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1. INTRODUCTION

a. Forms of Legal Entity

There are various forms of legal entity available to investors interested in setting up a business in South Africa. The decision as to which is appropriate will depend on numerous factors. The main legal entities are:

- Personal liability company (incorporated)
- Private limited liability company (proprietary limited)
- External company (branch office)
- Public company (limited)
- Partnership
- Sole trader; and
- Business / trading trust

b. Taxes, Tax Rates

Taxes in South Africa are broadly classified as being either direct tax or indirect. Direct taxes are taxes paid by the taxpayer directly to the government, whereas indirect taxes are taxes levied on the supply of goods and services. Examples of direct taxes include income tax, estate duty, certain types of withholding taxes and donations tax. Examples of indirect taxes include value-added tax ("VAT"), securities transfer tax ("STT"), transfer duty, and customs and exercise duty.

The South African Revenue Service ("SARS") administers a wide range of tax legislation, which includes the annually amended Income Tax Act,1962 ("Income Tax Act"), Value-Added Tax Act, 1991 ("VAT Act"), Securities Transfer Tax Act, 2007 ("STT Act"), Transfer Duty Act, 1949, Estate Duty Act, 1955, Tax Administration Act, 2011 ("TAA"), Customs and Excise Act, 1964 and Employment Tax Incentives Act, 2013, Mineral and Petroleum Resources Royalty Act, 2008, Mineral and Petroleum Resources Royalty (Administration) Act, 2008, as amended

i Income tax

Income tax rates differ depending, *inter alia*, on the type of legal entity, for example:

- individuals and special trusts are subject to income tax at marginal rates of up to 45%;
- most companies are subject to corporate income tax at the rate of 28%;
- trusts ("other than special trusts") are subject to income tax at the rate of 45%; and
- partnerships are typically treated on a flow-through basis for tax purposes.

ii Dividend tax

Dividend tax is payable in respect of dividends paid by South African resident companies (as well as certain foreign dividends paid by non-resident companies in respect of shares listed on the Johannesburg Stock Exchange (“JSE”) to the shareholders thereof. The rate is currently 20%, unless an exemption or reduced rate is applicable (for example under an applicable Double Taxation Agreement (“DTA”)).

Dividends declared to beneficial owners who are South African resident companies are generally exempt from dividends tax.

iii Interest withholding tax

Withholding tax on interest is payable in respect of South African sourced interest paid to or for the benefit of a non-resident. The rate is currently 15%, unless an exemption or reduced rate is applicable (for example under an applicable DTA).

iv Royalties withholding tax

Withholding tax on royalties is payable in respect of South African sourced royalties paid to or for the benefit of a non-resident. The rate is currently 15%, unless an exemption or reduced rate is applicable (for example under an applicable DTA).

v Capital gains tax (“CGT”)

This tax is generally payable on the disposal of any asset by a resident, and in respect of the disposal of certain assets by a non-resident, including, for example, immoveable property and rights and interests therein. An asset is property of whatever nature (movable or immovable), including rights or interest of whatever nature to or in such property, tangible or intangible assets, excluding currency but including any coin made mainly from gold or platinum.

Non-residents will only be subject to CGT upon capital gains arising from the disposal of:

- immovable property situated in South Africa;
- any interest in or right to immovable property situated in South Africa, where more than 80% of the market value of the interest at the date of the disposal relates directly or indirectly to South Africa immovable property which is not trading stock (i.e a “property rich company” – there are currently proposals to expand this category); or
- any asset effectively connected with a permanent establishment of the non-resident in South Africa.

The deemed or actual proceeds received upon the disposal of assets in excess of the base cost of the assets will be included in the taxpayer’s income and be taxable at the CGT rate applicable to the particular taxpayer. Individuals and special trusts are required to include 40% of their net capital gain in their taxable income, which results in a maximum effective CGT tax rate of 18%. Other legal entities (for example, companies and other trusts) are required to include 80% of their net capital gain in their taxable income. The maximum effective CGT tax rates as a result of these inclusions are 22.4% in respect of companies and 36% in respect of trusts.

There is no inflation indexation for CGT purposes in South Africa.

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vi Donations tax

Donations tax is payable at a flat rate of 20% on the first R30 million and at a flat rate of 25% above R30 million of the value of property disposed of by donation (including disposals for inadequate or no consideration). Non-residents are not subject to this tax and exemptions exist *inter alia* in respect of donations by public companies as defined. Charitable donations per se are not deductible for tax purposes unless they are made to certain approved public benefit organisations and the requirements for claiming such exemption are met, or unless they can be brought within the ambit of the general deduction provisions of the Income Tax Act.

vii Employment tax

Employers are required to withhold and account for employees' tax–Pay-As-You-Earn ("PAYE")–in respect of all remuneration payable to employees at their respective applicable marginal income tax rates (up to 45%).

Whilst there is no social security payable, a skills development levy ("SDL") and unemployment insurance fund ("UIF") contributions are also payable on employees' remuneration, and must be withheld and paid over to SARS as follows (together with the PAYE described above):

- UIF: 2% payable by the employer (1% contributed by the employee and 1% contributed by the employer each capped at R14,872 per month); and
- SDL: 1% payable by the employer.

viii VAT

A person carrying on an enterprise in South Africa will be regarded as a vendor and required to register as such for VAT purposes at the earlier of their voluntary registration as such with SARS, or when the total value of their actual or estimated taxable supplies a 12 month period exceeds R1 million. The supply of, *inter alia*, "electronic services" from abroad may also give rise to VAT registration requirements.

A VAT rate of either 0% or 15% is charged on the supply by any vendor of goods and/or services in the course or furtherance of any enterprise conducted by that vendor in South Africa (including the supply of electronic services) and also on imported goods and/or services.

Certain supplies are exempt from VAT, for example certain financial services such as the issue of debt or equity securities.

Certain supplies may be zero-rated for VAT purposes, for example the supply of certain goods or services to non-residents and the sale of businesses as a going concern, provided that the requirements for zero-rating are met.

ix Securities Transfer Tax ("STT")

The STT Act provides for the levying of STT in respect of *inter alia* every transfer of any security issued by South African companies and non-resident companies listed on an exchange in South Africa.

STT is payable by the company which issued the share in the case of an unlisted share or the person who transfers the share in the case of a listed share, but may in both scenarios be recovered from the person to whom the share was transferred.

x Transfer Duty

Any acquisition of immovable property in South Africa (including *inter alia* land and fixtures as well as real rights in land, rights to minerals, a share or interest in any entity which constitutes a residential property company for purposes of the Transfer Duty Act 1949 and shares in a share-block company) is potentially subject to Transfer duty. Transfer duty is charged at a progressive rate of up to 13%. Transfer duty is not charged where the transfer of the property is subject to VAT (either at 0% or the standard 15%).

xi Customs Duty and customs management

Customs duty at various rates is payable on certain goods imported into South Africa.

There are currently various customs offices in South Africa, including sea, land and air ports, as well as centralised processing centres, with officers involved in a number of activities aimed at: facilitating legitimate trade and travel while ensuring compliance; controlling and accounting for all imports and exports; collecting all revenue due to the State; administering specific industry schemes, trade measures, international protocols and other international obligations; eradicating smuggling and other transgressions through enforcement action; and enforcing controls on the importation and exportation of prohibited and restricted goods on behalf of other authorities administering such laws. Subject to certain exclusions, any contravention or failure to comply with provisions of the Customs and Excise Act is regarded as an offence and could result in *inter alia* the imposition of penalties.

South Africa has free trade agreements with the European Union, European Free Trade Association and Southern African Development Community that offers preferential customs duty rates on goods originating in these territories. South Africa is also a member of the Southern African Customs Union.

The exact processes and requirements applicable to imports and exports depend on *inter alia* the nature of the item/s being imported / exported. In certain instances, special permits/licences/certificates may be required.

xii Excise duty

Excise duty is charged on certain locally produced luxury or non-essential goods as well as on similar goods if imported, for example: alcohol and tobacco products.

xiii Mineral Royalties

A person that wins or recovers a mineral resource from within South Africa must pay a royalty in respect of the transfer of that mineral resource. The royalty liability is equal to the tax base (gross sales) multiplied by the relevant royalty percentage rate, the latter of which depends on the stage of processing at which the mineral is transferred and the nature of the mineral. Such royalty will be deductible for income tax purposes.

2. RECENT DEVELOPMENTS

There have been various recent developments in relation to South Africa's so-called "dividend stripping" anti-avoidance provisions which may be highly relevant to M&A deals. "Dividend stripping" *inter alia* involves stripping the value of the company through the declaration of exempt dividends, in order to minimise capital gain tax to be incurred as a result of a subsequent disposal.

The 2020 Budget Review document ("2020 BR") published by National Treasury on 26 February 2020 highlights a number of proposed amendments which may be relevant when considering an M&A deal. In this respect, the utilisation of assessed losses and the limitation of interest deductibility during a year of assessment may be of importance. In addition to the afore mentioned proposals, the 2020 BR indicates that the current exchange control regime will be subject to an overhaul within the next 12 months. This has already commenced with the abolishment of the so-called "loop structure" prohibition in January of this year.

However, due to the current national state of disaster and the Covid-19 pandemic, the specific manner and timing in which the remaining proposals may be carried out has yet to be determined.

In response to the Covid-19 pandemic and its impact on the local economy, a Draft Disaster Management Tax Relief Act was promulgated with an effective date of 1 April 2020, containing various short-term tax relief measures aimed at providing cash-flow relief, including increases to existing employment tax incentives, part deferrals on employees tax and provisional tax payments as well as carbon and certain excise taxes, VAT exemptions on the import of essential goods, as well as extensions of certain time periods relevant to tax audits and/or disputes.

3. SHARE ACQUISITION

a. General Comments

The entire corporate history of the entity is assumed within or along with the entity acquired, and the purchaser would typically therefore require an in-depth due diligence review and/or comprehensive tax indemnities and warranties.

The supply of shares is typically an exempt supply for VAT purposes.

STT is payable upon the transfer of securities (which includes unlisted shares, shares listed on the JSE, as well as member's interests in close corporations) at a rate of 0.25% on the greater of the consideration given or the market value of the shares in the case of unlisted securities, and the greater of the consideration declared by the acquiror or the closing price in the case of listed shares.

b. Tax Attributes

The tax losses of the target company are assumed within or along with that target company. Anti-avoidance provisions limit losses if a transaction is entered into solely or mainly for the purpose of utilising an assessed loss.

c. Tax Grouping

South Africa has no "group tax provisions".

However, South Africa does have various corporate rollover relief provisions which may apply to companies which form part of the same "group of companies" for tax purposes, as discussed further below.

d. Tax Free Reorganisations

Various special rules are provided for in the Income Tax Act to allow for tax neutral mergers, acquisitions, and restructuring, which (if the applicable requirements are met) may provide relief for certain income tax, CGT, STT, Transfer duty and VAT implications which may otherwise have been triggered. The Income Tax Act specifically provides for asset-for-share transactions, amalgamation transactions, intragroup transactions, unbundling transactions and liquidation distributions (tax roll-over provisions), each with specific requirements which must be met by the parties to the transactions before they will be applicable. Some of these provisions only may apply to companies which form part of the same "group of companies" for tax purposes.

e. Purchase Agreement

Consideration should be given to whether any exchange control approvals are required to be included as conditions precedent (and advisors should note that this area of regulation is currently under review).

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

STT must be paid:

- in respect of listed securities, by the 14th day of the month following the month during which the transfer occurred.
- in respect of unlisted securities, within two months from the end of the month in which the transfer occurred.

STT can only be accounted for and paid by electronic payment using the SARS e-STT system.

g. Share Purchase Advantages

The tax losses of the target company are assumed within or along with that target company.

h. Share Purchase Disadvantages

The entire corporate history of the entity is assumed within or along with the entity acquired, and the purchaser would typically therefore require an in-depth due diligence review and/or comprehensive tax indemnities and warranties.

4. ASSET ACQUISITION

a. General Comments

The existing tax liabilities of the target company are not assumed by the purchaser, except in very limited circumstances.

The amount allocated to the various assets would become the base cost of such assets in the purchaser's hands for CGT purposes, which would, where such base cost is high, result in lower capital gains tax implications upon the disposal of such assets (where the purchaser is subject to South African CGT).

The purchaser may be entitled to certain allowances or deductions on certain assets which are acquired, however, where the purchaser subsequently disposes of such assets, a recoupment of allowances or deductions claimed may arise.

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VAT may be payable, thereby increasing the acquisition costs in the event that the VAT is not completely or partially recoverable by the purchaser.

The purchaser may acquire only part of the target company's business.

Interest incurred on debt acquired to finance the acquisition of certain assets may be deductible.

b. Purchase Price Allocation

The purchase price must be allocated between assets being acquired.

c. Transfer Taxes, VAT

VAT (or transfer duty in the case of certain immoveable property) may be payable, thereby increasing the acquisition cost in the event that the relevant amount is not completely or partially recoverable by the purchaser as a VAT input tax claim.

d. Tax Free Reorganisations

Various special rules are provided for in the Income Tax Act to allow for tax neutral mergers, acquisitions, and restructuring, which (if the applicable requirements are met) may provide relief for certain income tax, CGT, STT and VAT implications which may otherwise have been triggered. The Income Tax Act specifically provides for asset-for-share transactions, amalgamation transactions, intragroup transactions, unbundling transactions and liquidation distributions (tax roll-over provisions), each with specific requirements which must be met by the parties to the transactions before they will be applicable.

e. Purchase Agreement

If zero-rating is required from a VAT perspective in respect of the transfer of an enterprise as a going concern, particular wording may be required to be included in the acquisition agreement, in addition to further requirements which would need to be met.

f. Depreciation and Amortisation

No depreciation may be recognised in respect of goodwill for tax purposes, and the purchaser should therefore ensure that the purchase price is allocated as much as possible to other asset categories that qualify for tax deductions or allowances.

g. Asset Purchase Advantages

There should be no exposure to the corporate history of the entity from which the stock is acquired.

h. Asset Purchase Disadvantages

Tax losses will not be assumed.

5. ACQUISITION VEHICLES

a. General Comments

Whether or not a domestic or foreign acquisition vehicle may be appropriate is a fact-specific enquiry, which will depend on, *inter alia*:

- the legal nature, tax residence and presence of the acquiror;
- the proposed acquisition funding structure/s;
- anticipated future cash flows; and
- the legal nature of and activities to be carried on by the target.

South Africa has general and specific anti-tax avoidance rules which should also be considered (for example, rules relating to hybrid debt and hybrid equity instruments, and provisions triggering deemed disposals when a person ceases to be a South African resident).

b. Domestic Acquisition Vehicle

The main entities available for foreign investment are:

- co-operative;
- external company (branch office);
- partnership;
- personal liability company (Incorporated);
- private limited liability company (Proprietary Limited);
- public company (Limited);
- sole trader; and
- trading trust.

c. Foreign Acquisition Vehicle

Whether or not a domestic or foreign acquisition vehicle may be appropriate is a fact-specific enquiry, which will depend on, *inter alia*:

- the legal nature, tax residence and presence of the acquirer;
- the proposed acquisition funding structure/s;
- anticipated future cash flows; and
- the legal nature of and activities to be carried on by the target.

d. Partnerships and joint ventures

Partnerships have a flow through treatment for tax purposes. Joint ventures may be structured in various ways. It would be necessary to consider the position specific to the circumstances on a given deal.

e. Strategic vs Private Equity Buyers

There are not particular differences to note tax wise between strategic and private equity buyers. It would be necessary to consider the position specific to the circumstances on a given deal.

6. ACQUISITION FINANCING

a. General Comments

Prior exchange control approval would be required in order to, *inter alia*, introduce loan funding into South Africa. Depending on the proposed terms of such funding, applications in this regard may take between 1 to 8 weeks to be processed.

In order to ensure that share capital and disposal proceeds can be freely remitted, shares held by non-resident shareholders must be endorsed "non-resident" for exchange control purposes.

b. Equity

In order to ensure that share capital (i.e. dividends) and disposal proceeds can be freely remitted, shares held by non-resident shareholders must be endorsed "non-resident" for exchange control purposes. There are various anti-avoidance provisions which should also be considered, such as hybrid equity rules and provisions triggering deemed disposals when a person ceases to be a South African tax resident.

c. Debt

There are no specific thin capitalisation rules applicable in South Africa. Thin capitalisation is to be dealt with as part of the general arm's length-based transfer pricing provisions.

Asset deal:

- Interest will typically be deductible by the taxpayer where such interest is incurred for the purpose of earning taxable income in the course of trade. Where the purchaser is a trading entity and acquires the business/assets of the target company in order to derive taxable income from its operations, the interest would generally be deductible from its income.

Share deal:

- Generally, interest incurred on debt acquired to fund the acquisition of shares would not be deductible as it would not be incurred for purposes of earning taxable income, as the dividend income earned by shareholders is generally exempt income. However, some exceptions are applicable in certain circumstances.

d. Hybrid Instruments

South Africa has hybrid debt and hybrid equity rules which would need to be considered in local and cross-border deals, particularly where preference shares and convertible loans are contemplated.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

The tax and exchange control considerations relevant to earn-out arrangements are fact-specific and would depend on, *inter alia*, the proposed deal structure as well as the nature of the earn-out payment/s. There are general rules relating to management and employee incentives but non-specific to private equity "carry".

7. DIVESTITURES

a. Tax Free

Depending on the transaction structure, it should be possible to exit the same amount of funds originally invested without triggering tax.

In terms of the Eighth Schedule of the Income Tax Act, a person, other than a headquarter company must disregard any capital gain or loss determined in respect of the disposal of an equity share in a foreign company if that person (whether alone or together with any other person forming part of the same group of companies as that person) held an interest of at least 10% of the equity shares and voting rights in that foreign company and held that interest for at least 18 months prior to that disposal.

b. Taxable

Exiting amounts in excess of the original investment may trigger CGT, income tax or withholding taxes, depending on the transaction structure.

c. Cross Border

Please see 7.a. above.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

South Africa levies income tax on a residence basis. Accordingly, South African tax residents are subject to tax on their worldwide income.

b. Dividend participation exemption

The Income Tax Act provides for an exemption from the levy of any normal tax in respect of a foreign dividend received by a person who is a resident and who holds at least 10 per cent of the equity shares and voting rights (whether alone or together with any other company forming part of the same group of companies as that person) in the company declaring the dividend.

c. Capital gain participation exemption

In terms of the Eighth Schedule of the Income Tax Act, a person, other than a headquarter company must disregard any capital gain or loss determined in respect of the disposal of an equity share in a foreign company if that person (whether alone or together with any other person forming part of the same group of companies as that person) held an interest of at least 10% of the equity shares and voting rights in that foreign company and held that interest for at least 18 months prior to that disposal.

d. CFC Regime

In summary, a foreign company may constitute a CFC in relation to a South African resident:

- when more than 50% of its total participation rights are directly or indirectly held, or more than 50% of its voting rights are directly or indirectly exercisable, by one or more persons that are residents, other than persons that are headquarter companies; or
- when its financial results are reflected in the consolidated financial statements of any company that is a resident, other than a headquarter company, as required under IFRS 10.

South Africa has a complex set of rules relating to the taxation of CFCs, which require that a portion of a CFC's net income must be included in the income of any resident, other than a resident that is a headquarter company, who directly or indirectly holds any participation rights in that CFC. This is commonly referred to as "attribution".

The amount to be attributed to a particular resident is determined by applying the percentage of the resident's participation rights over the total participation rights in the company on the last day of the year of assessment to the CFC's net income, or the net percentage of that CFC's financial results that is included in the resident holding company's consolidated financial statements under IFRS 10, whichever is applicable.

Complex calculations are required in order to determine this attribution amount, as a large number of exceptions, exclusions and specific inclusions may apply.

e. Foreign branches and partnerships

Exchange control approval would be required for foreign investment or expansion by a South African resident.

Foreign branches and partnership interests of South African tax residents would typical remain subject to tax in South Africa, subject to any available relief in terms of an applicable DTA.

f. Cash Repatriation

The terms of the exchange control approval granted in respect of the relevant foreign operations would determine whether cash repatriation is required.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The Income Tax Act contains special provisions relating to the taxation of Real Estate Investment Trusts ("REITs") and controlled companies which require careful consideration, if applicable.

Transfer duty or VAT may be due in respect of the transfer of immoveable property or shares deriving significant value from certain types of immoveable property. Disposal of such assets may also trigger CGT for non-residents.

b. CbC and Other Reporting Regimes

SARS has implemented a system that provides for the transmission of CbC reports to other tax jurisdictions in terms of the Multilateral Competent Authority Agreement ("MCAA") and the bilateral Competent Authority Agreement, as well as the exchange of transfer pricing documentation on request between the participating authorities.

10. TRANSFER PRICING

South Africa has a comprehensive set of "transfer pricing" rules which are applicable to cross-border transactions between related parties.

In terms of South Africa's transfer pricing rules, the onus is on the taxpayer to calculate its taxable income as if the cross-border related party transaction had been entered into on the terms and conditions that would have existed had the parties been independent persons dealing at arm's length. The rules do not distinguish between capital and revenue transactions.

South Africa's transfer pricing documentation requirements generally follow the three-tier approach recommended by the Organisation for Economic Cooperation and Development (OECD) (i.e CbC report, Local File and Master File).

Taxpayers whose cross-border related party transactions exceed or are expected to exceed R100 million in a year of assessment are required to submit a Local File. The Local File requirements include disclosure of any "business restructuring" transaction as contemplated in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Taxpayers which are the ultimate parent of a group, or which are part of a group which prepares a Master File, are additionally required to submit a Master File.

It is noted that in addition to the Master File and Local File, South Africa has certain transfer pricing record-keeping requirements which require particularly extensive documentation of any intra-group "financial assistance transaction".

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

South Africa does not have special rules addressing the use of hybrid entities.

b. Use of Hybrid Instruments

South Africa has hybrid debt and hybrid equity rules which would need to be considered in local and cross-border deals, particularly where preference shares and convertible loans are contemplated.

c. Principal/Limited Risk Distribution or Similar Structures

Please see 10. above.

d. Intellectual property

Please see 2.f. above and 16. below.

e. Special tax regimes

South Africa has special tax (and exchange control) regimes which apply to headquarter companies and domestic treasury management companies.

i Headquarter companies

In order to qualify as a "headquarter company" for income tax purposes, the relevant company must:

- be a South African tax resident;
- make an election to be a headquarter company for the relevant year of assessment (this election is effective from the date of commencement of the year of assessment in respect of which it is made);
- be held for the whole year of assessment by a shareholder/s that (alone or with any other group company) each hold at least 10% of its equity shares and voting rights ("qualifying foreign company"), provided that in making this determination, no regard must be had to any period prior to the commencement of trade,
- at the end of the year of assessment and all previous years of assessment, 80% or more of the cost of its assets must be any interest in equity shares, debt owed by or intellectual property ("IP") licensed to, a non-resident company that the headquarter company holds (alone or with another group company) at least 10% of the shares and voting rights in, provided that in determining total assets, cash and bank deposits payable on demand must be excluded and no regard must be had to any year of assessment during which the company at no point held assets with a market value in excess of R50,000; and
- if its gross income (excluding exchange gains and losses) exceeds R5 million, at least 50% of that income must consist of rental, dividend, interest, royalty or service fee income, or proceeds from the disposal of shares in or IP licensed to qualifying foreign companies.

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Once qualified, the company must submit its annual financial statements and group structure via email to National Treasury on an annual basis. In addition, for income tax purposes, the company will, *inter alia*:

- not be subject to the South African CFC rules (unless it has underlying South African interests);
- be exempt from income tax on foreign dividends received from qualifying foreign companies;
- not be subject to dividend withholding tax;
- not be subject to transfer pricing rules on financial assistance and IP related flows which it does not use but passes on to qualifying foreign companies (e.g. where IP is licensed to the company, which the company does not use itself, but which it on-licenses to qualifying foreign companies);
- be subject to more relaxed currency gains and losses rules than non-headquarter companies;
- not be subject to capital gains tax on the disposal of shares in qualifying foreign companies (unless those shares relate mainly to immoveable property in South Africa or constitute units in a collective investment scheme);
- be subject to rules which limit the amount of deductions for interest and royalty expenses to the amounts of interest and royalty income received from qualifying foreign companies;
- not be subject to interest withholding tax on financial assistance flows which the company itself does not use, but passes on to qualifying foreign companies;
- not be subject to royalty withholding tax on IP flows which the company itself does not use, but passes on to qualifying foreign companies,
- not qualify for South Africa's corporate group relief provisions, and
- could qualify for relief in respect of foreign taxes paid, if applicable.

ii Domestic treasury management companies

In order to qualify as a "domestic treasury management company" for tax purposes, the relevant company must:

- be incorporated or deemed to be incorporated (a) by or under any law in force in South Africa, or (b) by or under the law of any country other than South Africa, but still meet the requirement in below by virtue of being registered before 1 January 2019 with the financial surveillance department of the South African Reserve Bank;
- have its place of effective management in South Africa; and
- not be subject to exchange control restrictions by virtue of being registered as a "domestic treasury management company" with the financial surveillance department of the South African Reserve Bank.

Once qualified, for income tax purposes, the company:

- may use their functional currency (where other than Rands) as a starting point for various calculations and must translate amounts to Rands by applying the average exchange rate for the relevant year of assessment; and
- for capital gains tax and "exchange item" calculations, "local currency" is defined in relation to a domestic treasury management company, in respect of amounts and/or exchange items which are not attributable to a permanent establishment outside South Africa, as the functional currency of that domestic treasury management company.

12. OECD BEPS CONSIDERATIONS

South Africa is not a member of the OECD; however, it has a working relationship with the OECD, and collaborates with it on a variety of policy issues. South Africa is also party to various OECD instruments, including most recently, a Memorandum of Co-operation ("MoC").

In terms of this MoC, South Africa and the OECD have agreed to continue to work together in the area of taxation towards the achievement of the common objective of promoting fair and efficient tax systems and administrations, strengthening and modernising international taxation areas through the sharing of experiences between the South African revenue Service ("SARS"), National Treasury and OECD member countries. The MoC is in place until December 2023.

13. ACCOUNTING CONSIDERATIONS

IFRS and IFRS for SMEs is applied in South Africa. South African GAAP has been discontinued.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributions declared in respect of shares in South African resident companies can take the form of either dividends or returns of capital (to the extent that the directors of the company declaring the distribution have specifically resolved that the distribution should reduce the contributed tax capital ("CTC") of that company, provided that each shareholder of the class of shares receiving the distribution shall only be entitled to their pro-rata share of the entire CTC balance attributable to that class of shares).

CTC is a tax concept and is not necessarily linked to the company's distributable reserves for accounting purposes.

b. Substance Requirements for Recipients

South Africa has general and specific anti tax-avoidance rules which should be considered.

c. Application of Regional Rules

Exchange controls do not apply to transactions within the Common Monetary Area (South Africa, Lesotho, Namibia, and eSwatini).

d. Tax Rulings and Clearances

Tax clearance certificates can be obtained from SARS on request but only provide an indication of administrative compliance (for example, that all outstanding tax returns have been submitted), i.e do not guarantee substantive tax compliance.

Non-binding opinions as well as binding advance tax rulings can be applied for from SARS in respect of certain proposed transactions. Notably, advance tax rulings cannot be obtained on transfer pricing matters.

15. MAJOR NON-TAX CONSIDERATIONS

South Africa has exchange controls which are administered by the Financial Surveillance Department ("FinSurv") of the South African Reserve Bank ("SARB") and "Authorised Dealers". Authorised Dealers are generally commercial banks and some branches of foreign banks to whom the SARB has delegated power to oversee and regulate the inflow and outflow of capital in South Africa on its behalf and are the only entities permitted to *inter alia* effect a cross-border currency transaction for a South African resident.

Arguably the most notable exchange control regulation is the prohibition on the export of capital (including intellectual property) without prior FinSurv approval.

Further, the 2020 BR indicates a substantial overhaul of the current exchange control framework will take place over the next 12 months.

Currently, South Africa operates a "negative list" system whereby the default position is to treat all foreign currency transactions not listed in the Currency and Exchanges Manual as being prohibited. During the next 12 months, it is proposed that the current system will be replaced by a new "capital flow management system" in terms of which all foreign-currency transactions will be allowed, with the exception of a risk-based list of capital flow measures.

In this regard, all cross-border foreign-exchange activities conducted by South African residents will continue to be administered by Authorised Dealers.

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16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Algeria	10 / 15	10	10	[1]
Australia	5 / 15	10	10	[2]
Austria	5 / 15	0	0	[1]
Belarus	5 / 15	5 / 10	5 / 10	[1] [10] [11]
Belgium	5 / 15	10	0	[1]
Botswana	10 / 15	10	10	[1]
Brazil	10 / 15	15	10 / 15	[1] [12]
Bulgaria	5 / 15	5	5 / 10	[1] [11]
Cameroon	10 / 15	10	10	[1]
Canada	5 / 15	10	6 / 10	[3] [13]
Chile	5 / 15	5 / 15	5 / 10	[1] [11] [14]
China	5	10	7 / 10	[11]
Croatia	5 / 10	0	5	[1]
Cyprus	5 / 10	0	0	[4]
Czech Republic	5 / 15	0	10	[1]
Democratic Republic of Congo	5 / 15	10	10	[1]
Denmark	5 / 15	0	0	[1]
Egypt	15	12	15	
Ethiopia	10	8	20	
Finland	5 / 15	0	0	[4]
France	5 / 15	0	0	[4]
Germany	7.5 / 15	10	0	[5]
Ghana	5 / 15	5 / 10	10	[4] [10]
Greece	5 / 15	8	5 / 7	[1] [15]
Grenada	20	15	15	
Hong Kong	5 / 10	0 / 10	5	[4] [16]
Hungary	5 / 15	0	0	[1]
India	10	10	10	

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Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Indonesia	10 / 15	10	10	[4]
Iran	10	5	10	
Ireland	5 / 10	0	0	[4]
Israel	25	25	0 / 15	[17]
Italy	5 / 15	10	6	[1]
Japan	5 / 15	10	10	[5]
Kenya	10	10	10	
Korea	5 / 15	10	10	[1]
Kuwait	0	0	10	
Lesotho	10 / 15	10	10	[4]
Luxembourg	5 / 15	0	0	[1]
Malawi	20	10	0	[1]
Malaysia	5 / 10	10	5	[4]
Malta	5 / 10	10	10	[4]
Mauritius	5 / 10	0 / 10	5	[4] [16]
Mexico	5 / 10	10	10	[4]
Mozambique	8 / 15	8	5	[1]
Namibia	5 / 15	10	10	[1]
Netherlands	0* /5 / 10	0	0	[4]
New Zealand	5 / 15	10	10	[1]
Nigeria	7.5 / 10	7.5	7.5	[4]
Norway	5 / 15	0	0	[4]
Oman	5 / 10	0	8	[4]
Pakistan	10 / 15	10	10	[1]
Poland	5 / 15	10	10	[1]
Portugal	10 / 15	10	10	[1]
Qatar	5 / 10	10	5	[4]
Romania	15	15	15	
Russian Federation	10 / 15	10	0	[6]

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Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Rwanda	10 / 20	10	10	[1]
Saudi Arabia	5 / 10	5	10	[4]
Seychelles	5 / 10	0	0	[4]
Sierra Leone	20	15	15	
Singapore	5 / 10	7.5	5	[4]
Slovac Republic	5 / 15	0	10	[1]
Spain	5 / 10	5	5	[4]
Swaziland	10 / 15	10	10	[1]
Sweden	0*/5 / 15	0	0	[4]
Switzerland	5 / 15	5	0	[7]
Taiwan	5 / 15	10	10	[4]
Tanzania	10 / 20	10	10	[8]
Thailand	10 / 15	10 / 15	15	[1] [10]
Tunisia	10	5 / 12	10	[10]
Turkey	10 / 15	10	10	[1]
Uganda	10 / 15	10	10	[1]
Ukraine	5 / 15	10	10	[7]
United Arab Emirates	5 / 10	10	10	[4]
United Kingdom	5 / 10 / 15	0	0	[9]
United States of America	5 / 15	0	0	[2]
Zambia	20	0	0	
Zimbabwe	5 / 10	15	0	[1]

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Footnotes:	
1	Dividends–The reduced rate is applicable if, *inter alia*, the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends. The greater of the two rates will be applicable in all other cases.
2	Dividends - The lower rate is applicable if, *inter alia*, the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying dividends. The greater of the two rates is applicable in all other cases.
3	Dividends - The reduced rate is applicable if,*inter alia*, the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends where that company is a resident of Canada, provided the dividends are not paid by a non-resident owned investment corporation resident in Canada; lower rate will also apply where the beneficial owner is a company that holds directly at least 10 per cent of the capital of the company paying the dividends where that company is a resident of SA. the greater of the two rates will apply in all other cases.
4	Dividends - The reduced rate is applicable if, *inter alia*, the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends. The greater of the two rates will be applicable in all other cases.
5	Dividends - The reduced rate is applicable where, *inter alia*, the recipient of the dividends is a company which owns directly at least 25 per cent of the voting shares of the company paying dividends. The greater of the two rates is applicable to all other cases, provided that such dividends are subject to tax in the other Contracting State.
6	Dividends - The reduced rate is applicable if residents of the other Contracting State hold at least 30 per cent of the capital of the company paying the dividends and have directly invested in the equity share capital (authority fund) of that company an amount of not less than 100 000 U.S. dollars or the equivalent thereof in the currency of the first - mentioned State. The greater of the two rates is applicable in all other cases.
7	Dividends - The lower of the two rates is applicable if the beneficial owner is a company (other than a partnership) which holds directly at least 20 per cent of the capital of the company paying the dividends. The greater of the two rates is applicable in all other cases.
8	Dividends - The reduced rate is applicable if the beneficial owner is a company which holds at least 15 per cent of the capital of the company paying the dividends. The greater of the two rates is applicable in all other cases.
9	Dividends - The lower of the three rates is applicable if the beneficial owner is a company which holds at least 10 per cent of the company paying the dividends. The rate of 15 per cent will be applicable in the case of qualifying dividends paid by a property investment company which is a resident of a Contracting State, and the rate of 10% is applicable in all other cases.
10	Interest - The lower rate will apply if the interest is derived by, *inter alia*, a bank which is resident of the other Contracting State.
11	Royalties - The lower rate will apply if, *inter alia* the royalty is paid for the use of or right to use, industrial, commercial or scientific equipment.
12	Royalties - The higher rate will apply to the use of trademarks.
13	Royalties - The lower rate will apply to *inter alia*, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting); royalties for the use of, or the right to use, computer software; royalties for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement).

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Footnotes:	
14	Interest - The lower rate will apply to interest derived from (i) loans granted by banks and insurance companies; (ii) bonds or securities that are regularly and substantially traded on a recognised securities market; and (iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment.
15	Royalties - The lower rate will apply to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films, tapes or discs or any other media for television or radio broadcasting.
16	Interest - The lower rate will apply if the interest is derived by, *inter alia*, government or certain governmental institutions.
17	Royalties - The higher rate will apply in respect of cinematograph or television films.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

No.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person and all documents and information necessary to conduct a full tax due diligence in respect of each target, including but not limited to the items listed below.
2	Tax Due Diligence	Tax residence	A list indicating the jurisdiction/s in which each company is tax resident and/or subject to tax.
3	Tax Due Diligence	Transfer pricing	Details of the transfer pricing policies in place within the group.
4	Tax Due Diligence	Calculations	Copies of all latest tax calculations, tax returns, assessments and statements of account for each target (for the avoidance of doubt, this includes all forms of taxes, e.g. income tax, value-added tax, employees' tax, withholding taxes, securities transfer tax, transfer duty, etc.).
5	Tax Due Diligence	Capital gains tax	Capital gains tax valuations of properties held by each target, if available.
6	Tax Due Diligence	Share capital	Details of the share capital / contributed tax capital structure of each target.
7	Tax Due Diligence	Corporate restructures / reportable arrangements	Details of any transaction entered into by any target in terms of the corporate rollover relief provisions contained in section 42 to 47 of the Income Tax Act No. 58 of 1962 in the last 18 months, or six years in the case of an intra-group transaction as contemplated in section 45 transaction, or similar group relief provisions applicable outside of South Africa, or any "reportable arrangement" as contemplated in the Tax Administration Act No. 28 of 2011 or similar provisions applicable outside of South Africa.
8	Tax Due Diligence	VAT / payroll	All documents and information necessary to conduct a value-added tax and payroll review. Typically this would involve a review of (at least) sample VAT invoice and employees tax documentation over a five year period, as well as tax computations, returns, assessments and statements of account.
9	Tax Due Diligence	Deductions / allowances	Details of the material deductions and/or allowances which have been claimed by each target.
10	Tax Due Diligence	Compliance	Confirmation that each target has submitted all tax returns and other information, notices and returns as required by tax authorities timeously and accurately, and has maintained adequate records as required in terms of any applicable laws.
11	Tax Due Diligence	Payment	Confirmation that each target has paid and discharged when due all taxes payable (including, for the avoidance of doubt, all applicable withholding taxes).
12	Tax Due Diligence	Queries / audits / disputes	Details of any ongoing tax audits, enquiries (e.g. requests for information) or any threatened or actual disputes with tax authorities applicable to any target, and/or possible future audits, enquiries or disputes of which any target may be aware.
13	Tax Due Diligence	Rulings	If any tax position of any target is reliant upon a ruling issued by a tax authority, confirmation that ruling is valid and binding, together with copies of the ruling(s).

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No.	Category	Sub-Category	Description of Request
14	Tax Due Diligence	Funding structures	Details of the funding arrangements in place within the group and how are these treated for tax purposes.
15	Tax Due Diligence	Incentives	Details of any special incentives relied upon by any target.
16	Tax Due Diligence	Exchange control	Details of all exchange control arrangements and approvals as applicable.

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