

SOUTH AFRICAN REVENUE SERVICE

Tax Administration Act, 2011

Draft Public Notice listing arrangements for purposes of section 35(2) for public comment

This draft notice proposes the list of additional reportable arrangements that have certain characteristics that may lead to an undue tax benefit.

This notice will be supplementary to all previous notices issued under section 80M(2)(c) of the Income Tax Act, 1962 (Act No. 58 of 1962) or section 35(2) of the Tax Administration Act, 2011, and serves as an extension of the reportable arrangements listed therein.

Comments are invited to be submitted to Ms A Collins at acollins@sars.gov.za by not later than **10 April 2014**.

SOUTH AFRICAN REVENUE SERVICE

No.

March 2014

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

In terms of section 35(2) 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.

This notice is supplementary to all previous notices issued under section 80M(2)(c) of the Income Tax Act, 1962 (Act No. 58 of 1962) or section 35(2) of the Tax Administration Act, 2011, and serves as an extension of the reportable arrangements listed therein.

V 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 a tax Act as defined in section 1 of the Tax Administration Act, 2011, has the meaning so assigned.

2. Reportable arrangements

The following arrangements have been identified to have certain characteristics that may lead to an undue tax benefit:

- (a) Any arrangement in terms of which fees in excess of R5 million are or may become payable by a person who is a resident to a person who is not a resident with regard to technical, managerial and consultancy services rendered to that resident, if the person who is not a resident—
 - (i) has an office in South Africa; or
 - (ii) has a physical address in South Africa; or
 - (iii) has established or maintains a bank account, in South Africa; or
 - (iv) is registered as an external company in terms of the Companies Act, 2008 (Act No. 71 of 2008);
- (b) Any arrangement in terms of which a company buys back shares from one or more shareholders for an aggregate amount of at least R10 million, if that company issued or is 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;
- (c) Any arrangement that is expected to give rise or has given rise to a foreign tax credit or foreign tax credits if the credits taken or to be taken into account in determining normal tax payable by any person or persons that are party to that arrangement exceed an aggregate amount of R10 million;
- (d) Any arrangement in terms of which a resident—
 - (i) makes contributions or payments to; or

- (ii) acquires a beneficial interest in,
 - a trust that is not a resident, where the amount of the contributions or payments or the value of the interest exceed R10 million, excluding any contributions or payments made to, or beneficial interest acquired in any—
 - (aa) 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
 - (bb) foreign investment entity as defined in section 1(1) of the Income Tax Act;
- (e) Any arrangement in terms of which a person or persons acquire the controlling interest in a company that—
 - (i) 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 shares are purchased; or
 - (ii) expects to have an assessed loss exceeding R20 million in the year of assessment during which the shares are purchased; and
- (f) Any arrangement in terms of which a person that is a resident is to pay, or has paid an amount exceeding R1 million 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, 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 another person for purposes of that arrangement.