

## REPORTABLE TRANSACTIONS:

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

*It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.*

*There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.*

*Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.*

*Comments may be submitted to either:*

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## Insertion of Part IA in Chapter III of Income Tax Act, 1962

. The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part I:

### “PART IA

#### *Reportable Transactions*

#### **Definitions**

**76A.** (1) For purposes of this Part—

‘financial benefit’ means any reduction in finance costs, fees or charges;

‘participant’ in relation to a reportable transaction includes any person who directly or indirectly derives a tax benefit or financial benefit as a consequence of investing, borrowing or participating in any manner in that reportable transaction;

'reportable transaction' includes—

- (a) any arrangement in terms of which—
  - (i) certain assumptions are made with regard to the tax treatment of that arrangement or any part thereof;
  - (ii) any tax benefits or financial benefits are derived by any person which result from the tax treatment so assumed; and
  - (iii) provision is made for the variation of any rights or obligations of any participant in terms of that arrangement where the tax treatment so assumed does not materialise;
- (b) any arrangement—
  - (i) which is offered to a participant under any conditions of confidentiality relating to the structure of the arrangement and tax treatment of any part thereof; or
  - (ii) where the structure of the arrangement and tax treatment of any part thereof is claimed by any person to be proprietary to that person; or
- (c) any arrangement which is substantially similar to any arrangement identified by the Minister by notice in the *Gazette*;

'tax benefit' means any reduction in or postponement of the liability of a person for any tax, duty, levy, charge or other amount in terms of any Act administered by the Commissioner.

### **Reporting of transaction**

- 76B.** (1) Every company or trust which—
- (a) derives any tax benefit in terms of a reportable transaction; or
  - (b) claims any arrangement to be proprietary to that person as contemplated in paragraph (b)(ii) of the definition of 'reportable transaction',
- must report that transaction to the Commissioner.

(2) The company or trust contemplated in subsection (1) must report the transaction contemplated in subsection (1) to the Commissioner—

- (a) at the earlier of the date that the last of the transaction documents are signed or the date of implementation of the reportable transaction; and
- (b) in such form and at such place as the Commissioner may prescribe.

(3) The company or trust must in so reporting provide to the Commissioner—

- (a) a description of all the steps and key features of the tax shelter transaction;
- (b) a list of all the parties to and participants in the tax shelter transaction;
- (c) details of the promotional materials relating to that tax shelter transaction;
- (d) certified copies of all the signed documents relating to that tax shelter transaction and the financial model of that tax shelter transaction; and
- (e) if available, a live computer programme in respect of that reportable tax shelter transaction.

### **Identification number of reportable transaction**

**76C.**(1) The Commissioner must issue an identification number in respect of a reportable transaction within 60 days after the date that the transaction is reported in terms of section 76B.

(2) Only one identification number will be issued by the Commissioner in respect of any reportable transaction, regardless of the number of persons reporting that transaction.

### **Effect of identification number**

**76D.** An identification number issued by the Commissioner in respect of a reportable transaction is issued for administrative purposes only and shall not—

- (a) have the effect that such transaction has been approved or authorised by the Commissioner;
- (b) have the effect that any assumption of the tax treatment in terms of that transaction or any part thereof is accepted by the Commissioner; and
- (c) absolve any party to or participant in that transaction from any obligation or liability which may be imposed on any such party or participant, whether by law or otherwise.

### **Failure to report transaction**

**76E.** Where a company or trust fails to report a reportable transaction as contemplated in section 76B that company or trust may not claim any tax benefits in terms of that transaction to which that company or trust may otherwise have been entitled.

### **Duties of participants**

**76F.** Every participant in a reportable transaction must in that participant's tax return for a year of assessment, disclose the identification number of any reportable transaction in terms of which that participant during that year of assessment derives any tax benefit or financial benefit.”.

### **Amendment of section 104 of Act 58 of 1962**

. Section 104 of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Any person who —

(a) fails to report a reportable transaction as required by section 76B;

(b) claims any tax benefit in terms of a reportable transaction where no identification number has been issued in terms of section 76C in respect of that reportable transaction; or  
(c) fails to disclose in that persons tax return the identification number of a reportable transaction as required by section 76F,  
shall be guilty of an offence and upon conviction shall be liable for a fine or imprisonment for a period not exceeding five years.”.