

## South Africa's new reportable arrangement requires urgent action in relation to inbound services

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On 3 February 2016, in the *Government Gazette No. 39650*, the South African Revenue Service (SARS) issued a notice of a new reportable arrangement under Section 35(2) of the *Tax Administration Act 28 of 2011*.<sup>1</sup>

One such arrangement is inbound services. Taxpayers are obliged to report the designated arrangements within 45 business days of the Notice. As a result, taxpayers should urgently consider whether they fall within the provisions of the new reportable arrangement in relation to inbound services.

Intercompany services have been identified in developing countries as a particular area of concern and SARS has specifically highlighted its concerns in this area; the new reporting obligation is thus aimed at addressing these concerns. Accordingly, it follows that SARS is now aggressively querying and auditing taxpayers in relation to permanent establishments, transfer pricing and value added tax (VAT). We caution that the courts have not always been sympathetic to taxpayers and in a reported tax court case last year,<sup>2</sup> the court refused to decrease the maximum penalty imposed by SARS.

### Impact of the new reportable arrangement requirement

South African taxpayers and nonresidents with a South African permanent establishment may have an obligation to report details of certain inbound services to SARS by mid-April this year. Failure to report, where this is required, could be subject to substantial penalties of up ZAR150,000 per month and in some cases up to ZAR300,000 per month.<sup>3</sup>

It is expected that SARS will use the information collated to assess the risk of tax exposures resulting from permanent establishments, transfer pricing, VAT, employees' tax and potential exchange control violations.

### Next steps

The SARS Notice providing the details of these new reportable arrangements is very wide and taxpayers making use of inbound services must carefully assess whether a reporting requirement exists.

Due to the risks involved in reporting, a careful analysis needs to be made of whether such a reporting obligation exists. Companies making use of inbound services should

thus consider at the very least a review of the relevant service agreements and surrounding facts to conclude on whether there is a reportable arrangement.

If any arrangement is reportable, the filings of the relevant forms are required. Taxpayers should at the same time consider whether there is an additional risk of SARS audits in relation to tax exposures arising from permanent establishments, transfer pricing, VAT and employees' tax.

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### Endnotes

1. See EY Global Tax Alert, [South African Revenue Service issues revised reportable arrangement list with wider scope for reporting inbound services](#), dated 5 February 2016.
2. See EY Global Tax Alert, [South African tax developments](#), dated 18 June 2015.
3. As of 10 March 2016, approximately US\$9,873 and US\$19,746 respectively.

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