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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 212

16 March 2015

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, Thomas Swabihi Moyane, 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 section 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.



TS MOYANE

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. Any arrangement that would have qualified as—

- (a) 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; or
- (b) a “hybrid debt instrument” in terms of section 8F 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. Any 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. Any arrangement in terms of which—
- (a) a person that is a resident makes any contribution or payment on or after the date of publication of this notice 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 the date of publication of this notice, 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. Any 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); and
- 2.5. Any 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 the date of publication of this notice, 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.

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

Any 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.

GOEWERMENSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS

No. 212

16 Maart 2015

**OPENBARE KENNISGEWING OM RAPPORTEERBARE REËLINGS VIR
DOELEINDES VAN ARTIKELS 35(2) EN 36(4) VAN DIE WET OP
BELASTINGADMINISTRASIE, 2011 (WET NO. 28 VAN 2011), TE LYS**

Ingevolge artikels 35(2) en 36(4) van die Wet op Belastingadministrasie, 2011, lys ek, Thomas Swabihi Moyane, Kommissaris van die Suid-Afrikaanse Inkomstediens, hierby in die Bylae hierby, rapporteerbare reëlins en uitgeslote reëlins.

Hierdie openbare kennisgewing vervang met ingang van sy datum van publikasie alle vorige kennisgewings uitgevaardig kragtens artikels 80M(2)(c) en 80N(4) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), en artikel 35(2) van die Wet op Belastingadministrasie, 2011.



TS MOYANE

KOMMISSARIS VAN DIE SUID-AFRIKAANSE INKOMSTEDIENS

BYLAE

1. Algemeen

In hierdie kennisgewing, tensy uit die konteks anders blyk, dra enige woord of uitdrukking waaraan 'n betekenis in die Inkomstebelastingwet, 1962, of die Wet op Belastingadministrasie, 2011, geheg is, die betekenis aldus daaraan geheg.

2. Rapporteerbare reëlings

Die volgende reëlings is geïdentifiseer rapporteerbare reëlings te wees:

2.1. Enige reëling wat sou gekwalifiseer het as—

(a) 'n “hibriede ekwiteitsinstrument” ingevolge artikel 8E van die Inkomstebelastingwet, 1962, indien die voorgeskrewe tydperk in daardie artikel 10 jaar was; of

(b) 'n “hibriede skuldinstrument” ingevolge artikel 8F van die Inkomstebelastingwet, 1962, indien die voorgeskrewe tydperk in daardie artikel 10 jaar was, maar sonder insluiting van enige instrument genoteer op 'n beurs wat ingevolge die “Financial Markets Act, 2012” (Wet No. 19 van 2012), gereguleer word;

2.2. Enige reëling ingevolge waarvan—

(a) 'n maatskappy op of na die datum van publikasie van hierdie kennisgewing aandele van een of meer aandeelhouders vir 'n totale bedrag wat R10 miljoen te bowe gaan, terugkoop; en

(b) daardie maatskappy binne 12 maande vanaf die aangaan van daardie reëling of van die datum van enige terugkoop ingevolge daardie reëling aandele uitgereik het of verplig is om aandele uit te reik;

2.3. Enige reëling ingevolge waarvan—

- (a) 'n persoon wat 'n inwoner is op of na die datum van publikasie van hierdie kennisgewing enige bydrae of betaling maak aan 'n trust wat nie 'n inwoner is nie en 'n voordelige belang in daardie trust het of verkry; en
- (b) die bedrag van alle bydraes of betalings hetsy voor of na die datum van publikasie van hierdie kennisgewing gemaak, of die waarde van daardie belang R10 miljoen te bowe gaan of redelikerwys verwag word te bowe sal gaan, uitgesonder enige bydraes of betalings gemaak aan of voordelige belang verkry in enige—
 - (i) portefeulje vervat in enige beleggingskema beoog in paragraaf (e)(ii) van die omskrywing van “maatskappy” in artikel 1(1) van die Inkomstebelastingwet, 1962; of
 - (ii) buitelandse beleggingsentiteit soos omskryf in artikel 1(1) van die Inkomstebelastingwet, 1962;

2.4. Enige reëling ingevolge waarvan een of meer persone op of na die datum van publikasie van hierdie kennisgewing die beherende belang verkry, insluitend deur middel van die verkryging van aandele, stemregte of 'n kombinasie van beide, in 'n maatskappy wat—

- (a) (i) 'n balans van vasgestelde verlies wat R50 miljoen te bowe gaan oorgebring het of verwag om oor te bring van die jaar van aanslag wat die jaar van aanslag waarin die beherende belang verkry word, onmiddellik voorafgaan;
- (ii) 'n vasgestelde verlies wat R50 miljoen te bowe gaan, het of redelikerwys verwag om te hê ten opsigte van die jaar van aanslag waartydens die beherende belang verkry word; of
- (b) regstreeks of onregstreeks 'n beherende belang hou in 'n maatskappy in paragraaf (a) bedoel; en

- 2.5. Enige reëling tussen 'n persoon wat 'n inwoner is en 'n persoon wat as 'n versekeraar kwalifiseer ingevolge enige reg van enige ander land as die Republiek (hierna die buitelandse versekeraar genoem) ingevolge waarvan—
- (a) 'n totale bedrag wat R5 miljoen te bowe gaan of redelikerwys verwag word dit te bowe te gaan, deur die inwoner aan die buitelandse versekeraar betaal is of betaalbaar word; en
 - (b) enige bedrag betaalbaar op of na die datum van publikasie van hierdie kennisgewing, in kontant of andersins, aan enige begunstigde ingevolge daardie reëling hoofsaaklik bepaal moet word met verwysing na die waarde van bepaalde bates of klasse van bates wat deur of ten behoeve van die buitelandse versekeraar of deur 'n ander persoon vir doeleindes van daardie reëling gehou word.

3. Uitgeslote reëlings kragtens artikel 36(4) van die Wet op Belastingadministrasie, 2011

Enige reëling bedoel in artikel 35(1) van die Wet op Belastingadministrasie, 2011, is 'n uitgeslote reëling indien die totale belastingvoordeel wat uit daardie reëling deur alle deelnemers aan daardie reëling verkry word of sal word, nie R5 miljoen te bowe gaan nie.

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