



**MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA**

JOINT PRESS RELEASE: NATIONAL TREASURY AND SARS

2011 DRAFT TAXATION LAWS AMENDMENT BILL

***ACCELERATED CONSULTATION PROCESS ON SECTION 45 INTRA-GROUP AND
HYBRID SHARE ANTI-AVOIDANCE MEASURES***

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1. The National Treasury and SARS wish to notify key stakeholders about an accelerated process to provide certainty in respect of section 45 and hybrid shares. We wish to eliminate the current uncertainty about restructurings and acquisitions that do not pose a significant risk to the tax base.
 2. This statement is intended to give effect to the commitment made by the Minister of Finance at a press conference and in the National Assembly, on 23 June 2011, where he indicated flexibility if key stakeholders come forward with a detailed presentation of facts, provide full disclosure, and constructively engage with the National Treasury and SARS.

I. Statement of Principles

3. Government continues to be committed to allowing the use of section 45 to facilitate the tax neutral movement of assets between members of a group of companies, which do not give rise to artificial structuring to avoid paying taxes. Government also remains committed to the use of section 45 to partially shift minority ownership stakes to certain shareholders (mainly to facilitate Black Economic Empowerment).
4. Government is concerned about the use of section 45 to facilitate, for example, leveraged buyouts and other abusive restructuring where the fiscus is at risk, and will take appropriate steps to reduce such risk. National Treasury and SARS remain fully committed to closing unacceptable avoidance schemes.
5. National Treasury and SARS are fully aware that anti-avoidance legislation should not come at the expense of non-tax motivated commerce necessary for economic growth.

The goal of the ongoing factual enquiry is to obtain a more finessed balance between the needs of the fiscus and the needs of commerce.

6. With these goals in mind, National Treasury and SARS reiterate their commitment to the rollover relief provisions and the need to ensure that “non-cash out” mergers and acquisitions should ideally be free from an immediate tax charge. For instance, the transfer of partial share ownership from a pre-existing group of companies to facilitate Black Economic Empowerment should not generally be subject to an additional tax charge on transfer. On the other hand, seemingly neutral transactions cannot be condoned if these transactions set the stage for future tax losses (or other tax benefits) via excessive leverage or other means so as to partially or wholly eliminate ongoing operational income for many years to come.
7. The National Treasury and SARS fully recognise that certainty is the cornerstone of any viable tax system. However, a balance must be struck between improving stability and predictability in the tax system and moving quickly to reduce risk to the fiscus. The final proposals will accordingly safeguard this certainty for non-tax motivated transactions that are commercially driven, but taxpayers engaged in aggressive tax transactions should not view the concept of “certainty” as an automatic safe haven so as to wrongly deprive the fiscus (even if these aggressive tax transactions reach closure before a set legislative date).
8. National Treasury and SARS are committed to the development of revised proposals aimed at distinguishing between transactions which do not present an undue risk to the fiscus and transactions which need to be tightly controlled.
9. In view of the above, National Treasury and SARS would like to afford interested parties the opportunity to meet on an urgent basis from 30 June until 8 July 2011. In order for these meetings to be effective, it is strongly recommended that interested parties bring the organograms of the entire set of related transactions at issue, term sheet information of the various instruments involved in the financing as well as projected operational flows of the entities involved. These consultations aim to determine the characteristics of transactions that do not represent a potential threat to the tax base so that underlying principles or rules can be refined for a more targeted approach to be effective as soon as possible.

II. Accelerated consultation process

10. In the first instance, National Treasury and SARS will meet all those who come forward and provide all the facts, with the objective of providing assurance to those whose transactions do not erode the tax base and are purely commercial.
11. In the second instance, the information and feedback provided by all those who come forward will be utilised to formulate the “rules” which will form part of the amended Section 45.

12. Further opportunities will be provided to engage with the proposed rules and the National Treasury and SARS after mid-July, when the proposed rules may be published for further comment. Following this, a final Response Document which will be published in mid-August, followed by a revised set of Taxation Laws Amendment Bills which will be introduced in Parliament in September 2011.
13. Parliament is expected to pass the Bills by 30 November 2011. It is Parliament that has the power to finally approve all amendments as proposed, including those pertaining to section 45 and hybrid shares.

III. Opportunity for specific engagements

14. Stakeholders who are affected by the proposals regarding section 45 and hybrid shares can contact the following people to set up meetings, including to seek advice for any imminent transactions:

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