VAN HUYSSTEENS
COMMERCIAL ATTORNEYS

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KNOW WHEN TO REPORT A TRANSACTION

A very tax efficient manner in which companies / a disposing shareholder normally structure an envisaged share sale is by instead of the disposing shareholder selling the said shares to a third party, it enters into a buyback agreement with the company in which it owns the shares (in terms of section 48 of the Companies Act). The said buyback is then followed by a subscription of shares in the company by a third party.

The aforesaid transaction is efficient for tax purposes as the disposing shareholder (given it is a company) receives exempt dividends from the company and is therefore not liable for capital gains tax on the proceeds of the sold shares.

Although the aforesaid transaction is tax efficient it may qualify as a reportable arrangement in terms of section 35 of the Tax Administration Act 28 of 2011 (the "**TAA**"). Such transaction will be reportable if:

- the company buys back shares from one or more of its shareholders for an aggregate amount exceeding R10Mil; and
- the company issues or is required to issue any shares within 12 (twelve) months of entering into that arrangement or of the date of any buy-back in terms of that arrangement.

Should the transaction qualify as being reportable and the 'participant' (as defined in the **TAA**) fails to report same it may be levied with penalties as set out in the **TAA**.

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