



South African Fiscal Association

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29 June 2006

Newsletter 2/2006

Dear members

Seminar: Cape Town - 25 July 2006 Johannesburg - 27 July 2006

- 1. The impact of the non discrimination articles in Double Tax Conventions and the impact thereon relating to STC**
- 2. Section 103(1) - SARS address on the discussion draft**

Our second seminar for 2006 which is comprised of two very interesting topics will take place on the above dates.

Outline of Topic 1: Non-Discrimination Articles in DTC's and the effect on STC

On the 26th August 2004, the Minister of Finance issued a press statement in which he said the following:

"It has come to my attention that certain multinational companies and their advisers are attempting to argue that they may declare dividends to non-resident group companies without paying Secondary Tax on Companies (STC). I am concerned that this argument is based on an improper reading of the Double Taxation Agreements South Africa has entered into with other jurisdictions."

There have been a number of developments since this announcement. Firstly the Income Tax Act has been amended. Secondly, there is a pending court case on the matter, which is attracting a lot of interest. We have been working hard to arrange with a former member of SAFA, now residing and practising in the UK, together with another senior colleague, to co-present a seminar on the effect of non-discrimination articles in Double Tax Conventions with a focus on South African Companies' STC liability. They will discuss the impact of ground breaking cases such as the Semi-conductors case in the UK and the question around non-discrimination clauses in Double Tax Treaties. Their discussion will specifically focus on South Africa and will speculate on the outcome of the South African case on STC.

They will also take their discussion one step further. In many countries, although the national rules differ, the taxation of dividends paid by a subsidiary to a domestic parent differs from

the taxation of dividends paid by a subsidiary to a foreign parent. These rules have been challenged in the European Court of Justice as being unlawful and in most cases, successfully. What lessons are there for South Africa? What does this mean for South Africa? The address will be on case law relating to these issues. More importantly, most SA Double Tax treaties follow the OECD Model Convention and contain a non-discrimination clause which prohibits the state from imposing more burdensome tax on a subsidiary with a foreign parent. The UK also incorporated this clause in its treaties and in the UK the Court of Appeal has recently concluded that differential treatment on the basis of ownership of the subsidiary is not permitted as it is in contravention of that clause.

Can it be said, by way of example, that the differential treatment regarding STC violates this clause? In SA, domestic groups can elect not to pay STC. That election is not available where the subsidiary is foreign-owned. The presentation will look at the case law and important principles which can be distilled from that and assess the lessons for South Africa.

Outline Topic 2 - An address by SARS on the draft Section 103(1)

A discussion document in respect of section 103(1), including a draft for an amended section 103(1) has been released recently. We were fortunate to secure the author of this draft to inform us first hand as to the reasons for and expected impact of the new section 103(1).

DATES, VENUES AND BOOKING DETAILS:

Date: 25 July 2006
Place: Cape Town
 PricewaterhouseCoopers
 No 1 Waterhouse Place
 Century City
Time: 18h00 to 19h30
Topic 1: The impact of the non discrimination articles in DTC's and the impact thereon relating to STC
Speakers: Dr. Simon Whitehead
 Adv Liesl Fichardt
Topic 2: Section 103(1) – SARS address on the discussion Draft
Speaker: Edward Liptak - SARS author of the discussion draft on S 103(1)
Bookings: jolandie.james@za.pwc.com Tel no: 021- 529 2368

Date: 27 July 2006
Place: Johannesburg
 KPMG Auditorium, 85 Empire Road, Parktown
Time: 18h00 to 19h30
Topic 1: The impact of the non discrimination articles in DTC's and the impact thereon relating to STC
Speakers: Dr. Simon Whitehead
 Adv Liesl Fichardt
Topic 2: Section 103(1) – SARS's address on the discussion Draft
Speaker: We are in the process of arranging for a SARS substitute speaker for Edward Liptak, who is unfortunately not available in JHB on this date
Bookings: anne.schrenk@kpmg.co.za Tel : (011) 647 5770

The resumé of the speakers for Topic 1:

Dr. Simon Whitehead is a Partner at Dorsey & Whitney and the Dorsey Head of Trial for Europe. He specialises in claims by companies against the UK Inland Revenue for the recovery of damages and the repayment of taxes levied in breach of community law. He has practiced in the UK since 1991 and is also a qualified solicitor in Australia. He writes widely on UK & EU tax and litigation issues.

Adv Liesl Fichardt offers a broad understanding of many areas of corporate tax law. She has advised various multinational corporations on a range of international tax issues, including transfer pricing, thin capitalization, Double Tax Treaty provisions, anti-avoidance and VAT. She has also advised on UK and SA corporate tax provisions. She is currently involved in the GLO litigation which is pending before the UK Courts and the European Court of Justice. Previously, as Chairperson of the South African Tax Board, she presided over contentious tax disputes. During 2004 she acted as a Judge of the High Court of South Africa.

The resumé of the speakers for Topic 2:

This information will be provided in a next version of the newsletter.

AGM

Notice of the Annual General Meeting for 2005 is hereby given to be held on 27 July 2006 in a designated boardroom at the offices of KPMG, Johannesburg. Further detail and agenda will be sent to members under cover of a confidential e-mail.

We include below details of an invitation to attend the first IFA Seminar in Mauritius.

Lastly, do not forget to book for the IFA Congress in Amsterdam.

Regards

Charl du Toit
President: SAFA

Invitation to attend IFA Branch meeting in Mauritius

The Mauritius Branch of International Fiscal Association, in cooperation with IFA India Branch, is pleased to convene the first Regional Conference on International Taxation in Mauritius on **27&28 July 2006**.

The conference aims at providing a forum for exchange of knowledge about fiscal policies and tax structures in the countries of the region as affecting investment decisions.

The conference will be addressed by eminent tax professionals and senior government officials both local and international.

You are cordially invited to attend the conference. KINDLY INTIMATE YOUR LIKELY PARTICIPATION TO THE ADDRESS MENTIONED BELOW SO THAT FURTHER DETAILS ARE COMMUNICATED TO YOU.

Uday K Gujadhur

Chairman

IFA (Mauritius Branch)

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Conference Highlights

- a. Global Tax Structuring
(China/Singapore /India/Sri Lanka/Pakistan/Africa)
- b. Overview of the Mauritius tax legislation
- c. Global opportunities
(Mutual fund/securitisation/ecommerce)
- d. Recent developments in international taxation
- e. Transfer pricing issues

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