

Media Releases 2010

Substantial Settlement Agreements reached

Pretoria, 5 October 2010 – SARS is pleased to announce that it has entered into settlement agreements to resolve disputes with major institutions regarding cross-border transactions bearing the characteristics discussed below.

The total value that SARS derives from the settlements is in excess of R3 billion. In addition to the recovery of a substantial sum of tax and the institutions' co-operation in ensuring that the tax effects of these transactions are immediately terminated, SARS is also pleased to note their undertaking not to enter into similar or substantially the same transactions in future.

The institutions, which cannot be identified due to the confidentiality afforded taxpayers by the Income Tax Act, 1962, advised SARS that they acted in good faith when they entered into the transactions in light of independent legal advice furnished to them at the time. SARS, however, regards these transactions as constituting unacceptable tax avoidance that, inter alia, erodes the South African tax base. As provided for by the legislation in terms of which the settlements have been entered into, neither the institutions nor SARS have accepted the other's view of the transactions.

Many tax administrations around the world have encountered cross-border transactions that aim to use agreements entered into between countries for the avoidance of double taxation or relief measures in domestic law to generate tax benefits. Although there are variations of these transactions, the tax benefits generally flow from the fact that the tax relief claimed is in excess of any economic double taxation that has occurred on post tax dividends or interest income. The tax benefits are normally shared between the institution and its foreign counterparty through the pricing of the transactions. The transactions would typically lead to a financial loss for the institution in the absence of the tax benefits.

These transactions have had a substantial effect on tax bases of a number of countries and have been challenged internationally. In a notable recent success the New Zealand Inland Revenue Department succeeded in its litigation against two major institutions in the High Court and finally settled these disputes, together with similar disputes with two other institutions, for a combined amount exceeding NZ\$2.2 billion.

SARS and the institutions concerned have expressed their satisfaction with the settlement agreements that have been reached between them.

Whilst SARS' investigations into similar transactions in the market continue, it encourages participants in these transactions to approach SARS to explore dealing with such transactions in a non-litigious manner.

ENDS.