

Exchange Control Amendments to Headquarters Company Regime in South Africa

The South African Taxation Laws Amendment Act 7 of 2010, which came into effect on 1 January 2011, amended certain provisions of the Income Tax Act to introduce a regional headquarters company regime in South Africa, whereby a qualifying holding company will be eligible for tax relief.

The exchange control department of the South African Reserve Bank have now introduced circular number 2/2011 which clarifies the SARB's requirements with regards to the headquarters company regime. These are as follows:

In order to participate IHQ companies must register with the Financial Surveillance Department in order to invest offshore without restriction. In order to do so they need to meet the following criteria:

No Shareholders may hold less than 20% of the shares and voting rights;

The shares and or debt of the IHQ may not be listed on the JSE;

No more than 20% of the shares may be held directly or indirectly by residents;

At the end of each financial year, at least 80% of the assets must be foreign assets, which would not include cash or debt with a maturity of less than one year;

Reporting is required which will include for statistical purposes the source of funds, destination, loan funds from local sources etc;

IHQ will be treated as non-residents and hence transactions with local entities will be treated as being with a non-resident

IHQ can borrow freely offshore and such funds may be deployed locally or offshore;

Although these rules do add to the rules determining what is required, in our view they are a positive development as they clearly spell out how the exchange control provisions will interact with the tax legislation.

Osiris is well placed to advise on how to maximise this position and to implement structures to take advantage of these rules and to ensure that the provisions will always be met.

Key Contact:

If you require advice or assistance in regard to any of the matters raised in this brochure.

Please contact your usual contact or

Peter Todd

+44 207 078 7581

Osiris

January 2011