

SOUTH AFRICAN REVENUE SERVICE

Tax Administration Act, 2011

Draft Public Notice listing reportable arrangements for purposes of sections 35(2) and 36(4) for public comment

This draft notice proposes the list of reportable arrangements that have certain characteristics that may lead to an undue tax benefit as well as the list of reportable arrangements that are not likely to lead to an undue tax benefit.

This notice replaces, with effect from the date of publication thereof, all previous notices issued under sections 80M(2)(c) and 80N(4) of the Income Tax Act, 1962 (Act No. 58 of 1962), and section 35(2) of the Tax Administration Act, 2011 (Act No. 28 of 2011).

Comments are invited to be submitted to Ms A Collins at acollins@sars.gov.za by not later than **23 June 2014**.

SOUTH AFRICAN REVENUE SERVICE

No.

June 2014

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, Visvanathan Pillay, Acting Commissioner for the South African Revenue Service, hereby list, in the Schedule hereto, arrangements that have certain characteristics that may lead to an undue tax benefit and excluded arrangements.

This public notice replaces with effect from the date of publication thereof all previous notices issued under sections 80M(2)(c) and 80N(4) of the Income Tax Act, 1962 (Act No. 58 of 1962), and section 35(2) of the Tax Administration Act, 2011.

VISVANATHAN PILLAY

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 (Act No. 58 of 1962), or section 1 or section 34 of the Tax Administration Act, 2011 (Act No. 28 of 2011), has the meaning so assigned.

2. Reportable arrangements

2.1. Subject to the provisions of paragraph 3, the following arrangements have been identified to have certain characteristics that may lead to an undue tax benefit:

- 2.1.1. Any arrangement in terms of which fees that are payable or may become payable, on or after the date of publication of this notice, by a person that is a resident to a person that is not a resident with regard to services rendered to that resident in the Republic, exceed or are reasonably expected to exceed R5 million;
- 2.1.2. Any arrangement in terms of which a company buys back shares, on or after the date of publication of this notice, from one or more shareholders for an aggregate amount of at least R10 million, if 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;
- 2.1.3. Any arrangement that is expected to give rise, on or after the date of publication of this notice, to any rebate in respect of foreign taxes if the amount of the rebates to be taken or that have been taken into account in determining normal tax payable by any person or persons that is or are party to that arrangement, exceeds or is reasonably expected to exceed an aggregate amount of R5 million;

- 2.1.4. Any arrangement in terms of which a person that is a resident makes contributions or payments, on or after the date of publication of this notice, to a trust that is not a resident and acquires a beneficial interest in that trust, where the amount of all contributions or payments or the value of the interest exceeds or is reasonably expected to exceed R10 million, excluding any contributions or payments made, or beneficial interest acquired in any—
- (a) 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; or
 - (b) foreign investment entity as defined in section 1(1) of the Income Tax Act;
- 2.1.5. Any arrangement in terms of which a person or persons, by means of acquiring shares or voting rights on or after the date of publication of this notice, acquire the controlling interest in a company that—
- (a) has carried forward or expects to carry forward a balance of assessed loss exceeding R20 million from the year of assessment immediately preceding the year of assessment in which the controlling interest is acquired; or
 - (b) expects to have an assessed loss exceeding R20 million in the year of assessment during which the controlling interest is acquired;
- 2.1.6. Any arrangement in terms of which an amount that exceeds or is reasonably expected to exceed R5 million is or becomes payable by a person that is a resident to a person that qualifies as an insurer in terms of any law of any country other than the Republic (hereinafter referred to as the insurer) if any amount or amounts payable, on or after the date of publication of this notice, in cash or otherwise, to any beneficiary in terms of that arrangement are 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 insurer or by another person for purposes of that arrangement.

2.2. If a person becomes a participant in an arrangement referred to in paragraph 2.1 before the date of publication of this notice and that arrangement qualifies as a reportable arrangement on that date, the date upon which the 45 days reporting obligation period referred to in section 37(4) of the Tax Administration Act commences is regarded as the date of this publication.

3. Excluded arrangements

3.1. The following has been identified as an arrangement which is not likely to lead to an undue tax benefit:

Any arrangement where the tax benefit which is or will be derived or is assumed to be derived from that arrangement does not exceed R5 million.

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