

Tax Alert

30 June 2011

Section 45 and Hybrid instruments – Urgent new developments

On 3 June 2011, National Treasury proposed that the intra-group relief provisions contained in section 45 of the Income Tax Act would be suspended for a 19-month period until 31 December 2012. There are also proposals to substantially extend the rules around the re-classification of interest and dividend flows (sections 8E, 8EA & 8F).

However, on 29 June 2011, National Treasury and the SA Revenue Service issued a joint Media Statement which proposes two important developments:

(1) Urgent “assurances” on existing deals

As an interim measure, interested corporate groups are offered the opportunity to obtain “assurances” in respect of currently pending transactions. The Media Statement invites interested parties to meet with National Treasury and SARS on an urgent basis between 30 June and 8 July 2011. It appears that the objective of these meetings is for interested parties to demonstrate that their proposed transactions “do not erode the tax base and are purely commercial” and, in return, SARS and National Treasury may offer certain “assurances” in respect of the transactions.

Specifically, the information to be presented to National Treasury and SARS will need to include

- an organogram of the entire deal-structure;

- “term sheet” information of the financing instruments involved; and
- projected operational flows (presumably, this refers to profits).

As regards the actual “assurances” that will be granted to “successful” applicants, the Media Statement does not provide any further details.

(2) Substantially reduced “consultation” period

This appears to mean that “new” rules for section 45 will be proposed (for public comment) by July/August 2011 —i.e. a period of a few weeks as opposed to the originally proposed 19 months— and will be included in the final Taxation Laws Amendment Bill, 2011. It is expected that the “new” rules will provide for section 45 transactions that represent no risk to the tax base to be allowed.

PwC has substantial experience and a proven track record in interacting

with National Treasury and SARS. Interested groups are invited to contact us should you wish for us to assist you in this process.

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