

South Africa opens up Opportunities for Foreign Owned Subsidiaries

South Africa has:

- ✓ a sizable economy
- ✓ relative political stability
- ✓ an overall strength in financial services, and
- ✓ a network of tax treaties and investment protection agreements (SA-21 vs. Mauritius-13).

This makes it the natural Holding Company gateway into 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.

So, if you are a Holding Company and:

- ✓ Each shareholder holds at least 20% of the equity shares and voting rights in the holding company at any time, and
- ✓ Eighty per cent of the tax value of your total assets are invested in foreign subsidiaries (equity or debt), and
- ✓ The investment is at least 20% of the foreign subsidiaries equity shares.

Then:

- ✓ Your foreign subsidiaries will not be treated as a controlled foreign company merely because the South African holding company holds a significant equity interest in a foreign subsidiary.
- ✓ The dividends declared by your holding company will generally be exempt from secondary tax on companies or the new dividend tax once it has been introduced.
- ✓ Your holding company will not be deemed to violate the thin capitalisation rules merely because of the existence of back-to-back cross-border loans involving the holding company.

The intention of these provisions combined with one of the best double tax treaty networks into Africa, is to make South Africa a more attractive choice for foreign multinationals.

However, there is an uninterrupted compliance requirement since the company's inception and therefore many existing companies **may** be disqualified.

The question is whether it is enough to make it more attractive than the traditional routes into Africa such as Mauritius.

While these provisions go a long way in offering an attractive regime to foreign multinationals, the onerous, all or nothing approach to the criteria and the fact that legislation does not provide an exemption from tax in respect of foreign exchange gains in respect of loans from offshore shareholders as well as loans to the qualifying holding companies, nor does it offer any benefit in terms of the South African controlled foreign company rules if the non-resident investor is only a minority shareholder in the holding company, may mean that it is not always the natural route into Africa.

However, it is an important step forward, and in our view the beginnings of a tax regime that will take some beating.

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.

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January 2011