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## PERSVERKLARING

*deur die*

*Kommissaris van Binnelandse Inkomste*

### oor die BELASTING VAN GADES GETROUD BINNE GEMEENSAP VAN GOEDERE

Die afgelope tyd het daar heelwat onsekerheid ontstaan oor die juiste posisie met betrekking tot die belasting van inkomste, veral passiewe inkomste soos bv. beleggingsinkomste, in die hande van gades wat binne gemeenskap van goedere getroud is. Daar word byvoorbeeld aangevoer dat vanweë die feit dat elke gade 'n onverdeelde halwe aandeel in die gemeenskaplike boedel het, inkomste die gemeenskaplike boedel toeval en die inkomste vervolgens in gelyke dele in die hande van die gades belasbaar is. Alhoewel Binnelandse Inkomste egter van mening is dat die bepalinge van die Inkomstebelastingwet wel voorsiening daarvoor maak om die inkomste te belas in die hande van die gade aan wie die inkomste werklik toegeval het alvorens dit deel vorm van die gemeenskaplike boedel, is daar besluit om spesifieke reëls in hierdie verband in die Inkomstebelastingwet in te voer ten einde enige onsekerheid uit die weg te ruim, asook om vanweë sekere praktiese oorwegings die administrasie van die Wet te vergemaklik en te vereenvoudig.

Die Minister van Finansies is derhalwe reeds versoek om gedurende die huidige Sessie by die Parlement aan te beveel dat die Inkomstebelastingwet soos volg gewysig word:

Artikel 7 van die Inkomstebelastingwet, 1962, word hierby gewysig deur na subartikel (2) die volgende subartikels in te voeg:

“(2A) In die geval van gades wat binne gemeenskap van goedere getroud is, word—

- (a) enige inkomste (behalwe huurgeld uit vaste eiendom) wat verkry is uit die beoefening van 'n bedryf, indien daardie bedryf deur slegs een van die gades beoefen

## PRESS RELEASE

*by the*

*Commissioner for Inland Revenue*

### CONCERNING THE TAXATION OF SPOUSES MARRIED IN COMMUNITY OF PROPERTY

During recent times a fair amount of uncertainty has arisen as to the taxation of income, especially passive income such as income from investments, in the hands of spouses married in community of property. It has, for example, been argued that by reason of the fact that spouses married in community of property each own an undivided half share in the joint estate, income accrues to the joint estate and that such income is therefore taxable in equal shares in the hands of the spouses. Although Inland Revenue holds the view that the provisions of the Income Tax Act make provision for the taxation of such income in the hands of the spouse to whom the income actually accrues before it falls into the joint estate, it has been decided to introduce more specific rules into the Act in order to remove any uncertainty in this regard but also, for practical reasons, to simplify the administration of the Act.

The Minister of Finance has therefore been requested to recommend to Parliament during the present Session that the Income Tax Act be amended as follows:

Section 7 of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) In the case of spouses who are married in community of property—

- (a) any income (other than income from rental of fixed property) which has been derived from the carrying on of any trade shall, if such trade is carried on by only one of the

word, geag aan daardie gade toe te geval het of, indien daardie bedryf gesamentlik deur die gades beoefen word, geag, behoudens die bepalings van subartikel (2) (b), aan beide gades toe te geval het in die verhouding soos deur hulle ooreengekom kragtens die ooreenkoms wat hul gesamentlike bedryf reguleer; en

- (b) enige huurgeld uit vaste eiendom en enige inkomste wat op 'n ander wyse as uit die beoefening van 'n bedryf verkry is, geag beide gades in gelyke dele toe te geval het: Met dien verstande dat enige bedoelde inkomste wat nie binne die gemeenskaplike boedel van die gades val nie, geag word inkomste te wees wat die gade wat daarop geregtig is, toegeval het.

(2B) Enige aftrekking of vermindering wat kragtens die bepalings van hierdie Wet toegestaan kan word by die vasstelling van die belasbare inkomste verkry by wyse van enige inkomste wat geag word inkomste te wees wat aan 'n gade toegeval het ooreenkomstig die bepalings van subartikel (2A), word, vir sover bedoelde inkomste kragtens die bepalings van daardie subartikel geag word inkomste te wees wat aan daardie gade toegeval het, geag 'n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste deur daardie gade verkry.

(2C) By die toepassing van subartikel (2A) word —

- (a) 'n voordeel betaal of betaalbaar aan 'n gade as 'n lid of gewese lid van 'n pensioenfonds, voorsorgsfonds, bystandsfonds of 'n uittreding-annuiteitsfonds, geag inkomste te wees wat deur daardie gade verkry is uit 'n bedryf wat deur hom beoefen word; en
- (b) 'n jaargeldbedrag (soos omskryf in artikel 10A) betaal of betaalbaar aan 'n gade, geag inkomste te wees wat deur daardie gade verkry is uit 'n bedryf wat deur hom beoefen word."

Die wysigings aan artikel 7 van die Inkomstebelastingwet, 1962, word geag in werking te getree het —

- (a) vir sover dit inkomste verkry uit 'n bedryf betref, vanaf die begin van jare van aanslag wat op of na 28 Februarie 1991, geëindig het of eindig: Met dien verstande dat waar daardie inkomste verkry is uit die verhuur van vaste eiendom ten opsigte van die jaar van aanslag geëindig op 28 Februarie 1991, die Kommissaris nie verplig is om 'n aanslag te wysig nie wat uitgereik is op die grondslag waar inkomste in die hande van enige van die gades belas is, tensy beide gades skriftelik nie later as 31 Desember 1992 daarom aansoek doen;
- (b) vir sover dit inkomste verkry op 'n ander wyse dan uit 'n bedryf betref, vanaf die begin van jare van aanslag wat op of na 29 Februarie 1992, geëindig het of eindig.

spouses, be deemed to have accrued to that spouse or, if such trade is carried on jointly by both spouses, be deemed, subject to the provisions of subsection (2) (b), to have accrued to both spouses in the proportions determined by them in terms of the agreement that governs their joint trade; and

- (b) any rental of fixed property and any income derived otherwise than from the carrying on of any trade shall be deemed to have accrued in equal shares to both spouses: Provided that any such income which does not fall into the joint estate of the spouses shall be deemed to be income accrued to the spouse who is entitled thereto.

(2B) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any income which is under the provisions of subsection (2A) deemed to be income accrued to a spouse shall, to the extent to which such income is under the provisions of that subsection deemed to be income which has accrued to such spouse, be deemed to be a deduction or allowance which may be made in the determination of the taxable income of such spouse.

(2C) For the purposes of subsection (2A) —

- (a) any benefit paid or payable to a spouse as a member or past member of a pension fund, provident fund, benefit fund or retirement annuity fund shall be deemed to be income derived by such spouse from a trade carried on by him; and
- (b) any annuity amount (as defined in section 10A) paid or payable to a spouse shall be deemed to be income derived by such spouse from a trade carried on by him."

The amendments to section 7 of the Income Tax Act shall —

- (a) to the extent that such income was derived from a trade, be deemed to have come into operation as from the commencement of years of assessment ended or ending on or after 28 February 1991: Provided that where such income was derived from the rental of fixed property in respect of the year of assessment ended on 28 February 1991, the Commissioner shall not be obliged to amend an assessment which has been issued on a basis where such income was taxed in the hands of either of the spouses, unless both spouses make written application therefor not later than 31 December 1992;
- (b) to the extent that such income was derived otherwise than from a trade, be deemed to have come into operation as from the commencement of years of assessment ended or ending on or after 29 February 1992.



Vanweë die feit dat die wetgewing van 'n terugwerkende aard is en individue nie later nie as 29 Februarie 1992 hulle voorlopige belastingbetalings moet maak, word daar reeds op hierdie stadium kennis gegee van die beoogde wysigings ten einde 'n gade wat aanspreeklik is vir die betaling van voorlopige belasting op 29 Februarie 1992, in staat te stel om sy of haar skatting van inkomste dienooreenkomstig aan te pas. Dit mag egter wees dat sekere tegniese en gevolglike wysigings mettertyd aangebring sal moet word.

Die uitwerking van die voorgestelde wetgewing is soos volg:

1. Die voorgestelde artikel 7 (2A) (a) bepaal as algemene reël dat inkomste verkry uit die beoefening van 'n bedryf, ten volle belasbaar sal wees in die hande van die gade wat die bedryf beoefen het. Waar die gades egter die bedryf in vennootskap beoefen het, val die inkomste die gades toe in die winsverdelingsverhouding ooreenkomstig hul vennootskapsooreenkomste. Die teenvermydingsbepalings vervat in artikel 7 (2) (b) is egter steeds van toepassing om die kanalisering van oormatige vergoeding aan 'n gade te verhoed.

Daarbenewens bepaal die voorgestelde artikel 7 (2C), dat vir doeleindes van die toepassing van hierdie reël, word enige voordele betaalbaar deur 'n pensioenfonds, voorsorgsfonds, bystandsfonds of 'n uittredingannuïteitsfonds geag inkomste verkry uit 'n bedryf te wees in die hande van die gade wat 'n lid of gewese lid van die fonds is. Jaargeldbedrae soos omskryf in artikel 10A word eweneens geag inkomste verkry uit 'n bedryf te wees in die hande van die gade aan wie die jaargeldbedrag betaalbaar is. Alhoewel jaargeldbedrae van hierdie aard in wese eintlik beleggingsinkomste verteenwoordig, word dit vir die doeleindes van hierdie bepaling nie as sodanig beskou nie, vanweë die feit dat werknemersbelasting daarvan aftrekbaar is en die verdeling daarvan praktiese en administratiewe probleme mag meebring.

2. Die voorgestelde artikel 7 (2A) (b) bepaal dat huurgeld verkry uit die verhuur van vaste eiendom, asook alle inkomste verkry op 'n ander wyse as uit 'n bedryf, in gelyke dele in die hande van die gades belasbaar sal wees. Die uitwerking van hierdie bepaling is dus dat beleggingsinkomste soos byvoorbeeld rente, in gelyke dele in die hande van die gades belasbaar sal wees. Die betrokke artikel reguleer ook gevalle waar 'n skenker of testateur 'n bate aan 'n gade getroud binne gemeenskap van goedere geskenk of bemaak het met die voorbehoud dat die bate nie deel van die gemeenskaplike boedel sal vorm nie. Indien die skenker of testateur voorts bepaal het dat die vrugte (inkomste) van die bate ook nie deel van die gemeenskaplike boedel sal vorm nie, word daardie inkomste uitsluitlik belas in die hande van die gade wat die eienaar van die bate is.

By reason of the fact that the legislation is of a retroactive nature and individuals have to make their provisional tax payments not later than 29 February 1992, notice of the proposed amendments is given at this early stage to enable a spouse who is liable for the payment of provisional tax on 29 February 1992, to adjust his or her estimate accordingly. It may however be necessary for certain technical and consequential amendments to be made.

The effect of the proposed legislation will be as follows:

1. The proposed section 7 (2A) (a) provides, as a general rule, that income derived from a trade, shall be taxable in full in the hands of the spouse carrying on such trade. Where the spouses, however, carry on a trade in partnership, the income accrues to the spouses in the profit-sharing ratio in accordance with their partnership agreement. The anti-avoidance provisions contained in section 7 (2) (b) are, however, still applicable to prevent the channelling of excessive remuneration to a spouse.

In addition thereto the proposed section 7 (2C) provides that for the purposes of the application of this rule, benefits payable by pension, provident, benefit and annuity funds, are deemed to be income derived from a trade in the hands of the spouse who is a member or past member of the fund. Annuity amounts as defined in section 10A are also deemed to be income derived from a trade in the hands of the spouse to whom the annuity amount is payable. Although annuity amounts of this nature in essence represent investment income, it is for purposes of these provisions not regarded as such, by reason of the fact that employees tax is deductible therefrom and the apportionment thereof may lead to practical and administrative difficulties.

2. The proposed section 7 (2A) (b) provides that rental income derived from the letting of fixed property and also all income derived otherwise than from a trade, shall be taxable in equal shares in the hands of the spouses. The effect of this provision is thus that investment income, such as interest, will be taxable in equal shares in the hands of the spouses. The relevant section also governs situations where a donor or a testator, donates or bequeaths an asset to a spouse on condition that such asset shall not form part of the joint estate. If the donor or testator furthermore provides that the fruits (income) produced by the asset shall also not form part of the joint estate, such income shall be taxed in the hands of the spouse who is the owner of the

Waar die skenker of testateur hom geensins oor die toevalling van die vrugte (inkomste) van die bate uitgespreek het nie, en dit die gemeenskaplike boedel toeval, word die inkomste in gelyke dele in die hande van die gades belas.

3. Die voorgestelde artikel 7 (2B) reguleer die aftrekking van uitgawes en verminderings teen die inkomste toegeval aan 'n gade, tot die mate wat daardie inkomste geag word inkomste te wees wat die gade toegeval het.

Met betrekking tot uitgawes wat wel vir belasting-doeleindes aftrekbaar is, maar nie spesifiek verband hou of aangegaan is in die voortbrenging van inkomste wat 'n gade toeval nie, sal die gewone reëls steeds geld. So sal in die geval van mediese uitgawes, die uitgawe steeds aftrekbaar wees deur die gade wat die mediese onkoste betaal het, ongeag die feit dat die koste moontlik gedelig word vanuit die fondse van die gemeenskaplike boedel. Net so in die geval van bydraes tot 'n pensioenfonds of aan 'n uittredingannuïteitsfonds, sal die bydraes aftrekbaar wees in die hande van die gade wat die bydraes gemaak het en ook 'n lid van die fonds is, onderhewig aan enige oordraagbaarheid van bydraes deur 'n vrou aan haar man ten opsigte van bydraes aan uittredingannuïteitsfondse.

4. Die inwerktradingbepalings bepaal dat sover dit inkomste verkry uit 'n bedryf betref, die bepaling van toepassing sal wees vanaf die begin van jare van aanslag wat op of na 28 Februarie 1991, geëindig het of eindig. Sover dit huurgeld vanuit vaste eiendom betref, sal die gades egter geregtig wees om waar die huurgeld slegs in een van die gades se hande belas is, nie later nie as 31 Desember 1992, skriftelik om 'n verdeling van die huurgeld vir belastingdoelindes aansoek te doen. Gades wat alreeds hul opgawe van inkomste vir die 1991 belastingjaar ingedien het, maar nog nie 'n aanslag ontvang het nie, kan ook voor daardie datum skriftelik om 'n verdeling aanvra. Dit is belangrik dat skriftelike versoeke van hierdie aard deur beide gade onderteken word.

Vir sover dit inkomste verkry op 'n ander wyse as uit 'n bedryf betref, sal die bepaling van toepassing wees vanaf die begin van jare van aanslag wat op of na 29 Februarie 1992, geëindig het of eindig.

Alhoewel die voorgestelde wysigings wel van 'n terugwerkende aard is, is die uitwerking daarvan hoofsaaklik tot die voordeel van belastingtiges en word dit daarbenewens ingevoer om bestaande belastingregte te beskerm, die belastingreëls in hierdie verband duideliker en meer spesifiek te omskryf en derhalwe die toepassing van die belastingstelsel te vereenvoudig.

5. Die volgende voorbeeld illustreer die praktiese uitwerking van die nuwe bepalinge:

asset. Where the donor or testator was silent as to whom the fruits (income) should accrue, and it accrues to the joint estate, such income shall be taxed in equal shares in the hands of the spouses.

3. The proposed section 7 (2B) governs the deduction of expenditure and allowances against the income of a spouse to the extent to which such income is deemed to be income that has accrued to such spouse. The normal rules shall, however, apply in respect of expenditure which is deductible for tax purposes but is not specifically related to or was not incurred in the production of such income which accrued to the spouse. In the case of medical expenses for instance, the expenditure will still be deductible in the hands of the spouse who paid the medical expenses, notwithstanding the fact that the expenditure was discharged from funds belonging to the joint estate. Likewise, in the case of contributions to a pension fund or to an annuity fund, the contributions shall be deductible in the hands of the spouse who made the contributions and is also a member of the fund subject to any transferability of contributions by a woman to her husband in respect of the contributions to retirement annuity funds.

4. The implementation provisions provide that to the extent that such income was derived from a trade, the provisions shall be applicable from the commencement of years of assessment ended or ending on or after 28 February 1991. In so far as it relates to rental from a fixed property, in cases where the rental was taxed in only one of the spouses' hands, the spouses shall be allowed to apply in writing not later than 31 December 1992, for an apportionment of the rental income for tax purposes. Spouses who have already submitted their return of income for the 1991 tax year but who have not yet received an assessment, may also make written application before that date from an apportionment of the rental income. It is important to note that written applications of this nature should be signed by both spouses.

To the extent that such income was derived otherwise than from a trade, the provisions shall be applicable as from the commencement of years of assessment ended or ending on or after 29 February 1992.

Although the proposed amendments are indeed of a retroactive nature, the result thereof is mainly to the benefit of taxpayers and, in addition, are implemented to protect existing tax rights as well as to clarify and define more specifically the tax rules in this regard, thereby simplifying the tax system.

5. The following example illustrates the practical result of the new provisions:



**Inkomste:**

	<b>Man</b>	<b>Vrou</b>
Besoldiging .....	R50 000	R40 000
Netto huurgeld .....	6 000	—
Besigheidsinkomste .....	10 000	—
Bruto belasbare rente .....	6 000	4 000

**Aftrekkings:**

Mediese uitgawes betaal deur .....	5 000	1 000
Pensioenfondsbydraes .....	3 000	2 000
Annuiteitsfondsbydraes .....	1 800	600
Artikel 18A skenking .....	100	

**Oplossing****Belastingposisie van die man**

Inkomste: Besoldiging .....	R50 000
Huurgeld ( $6\,000 \div 2$ ) .....	3 000
Besigheidsinkomste .....	10 000
*Rente $[(6\,000 + 4\,000) \div 2] - 2\,000$ .....	3 000
	<hr/>
	66 000

**Min: Aftrekkings:**

Pensioenfondsbydraes .....	R3 000
Annuiteitsfondsbydraes .....	1 800
Skenking .....	100
Medies:	
R5 000 - $[(R66\,000 - 4\,900) \times 5\%]$ .....	1 945
	<hr/>
	6 845

Belasbare Inkomste .....	<hr/> <hr/> R59 155
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**Belastingposisie van die vrou**

Inkomste: Besoldiging .....	R40 000
Huurgeld ( $6\,000 \div 2$ ) .....	3 000
*Rente $[(6\,000 + 4\,000) \div 2] - 2\,000$ .....	3 000
	<hr/>
	46 000

**Min: Aftrekkings:**

Pensioenfondsbydraes .....	R2 000
Annuiteitsfondsbydraes .....	600
Medies:	
R1 000 - $[(R46\,000 - 2\,600) \times 5\%]$ .....	Nul
	<hr/>
	2 600

Belasbare Inkomste .....	<hr/> <hr/> R43 400
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\* Beide gades is op die R2 000 rentevrystelling geregtig.

**Income:**

	<b>Husband</b>	<b>Wife</b>
Remuneration .....	R50 000	R40 000
Net rental income .....	6 000	—
Trading income .....	10 000	—
Gross taxable interest .....	6 000	4 000

**Deductions:**

Medical expenses paid by .....	5 000	1 000
Pension fund contributions .....	3 000	2 000
Annuity fund contributions .....	1 800	600
Section 18A donation .....	100	

**Solution****Tax position of husband**

Income: Remuneration .....	R50 000
Rental income ( $6\,000 \div 2$ ) .....	3 000
Trading income .....	10 000
*Interest $[(6\,000 + 4\,000) \div 2] - 2\,000$ .....	3 000
	<hr/>
	66 000

**Less: Deductions:**

Pension fund contributions .....	R3 000	
Annuity fund contributions .....	1 800	
Donation .....	100	
Medical:		
R5 000 - [(R66 000 - 4 900) × 5%] .....	1 945	6 845
Taxable income .....		<u>R59 155</u>

**Tax position of the wife:**

Income: Remuneration .....	R40 000
Rental income (6 000 ÷ 2) .....	3 000
*Interest [(6 000 + 4 000) ÷ 2] - 2 000 .....	3 000
	<u>46 000</u>

**Less: Deductions:**

Pension fund contributions .....	R2 000	
Annuity fund contributions .....	600	
Medical:		
R1 000 - [(R46 000 - 2 600) × 5%] .....	Nil	2 600
Taxable income .....		<u>R43 400</u>

\* Both spouses are entitled to the R2 000 interest exemption.

6. Ten slotte moet daarop gewys word dat die voorgestelde wetgewing op die oog af mag voorkom dat dit 'n geleentheid bied vir gades wat binne gemeenskap van goedere getroud is om hul passiewe inkomste te verdeel, terwyl dieselfde voordele nie beskikbaar is nie vir gades wat buite gemeenskap van goedere getroud is. Dit is egter nie die bedoeling nie. Die voorgestelde wetgewing poog om die bestaande regte wat algemeen van toepassing is op gades wat binne gemeenskap van goedere getroud is, te volg sover dit passiewe inkomste betref wat voortspruit uit bates wat deel vorm van die gemeenskaplike boedel. Die voorgestelde wetgewing bevestig dus slegs in hierdie verband die wettiese posisie tussen gades getroud binne gemeenskap van goedere en is geensins bedoel om voorkeurregte te skep vir 'n groep belastingpligtiges ten koste van gades wat nie binne gemeenskap van goedere getroud is nie. Daarbenewens bevorder dit die eenvoudigheid van die belastingstelsel wat andersins ingewikkelde subjektiewe reëls sou geverg het om vas te stel welke gade verantwoordelik was vir die voortbrenging van die passiewe inkomste.

*Uitgereik deur:* Die Kommissaris van Binnelandse Inkomste Pretoria.

*Navrae:* J. J. Louw (012) 315-5388.  
A. P. Keanly (012) 315-5378.

*Datum:* 5 Februarie 1992.

6. In conclusion, it must be mentioned that the proposed legislation may, on the surface, appear to present the opportunity for spouses who are married in community of property to apportion their passive income, while a similar benefit is not available for spouses who are married out of community of property. This is, however, not the intention. The proposed legislation attempts to follow the existing rights which are generally applicable to spouses married in community of property in so far as passive income derived from assets which form part of the joint estate are concerned. The proposed legislation in this regard therefore only confirms the legal position between spouses married in community of property and is in no way intended to create preferential rights for a group of taxpayers at the cost of spouses who are not married in community of property. In addition, it promotes the simplification of the tax system which would otherwise require complex subjective rules in order to determine which spouse was responsible for the production of the passive income.

*Issued by:* The Commissioner for Inland Revenue Pretoria.

*Enquiries:* J. J. Louw (012) 315-5388.  
A. P. Keanly (012) 315-5378.

*Date:* 5 February 1992.

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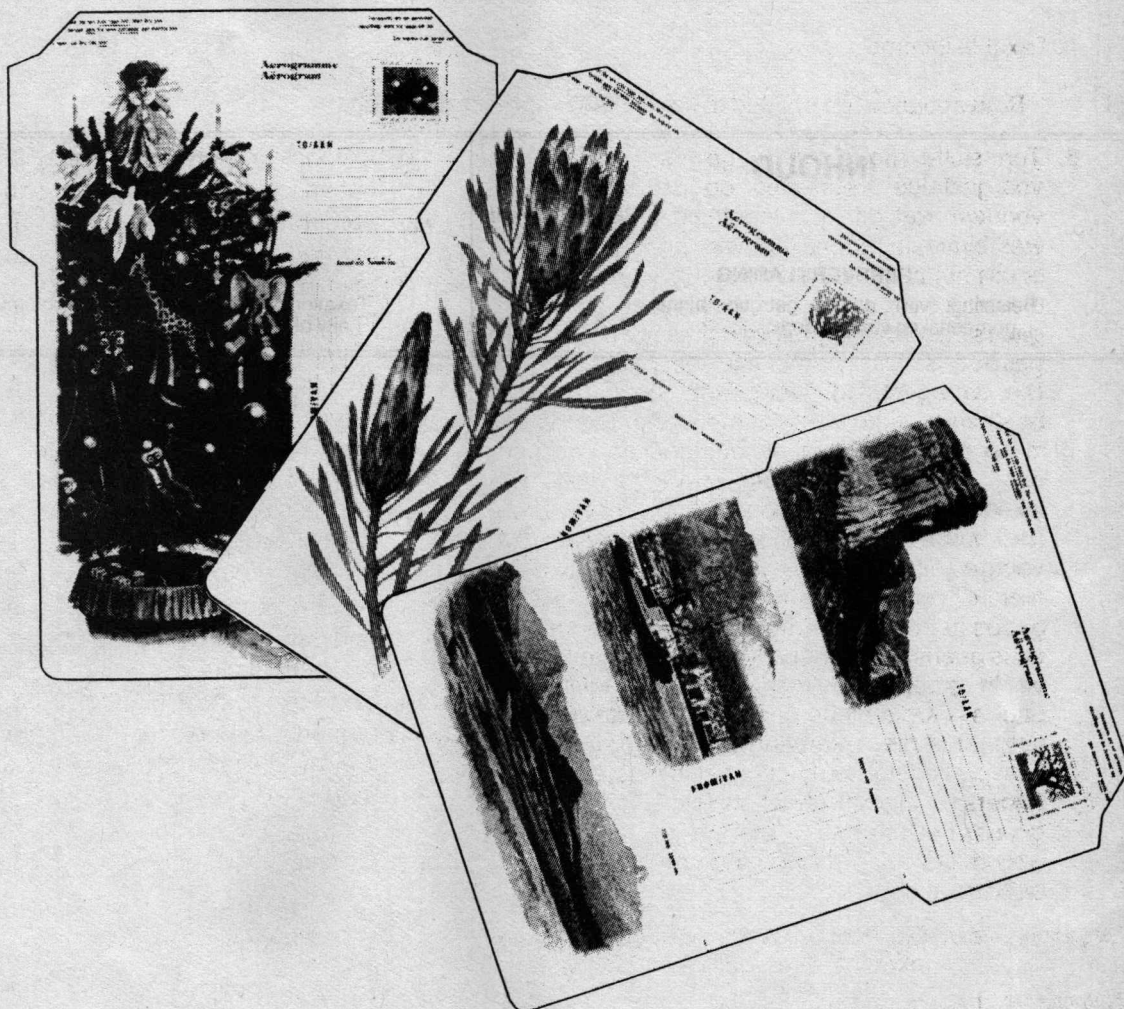


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