

# **Binding Ruling – Conversion of a PBO to a for-profit Company**



In Binding Private Ruling 188 ('BPR') SARS recently dealt with the conversion of a tax exempt Public Benefit Organisation ('PBO') to a for-profit company.

Parties to the proposed transaction were a company incorporated in a foreign country and limited by guarantee, which is registered in South Africa as an external company (the 'Applicant' or 'Applicant PBO') under section 23(1)(a) of the Companies Act, 2008, and a PBO under section 30 of the Income Tax Act ('the Act'). Section 30 governs PBOs in the Act.

## **The proposed transaction can be described as follows:**

The Applicant is a company incorporated in a foreign country, registered in South Africa as an external company (branch) and as a PBO in terms of section 30 that is a tax resident in South Africa. Historically, the Applicant PBO incurred various expenses payable to the Applicant in the foreign country, for instance, royalty payments, management fees and network fees.

The Applicant in the foreign country intended to convert from a tax exempt company to a for-profit company and as a result will convert from a company limited by guarantee to a company limited by shares. The change in status of the Applicant in

the foreign country will result in a change in the status of the Applicant PBO in South Africa. The Applicant PBO would accordingly request a notice of withdrawal as a PBO under section 30.

## **Conditions and assumptions made by SARS**

**The BPR was subject to the following additional conditions and assumptions:**

- The conversion of the Applicant PBO to a for-profit company will take place during 2014.
- More than 15% of the receipts and accruals of the Applicant PBO within three years preceding the termination of its activities as an approved PBO had to be from a South African source, as contemplated in section 30(6A)(b).
- All royalties, management fees, network fees and other fees incurred by the Applicant PBO had to constitute bona fide liabilities, as contemplated in section 30(7).

**SARS made the following ruling in connection with the proposed transaction:**

- The provisions of section 30(7) will apply to the proposed transaction.
- However, to the extent that the Applicant PBO's bona fide liabilities exceed the market value of the assets in question, an amount equal to zero will be included in the Applicant PBO's taxable income.
- No donations tax will be payable by the Applicant PBO under the Act.

This BPR is valid for the year of assessment during which the proposed transaction occurs