



South African Fiscal Association

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Dear members

First seminar for 2006: The tax implications of investing into Africa

We are pleased to confirm that this seminar will go ahead at the dates announced last year. We hope to see many of our members at the seminar.

This is a very important issue. 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. The main issue in this regard is SARS's apparent application of section 6quat not to allow tax credits for income from a South African source. Africa has high withholding taxes and such interpretation of 6quat can result in effective tax rates of more than 50% for SA investors. Compared to this the effective tax rates for investment into e.g. Europe is a lot lower. See further discussion of this issue below. Another matter is transfer pricing on start up loans for investment into Africa.

Speakers

We were fortunate to secure the following speakers:

Mandiza Mbekeni is the Chief Executive Officer of the NEPAD Business Foundation. She holds a BA from Rhodes University, LLB from the University of Natal and Management Advanced Program from the University of the Witwatersrand. Mandiza sits on several boards. She is the chairperson of the board of SAWIMIH (South African Women In Mining Investment Holding). She was the company secretary and Executive committee member of the Black Management Forum from 1999 – 2004.

Joseph Rock is Senior Manager: Operations Support at the SARS Large Business Centre. The qualities of Joseph are well known to many of our members.

Osman Mollagee is Head of Taxation at the Accounting Department of the University of the Western Cape. He is also an Associate Director with PricewaterhouseCoopers. Osman has been involved in taxation all of his working life, which included a more than three years secondment to London, and has wide experience on the topic

Ideally one would have wanted also a speaker from National Treasury who is ultimately responsible for policy in this regard. We trust we would be able to arrange with someone from Treasury to attend the seminar and provide inputs from the floor.

More on the topic

Where a SA-resident suffers foreign tax on foreign income, *s6quat* allows (broadly speaking) a reduction in the SA tax payable on the foreign income.

However, one of the technical aspects of *s6quat* that is currently being hotly debated, is the intended interpretation of “source”. Specifically, is it intended to have the same meaning as in the definition of “gross income” or does it mean “the place/ country from which the income is received”? The potential implications of this debate are perhaps best illustrated through an example :

- A SA-resident company provides management services to a client in Malawi, for a fee of R1 000.
- The work is actually carried out in SA, at a cost of R 600 (i.e. SA company makes a profit of R400).
- Malawian tax law imposes a 10% withholding tax on management fees paid to non-Malawian residents.

The SA company is clearly subject to SA tax on the R400, producing an initial (before rebates) Normal Tax liability of R116 (R400 x 29%). However, the two alternative *s6quat* treatments are :

- (a) If the management fees are considered to be **not** from a SA-source, then the SA company pays SA tax of R16 (i.e. R116 – R100) because the R100 Malawian tax is allowed as a *s6quat* rebate. Total tax paid is then R116 (i.e. R100 in Malawi + R16 in SA), and the effective tax rate is 29%.
- (b) If the management fees **are** from a SA-source, then the SA company pays full SA tax of R116 since the Malawian tax is denied as a *s6quat* rebate. Total tax paid is then R216 (R100 Malawi + R116 SA), and the effective tax rate is 54%.

There are instances where the actual rate is a lot higher than 54%

As illustrated then, what the “source” of the management fee is considered to mean is a critical question. It is especially relevant in Africa, where so many regimes impose withholding taxes on many different categories of payments to non-residents.

What are the reasons why South Africa (or any other country) allows unilateral tax relief such as under *s6quat*? Is one reason the promotion of business and foreign investment? If so, does it make sense to adopt an interpretation that results in double tax? Whose responsibility (the taxpayer or Government) is it to take the matter of high

withholding taxes up with other African countries? The seminar will address all these and other issues.

Dates, venues and booking details:

Date: 28 February 2006
Place: Cape Town
 PricewaterhouseCoopers
 No 1 Waterhouse Place
 Century City
Time: 18h00 to 19h30
Topic: Tax implications of investing into Africa
Speakers:

- **Mandiza Mbekeni** is the Chief Executive Officer of the NEPAD Business Foundation.
- **Joseph Rock** is Senior Manager: Operations Support at the SARS Large Business Centre
- **Osman Mollagee** is Head of Taxation at the Accounting Department of the University of the Western Cape.

Bookings: jolandie.james@za.pwc.com Tel no: 021- 529 2368

Date: 2 March 2006
Place: Johannesburg
 KPMG Auditorium, 85 Empire Road, Parktown
Time: 18h00 to 19h30
Topic: Tax implications of investing into Africa
Speakers:

- **Mandiza Mbekeni** is the Chief Executive Officer of the NEPAD Business Foundation.
- **Joseph Rock** is Senior Manager: Operations Support at the SARS Large Business Centre
- **Osman Mollagee** is Head of Taxation at the Accounting Department of the University of the Western Cape.

Bookings: Bronwyn.Johnson@kpmg.co.za Tel no: 011 - 647 5716

As a once off marketing initiative non members are welcome to attend free of charge, subject to availability of seating after we have accommodated our members.

Regards

Charl du Toit
President: SAFA