



## South African Fiscal Association

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P O Box 452  
CAPE TOWN  
8000  
Telephone: 021 794 0366  
Fax: 021 794 0367  
e-mail: [basilnewton@iafrica.com](mailto:basilnewton@iafrica.com)

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Newsletter 4/2008

### Dear members

#### **Invitation to SAFA seminar on recent international tax cases on place of effective management, beneficial ownership, transfer pricing and abuse of tax treaties:**

The primary focus of SAFA is on international tax and this seminar is therefore fully focussed on discussing some important recent land mark international tax cases. The past year or so has been quite fruitful as far as international tax cases on important tax issues are concerned. This seminar is, however, not only relevant for persons dealing with international tax. International tax cases on issues such as the meaning of beneficial ownership and place of effective management may also have a bearing on the domestic meaning of such terms.

The facts and structures that the cases relate to are commonly used and SAFA members will therefore derive great benefit from the discussion. Below we provide a list of the topics to be discussed.

The notion of **beneficial ownership** is decisive in determining whether a person qualifies for tax treaty benefits in respect of cross border dividends, royalties and interest. The notion has also been incorporated in South African domestic law in relation to Securities Transfer Tax and will apparently also be a key determinator in the dividend withholding tax that will replace STC. SAFA's first seminar a few years ago was on the meaning of **place of effective management** and it is an opportune time to look at one of the latest decisions on this term that is so key to determining tax residence. **Transfer pricing** has for years been indicated by big business as the most important tax issue internationally. **Tax abuse** has always been a relevant topic but there has never been much clarity on how it applies in the tax treaty context.

#### **We plan to deal with the following:**

*Wood and another v Holden (HMIT)* [2006] EWCA Civ 26 Court of Appeal (Civil Division), United Kingdom, 26 January 2006.

- a landmark case in England, dealing with the meaning of "central management and control" and the similarity with "place of effective management".

*Prévost Car Inc. v Her Majesty the Queen* [unreported] Toronto Tax Court, Canada, 22 April 2008.

- another landmark case in Canada, dealing with the meaning of "beneficial ownership".

*Roche Products Pty Ltd v Commissioner of Taxes* [2008] AATA 261 Administrative Appeals Tribunal, Australia, 2 April 2008.

- an Australian case dealing with the important concept of comparability with reference to the application of transfer pricing methodologies.

*Her Majesty the Queen v MIL (Investments) S.A.* 2007 FCA 236 Federal Court of Appeal, Canada, 13 June 2007; *Lorraine Kinsella v The Revenue Commissioners* [2007] IEHC 250 Irish High Court, 31 July 2007.

- two cases dealing with the issue of tax avoidance schemes and the abuse of tax treaties.

In addition to the cases discussed at the seminars the hand-out material will also provide information on other recent tax cases of significance.

### **BOOKING DETAILS**

**Date:** 28 August 2008  
**Place:** Johannesburg  
 KPMG Auditorium, 85 Empire Road, Parktown  
**Time:** 18h00 to 19h30  
**Topic:** Recent international tax cases on place of effective management, beneficial ownership, transfer pricing and abuse of tax treaties  
**Speakers:** Dr Charl du Toit - Director: International Tax, PricewaterhouseCoopers  
 Michael Honiball - Director: International Tax and Transfer Pricing, KPMG  
**Bookings:** [Tania.Bezuidenhout@kpmg.co.za](mailto:Tania.Bezuidenhout@kpmg.co.za) Tel no: 011 - 647 5700

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**Date:** 26 August 2008  
**Place:** Cape Town  
 PricewaterhouseCoopers, No 1 Waterhouse Place  
 Century City  
**Time:** 18h00 to 19h30  
**Topic:** Recent international tax cases on place of effective management, beneficial ownership, transfer pricing and abuse of tax treaties  
**Speakers:** Dr Charl du Toit - Director: International Tax, PricewaterhouseCoopers  
 Michael Honiball - Director: International Tax and Transfer Pricing, KPMG  
**Bookings:** [jolandie.james@za.pwc.com](mailto:jolandie.james@za.pwc.com) Tel no: 021- 529 2368

### **The presenters**

Michael Honiball is head of International Tax and Transfer Pricing Services at KPMG. He is also a lecturer in international tax and transfer pricing at the Universities of Johannesburg and the Witwatersrand and the co-author of "International Tax: A South African Perspective".

Charl du Toit is Director: International Tax at PricewaterhouseCoopers. The topic of his PhD studies in Amsterdam was "Beneficial Ownership of Royalties in Bilateral Tax Treaties" and his book on the subject is published internationally.

### **Annual General Meeting**

Notice is hereby given that the AGM for SAFA will take place at the KPMG offices in Johannesburg in a designated room shortly before the seminar on 28 August 2008. All members are welcome to attend.

**Subscriptions:**

A reminder to those of you who have not have settled your subscriptions for 2008, please do so as soon as possible. Those members who fail to settle their obligations will unfortunately find that their membership is terminated by year end.

Regards

**Charl du Toit**  
**President: SAFA**