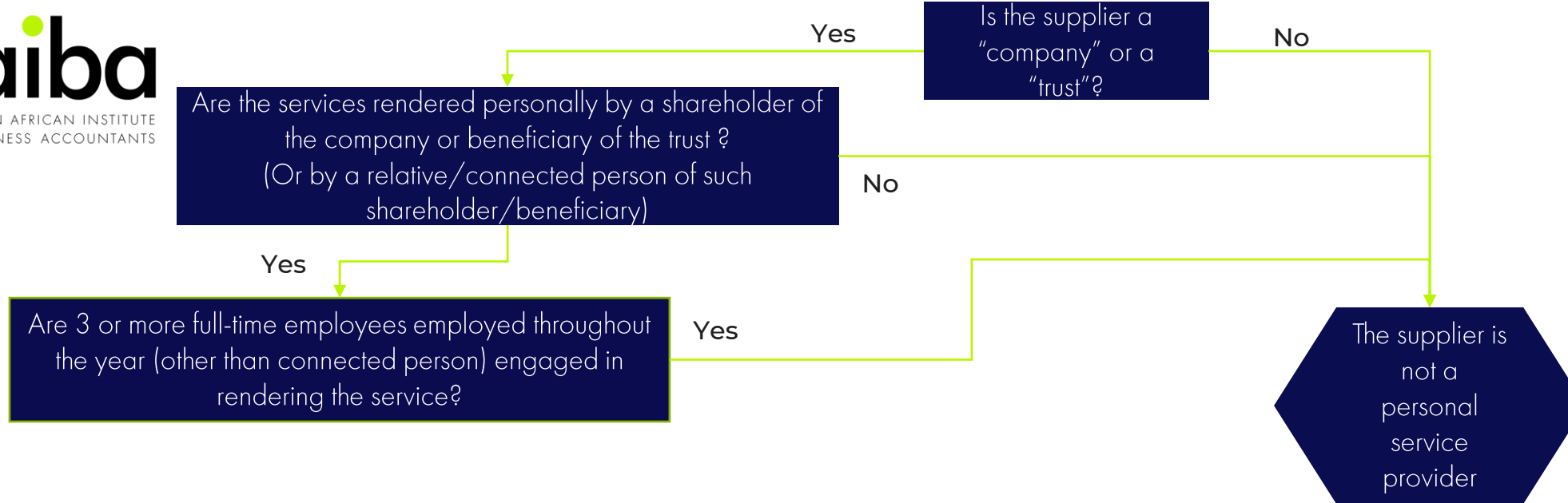
Is the supplier a
“company” or a
“trust”?

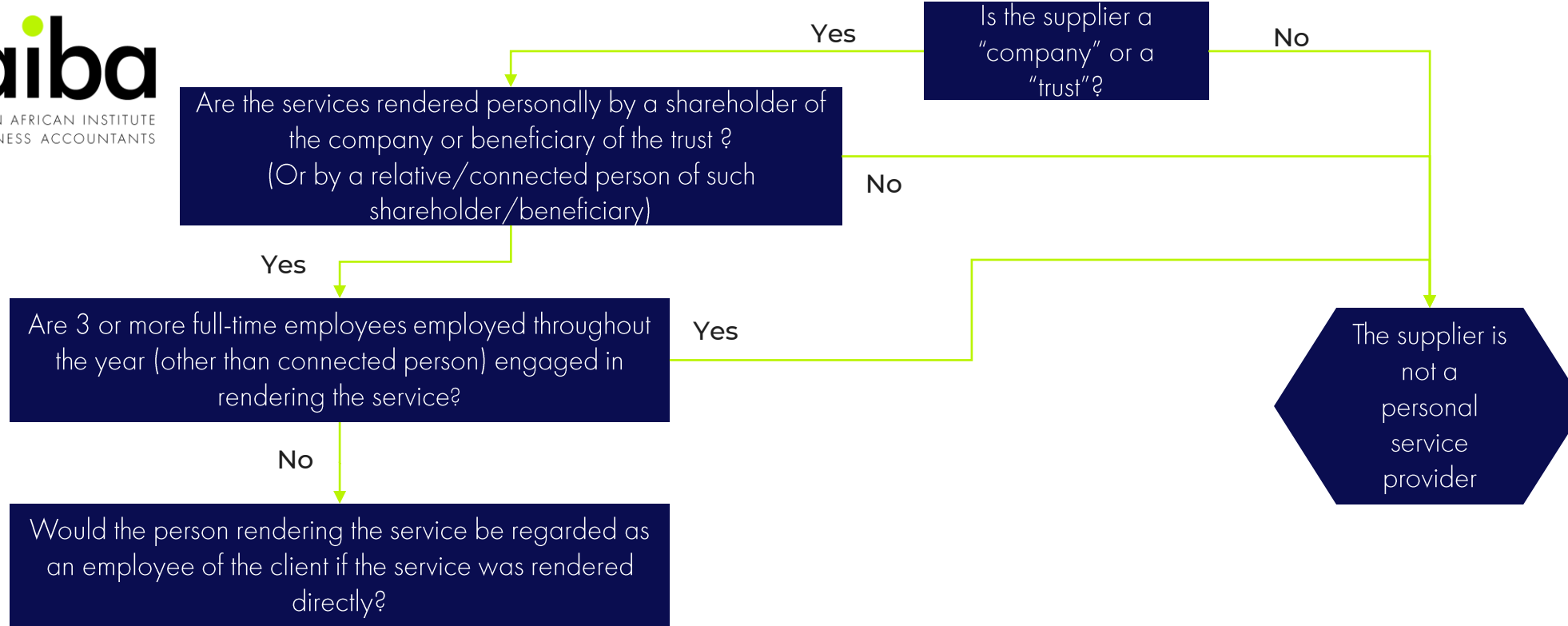


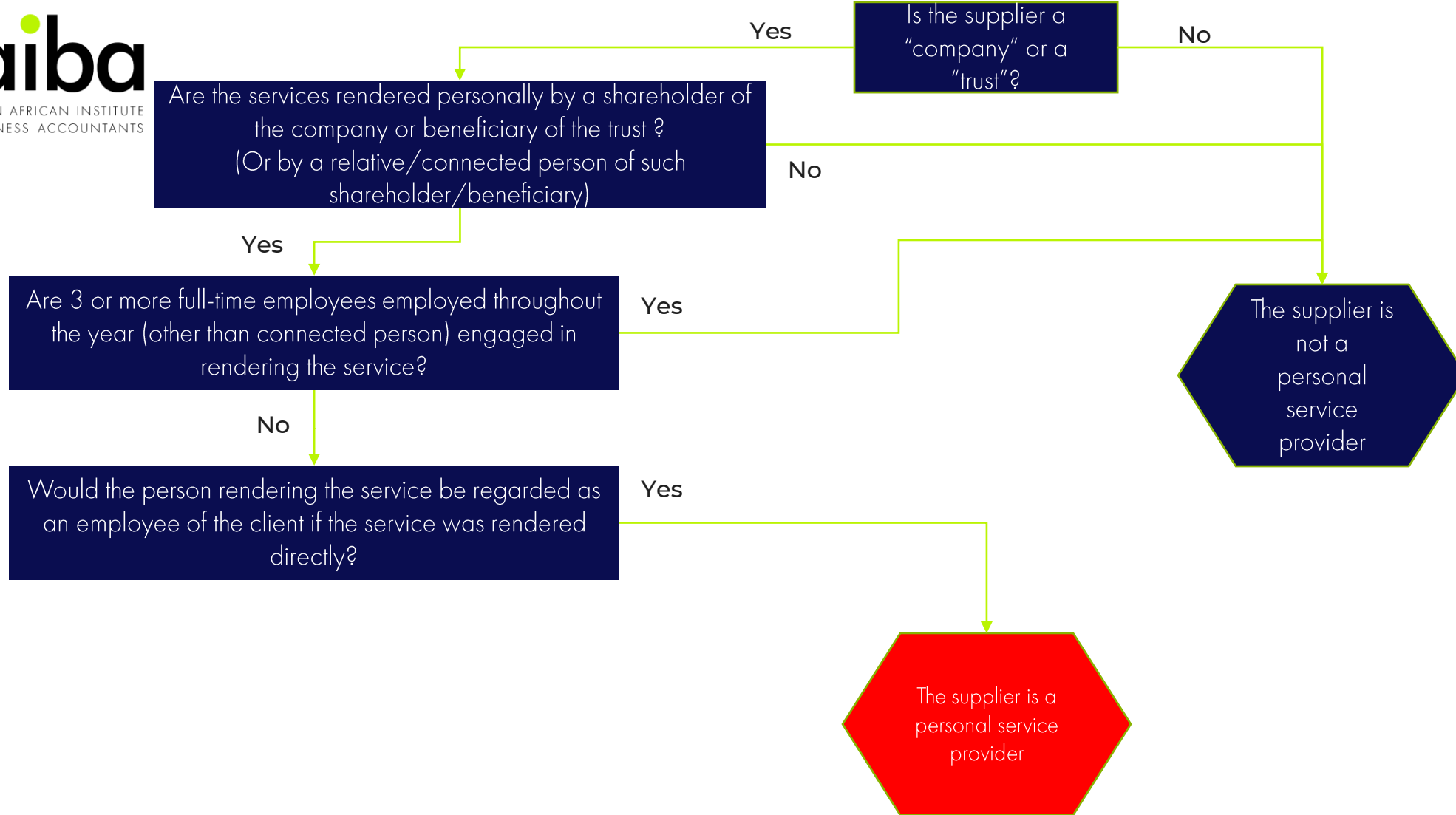


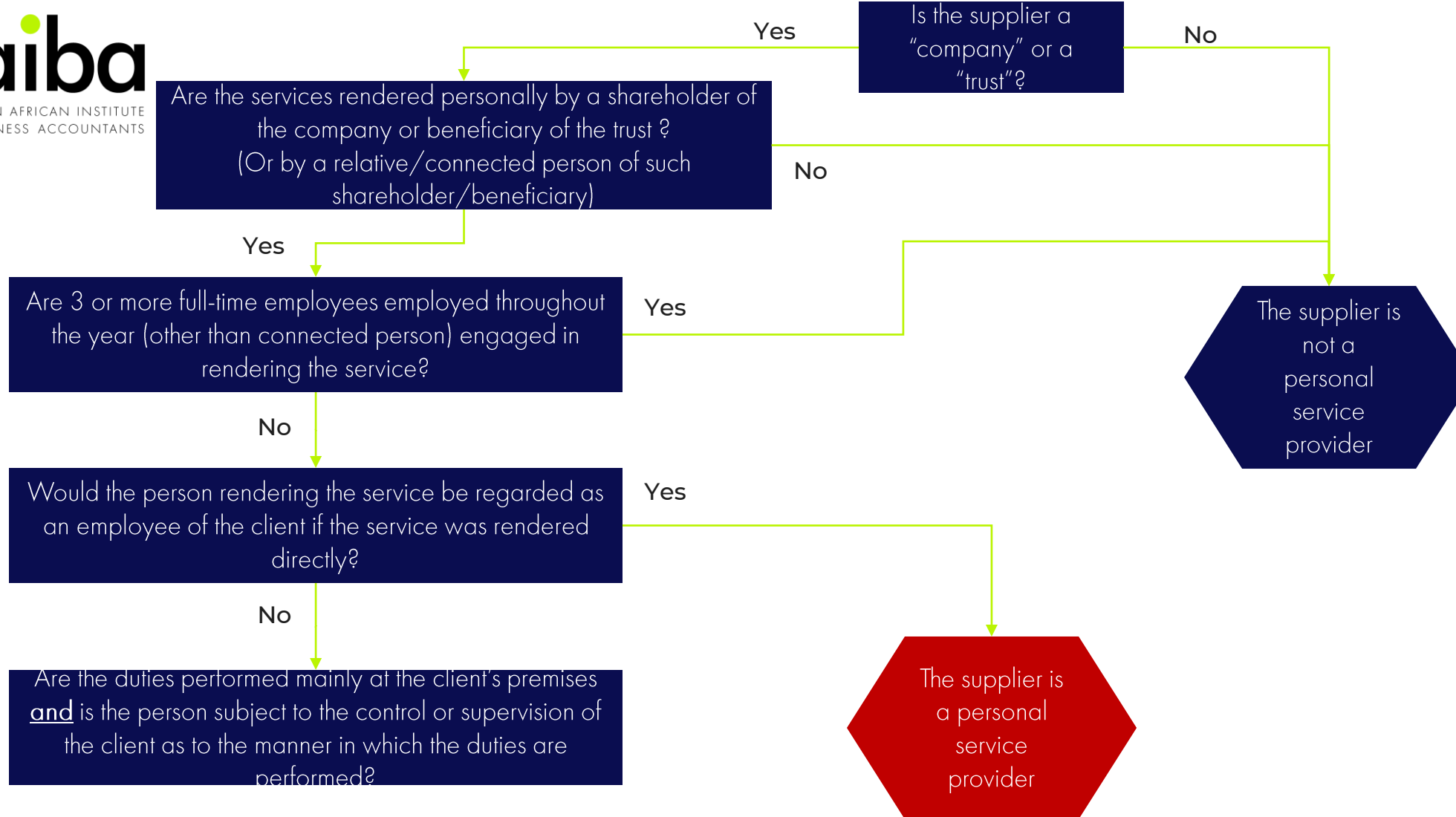


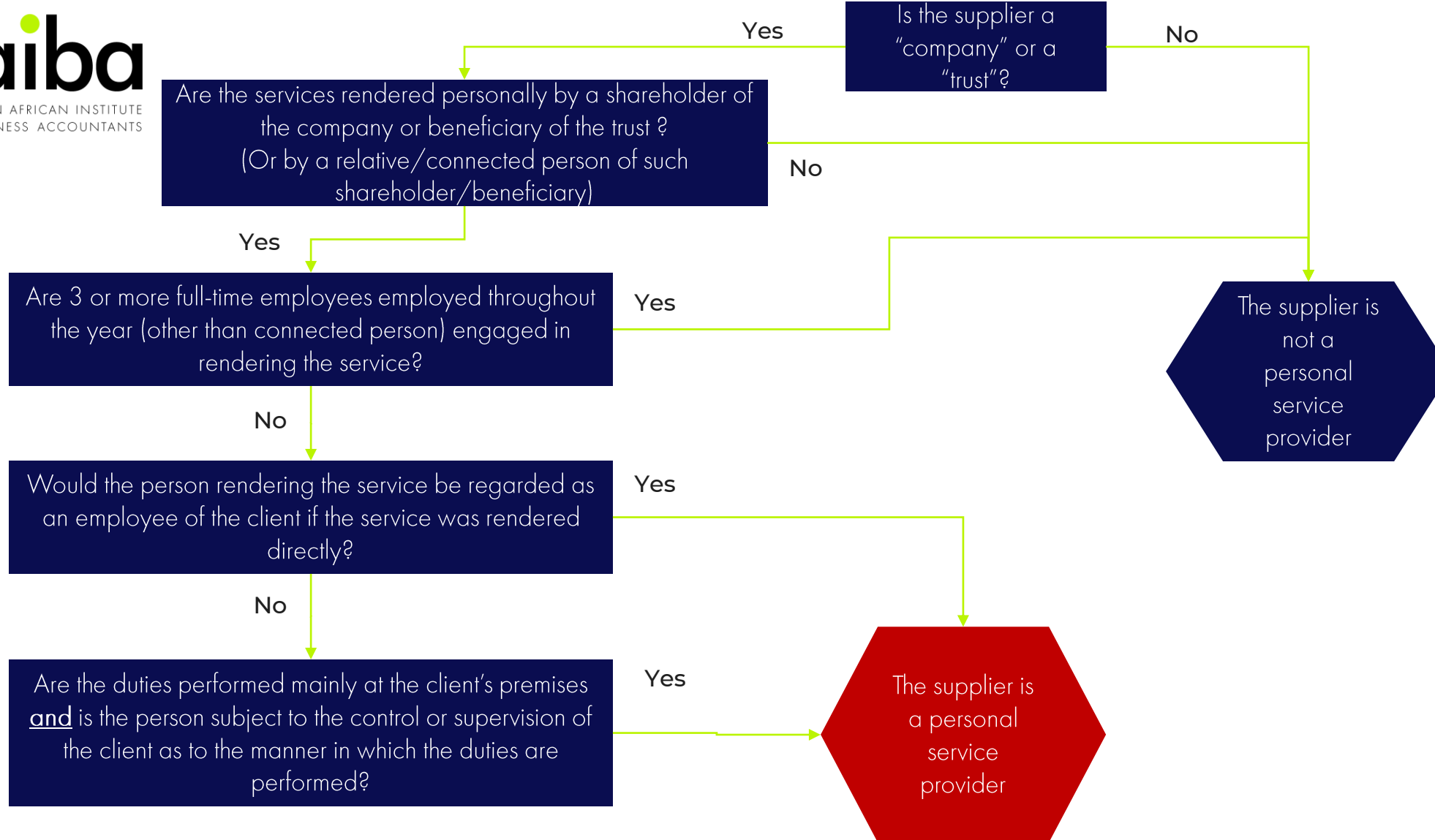


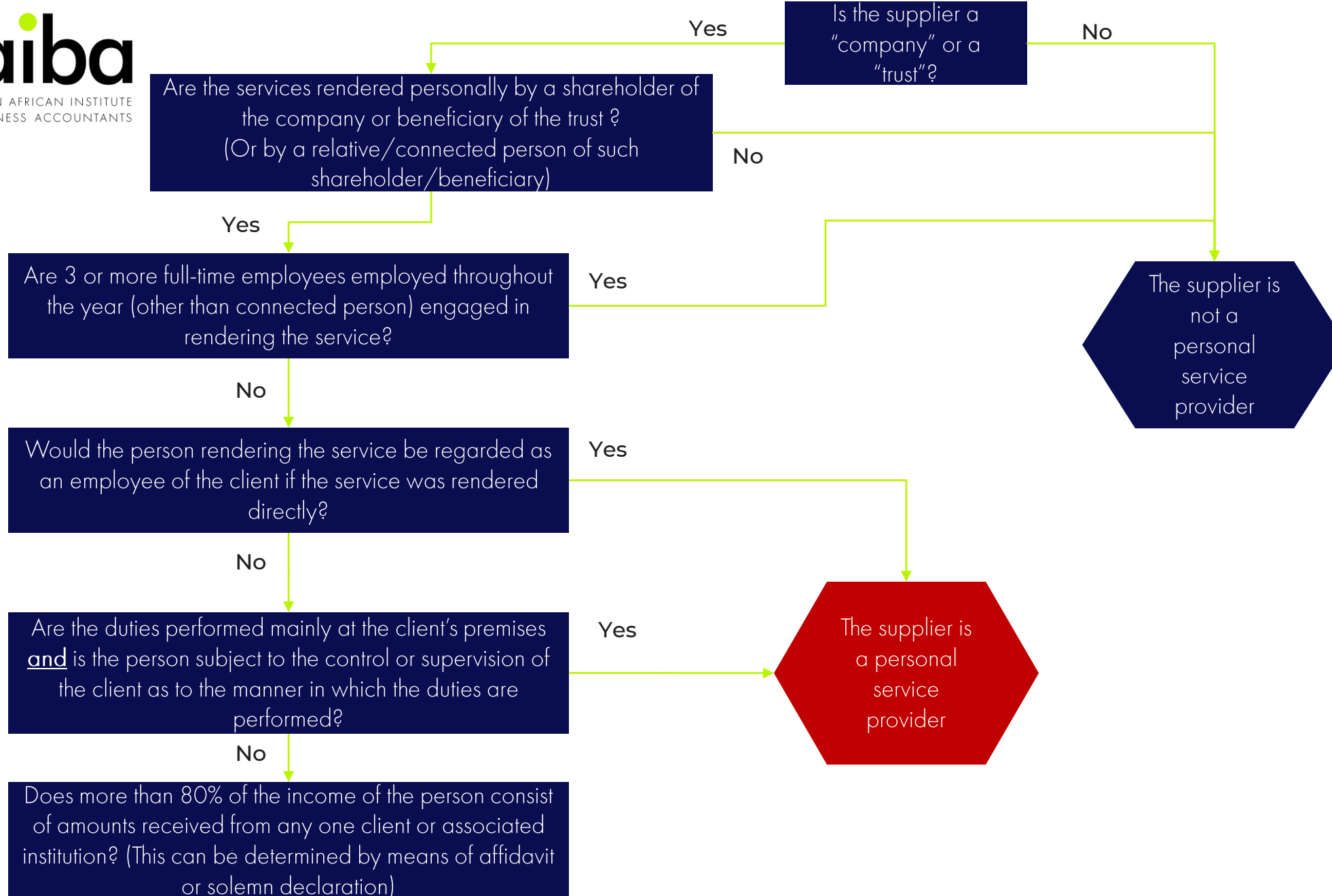


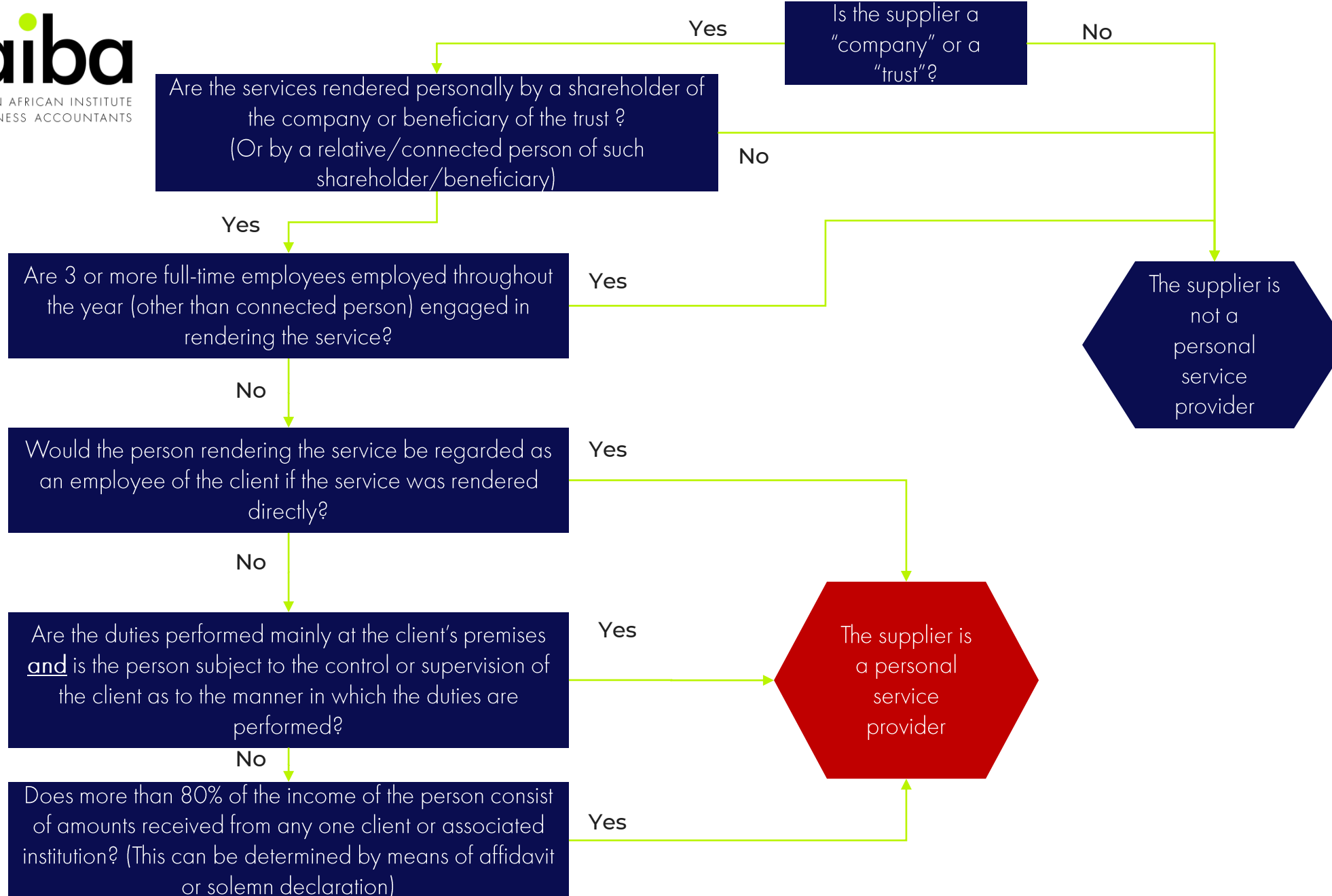


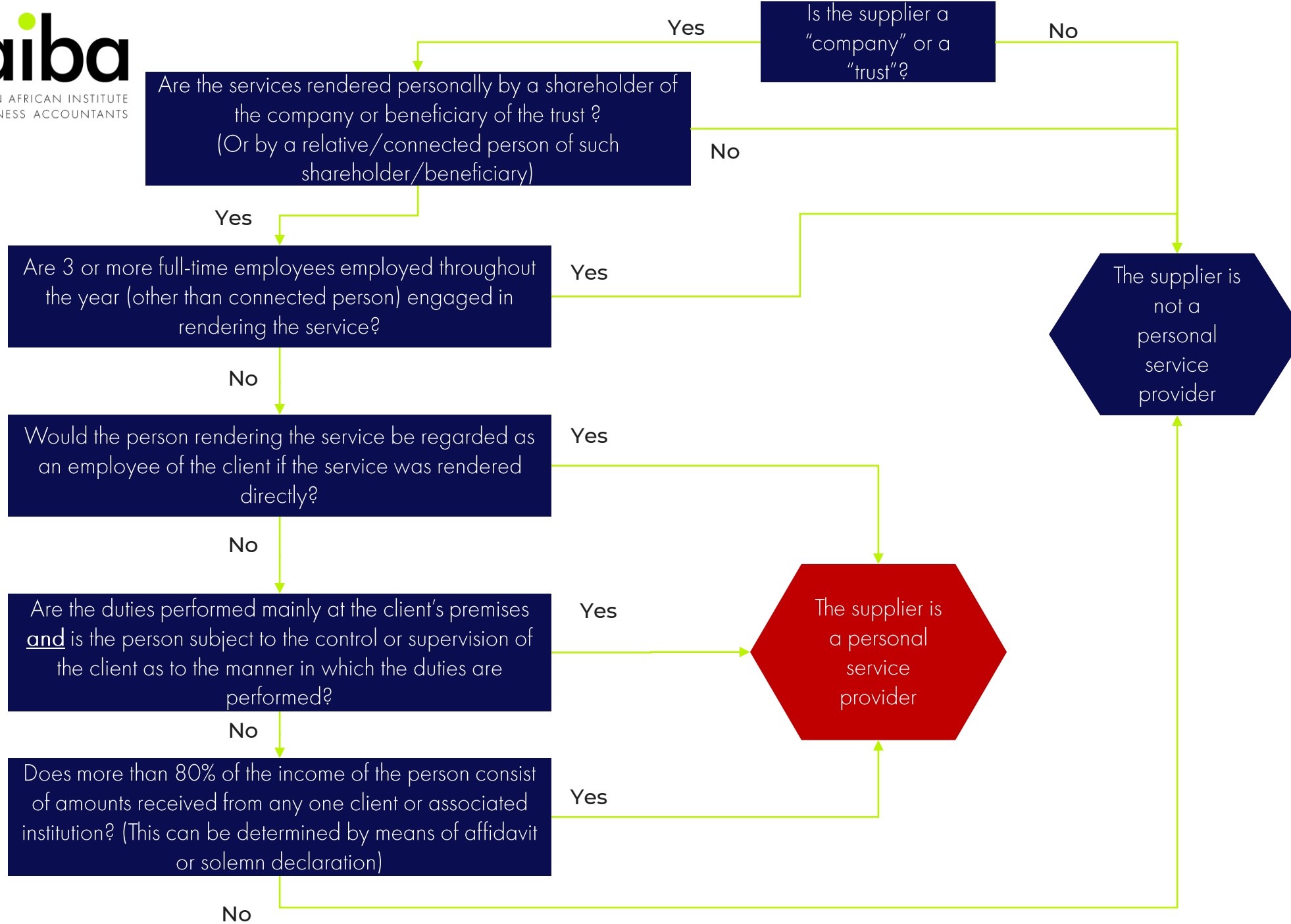


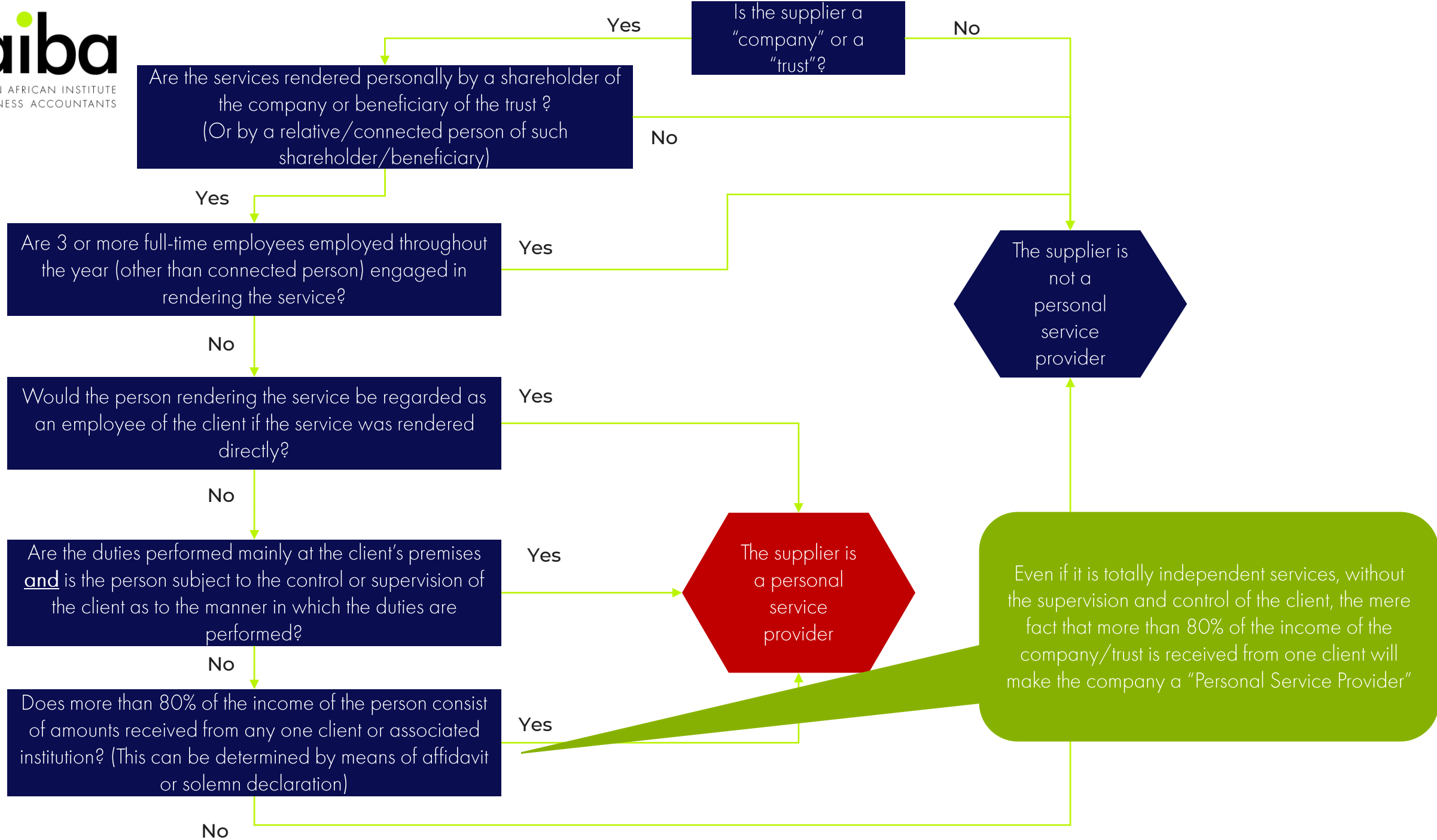


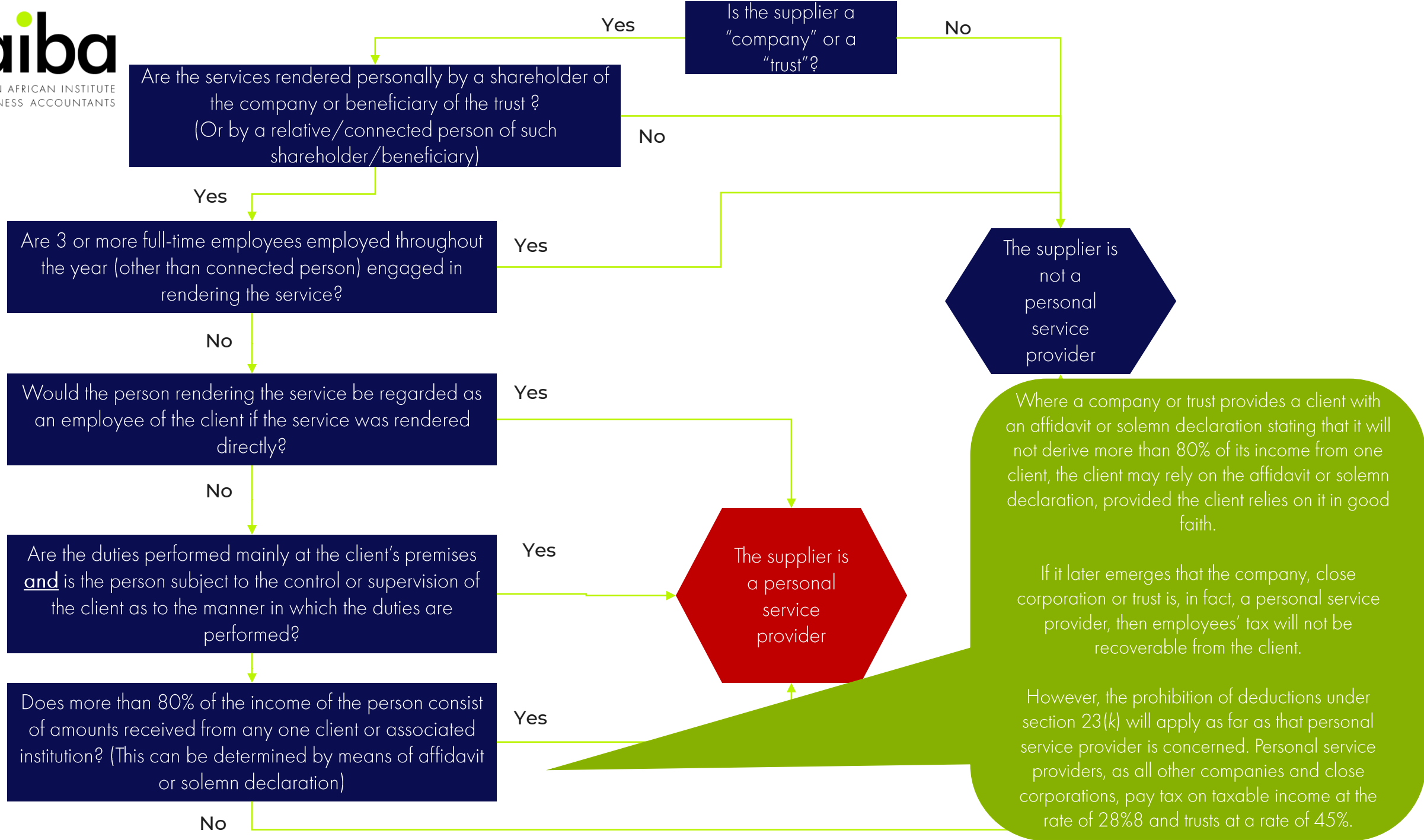












2. Personal Service Providers (continue)

Independent Services

- Specifically excluded from the definition of “remuneration” is *“any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph ... (e) of the definition of “employee”) in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered.”* (Emphasis added)
- We highlight however that a personal services provider is included in the definition of “employee” by virtue of par (e) of the definition of “employee”. The highlighted area in the above definition clearly excludes personal services providers from the “independent services” exclusion.
- This means that even if the company supplier is rendering services independently from COMPANY, that the fee will not necessarily be exempted from the deduction of PAYE.

2. Personal Service Providers (continue)

What happens if the company is a PSP?

- PAYE at 28% must be withheld by the client
- In the company tax return, Section 23(k) will apply which limits the tax deductions that the PSP company may claim.

23. Deductions not allowed in determination of taxable income.—No deductions shall in any case be made in respect of the following matters, namely—

(k) any expense incurred by—

(ii) a personal service provider as defined in the said Schedule,

other than any expense which constitutes an amount paid or payable to any employee of ... personal service provider for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee and, in the case of such personal service provider, any expense, deduction or contribution contemplated in paragraphs (c), (i), (l), (nA) or (nB) of section 11, expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade.

The PSP can only claim the following expenses as a tax deduction:

- Employment Cost
- Section 11 (c): Legal expenses
- Section 11 (i): Bad debts
- Section 11 (nA) and (nB): Income refunded

2. Personal Service Providers (continue)

Value Added Tax

2. Personal Service Providers (continue)

Par 2.2 of the VAT 404 Guide issued by SARS

You will be liable for compulsory VAT registration if you are carrying on an enterprise and make taxable supplies in the course or furtherance of that enterprise exceeding R1 million in any consecutive period of 12 months, or will exceed that amount in terms of a written contractual obligation.

The R1 million compulsory VAT registration threshold applies to the total value of taxable supplies (turnover) and not the net income (profit) that your business has made for the period.

The VAT Act operates independently from the Income Tax Act.

The mere fact that a company is a Personal Services Provider and 28% PAYE must be withheld does not mean that the company does not have to register for VAT and charge VAT

Exclusion from scope of VAT enterprise (i.e. from scope of VAT)

Provided that—

- (iii) (aa) the rendering of services by an employee to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of an enterprise to the extent that any amount constituting remuneration as contemplated in the definition of "remuneration" in paragraph 1 of the Fourth Schedule to the Income Tax Act is paid or is payable to such employee or office holder, as the case may be;*
- (bb) subparagraph (aa) of this paragraph shall not apply in relation to any employment or office accepted by any person in carrying on any enterprise carried on by him independently of the employer or concern by whom the amount of remuneration is paid or payable;*

2. Personal Service Providers (continue)

Conclusion

2. Personal Service Providers (continue)

Conclusion

- The legislation governing PSP's is designed as an anti-avoidance legislation to prevent persons from contracting via companies in order to avoid the payment of PAYE.
- It is in our opinion not worthwhile being classified as a PSP due to the limitation of deductions in Section 23K
- Being classified as a PSP does not absolve the company from being registered for VAT purposes.

2. Personal Service Providers (continue)

What to do the company is a PSP but the client has failed to deduct PAYE?

- The client is obligated to withhold PAYE and is liable for interest and penalties if it fails to do so.
- The client is entitled to recover the PAYE so paid to SARS from the PSP
- If the PSP is a company with a February year-end, it is obligated to make provisional tax payments by that date.
- The PAYE deducted by the client can be used to reduce the February 2022 provisional taxes due by the PSP.

Par 5(2) of the 4th Schedule reads as follows:

(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Commissioner is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Commissioner may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under sub-paragraph (1) of this paragraph.

SARS unfortunately very seldom applies its discretion in this manner.

2. Personal Service Providers (continue)

What to do if the PSP has inadvertently not registered for VAT?

The PSP can avoid penalties (but not interest) by using the Voluntary Disclosure Process to retrospectively register and pay VAT.

Upon issue of tax invoices, the additional VAT will generally be paid by the client if the client can claim the VAT back as input tax.

3.

Independent Contractors

tax happy hour



3. Independent Contractors (continue)



INTERPRETATION NOTE 17 (Issue 5)

DATE: 5 March 2019

ACT : INCOME TAX ACT 58 OF 1962

SECTION : THE FOURTH SCHEDULE

SUBJECT : EMPLOYEES' TAX: INDEPENDENT CONTRACTORS

3. Independent Contractors (continue)

Extracts from N17

Labour Brokers [paragraph 2(5) of the Fourth Schedule]

- Remuneration paid to any labour broker who is not in possession of an exemption certificate (IRP30), is subject to employees' tax.
- This is an anti-avoidance measure and must be applied strictly. The exemption certificate will be issued only if the labour broker carries on an independent business and if certain other requirements have been met.
- The common law tests (dominant impression tests) are used to determine whether a labour broker is carrying on an independent business.
- An independent business can, in general terms, be described as one that is an entrepreneurial enterprise, enjoying such a degree of independence that it can survive the termination of the relationship with its client.

A labour broker excludes a company or trust and can therefore only be a natural person. If it is a company or trust – apply the PSP flowchart.

This presentation does not deal with “labour brokers” and the topic is not discussed any further

3. Independent Contractors (continue)

Extracts from N17

Independent contractor

“Remuneration” as defined excludes –

*“any amount paid or payable in respect of services rendered or to be rendered by any person ... in the course of any trade carried on by him independently of the person by whom such amount is paid or payable **and** of the person to whom such services have been or are to be rendered”*

The word “and” where it appears in this paragraph means the test comprises dual elements. The test requires that the person must be independent of both the person –

- (i) by whom the amount is paid or payable; **and**
- (ii) to whom such services are rendered or will be rendered.

3. Independent Contractors (continue)

Extracts from N17

When is it required of SARS to determine the status of a person?

- It is the responsibility of the employer to determine whether the provisions of exclusionary subparagraph (ii) of the definition of "remuneration" are applicable and whether payments are subject to employees' tax.
- Not only is this responsibility set by the provisions of the Fourth Schedule, but it is also the employer that is in the best position to evaluate the facts and the actual situation.
- A SARS branch office is not permitted to consider applications from persons, apparently falling into paragraph (a) of the definition of an "employee", for confirmation as an independent contractor under exclusionary subparagraph (ii) of the definition of "remuneration".

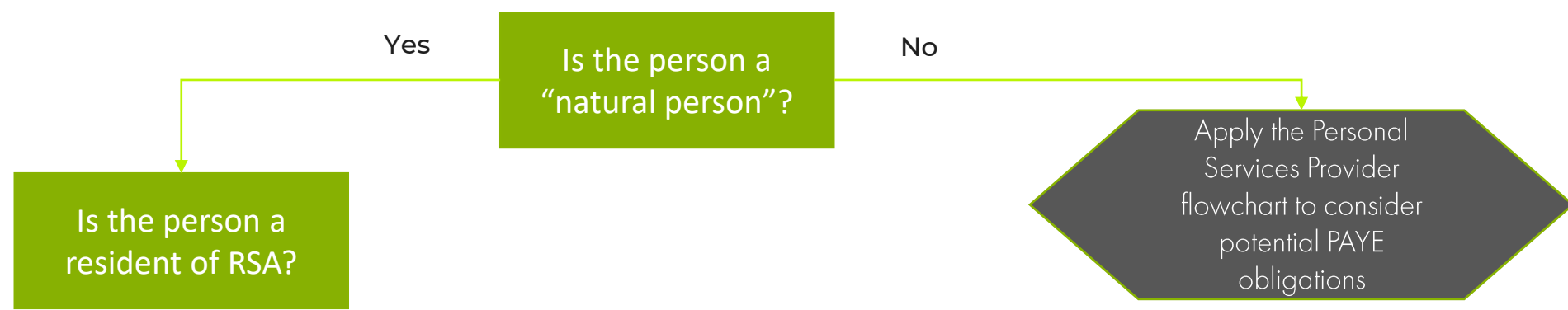


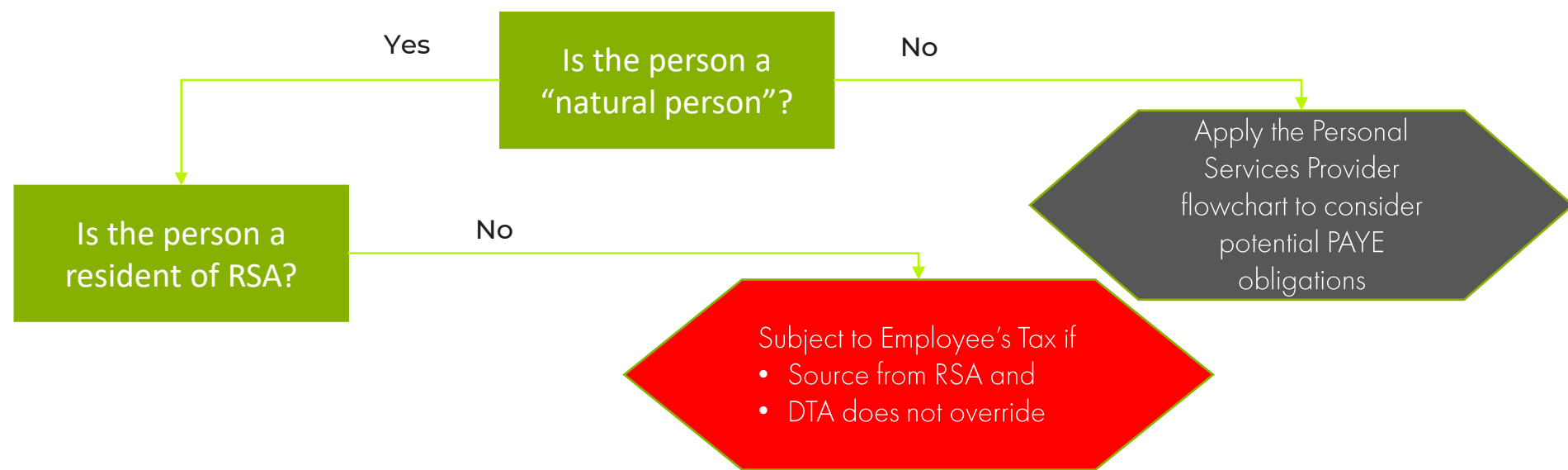
Is the person a
“natural person”?

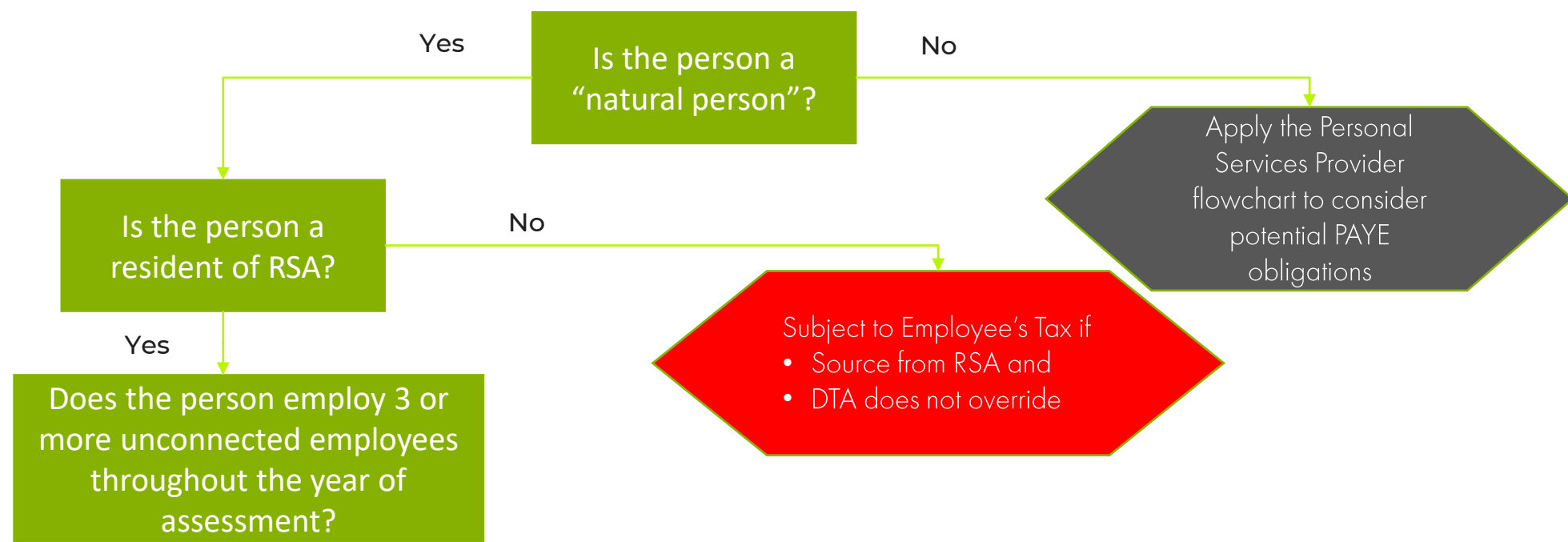
Is the person a
“natural person”?

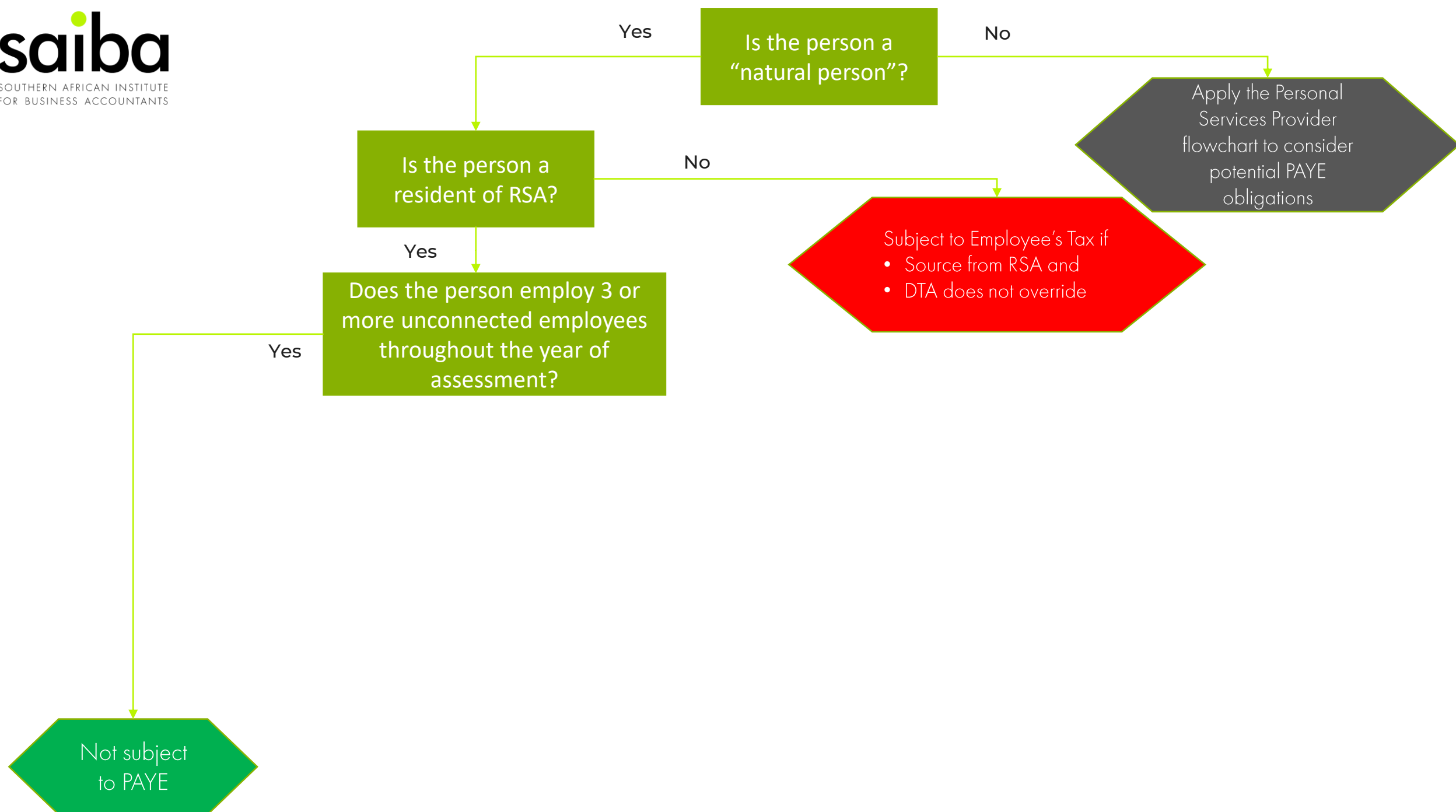
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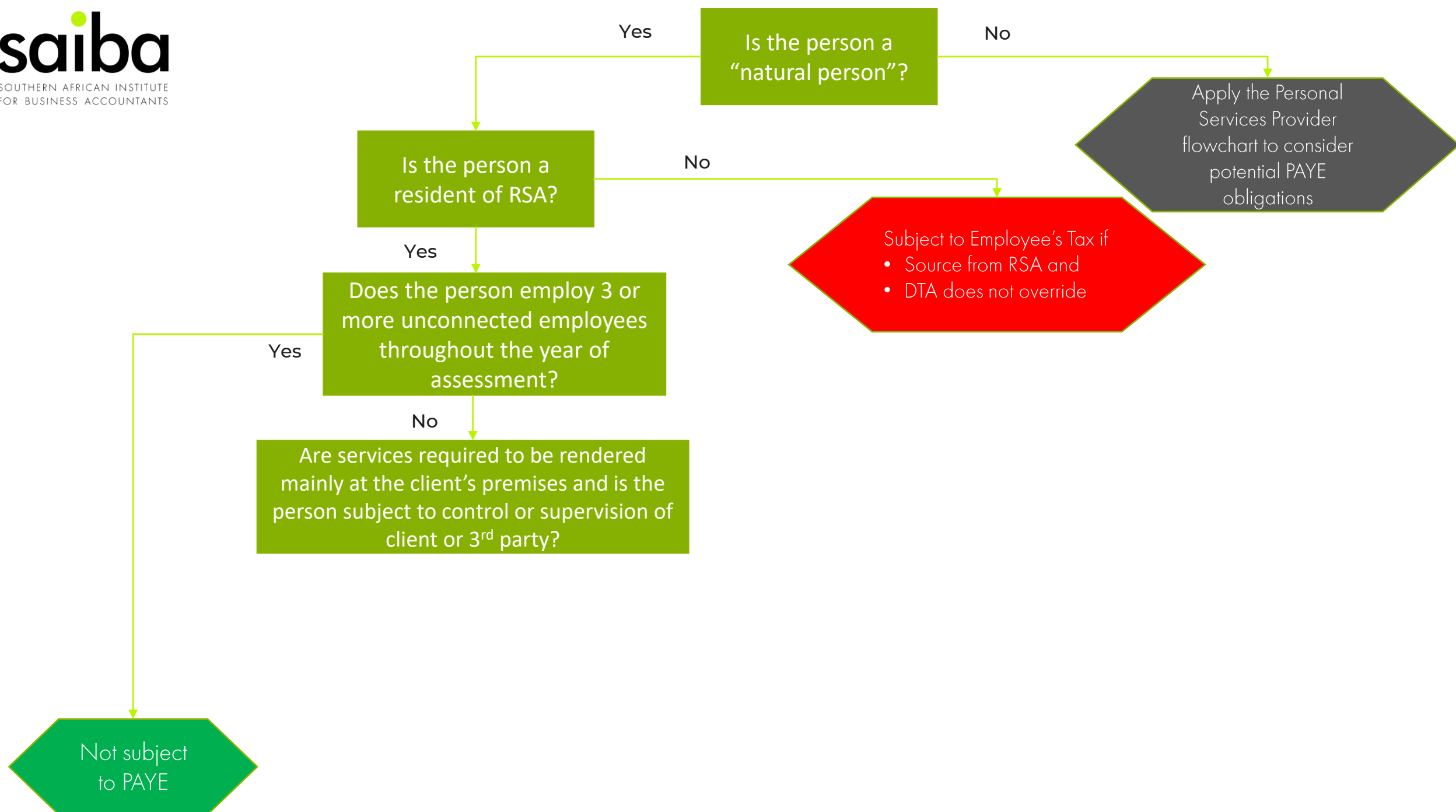
Apply the Personal
Services Provider
flowchart to consider
potential PAYE
obligations

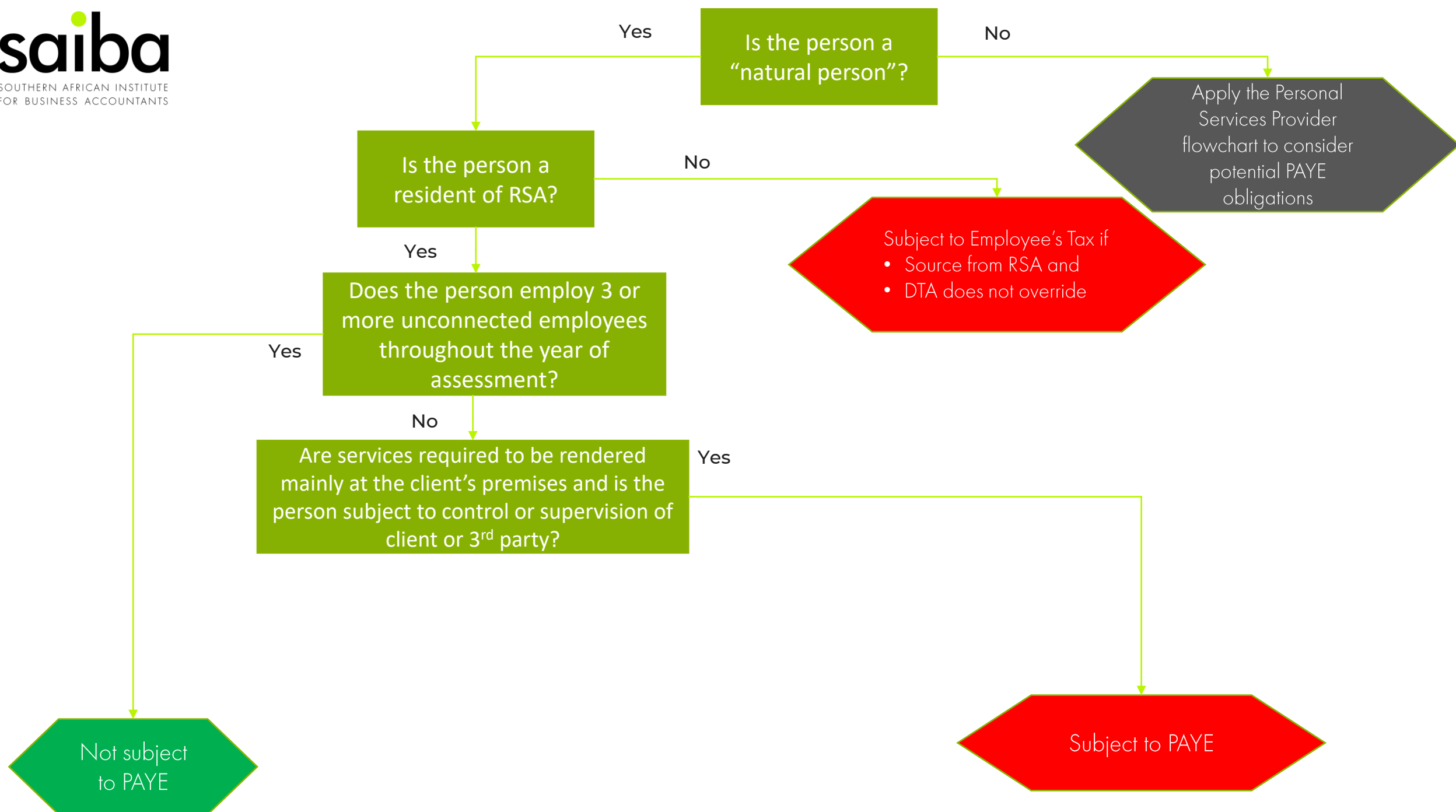


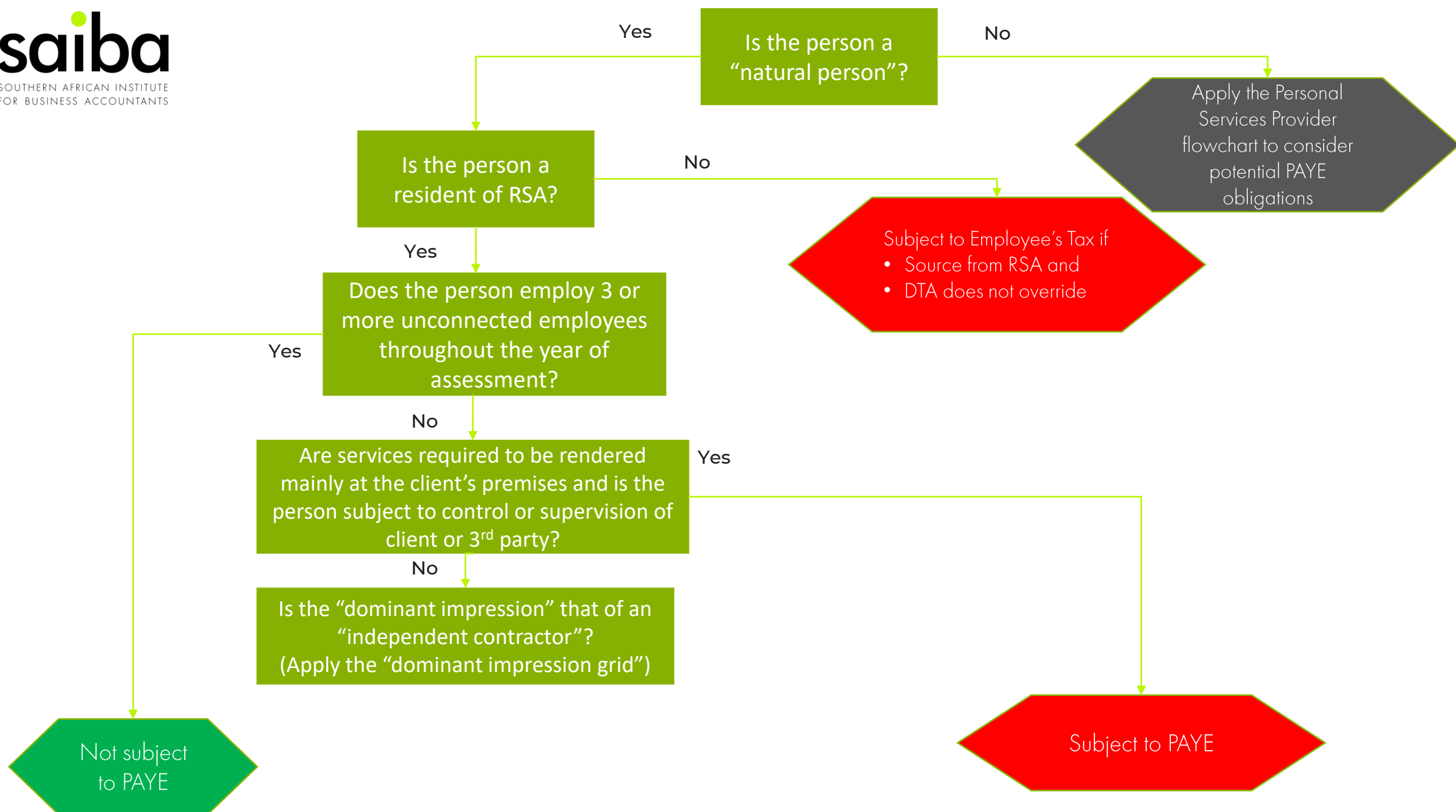


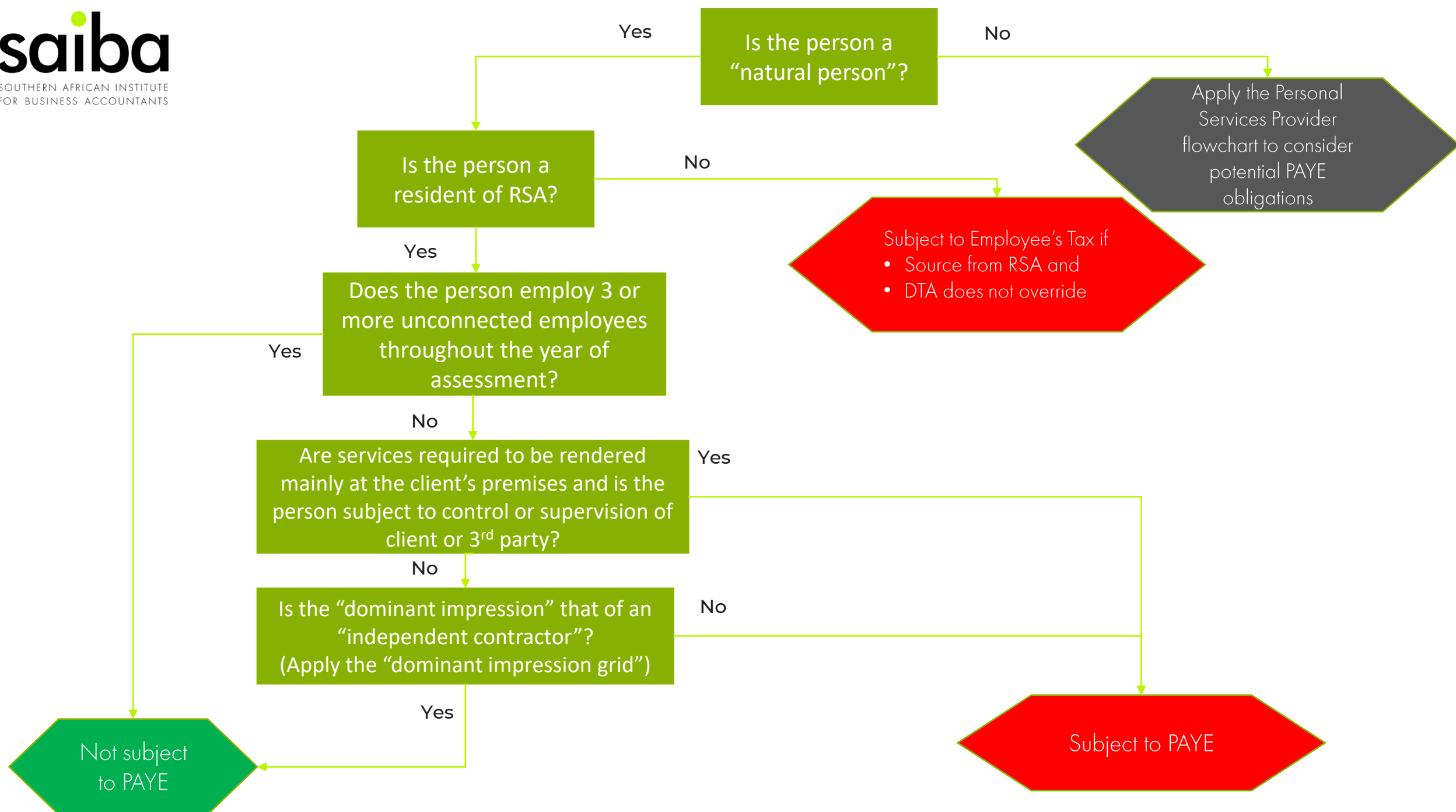












Annexure C – Common law dominant impression test grid

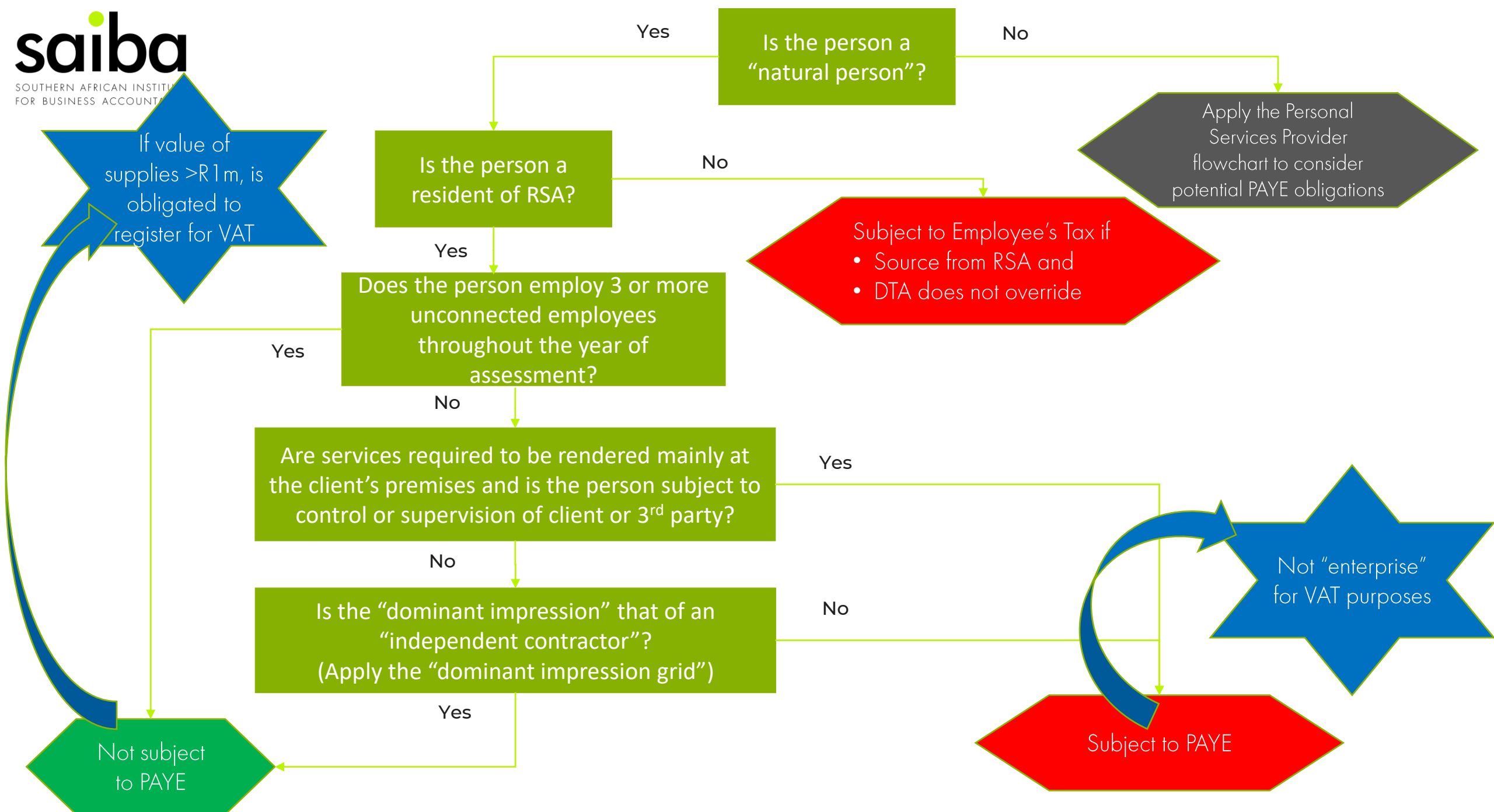
	INDICATOR	SUGGESTS EMPLOYEE STATUS	SUGGESTS INDEPENDENT CONTRACTOR STATUS
NEAR-CONCLUSIVE Control Manner/Exclusive Acquisition.	Control of manner of working	Employer instructs (has right to) which tools/equipment, or staff, or raw materials, or routines, patents, technology	Person chooses which tools/equipment, or staff, or raw materials, or routines, patents, technology
	Payment regime	Payment by a rate x time-period, but regardless of output or results	Payment by a rate x time-period but with reference to results, or payment by output or "results in a time period"
	Person who must render the service	Person obliged to render service personally, hires & fires only with approval	Person, as employer, can delegate to, hire & fire own employees, or can subcontract
	Nature of obligation to work	Person obliged to be present, even if there is no work to be done	Person only present and performing work if actually required, and chooses to
	Employer (client) base	Person bound to an exclusive relationship with one employer (particularly for independent business test)	Person free to build a multiple concurrent client base (especially if tries to build client base – advertises etc)
	Risk/Profit & loss	Employer bears risk (pays despite poor performance/slow markets) (particularly for independent business test)	Person bears risk (bad workmanship, price hikes, time over-runs)

	INDICATOR	SUGGESTS EMPLOYEE STATUS	SUGGESTS INDEPENDENT CONTRACTOR STATUS
PERSUASIVE Extent of Control	Instructions/Supervision	Employer instructs on location, what work, sequence of work etc or has the right to do so	Person determines own work, sequence of work etc. Bound by contract terms, not orders as to what work, where etc
	Reports	Control through oral/written reports	Person not obliged to make reports
	Training	Employer controls by training the person in the employer's methods	Worker uses/trains in own methods
	Productive time (work hours, work week)	Controlled or set by employer/person works full time or substantially so	At person's discretion

	INDICATOR	SUGGESTS EMPLOYEE STATUS	SUGGESTS INDEPENDENT CONTRACTOR STATUS
RELEVANT Labels, clauses, compliance, economic circumstances, "resonant" of	Tools, materials, stationery etc	Provided by employer, no contractual requirement that person provides	Contractually/necessarily provided by person
	Office/ workshop, admin/ secretarial etc	Provided by employer, no contractual requirement that person provides	Contractually/necessarily provided by person
	Integration/Usual premises	Employer's usual business premises	Person's own/leased premises
	Integration/Usual business operations	Person's service critical/integral part of employer's operations	Person's services are incidental to the employer's operations or success
	Integration/Hierarchy & organogram	Person has a job designation, a position in the employer's hierarchy	Person designated by profession or trade, no position in the hierarchy
	Duration of relationship	Open ended/fixed term & renewable, ends on death of worker	Limited with regard to result, binds business despite worker's death
	Threat of termination/ Breach of contract	Employer may dismiss on notice (LRA equity aside), worker may resign at will (BCEA aside)	Employer in breach if it terminates prematurely. Person in breach if fails to deliver product/service
	Significant investment	Employer finances premises, tools, raw materials, training etc	Person finances premises, tools, raw materials, training etc
	Employee benefits	Especially if designed to reward loyalty	Person not eligible for benefits
	<i>Bona fide</i> expenses or statutory compliance	No business expenses, travel expenses and/or reimbursed by employer. Registered with trade/professional association	Over-heads built into contract prices. Registered under tax/labour statutes & with trade/professional association
	Viability on termination	Obligated to approach an employment agency or labour broker to obtain new work (particularly for independent business test).	Has other clients, continues trading. Was a labour broker or independent contractor before this contract
	Industry norms, customs	Militate against independent viability Make it likely person is an employee	Will promote independent viability Make it likely person is an independent contractor or labour broker

3. Independent Contractors (continue)

Value Added Tax



4.

Turnover Tax

tax happy hour



4. Turnover Tax

- Turnover tax is a simplified system aimed at making it easier for micro business to meet their tax obligations.
- The turnover tax system replaces Income Tax, VAT, Provisional Tax, Capital Gains Tax and Dividends Tax for micro businesses with a qualifying annual turnover of R 1 million or less.
- A micro business that is registered for turnover tax can, however, elect to remain in the VAT system (from 1 March 2012).
- Turnover tax is worked out by applying a tax rate to the taxable turnover of a micro business.



4. Turnover Tax (continue)

Who is it for?

Micro businesses with an annual turnover of R 1 million or less. The following taxpayers may qualify:

- Individuals (sole proprietors)
- Partnerships
- Close corporations
- Companies
- Co-operatives

How to register?

To register for Turnover Tax:

- Do a [quick test](#) to see if you qualify for turnover tax
- For more information on [how to register](#)

How to submit?

The following channels can be used to submit Turnover Tax returns:

- [Make an appointment on the eBooking system.](#)
- [Or email SARS](#)

Source:

<https://www.sars.gov.za/types-of-tax/turnover-tax/>

4. Turnover Tax (continue)

There are three payment dates:

- 1st payment is in the middle of the tax year on the last business day of August i.e. 29 August 2014 on the [TT02 – Payment Advice for Turnover Tax](#)
- 2nd payment is at the end of the tax year on the last business day of February i.e. 27 February 2015 on the [TT02 – Payment Advice for Turnover Tax](#)
- Final payment is after the annual [TT03 – Turnover Tax Return](#) is submitted and processed. The submission of TT03 turnover tax returns is in line with the submission of the annual income tax returns, between 1 July and 31 January of the following year.

Source:

<https://www.sars.gov.za/types-of-tax/turnover-tax/>

4. Turnover Tax (continue)

TURNOVER TAX FOR MICRO BUSINESSES

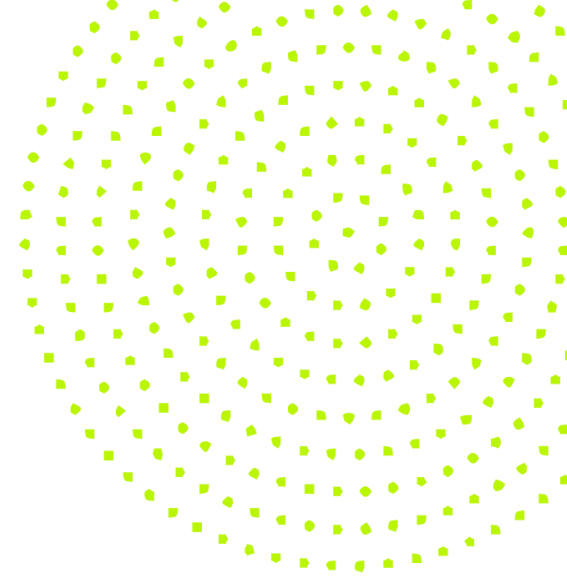
Years of assessment ending on any date between 1 March 2022 and 28 February 2023.

Taxable turnover (R)	Rate of tax (R)
1 – 335 000	0% of taxable turnover
335 001 – 500 000	1% of taxable turnover above 335 000
500 001 – 750 000	1 650 + 2% of taxable turnover above 500 000
750 001 and above	6 650 + 3% of taxable turnover above 750 000

Maximum tax =
R14 150 at R1 000 000

4. Turnover Tax (continue)

- By answering the following questions you will be able to determine if a business meets the criteria to qualify for turnover tax registration.
- If the answer to any one of the questions is “NO”, the business will not qualify for turnover tax registration for that year of assessment.
- A partner in more than one partnership will not qualify for “turnover tax”. The other partners may still qualify if they are only partners in a single partnership and do not answer “No” to any of the questions below.
- Please refer to the [Tax Guide for Micro Businesses](#) for assistance with completing the test.



4. Turnover Tax (continue)

Questions

Will the “qualifying turnover” of the business be less than or equal to R1 million for the year of assessment?

Do you declare that the business is not a “personal service provider” or a “labour broker” without a SARS exemption certificate?

Does the business trade in one of the following forms: sole proprietor, partnership, close corporation, co-operative or company?

If the business is a partnership, do you declare that all the partners will be individuals throughout the year of assessment?

If the business is a close corporation, co-operative or company, do you declare that all of the shareholders/members will be individuals throughout the year of assessment?

Do you declare that the business is not a public benefit organisation, recreational club, association of persons or a small business funding entity?

Does the business have a year of assessment that ends on the last day of February?

Do you declare that the business was not previously registered for the Turnover Tax?

4. Turnover Tax (continue)

Questions

Do you declare that the owner, any partner, shareholders, members and the business do not hold shares/interests in a close corporation, company, or cooperative other than the following exceptions:

- Listed South African companies;
- Collective investment schemes;
- Body corporates and share block companies;
- Venture capital companies;
- Less than 5% in social or consumer co-operatives;
- Less than 5% in cooperative burial societies or primary savings co-operative banks;
- Friendly societies;
- Any other company that did not trade during any year of assessment and which did not own assets with a total market value that exceeds R5 000 during any year of assessment;
- Any company that has taken steps to liquidate, wind up or deregister?

a) If you are a natural person, do you declare that the income from “professional services” is not expected to exceed 20% of your total receipts during the year of assessment

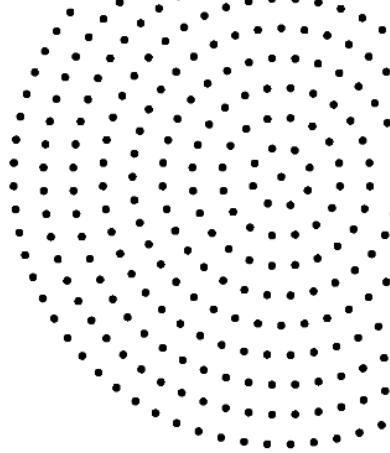
b) If the business is a company, close corporation or co-operative, do you declare that income from “professional services” and “investment income” is not expected to exceed 20% of the total receipts for the year of assessment?

Do you declare that the income from the disposal of assets by the business over the year of assessment and the past two years of assessment is not expected to exceed R1.5 million in total?

Do you declare that the business was not previously registered for the Turnover Tax?



- Cannot create assessed loss
- Cannot apply to professional services
- Limit of R1m is too low for Turnover Tax to be of any widespread use.
- May be worthwhile to retired person trying to make some income “on the side” by way of e.g catering business.



THANK YOU

For joining us.
Stay In touch.
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SEE YOU AGAIN

20 Apr 2022
Wednesday

tax happy hour

