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International tax

South Africa Highlights 2013

Investment basics:

Currency – South African Rand (ZAR)

Foreign exchange control – Exchange control is administered by the South African Reserve Bank, which has delegated powers to authorized dealers (banks licensed to deal in foreign exchange). South Africa does not impose exchange controls on nonresidents, but exercises exchange controls over residents and transactions between residents and nonresidents.

Accounting principles/financial statements – IFRS. Financial statements must be prepared annually. New audit requirements became effective on 1 May 2011 through the new Companies Act. Certain companies are required to have audited financial statements and other companies must have their financial statements independently reviewed.

Principal business entities – Companies are classified as profit or nonprofit companies. With regard to profit companies, the Companies Act distinguishes between four different types of company: a private company, personal liability company, state-owned company and a public company. A branch of a foreign company is required to register as an external company. The most commonly adopted forms of doing business by foreign investors are private companies and branches.

Corporate taxation:

Residence – A corporation is resident if it is incorporated in South Africa or effectively managed in South Africa (unless a corporation is deemed to be exclusively resident in another country for purposes of the tax treaty with such other country).

Basis – Residents are taxed on worldwide income; nonresidents are taxed on South African-source income and on capital gains arising from the disposal of immovable property and assets of a permanent establishment in South Africa. Foreign-source income derived by residents is subject to corporation tax in the same way as South African-source income. Branches generally are taxed in the same manner as subsidiary companies.

Taxable income – Income tax is imposed on a company's profits, which consist of business/trading income, passive income and capital gains. Expenses incurred in the production of income may be deducted in computing taxable income.

Taxation of dividends – Before 1 April 2012, dividends received by a South African company from another South African company were exempt from corporation tax, although the Secondary Tax on Companies (STC), calculated on the net amount of dividends declared at a rate of 10%, was imposed on the payer of the dividends (subject to exemption). With effect from 1 April 2012, STC was abolished and replaced by a dividends withholding tax (see below). Dividends received from a foreign company are, in principle, subject to income tax, although various exemptions exist (e.g. a foreign dividend will be exempt where the recipient holds at least 10% of the shares and voting rights of the company declaring the dividend). When a foreign dividend is taxable, a credit for withholding tax suffered generally is available.

Capital gains – Only 66.6% of capital gains are included in taxable income and taxed at the normal income tax rate. However, gains on the sale of substantial foreign shareholdings are exempt if certain conditions are satisfied.

Losses – Trading losses may be carried forward indefinitely. The carryback of losses is not permitted.

Rate – The rate is 28% for companies. The rate on branches was reduced from 33% to 28% on 1 March 2012.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Foreign tax paid on foreign-source income and South African-sourced services income may be credited against South African tax on the same profits, but the credit is limited to, amongst others, the amount of South African tax payable on the foreign income.

Participation exemption – A participation exemption may apply to capital gains derived by a South African resident holding company on the disposition of a substantial shareholding in a foreign company. To qualify for the exemption, the South African company must hold at least 10% (20% before 1 April 2012) of the equity shares and voting rights in a foreign company for at least 18 months before the disposal, and the interest must be disposed of to a nonresident. Complex anti-abuse rules apply to the participation exemption.

Holding company regime – Under the regional holding company regime, the controlled foreign company (CFC), dividends, interest and royalty withholding tax and thin capitalization rules do not apply. Exchange control relief is given to qualifying headquarter companies.

Under the functional currency rules, certain entities, including branches, CFCs and headquarter companies (where ZAR is not the functional currency) are allowed to rely on their functional currency (i.e. the currency of the primary economic environment in which the business operations are conducted) for tax purposes.

Incentives – Incentives include a preferential corporate tax rate for small business corporations; an R&D deduction; depreciation allowances; urban development and infrastructure development allowances; public private partnerships grants; environmental expenditure deductions; a carbon-reducing exemption; oil and gas income tax incentives; and a film allowance.

Withholding tax:

Dividends – With effect from 1 April 2012, dividends paid to individuals, trusts and foreign persons are subject to a 15% withholding tax (subject to the provisions of any applicable tax treaty). Before this date, withholding tax was not imposed on dividends. (See STC discussion under "Taxation of dividends.")

Interest – South Africa does not levy a withholding tax on interest. However, with effect from 1 July 2013, a 15% withholding tax will be levied (subject to certain exemptions) on interest paid to a nonresident, unless the rate is reduced under a tax treaty.

Royalties – The withholding tax on royalties paid to a nonresident is 12% unless the rate is reduced under a tax treaty. The rate is proposed to be increased to 15% as from 1 July 2013 to be in line with the withholding taxes on dividends and interest.

Technical service fees – No

Branch remittance tax – No

Other – Where a purchaser of South African immovable property makes a payment to a nonresident, the purchaser must withhold a percentage of the amount payable, depending on whether the seller is an individual, a company or a trust.

A final withholding tax of 15% is withheld on gross payments to nonresident entertainers and sportspersons who earn income in South Africa.

Other taxes on corporations:

Capital duty – No

Payroll tax – A 1% payroll levy ("skills development levy") is imposed on all employers, but companies with annual payroll costs below ZAR 500,000 are exempt.

Real property tax – Municipal authorities levy "rates" on the occupation of real property. Rates are deductible in calculating corporation tax liability. (See also "Transfer tax," below.)

Social security – The employer must contribute the equivalent of 1% of gross income for each employee (up to a capped amount), plus a similar 1% deduction from the employee, to the Unemployment Insurance Fund.

Stamp duty – Securities Transfer Tax is levied on the transfer of securities (including shares) at a rate of 0.25%.

Transfer tax – Transfer duty at progressive rates up to 8% is payable on the acquisition of immovable property where the transaction is not subject to VAT.

Other – Donations (gift) tax is payable by a donor at 20% of the value of property donated by South African residents. Certain exemptions apply (e.g. donations by public companies and between group companies.

Anti-avoidance rules:

Transfer pricing – Transfer pricing legislation requires a South African taxpayer to follow arm's length principles in transactions with connected persons outside South Africa. Changes to the transfer pricing rules that apply as from 1 April 2012 shifts the responsibility for adjusting prices to arm's length from the tax authorities to the taxpayer.

Thin capitalization – Thin capitalization provisions limit the deduction of interest payable by South African companies on debt provided by a nonresident connected person in relation to the South African borrower or a nonresident connected person entitled to participate, directly or indirectly, in not less than 25% of the company's equity. As from 1 April 2012, the thin capitalization rules merged into the general transfer pricing rules and the "safe-harbor" 3:1 ratio no longer applies. The main test for thin capitalization purposes is to assess the commercial terms and conditions of an agreement concluded between independent parties as compared to the terms and conditions concluded between a South African taxpayer and a nonresident connected person.

Controlled foreign companies – Under the CFC rules, an amount equal to the net income earned by a CFC in relation to a South African resident is subject to tax in the hands of the South African resident unless an exemption applies. A CFC is a foreign company in which one or more South African residents hold, directly or indirectly, more than 50% of the participation or voting rights of the company. Tax paid in the foreign country generally may be offset against the South African tax payable.

Other – A statutory GAAR applies.

Disclosure requirements – The tax authorities may, for purposes of the administration of the Income Tax Act, require any taxpayer or any other person to furnish information, documents or other items.

Administration and compliance:

Tax year – The tax year is the same as the corporation's accounting year.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – Companies are required to file their income tax returns annually, within 12 months of the company's financial year end. Advance payments of tax must be made twice a year, based on estimates of the final tax amount, the first during the first six months of the company's financial year and the second before the end of the year. Where the provisional tax payments are less than the final tax liability, an additional payment of provisional tax must be made within six months after the end of the tax year.

Penalties – Penalties and interest are imposed for failure to comply.

Rulings – Binding rulings are available from the tax authorities on the interpretation of most provisions of the Income Tax Act.

Personal taxation:

Basis – South African residents are taxed on worldwide income. Nonresidents are taxed on South African-source income and on capital gains from the disposal of immovable property and assets of a permanent establishment in South Africa.

Residence – An individual is resident if: (a) "ordinarily resident" in South Africa, or (b) physically present in South Africa for more than 91 days in the current tax year and in each of the preceding five tax years, and physically present in South Africa for a period exceeding 915 days in aggregate in those preceding five tax years. This excludes a person that is deemed to be exclusively resident in another country for purposes of the application of a tax treaty between South Africa and such other country.

Filing status – Spouses generally are taxed separately.

Taxable income – Taxable income is gross income less exempt income and allowable deductions. Gross income from employment includes all remuneration in cash or in kind, including bonuses, allowances and taxes reimbursed or paid on the employee's behalf. Dividends from South African companies are exempt from income tax but will be subject to dividends tax at a rate of 15%. The tax on lump sums received from a pension, provident or retirement annuity fund is calculated differently, depending on whether the payment is as a result of resignation, withdrawal or retirement.

Capital gains – Only 33.3% of capital gains are included in taxable income to be taxed at the normal tax rates applicable to individuals.

Deductions and allowances – Subject to certain restrictions, deductions are granted for contributions to pension and retirement annuity funds, certain donations and travel and motor vehicle expenses. With effect from 1 March 2012, deductions for medical expenses were converted to medical tax credits for all taxpayers under the age of 65. With effect from 1 March 2014, medical contributions and expenses for persons with disabilities and taxpayers over the age of 65 will be converted to tax credits.

Rates – Rates are progressive up to 40%.

Other taxes on individuals:

Capital duty – No

Stamp duty – The rate of Securities Transfer Tax is 0.25% on the transfer of shares.

Capital acquisitions tax – No

Real property tax – Municipal authorities levy a real estate tax, known as "rates," on the occupation of real property.

Transfer duty is payable at progressive rates up to 8% on the acquisition of immovable property where the transaction is not subject to VAT.

Inheritance/estate tax – Estate duty is payable at the rate of 20% on the worldwide net estate of an individual who dies while ordinarily resident in South Africa, with a standard deduction of ZAR 3.5 million per estate. Certain other deductions are allowed, the most important of which is the deduction for assets accruing to a surviving spouse. Estate duty also is payable on the net South African-situated estate of a person who dies while not ordinarily resident in South Africa. The same deductions and exemptions are applicable.

A donations tax is payable where a resident donor donates property valued in excess of ZAR 100,000 in aggregate per annum. The tax is levied at a rate of 20% on such excess and is only payable if the donor is an individual resident in South Africa. Certain donations are exempt from donations tax, including donations between spouses and donations to approved public benefit organizations.

Net wealth/net worth tax – No

Social security – The employer must contribute the equivalent of 1% of gross income (up to a capped amount) for each employee, plus a similar 1% deduction from the employee, to the Unemployment Insurance Fund.

Administration and compliance:

Tax year – The tax year for individuals ends 28 February.

Filing and payment – Tax returns must be filed by a date published by the South African Revenue Service (SARS). Tax on employment income is withheld by the employer under the PAYE system and remitted to the tax authorities. Income not subject to PAYE is self-assessed – individuals must make tax payments at six-month intervals during the tax year and a final payment six months after the tax year.

Penalties – Penalties and interest apply for failure to comply.

Value added tax:

Taxable transactions – VAT is levied on the sale of goods and the provision of services.

Rates – The standard rate is 14%; certain transactions are zero-rated or exempt.

Registration – A person making standard or zero-rated supplies of more than ZAR 1 million per year is obliged to register. Nonresidents that carry on an enterprise in South Africa are required to register.

Filing and payment – VAT returns generally must submitted every two months, but businesses with an annual turnover in excess of ZAR 30 million must submit monthly returns. Returns must be submitted within 25 days after the end of the tax period. Payment in full must accompany the return.

Source of tax law: Income Tax Act No. 58 of 1962

Tax treaties: South Africa has concluded more than 70 tax treaties.

Tax authorities: South African Revenue Service (SARS)

International organizations: African Union, Common Monetary Area, IMF, Commonwealth, Cotonou Convention, Multilateral Investment Guarantee Agency, Non-Aligned Movement, UN, UNCTAD, World Bank, WCO, WTO

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