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PRESS RELEASE

by **Mr B. J. DU PLESSIS,**
Minister of Finance

IN CONNECTION WITH SCHEMES FOR THE AVOIDANCE OF INCOME TAX

I have been informed by the Commissioner for Inland Revenue that in the course of examining tax returns which have been submitted during the past few months various tax avoidance schemes have come to light, some new and others variations of schemes which have been used in the past. Among the schemes observed are the following:

1. *Dividend—interest swaps*

Under these schemes a taxpaying company cedes for a specified period its entitlement to interest income in favour of an insurance company or an exempt institution in consideration for the cession by the insurance company or exempt institution of its entitlement to dividend income. In this way the ordinary taxpaying company avoids tax on its interest income and receives instead dividend income which is exempt from tax in its hands.

2. *Provision of finance by means of preference shares*

In cases where a company having an assessed loss for income tax purposes requires additional finance it frequently obtains this by means of the issue of redeemable preference shares rather than by taking a straight interest-bearing loan. The advantages to the parties are that whereas the borrower's assessed loss is reduced to the extent that the "dividend" paid is not deductible in the determination of its taxable income the lender is not taxed thereon and therefore does not increase its tax liability. The tax saved as a result of the utilisation of the tax base of the borrower is usually shared by the parties by means of the payment of a lower rate of "dividend" than would otherwise have been the case.

PERSVERKLARING

deur **mnr. B. J. DU PLESSIS,**
Minister van Finansies

IN VERBAND MET SKEMAS VIR DIE VERMYDING VAN INKOMSTEBELASTING

Ek is deur die Kommissaris van Binnelandse Inkomste meegedeel dat tydens die nasien van belastingopgawes wat gedurende die afgelope paar maande ingedien is, verskeie belastingvermydingskemas aan die lig gekom het, waarvan sommige nuut is en ander variasies is van skemas wat reeds in die verlede gebruik is. Onder die skemas waargeneem is die volgende:

1. *Dividende—rente ruilings*

Ingevolge skemas van hierdie aard sedgeer 'n belastingbetalende maatskappy sy reg op rente-inkomste vir 'n bepaalde tydperk ten gunste van 'n versekeringsmaatskappy of 'n vrygestelde inrigting, as teenprestasie vir die sessie deur die versekeringsmaatskappy of vrygestelde inrigting van sy reg op dividend-inkomste. Op hierdie wyse vermy die gewone belastingbetalende maatskappy belasting op sy rente-inkomste en ontvang in ruil daarvoor dividend-inkomste wat in sy hande belastingvry is.

2. *Finansiering deur middel van voorkeuraandeel*

In gevalle waar 'n maatskappy met 'n aangeslane verlies vir inkomstebelastingdoeleindes addisionele kapitaal benodig, gebeur dit dikwels dat dit by wyse van die uitreiking van aflosbare voorkeuraandeel verkry word, in plaas van by wyse van die opneem van 'n gewone rentedraende lening. Die voordele wat dit vir die partye inhou is dat terwyl die lener se aangeslane verlies verminder word tot die mate dat die "dividend" betaal nie by die vasstelling van sy belasbare inkomste aftrekbaar is nie, is die uitlener nie daarop belasbaar nie en word sy belastingaanspreeklikheid derhalwe nie verhoog nie. Die belastingbesparing as gevolg van die gebruikmaking van die belastingbasis van die lener, word gewoonlik gesamentlik deur die partye benut deur middel van die betaling van 'n laer "dividend"-koers as wat andersins die geval sou gewees het.

3. *Provision of finance by means of variable rate debentures*

This is a device whereby the income of an operating company can easily be drained off to institutions which are either exempt from tax or whose taxable income is determined according to special rules. Instead of the operating company obtaining capital by means of the issue of equity shares it issues variable-rate debentures the return on which is directly linked to the profitability of the company. Because of the reduction in its tax liability the operating company is able to offer investors a rate of return in excess of the dividend it would have been able to pay on equity shares.

4. *Round-tripping of funds between financial institutions and the corporate sector*

These schemes are also based on the difference in treatment between certain financial institutions and ordinary companies and on the fact that an ordinary company is not subject to tax on dividends. It has been established that by means of these schemes very large sums of money are circulating between insurers and their subsidiaries, the banks and the corporate sector. The considerable tax savings that are being effected are shared by the participants through adjustments to the relevant interest and dividend rates.

Investigations carried out by the Commissioner for Inland Revenue confirm that the threat which these schemes pose to the corporate income tax base is not only real but massive. Obviously this is to the detriment of all other taxpayers and indeed also against public interest if schemes of this nature are allowed to proceed. While it is not expected of anybody to pay more tax than he ought to, it is obvious that these schemes are undesirable and certainly in conflict with the intention of the legislator. The Commissioner has already identified certain specific cases which, in his opinion, can be challenged under the existing provisions of the Income Tax Act and in those cases he will raise assessments as soon as possible. Should the taxpayers concerned dispute the assessments, their appeals will be referred for hearing to the Income Tax Special Court. If the Commissioner's further investigations indicate that amendments to the law are necessary in order to combat the various schemes coming to light then I shall regard it as my duty to recommend to Parliament that such amendments be made applicable to schemes entered into on or after today's date.

Persons involved in practices of this nature must take cognisance of the fact that their actions will not only be contested in court but also be combated by way of new legislation with effect from today. As due notice has now been given of the proposed actions in this regard, such legislation, when it becomes operative next year, cannot be described as retroactive in the normal sense. The tax authorities find it more and more difficult to timeously keep undesirable tax practices in check, especially when Parliament is not in Session and amendments cannot be introduced quickly.

Issued by the Ministry of Finance,
Pretoria.

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3. *Finansiering deur middel van skuldbriewe met 'n wisselende koers*

Hierdie is 'n metode ingevolge waarvan die inkomste van 'n bedryfsmaatskappy maklik afgewentel kan word op belastingvrye instellings of instellings wie se belastbare inkomste ingevolge spesiale reëls vasgestel word. Insteede daarvan dat die bedryfsmaatskappy kapitaal bekom deur middel van die uitreiking van gewone aandele, word skuldbriewe met 'n wisselende koers en waarvan die opbrengs direk gekoppel is aan die winsgewendheid van die maatskappy, uitgereik. Vanweë die vermindering van sy belastingaanspreeklikheid, is die bedryfsmaatskappy in staat om aan sy beleggers 'n opbrengs te bied wat meer is as die dividend wat dit sou uitkeer op gewone aandele.

4. *Sirkulering van kapitaal tussen finansiële instellings en die korporatiewe sektor*

Skemas van hierdie aard is ook gefundeer op die verskil in behandeling vir belastingdoeleindes tussen sekere finansiële instellings en gewone maatskappye asook op die feit dat 'n gewone maatskappy nie op dividende belasbaar is nie. Dit is vasgestel dat vanweë hierdie skemas baie groot bedrae geld tussen versekeraars en hul filiale, die banke en die korporatiewe sektor, sirkuleer. Die aansienlike belastingbesparings wat bewerkstellig word, word deur deelnemers benut by wyse van aansuiwerings aan die betrokke rente- en dividendkoerse.

Ondersoeke gedoen deur die Kommissaris van Binne-landse Inkomste bevestig dat die gevaar wat skemas van hierdie aard vir die maatskappybelastingbasis inhou, nie alleen werklik is nie, maar van ontsaglike omvang is. Klaarblyklik is dit dus tot nadeel van alle ander belastingbetalers en ook trouens teen die breë landsbelang as hierdie skemas sou voortgaan. Terwyl daar van niemand verwag word om méér belasting te betaal as wat hy behoort te betaal nie, is dit voor die hand liggend dat hierdie skemas ongewens en beslis in botsing met die bedoeling van die wetgewer is. Die Kommissaris het reeds sekere gevalle geïdentifiseer wat na sy mening, ingevolge die bestaande bepalinge van die Inkomstebelastingwet aanvegbaar is en in sodanige gevalle sal aanslae so spoedig moontlik uitgereik word. Sou die betrokke belastingpligtiges die aanslae betwis, sal hul appélle vir verhoor na die Spesiale Inkomstebelastinghof verwys word. Indien die Kommissaris se verdere ondersoek daarop dui dat wysigings aan die Wet noodsaaklik is ten einde die verskeie skemas wat aan die lig gekom het te bestry, sal ek dit as my plig beskou om by die Parlement aan te beveel dat sodanige wysigings van toepassing gemaak word op skemas aangegaan op of na vandag se datum.

Persone wat by hierdie praktyke betrokke is moet dus asseblief kennis neem dat hulle optredes nie alleen in die howe getoets staan te word nie maar selfs by wyse van nuwe wetgewing wat vanaf vandag sal geld, bestry sal word. Aangesien daar nou reeds van hierdie beoogde optrede kennis gegee word, sal sodanige wetgewing wanneer dit aanstaande jaar in werking tree, nie in die gewone sin as terugwerkend van aard bestempel kan word nie. Die belastingowerheid vind dit al hoe moeiliker om ongewenste belastingpraktyke betyds aan bande te lê, veral wanneer die Parlement nie in Sitting is en wetswysigings dus nie vinnig aangebring kan word nie.

Uitgereik deur die Ministerie van Finansies,
Pretoria.

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CONTENTS			INHOUD		
<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>	<i>No.</i>	<i>Bladsy No.</i>	<i>Staats- koerant No.</i>
PRESS RELEASE			PERSVERKLARING		
Schemes for the avoidance of income tax.....	1	11642	Skemas vir die vermyding van inkomstebe- lasting.....	1	11642