

BINDING PRIVATE RULING: BPR 188

DATE: 18 February 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 30
SUBJECT : CONVERSION OF A PUBLIC BENEFIT ORGANISATION TO A FOR-PROFIT COMPANY

1. Summary

This ruling deals with the conversion of a tax exempt Public Benefit Organisation (PBO) to a for-profit company.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 4 November 2014 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of section 30.

3. Parties to the proposed transaction

The Applicant: A company, incorporated in a foreign country and limited by guarantee, that is registered in South Africa as an external company under section 23(1)(a) of the Companies Act No. 71 of 2008 and a PBO under section 30.

4. Description of the proposed transaction

The Applicant is a company incorporated in a foreign country, registered in South Africa as an external company and as a PBO in terms of section 30 that is 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 intends 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 under section 10.

The Applicant PBO will accordingly request a notice of withdrawal as a PBO under section 30.

5. Conditions and assumptions

This binding private ruling is 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 preceeding the termination of its activities as an approved PBO, must be from a South African source.
- All royalties, management fees, network fees and other fees incurred by the Applicant PBO must constitute *bona fide* liabilities, as contemplated in section 30(7).

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- The provisions of section 30(7) will apply to the proposed transaction.
- 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.

7. Period for which this ruling is valid

This binding private ruling is valid for the year of assessment during which the proposed transaction occurs.