



South African Fiscal Association

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Dear members

We wish to advise that due to the non availability of a UK barrister as well as a proliferation of year end training, mainly within the large accounting firms, we were unable to secure seminar rooms and an appropriate date for a further SAFA seminar in 2005. To prevent this problem in future we have decided to move forward the dates of the seminars and have pre-booked seminar rooms. Although we may still have to change dates in order to accommodate presenters the new arrangement would hopefully ensure three rounds of seminars in 2006.

Preliminary dates for seminars for 2006

We have booked seminar rooms for the following dates:

Cape Town	28 February 2006
Johannesburg	2 March 2006

Cape Town	25 July 2006
Johannesburg	27 July 2006

Cape Town	24 October 2006
Johannesburg	26 October 2006

Seminars

The topics of seminars will be provided closer to the time. We welcome suggestions from members on topics. After suggestions from members we have made some progress on the arrangements of at least two of the seminars. They are mentioned hereunder. Another topic on the shortlist recommended by one of our members is a

discussion on share incentive schemes following the introduction of section 8C to the Income Tax Act. Also proposed is a session on the draft discussion paper relating to proposed amendments to section 103 accompanied by an address by a representative of SARS who could explain their position.

Proposed topic for seminar one: The tax implications of investing into Africa

One often hears Government Ministers encouraging South Africans to invest into Africa, but does the South African tax system support this? NEPAD also requires members to have tax systems that encourage inter Africa investment. How is transfer pricing legislation applied for investment into Africa? What about SARS's apparent application of section 6*quat* not to allow tax credits for income from a South African source? Africa has high withholding taxes and such interpretation of 6*quat* can result in effective tax rates of more than 50% for SA investors.

We plan to invite a senior Government official to discuss the importance of investment in Africa. The further speakers would be someone from National Treasury or SARS and someone from the tax consulting profession to debate whether the South African tax system is supportive of investments into Africa.

Although the focus is on Africa the same issues may apply to other offshore investments.

Proposed topic for seminar two: The impact of the EC Treaty on Fundamental freedoms of non member Jurisdictions

We have been fortunate to arrange with a former member of SAFA, now residing and practising in the UK, together with another UK solicitor, to co-present a seminar on this important subject. They represent a prestigious UK legal practice specialising in corporate law and EU tax matters. They have advised us of tentative dates for 25 and 27 July 2006. The gist of the court cases and issues are:

Many multi-national companies, whether they were first established in South Africa or elsewhere, have group structures in the form of parents, subsidiaries, branches or permanent establishments in European Union (EU) member states.

These companies are all subject to multiple tax regimes. In EU member states in particular, developments in recent years have seen increasing coherence with regard to corporation tax as a result of the application of European Community (EC) law. Many corporation tax principles which have been applied in some member states have been attacked in the European Court of Justice (ECJ), some attacks have been successful. Some of the cases relate to taxation of dividends, group loss relief systems, CFC regimes and Thin Capitalisation provisions. All those cases are based on the grounds that the relevant taxation provision is in breach of the freedoms entrenched in the EC Treaty, including the freedom of establishment and the free movement of capital. The cases are also based on contravention of provisions of Double Taxation Conventions between states.

In many of the cases currently before the ECJ the claimants are MNE's that have structured their operations across borders and may have establishments in both EU member states and non EU member states. In some non EU member states the tax

treatment of these MNE's is more adverse than that encountered in member states. As a result, the question arises to what extent, if any, the European Community law principles, in particular the freedoms which are entrenched in the EC Treaty, as well as the non-discrimination provisions, could be raised on behalf of tax regimes in non-EU member states, such as South Africa.

The answer lies in the provisions of the EC treaty as well as the bilateral DTCs concluded between SA and the various EU jurisdictions. Certain provisions of the EC treaty are directly applicable to non EU members, in particular Article 56 which provides for the free movement of capital and payments which was extended to non-member countries as from 1 January 1994. The provision prohibits restrictions on the movement of capital between member states and third countries. The provision is however subject to limitations.

In addition, many DTCs contain a non-discrimination clause which prohibits a state from subjecting an enterprise to taxation which is more burdensome than the taxation of other similar enterprises in the other treaty partner state. Similar clauses are contained in treaties between EU members and have successfully been relied upon by enterprises in those states to protect themselves against adverse taxation regimes.

It is becoming increasingly important for MNE's to have regard to international tax developments in the EU context as these principles and remedies may soon be sought by South African based MNE's.

Membership subscriptions for 2006:

You have been advised about the new requirements by IFA regarding the early communication of changes and/or cancellations of membership to which we are unfortunately bound. We trust that you understand our position and will assist us as best possible to comply. Please note that SAFA is obliged to pay your pro rata subscriptions to IFA regardless of whether we recover payment from you which results in a compounded loss position, so please treat this matter as one of importance.

End of Year

Another year has passed. We thank our members for their good support during 2005 and we wish all of them a pleasant, safe and well deserved summer holiday.

Regards

Charl du Toit
President: SAFA