



chartered accountants
& business advisers

TAX ASPECTS OF FOREIGN INVESTMENTS



EXCHANGE CONTROL

- Foreign investment allowance: R4 million per person; tax clearance certificate
- Loop structure – not permitted
- Foreign income: may be retained offshore
- Asset swap
- Emigration
 - Blocked assets/ settling-in allowance
 - 10% exit levy: liquid assets/ listed shares

BASIS OF TAXATION

- SA: residence, worldwide income and capital gains
- Ordinarily resident/ physical presence
 - 91 days in current and preceding 5 years
 - > 915 in aggregate in preceding 5 years
- Trust/ companies:
 - incorporated/ formed/ established in SA
 - place of effective management – day to day
- DTA: tiebreaker clause

FOREIGN SOURCED INCOME

- Conversion to Rand:
 - Spot/ average
 - PE outside SA – average
- Interest and foreign dividends: Taxable
- Foreign dividends exemptions
 - > 20% of equity shares and voting rights (foreign CIS included)
 - CFC income
 - Previously SA taxed income
 - Directly/ indirectly out of dividend from SA resident Co
 - Dual listed foreign companies

FOREIGN SOURCED INCOME

- R3 700 exemption
- Deduction:
 - Interest, limited to foreign dividend
 - Excess – exempt dividends – carry forward
- Rental income: DTA provisions

CONTROLLED FOREIGN CORPORATIONS

- SA residents > 50 % participation rights/ voting rights
- CFC:
 - Net income attributed to SA resident – proportionally
- Net income:
 - I.t.o ITA and deem CFC a resident for gross income, CGT and other
 - Losses not attributed; carried forward
 - NP: 25% of capital gains

CONTROLLED FOREIGN CORPORATIONS

- Exemptions:
 - FBE (NB exclusions), passive income >10% of total
 - Income taxed in SA at normal rates
 - Foreign dividends out of CFC taxed net income
- Can elect foreign Co to be a CFC – 10% - 20% shareholding, access underlying tax credits
- >10% participation rights: IT10 submitted to SARS

CAPITAL GAINS TAX

- Special conversion rules apply
- Immovable property outside SA, foreign PE assets, unlisted shares
 - Same currency: Ignore exchange rate movements
 - Difference currencies: Exchange rate movements a factor
- Foreign equity instruments and deemed SA sourced assets

CAPITAL GAINS TAX

- Listed shares
- Foreign CIS
- Rights/ obligations deriving value from specified foreign index
- Coins made mainly from gold/ platinum

Conversion of proceeds and base cost to Rand at average for year of disposal and acquisition – foreign exchange movements taken into account

FOREIGN EXCHANGE GAINS AND LOSSES

INCOME TAX

- Loans/ forex held as trading stock or FCOC/ FEC
- Realised and unrealised foreign exchange gains and losses

CGT

- Foreign currency assets and liabilities
- Disposal/ settlement
- Foreign currency asset pool
 - Movement in same pool ignored

FOREIGN EXCHANGE GAINS AND LOSSES

- Personal foreign currency assets
 - Cash/ bank account
 - Per currency
 - Personal expenses (accommodation, travel, domestic)
- Inter-spouse transfer – tax free rollover



ATTRIBUTION RULES

- Anti-avoidance provisions: Income and capital gains
- s 25B and par 80(1) and par 80(2)
 - Trust income and capital gain flow through to vested beneficiary
- s 7(5) and par 70
 - D, S or disposition
 - Conditionality attached to vesting in beneficiary – attribution to donor

ATTRIBUTION RULES

- s 7(8) and par 72
 - D, S or disposition by resident
 - Vesting of income/ capital gain in non-resident – attribution to resident donor

- s 25B(2A) and par 80(3)
 - Resident acquires vested right to “capital” of a foreign trust arising from income/capital gain of trust
 - In a year when resident had contingent right thereto
 - Would have been taxable in SA had trust been a resident
 - Treated as income/ capital gain of resident

FOREIGN TAX REBATES

- ITA/ DTA can provide relieve – not both
- Foreign tax payable on:
 - Foreign sourced income and capital gains
 - CFC income attributed
 - Foreign dividends
 - Income/ capital gain attributed

Can be claimed as a rebate against SA tax

- Limited to SA tax on such income
- Excess:
 - carried forward for 7 years

NON DISCLOSURE

- Failure to disclose foreign assets and foreign income to SARS
- SARS can estimate foreign assets and foreign income by applying official rate of interest to estimated asset amount
- Must give notice to taxpayer
- Voluntary disclosure programme



chartered accountants
& business advisers

CONCLUSION

