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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. R. 180

1 March 2005

NOTICE SETTING OUT ARRANGEMENTS FOR PURPOSES OF SECTION 76A(1)(a) AND SECTION 76A(1)(b) OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962)

By virtue of the power vested in me by paragraphs (a) and (b) of the definition of "reportable arrangement" in section 76A(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby give notice in—

- (a) Schedule A hereto, of arrangements which have been identified as not being likely to lead to an undue tax benefit; and
- (b) Schedule B hereto, of arrangements which have certain characteristics that have been identified as being likely to lead to an undue tax benefit.

T. A. MANUEL
MINISTER OF FINANCE

SCHEDULE A

1. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

2. Subject to the provisions of Schedule B and paragraph 3, the following have been identified as arrangements which are not likely to lead to any undue tax benefits (hereinafter referred to as "excluded arrangements"):

- (a) any loan, advance or debt in terms of which—
 - (i) the borrower receives an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date;
 - or

- (ii) the borrower receives a fungible asset and agrees to return an asset of the same kind and of the same or equivalent quantity and quality to the lender at a determinable future date;
- (b) any lease;
- (c) any transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (d) any transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).

3. Paragraph 2 applies only to an excluded arrangement referred to in that paragraph which—

- (a) is undertaken on a stand-alone basis and is not directly or indirectly connected to, or directly or indirectly dependent upon, any other arrangement (whether entered into between the same or different parties); or
- (b) is an arrangement that would have qualified as having been undertaken on a stand-alone basis in terms of paragraph 3(a), were it not for a connected arrangement that is entered into for the sole purpose of providing security and no tax benefit is obtained or enhanced by entering into such security arrangement,

provided such excluded arrangement is not entered into—

- (i) with the main purpose of obtaining or enhancing a tax benefit; or
- (ii) in a specific manner or form with the main purposes of obtaining or enhancing a tax benefit.

SCHEDULE B

1. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

2. The following have been identified as arrangements which have certain characteristics which are likely to lead to an undue tax benefit:

- (a) any arrangement which would have qualified as a hybrid equity instrument as defined in section 8E of the Income Tax Act, 1962, if the prescribed periods in that section had been five years; or
- (b) any arrangement which would have qualified as a hybrid debt instrument as defined in section 8F of the Income Tax Act, 1962, if the prescribed periods in that section had been five years.

3. Paragraph 2 does not apply in respect of any instrument listed on an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004).

SUID-AFRIKAANSE INKOMSTEDIENS**No. R. 180****1 Maart 2005****KENNISGEWING WAT DIE REËLINGS VIR DOELEINDES VAN ARTIKEL 76A(1)(a) EN ARTIKEL 76A(1)(b) VAN DIE INKOMSTEBELASTINGWET, 1962 (WET NO. 58 VAN 1962), UITEENSIT**

Kragtens die bevoegdheid aan my verleen deur paragrawe (a) en (b) van die omskrywing van "rapporteerbare reëling" in artikel 76A(1) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), gee ek, Trevor Andrew Manuel, Minister van Finansies, hiermee kennis in—

- (a) Bylae A hierby, van reëlins wat geïdentifiseer is wat nie waarskynlik tot 'n onbehoorlike belastingvoordeel sal lei nie; en
- (b) Bylae B hierby, van reëlins wat sekere eienskappe het wat geïdentifiseer word as waarskynlik tot 'n onbehoorlike belastingvoordeel sal lei.

T. A. MANUEL**MINISTER VAN FINANSIES****BYLAE A**

1. In hierdie Bylae, tensy uit die samehang anders blyk, dra enige woord of uitdrukking waaraan 'n betekenis in die Inkomstebelastingwet, 1962, geheg is, die betekenis aldus daaraan geheg.

2. Behoudens die bepalings van Bylae B en paragraaf 3, word die volgende geïdentifiseer as reëlins wat nie waarskynlik tot 'n onbehoorlike belastingvoordeel sal lei nie (hierna "uitgesluite reëlins" genoem):

- (a) enige lening, voorskot of skuld ingevolge waarvan—

- (i) die lener 'n bedrag kontant ontvang en onderneem om minstens dieselfde bedrag kontant op 'n bepaalbare toekomstige datum aan die uitlener terug te betaal; of
 - (ii) die lener 'n vervangbare bate ontvang en onderneem om 'n bate van dieselfde soort en van dieselfde of gelyke hoeveelheid en gehalte op 'n bepaalbare toekomstige datum aan die uitlener terug te lewer;
- (b) enige huurooreenkoms;
- (c) enige transaksie aangaan deur middel van 'n beurs wat kragtens die "Securities Services Act, 2004" (Wet No. 36 van 2004), gereguleer word;
- (d) enige transaksie in deelnemende belange in 'n skema wat kragtens die "Collective Investment Schemes Control Act, 2002" (Wet No. 45 van 2002), gereguleer word.

3. Paragraaf 2 is van toepassing slegs ten opsigte van 'n uitgesluite reëling in daardie paragraaf bedoel, wat—

- (a) op 'n alleenstaande basis aangaan is en wat nie direk of indirek verbind is aan, of direk of indirek afhanklik is van, enige ander reëling nie (hetsy tussen dieselfde of verskillende persone aangaan); of
- (b) 'n reëling daarstel wat sou kwalifiseer as aangaan op 'n alleenstaande basis ingevolge paragraaf 3(a), as dit nie was vir die verbonde reëling wat aangaan is met die uitsluitlike doel om sekuriteit te verskaf en geen belastingvoordeel verkry is of bevorder word deur daardie sekuriteitsreëling aan te gaan nie,

op die voorwaarde dat daardie uitgesluite reëling nie aangaan is—

- (i) met die hoofdoel om 'n belastingvoordeel te verkry of bevorder nie; of
- (ii) op 'n spesifieke wyse of vorm, met die hoofdoel om 'n belastingvoordeel te verkry of te bevorder nie.

BYLAE B

1. In hierdie Bylae, tensy uit die samehang anders blyk, dra enige woord of uitdrukking waaraan 'n betekenis in die Inkomstebelastingwet, 1962, geheg is, die betekenis aldus daaraan geheg.
2. Die volgende is geïdentifiseer as reëlings wat sekere eienskappe het wat waarskynlik tot 'n onbehoorlike belastingvoordeel sal lei:
 - (a) enige reëling wat as 'n hibriede ekwiteitsinstrument soos in artikel 8E van die Inkomstebelastingwet, 1962, omskryf sou kwalifiseer indien die voorgeskrewe tydperke in daardie artikel vyf jaar was; of
 - (b) enige reëling wat as 'n hibriede skuldinstrument soos in artikel 8F van die Inkomstebelastingwet, 1962, omskryf sou kwalifiseer indien die voorgeskrewe tydperke in daardie artikel vyf jaar was.
3. Paragraaf 2 is nie van toepassing nie ten opsigte van enige instrument wat op 'n beurs wat kragtens die "Securities Services Act, 2004" gereguleer word, genoteer is.

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