

21 FEBRUARY 2020

TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE >

Fundraising by public benefit organisations – SARS issues binding private ruling

In the current economic climate, entities in the non-profit sector are looking for new and innovative ways to fund their operations. To the extent that an entity in the non-profit sector is an approved public benefit organisation (PBO) in terms of section 30 of the Income Tax Act 58 of 1962 (Act), such an entity must at all times comply with the provisions of section 30 to retain its PBO status.

FOR MORE INSIGHT INTO OUR
EXPERTISE AND SERVICES

CLICK HERE 

Fundraising by public benefit organisations – SARS issues binding private ruling

To the extent that an entity in the non-profit sector is an approved public benefit organisation (PBO) in terms of section 30 of the Income Tax Act 58 of 1962 (Act), such an entity must at all times comply with the provisions of section 30 to retain its PBO status.

In the current economic climate, entities in the non-profit sector are looking for new and innovative ways to fund their operations. To the extent that an entity in the non-profit sector is an approved public benefit organisation (PBO) in terms of section 30 of the Income Tax Act 58 of 1962 (Act), such an entity must at all times comply with the provisions of section 30 to retain its PBO status.

On 17 January 2019, the South African Revenue Service (SARS) issued Binding Private Ruling 338 (Ruling), which deals with the tax treatments of payments made to the applicant, a PBO approved in terms of section 30 of the Act (Applicant), at a fundraising event .

Facts

- The Applicant will host a fundraising event as a means of encouraging donations towards its public benefit activities.
- The fundraising event will be managed by an external events management company.
- During the fundraising event attendees will make payments to participate in activities and make cash donations.
- The events management company will develop and manage an electronic system that will enable attendees to make the requisite payments during the fundraising event.

- The system will distinguish the various payments as either payments to participate in activities or to make donations of money, and it will also tally the various amounts at the end of the fundraising evening.
- Each attendee will settle the total amount due in respect of his or her transactions at the end of the evening by a single credit card payment.
- The Applicant will use the reports generated by the system to determine which attendees are eligible to receive a section 18A receipt, that is, a receipt which entitles the donor to claim a donation as a deduction in terms of section 18A of the Act.
- The Applicant will also use the reports generated to determine the amount to be indicated on the receipt.
- Only the donations made by each attendee will be reflected on the section 18A receipt.

Ruling

Before setting out its decision, SARS indicated that the Ruling is subject to the additional condition and assumption that the payment tracking system to be used at the fundraising event, must as nearly as practicable conform to the one proposed. The payment tracking system must be easy to verify in respect of its intended function of accounting for donations of money separately from other payments.

Fundraising by public benefit organisations – SARS issues binding private ruling...continued

The Ruling illustrates that only bona fide donations may qualify for deduction.

Pursuant to setting out this condition and assumption, SARS ruled as follows:

- The donations made to the Applicant which have been identified as such by the Applicant's proposed payment tracking system at its fundraising event will constitute *bona fide* donations made to a PBO under section 18A of the Act.
- The Applicant may issue the donors with section 18A receipts in respect of those "*bona fide*" donations.
- Nothing in this ruling precludes the Commissioner from exercising the powers under section 30(5) of the Act, or any amendment or substitution of that provision.

Comment

In terms of section 18A(1) of the Act, where a taxpayer makes a *bona fide* donation to a PBO approved in terms of section 30 of the Act that carries on public benefit activities listed in Part II of the Ninth Schedule to the Act and which is approved for purposes of section 18A, the taxpayer may deduct the amount actually paid or transferred from its taxable income. The deduction can also be claimed where the donation is made to a PBO that is approved in terms of section 30 of the Act and which donates funds to other approved PBO's that carry

on public benefit activities in Part II of the Ninth Schedule to the Act and which are approved for purposes of section 18A of the Act. Taxpayers should note that the deduction that can be claimed in a particular year of assessment is limited and the full amount of the donation cannot necessarily be deducted from taxable income in that year.

The Ruling illustrates that only *bona fide* donations may qualify for deduction. In other words, the deduction must be a donation in the true sense, which would not be the case if there is any *quid pro quo* in exchange for the donation being made. Section 55 of the Act defines a donation as any gratuitous disposal of property including any gratuitous waiver or renunciation of a right. Furthermore, in *Welch's Estate v C:SARS 2005 (4) SA 173*, it was held that the common law requirement for a donation still applies, which is that it must be motivated by pure liberality or disinterested benevolence and not by self-interest or the expectation of a *quid pro quo*.

It is possible that in the context of the Ruling, an amount paid to participate in an activity during the fundraising event may not be a *bona fide* donation, as the person would be receiving something in return for the payment made.

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

Fundraising by public benefit organisations – SARS issues binding private ruling...*continued*

Approved PBOs should take note of the Ruling and ensure that they only issue section 18A receipts where they are permitted to do so.

Lastly, the reference to section 30(5) of the Act is also interesting. This provision states that SARS can revoke an entity's PBO status, if SARS believes that there has been, among other things, material non-compliance with section 30 of the Act. In other words, SARS may still revoke the Applicant's PBO status in future if it does not continue to comply with section 30 of the Act.

Approved PBOs should take note of the Ruling and ensure that they only issue section 18A receipts where they are permitted to do so. The issuing of a section

18A receipt that does not comply with section 18A of the Act, may result in the PBO suffering adverse tax consequences. Approved PBOs carrying on fundraising activities must also ensure that they carry on the activities in a manner that is consistent with section 30 of the Act, so as not to risk their PBO status.

Readers interested in a more general discussion of the PBO provisions in the Act can have a look at our [Tax & Exchange Control Alert](#) of 16 March 2018.

Louis Botha

CHAMBERS GLOBAL 2019 - 2020 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 -2020 in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2020 in Band 1: Tax: Indirect Tax.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2020 in Band 3: Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017- 2020 in Band 1: Tax: Consultants.



OUR TEAM

For more information about our Tax & Exchange Control practice and services, please contact:



Emil Brincker
National Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Mark Linington
Private Equity Sector Head
Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Louis Botha
Senior Associate
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



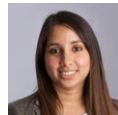
Gerhard Badenhorst
Director
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Jerome Brink
Senior Associate
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Petr Erasmus
Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Varusha Moodaley
Senior Associate
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Dries Hoek
Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Louise Kotze
Associate
T +27 (0)11 562 1077
E louise.kotze@cdhlegal.com



Heinrich Louw
Director
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Ben Strauss
Director
T +27 (0)21 405 6063
E ben.strauss@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2020 8680/FEB

