**Reportable arrangements and excluded arrangements**

9 February 2016

**In brief**

The Commissioner for the South African Revenue Service issued a public notice in Government Gazette No. 39650 of 3 February 2016 revising the list of reportable arrangements and excluded arrangements for purposes of the Tax Administration Act (‘TAA’). The notice is effective from 3 February 2016 and replaces all previous reportable arrangement notices.

**In detail**

**Reportable arrangements**

The content of the notice and changes from the previous notice are summarised below.

**Hybrid equity instruments**

An arrangement that would have qualified as a hybrid equity instrument if the prescribed period in section 8E of the Income Tax Act (‘ITA’) had been 10 years is a reportable arrangement, excluding instruments listed on an exchange regulated in terms of the Financial Markets Act. The exclusion for listed instruments is a change from the previous notice;

**Share subscription and buy-back arrangements**

Certain arrangements whereby a company buys back shares for an amount in excess of R10 million and the company issued or is required to issue any shares within 12 months of the date of entering into the arrangement or of the buy-back are reportable;

**Hybrid debt instruments**

In terms of the previous notice, certain arrangements that would have qualified as hybrid debt instruments in terms of section 8F of the ITA had the prescribed period in that section been 10 years would have been reportable arrangements. This category of reportable arrangement has been removed from the latest notice and is no longer reportable;

**Foreign trusts**

Where a resident makes a contribution to a foreign trust in which it has a beneficial interest and the sum of all contributions before or after that date or the value of the beneficial interest exceeds or is expected to exceed R10 million is a reportable arrangement. Contributions to certain investments, such as mutual funds, are excluded.

**Assessed loss companies**

The direct or indirect acquisition of a controlling interest in a company with assessed losses in excess of R50 million from the year of assessment preceding the transaction or during which the transaction is concluded is reportable;

**Foreign insurance**

Arrangements between residents and foreign insurers are reportable if amounts that exceed or are expected to exceed R5
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Million have been paid or will become payable to the foreign insurer and any amount payable to beneficiaries is determined mainly with reference to the value of particular assets or categories of assets held by the foreign insurer;

**Foreign services**

A new reportable arrangement relating to certain services rendered by foreign persons is introduced. The services in question are those comprising consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical, or training services rendered to a resident person or to a permanent establishment of a non-resident person in South Africa. In order to be reportable, the non-resident person (or an employee, agent or representative of that person) must be or must be anticipated to be physically present in South Africa in connection with or for the purpose of rendering the services. In addition, the expenditure incurred or expected to be incurred from 3 February 2016 in respect of that service, must exceed or be expected to exceed R10 million in aggregate.

The arrangement will not be a reportable arrangement if the expenditure qualifies as remuneration for purposes of the Fourth Schedule to the ITA.

**Excluded arrangements**

The following arrangements are listed as excluded arrangements in terms of the notice.

**De minimus exclusion**

An arrangement referred to in section 35(1) of the TAA is an excluded arrangement and not reportable if the aggregate tax benefit which is or may be derived in terms thereof by all participants does not exceed R5 million. This exclusion does not apply to the arrangements specifically listed in the notice as reportable, but only to those that would otherwise be reportable solely because they contain any of the features set out in section 35(1) of the TAA.

**Main benefit exclusion**

A main benefit exclusion is reintroduced for certain arrangements. This exclusion applies to those arrangements where the accounting treatment differs from the tax treatment, as contemplated in section 35(1)(c) of the TAA, where the tax benefit was not the main or one of the main benefits of the arrangement.

**The takeaway**

The elimination of hybrid debt instruments from the list of reportable arrangements will eliminate the need to report connected person loans with terms in excess of 10 years as well as certain other arrangements and will reduce the compliance burden for taxpayers.

However, the most important change in the new notice relates to the introduction of the reporting requirements for service fees. This will have far-reaching implications for recipients of services falling within this reportable arrangement. This change should be considered in conjunction with the change to the definition of a participant insofar as it relates to listed arrangements. In this regard, all parties to a listed arrangement have an obligation to report it.

The reintroduction of a limited main benefit exclusion is welcomed as an attempt to address concerns arising from the deletion thereof insofar as it relates to arrangements where the tax and accounting treatments differ. The concern was that these arrangements would all be reportable, assuming that they gave rise to a tax benefit.
**Let’s talk**

For a deeper discussion of how this issue might affect your business, please contact:

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