

**December 2018**

## **TO REPORT OR NOT TO REPORT: REPORTABLE TAX ARRANGEMENTS**

Sections 34 of the Tax Administration Act (**TAA**) deals with "reportable arrangements". A Reportable Arrangement has certain characteristics (as listed in the **TAA**) and where one person promotes the arrangement and another person derives a tax benefit from the arrangement. If all criteria (as listed in **TAA**) is present, every company or trust which derives a tax benefit, must report that arrangement to SARS within 60 days after the date that any amount is first received by any person in terms of that arrangement.

The purpose of reporting such an arrangement is to enable SARS to assess it against the anti-avoidance rules. According to the **TAA**, the following arrangements are reportable arrangements if:

- It contains provisions in terms of which the calculation of interest, finance costs, fees or any other charges is wholly or partly dependent on the assumptions relating to the tax treatment of that arrangement; or
- It has any of the characteristics of round-trip financing, involves an accommodating or tax indifferent party; or an arrangement with elements that have the effect of offsetting or cancelling each other; or
- It gives rise to an amount that is or will be disclosed by any 'participant' in any year of assessment or over the term of the arrangement as a deduction for purposes of the Income Tax Act but not as an expense for purposes of financial reporting standards; or
- It constitutes revenue for purposes of 'financial reporting standards' but not as gross income for purposes of the Income Tax Act;
- It does not result in a reasonable expectation of a 'pre-tax profit' for any 'participant'; or
- It results in a reasonable expectation of a 'pre-tax profit' for any 'participant' that is less than the value of that 'tax benefit' to that 'participant' if both are discounted to a present value at the end of the first year of assessment when that 'tax benefit' is or will be derived or is assumed to be derived, using consistent assumptions and a reasonable discount rate for that 'participant'.

In addition to the above, there is a category of reportable arrangements identified by SARS by notice in the Gazette. These arrangements have been identified on the basis of certain characteristics which have the effect of avoiding or postponing liability for or reducing the amount of taxes on income.

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