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SOUTH AFRICAN REVENUE SERVICE

No.

February 2019

PUBLIC NOTICE LISTING ARRANGEMENTS FOR PURPOSES OF SECTIONS 35(2) AND 36(4) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)

In terms of sections 35(2) and 36(4) of the Tax Administration Act, 2011, I, Mark Stanley Kingon, Acting Commissioner for the South African Revenue Service, hereby list, in the Schedule hereto, reportable arrangements and excluded arrangements.

This public notice replaces, with effect from its date of publication, all previous notices issued under sections 35(2) and 36(4) of the Tax Administration Act, 2011.

M S KINGON

ACTING COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

1. General

In this notice, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, or the Tax Administration Act, 2011, has the meaning so assigned.

2. Reportable arrangements

The following arrangements have been identified to be reportable arrangements:

- 2.1. An arrangement that would have qualified as a “hybrid equity instrument” in terms of section 8E of the Income Tax Act, 1962, if the prescribed period in that section had been 10 years, but does not include any instrument listed on an exchange regulated in terms of the Financial Markets Act, 2012 (Act No. 19 of 2012);
- 2.2. An arrangement in terms of which—
 - (a) a company buys back shares on or after the date of publication of this notice from one or more shareholders for an aggregate amount exceeding R10 million; and
 - (b) that company issued or is required to issue any shares within 12 months of entering into that arrangement or of the date of any buy-back in terms of that arrangement;

2.3. An arrangement in terms of which—

- (a) a person that is a resident makes any contribution or payment on or after 16 March 2015 to a trust that is not a resident and has or acquires a beneficial interest in that trust; and
- (b) the amount of all contributions or payments, whether made before or after 16 March 2015, or the value of that interest exceeds or is reasonably expected to exceed R10 million, excluding any contributions or payments made to or beneficial interest acquired in any—
 - (i) portfolio comprised in any investment scheme contemplated in paragraph (e)(ii) of the definition of “company” in section 1(1) of the Income Tax Act, 1962; or
 - (ii) foreign investment entity as defined in section 1(1) of the Income Tax Act, 1962;

2.4. An arrangement in terms of which one or more persons acquire the controlling interest in a company on or after the date of publication of this notice, including by means of acquiring shares, voting rights or a combination of both, that—

- (a)
 - (i) has carried forward or reasonably expects to carry forward a balance of assessed loss exceeding R50 million from the year of assessment immediately preceding the year of assessment in which the controlling interest is acquired; or
 - (ii) has or reasonably expects to have an assessed loss exceeding R50 million in respect of the year of assessment during which the controlling interest is acquired. or
- (b) directly or indirectly holds a controlling interest in a company referred to in paragraph (a);

2.5. An arrangement between a person that is a resident and a person that qualifies as an insurer in terms of any law of any country other than the Republic (hereinafter referred to as the foreign insurer) in terms of which—

- (a) an aggregate amount that exceeds or is reasonably expected to exceed R5 million has been paid or becomes payable by the resident to the foreign insurer; and
- (b) any amount payable on or after 16 March 2016, in cash or otherwise, to any beneficiary in terms of that arrangement is to be determined mainly by reference to the value of particular assets or categories of assets that are held by or on behalf of the foreign insurer or by another person for purposes of that arrangement; and

2.6. An arrangement for the rendering to a person—

- (a) that is a resident; or
- (b) that is not a resident that has a permanent establishment in the Republic to which that arrangement relates,

of consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical or training services, in terms of which—

- (i) a person that is not a resident or an employee, agent or representative of that person—
 - (aa) was or is physically present in the Republic; or
 - (bb) is anticipated to be physically present in the Republic, in connection with or for purposes of rendering those services; and
- (ii) the expenditure in respect of those services under that arrangement—
 - (aa) incurred or to be incurred, on or after the date of publication of this notice, exceeds or is anticipated to exceed R10 million in aggregate; and
 - (bb) does not qualify as remuneration for purposes of the Fourth Schedule to the Income Tax Act, 1962.

2.7 An arrangement in terms of which a closure rehabilitation company or trust referred to in section 37A of the Income Tax Act, 1962, prior to a final closure plan of the relevant prospecting right, mining right or mining permit has been approved by the Cabinet member responsible for mineral resources—

(a) directly or indirectly—

(i) distributes;

(ii) authorizes the withdrawal or transfer; or

(ii) authorizes the use as security,

of an aggregate amount of more than R10 million in any year of assessment;

(b) effects a change to financial instruments or investments held by that company or trust to the extent that it does not comply with section 37A(2);

(c) distributes or authorizes the distribution of property from that company or trust to the extent that it does not comply with section 37A(7);

(d) makes any adjustment to bank guarantees or other financial guarantees held by that company or trust for the purpose of that section;

(e) directly or indirectly provides any guarantee of any form; or

(f) uses any asset held by that company or trust as security for any debt.

3. Excluded arrangements under section 36(4) of the Tax Administration Act, 2011

3.1. An arrangement referred to in section 35(1) of the Tax Administration Act, 2011, is an excluded arrangement if the aggregate tax benefit which is or may be derived from that arrangement by all participants to that arrangement does not exceed R5 million.

3.2. An arrangement referred to in section 35(1)(c) of the Tax Administration Act, 2011, is an excluded arrangement if the tax benefit which is or will be derived or is assumed to be derived from that arrangement is not the main or one of the main benefits of that arrangement.