

Media Releases 2011

JOINT PRESS RELEASE: NATIONAL TREASURY AND SARS

2011 DRAFT TAXATION LAWS AMENDMENT BILL: SECTION 45 INTRA-GROUP AND HYBRID SHARE ANTI-AVOIDANCE MEASURES

The Draft Taxation Laws Amendment Bills, 2011 (draft Bills) were publicly released on 2 June 2011. These Bills come during a difficult economic period when global growth continues to be subdued, along with slowed prospects for revenue growth.

These Bills contain the 18-month suspension of section 45. The purpose of this suspension was to temporarily close section 45 as a tax-free mechanism to obtain interest deductions linked to excessive debt. Tax leakage from excessive debt is a global phenomenon and various countries introduce measures to control interest deductions from excessive debt.

The intention of the suspension was to provide the fiscus with interim protection against the potential loss of R3-to-5 billion per annum. These annual losses stem from the structural problem of excessive debt, along with the use of share-like instruments masquerading as debt.

Since 3 June 2011, National Treasury and SARS sought further information from interested parties. This culminated in a week of meetings, consisting of more than 30 consultations relating to more than 50 transactions. Those engaged in more aggressive transactions were less forthcoming but some individuals disclosed critical information that pinpointed the precise areas of concern. The period of consultation accordingly re-affirmed our decision to put controls on excessive debt.

Given the additional facts provided, a solution is now being proposed for the short term. This revised short-term solution should better accommodate the pressing needs of the business community while simultaneously providing effective interim protection for fiscus. Commercially orientated transactions must be allowed to proceed as long as such transactions do not contain unacceptable tax leakage. It should be noted that our goal was never to impede commercially-drive transactions of this nature, but merely to prevent certain taxpayers and their advisors from exploiting weaknesses in the tax system.

It is proposed that a section be introduced to control the interest deductions associated with debt used to fund the acquisition of assets in section 44, 45 or 47 transactions. Transactions will follow different channels. Interest deductions arising from transactions in the green channel will be automatically permissible. Interest deductions on associated debt for amber transactions will only be permitted upon pre-approval. Transactions that are not approved will not be permitted an interest deduction. This approach is guided by the need to reduce administrative burdens for most legitimate transactions. In the light of this approach the suspension of section 45 will no longer be necessary.

A longer-term set of solutions to deal with excessive debt and the characterisation of debt are still planned for 2012 and beyond. SARS will continue to investigate a number of pre-existing aggressive transactions that deliberately avoid paying their fair share of the tax burden.

Finally, it must be understood that the proposed controls to limit excessive debt comes at a time of huge fiscal challenges and developmental needs. It is improper and immoral for tax advisors to raid the fiscus so that short term interests are placed above the national interest.