# PREVENTING BASE EROSION AND PROFIT SHIFTING IN SOUTH AFRICA

## DAVIS TAX COMMITTEE INTERIM REPORT

## SUMMARY OF RECOMMENDATIONS FOR SOUTH AFRICA: OECD SEPTEMBER 2014 DELIVERABLES

### OECD SEPTEMBER 2014 ACTIONS

| Action | OECD Action Required |
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| Action 1 | Digital economy |
| Action 2 | Hybrid mismatch arrangements |
| Action 5 | Harmful tax practices |
| Action 6 | Treaty abuse |
| Action 8 | Transfer pricing work on intangibles |
| Action 13 | Transfer pricing documentation and country by country reporting (CBCR) |
| Action 15 | Develop a Multilateral Instrument to enable jurisdictions that wish to do so to implement |

| BEPS ACTION PLAN | LEGISLATION IN SOUTH AFRICA | CONCERNS IN SOUTH AFRICA | RECOMMENDATIONS FOR SOUTH AFRICA |
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| **ACTION PLAN 1: ADDRESS THE TAX CHALLENGES OF THE DIGITAL ECONOMY**<br><br>OECD Recommendations:<br>Ensure the alignment of taxation with economic activities and value creation:<br>• Ensure that core activities cannot inappropriately benefit from the preparatory or auxiliary exception from PE status, and that artificial arrangements relating to sales of goods and services cannot be used to avoid PE status; particularly with | **Direct Taxes:**<br>• Definition of gross income in S 1 of ITA: SA sourced income of non-residents involved in electronic transactions is taxable in SA. The source basis of taxation for non-residents should be read with the DTAs entered into by SA in terms of s 231 of the Constitution and s 108(2) of the ITA.<br>• Section 30(1)(b) of the TAA provides for electronic record keeping<br>• Definition of a PE in s 1 of the | • The ITA does not have source rules that deal specifically with electronic transactions.<br>• With respect to digital transactions by non-residents, the common law source rules rely on the principle of originating cause (what the taxpayer does to earn the quid pro quo and its location). Companies like Google can avoid tax in SA because the originating cause of their income is not in SA.<br>• Administrative concerns: Currently non-residents are only | Required amendments in the ITA<br>• There is no urgent need to amend the rules which provide for the taxation of e-commerce businesses conducted by SA residents, directly or via offshore intermediate companies based in tax havens. The application of the existing CFC, transfer pricing and anti-tax avoidance rules should suffice to subject the income generated by SA CFCs via e-commerce to tax in SA. It may however be necessary to make adjustments to the foreign tax credit rules and the CFC rules to cater more |

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| regards to:<br>• Intangibles, the use of data, and the spread of global value chains, and their impact on transfer pricing:<br>• The possible need to adapt CFC rules to the digital economy:<br>• Addressing opportunities for tax planning by businesses engaged in VAT-exempt activities | ITA<br>• 2002 Electronic Communications and Transactions Act | required to submit tax returns for trade carried on through a SA PE. | specifically for e-commerce.<br>• To enable SA to impose tax on non-resident suppliers of goods and services via e-commerce to SA customers, new source rules that deal with the taxation of the digital economy need to be enacted<br>• The current scope of the source rules under s 9 of the ITA need to be expanded to include rules that ensure the proceeds derived from the supply of electronic goods and services are considered derived from a source in SA. The rules should be are based on where consumption takes place.<br>• The rules should also aim to clarify the characterisation of the typical income flows from e-commerce transactions. The enacting of such rules would create the basis from which SA can apply the envisaged OECD recommendations on the digital economy.<br><br><u>Required administrative actions:</u><br>• Rules should be enacted that require non-resident companies with SA sourced income (excluding certain passive income) to submit income tax returns even if they do not have a PE in SA. This would ensure that such non-residents are included in the tax system. The IT14 needs to be re-designed to support BEPS identification specifically with regard to separate disclosure of inbound investment flows.<br>• Since most of the challenges that e-commerce poses to the legislation relate |

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| | | | to difficulties of identifying the location of taxpayers and their business transaction, it is recommended that the ITA be amended to provide that the provisions of the Electronic Communications and Transactions Act be taken into account for detection and identification purposes, so as to ensure tax compliance for taxpayers involved in e-commerce.<br>• While attending to the above, SA should monitor the outcomes of OECD's on-going work on the PE threshold for the digital economy. Taking a unilateral approach to reworking the PE rules for e-commerce is unlikely to work.<br>• SA should work hand-in-hand with developed and developing nations, in order to come up with a feasible way of taxing e-commerce transactions<br>• Technology is continuously changing, developing and evolving. In adopting any e-commerce legislation, it is crucial to understand the technology and ensure that South Africa does not implement taxing provisions which are attached to a particular type of technology |
| | **Indirect taxes:**<br>• VAT: Place of consumption rules were introduced for e-commerce transactions. The rules require VAT registration of foreign suppliers of e-commerce.<br>• Enabling legislation introduced by Taxation Laws Amendment Act | There are various concerns regarding the VAT rules. These can be broken down into four main categories:<br>• Challenges of determining whether there is a supply of goods or services.<br>• Challenges of determining | • There are generally no place of supply rules in South Africa. Suppliers providing services to SA consumers are subject to the registration threshold. This has been extended to include services supplied electronically.<br>• It is recommended that "telecommunication services" should be |

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| | of 2013, effective from 1 June 2014.<br>• Further changes are proposed in the TLAB 2014, which is expected to come into effect 01 April 2015. The proposals contained in the TLAB deal with issues such as tax invoice requirements and advertised prices for suppliers of electronic services . | where the place of supply is.<br>Challenges of determining whether a transaction is made in the course or furtherance of an enterprise and in the making of taxable supplies. In other words, should B2B (business-to-business) transactions be treated differently from B2C (business-to-consumer) transactions. NT is of the view that not having the distinction actually broadens the SA VAT net since the onus is now on the supplier to levy VAT. B2C transactions will lead to no input tax claim if the recipient is not registered for VAT. B2B transactions are subject to the normal input tax provisions of the VAT Act.<br><br>• South African VAT legislation generally only deals with who the supplier is and what the supply is. The VAT implications usually flow from that rather than from who the recipient is (i.e. business or consumer)<br>• Challenges of determining how VAT on the transaction is collected. | specifically defined, and clear and specific place-of-supply rules for telecommunication services should be incorporated in the Act. These provisions should be in line with the OECD principles on the harmonisation of global VAT/GST rules.<br>• While the list of services in the Regulations does not provide for adequate definitions, which causes some confusion, the definitions in the Regulations, as they stand, may not necessarily require further amendments. However, further guidelines providing clarification should accompany the Regulations. These guidelines should be updated regularly to ensure that new technology cannot escape the VAT fold.<br>• It remains uncertain if the list of electronic services in the Regulations can be interpreted so as to include the supply of online advertising. It is recommended that the guidelines referred to above should clarify this issue.<br>• While the reverse-charge mechanism applies as a backstop to the registration mechanism, it remains uncertain under what circumstances the reverse-charge mechanism will apply. It further remains uncertain under what circumstances the use-and-enjoyment principle will take precedence over the place-of-supply proxies in the case of the supply of electronic services. It is recommended that clarity should to given on whether the use-and enjoyment principle should apply as a backstop where the place-supply-proxies lead to double or non-taxation, or |

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| | | | market distortions. It is recommended that the VAT Act be amended in line with the OECD proposals and Article 59a Council Directive 2008/8/EC.<br>• The differentiation between B2B and B2C transactions are, in principle, in line with the OECD recommendations. However, the existing rules do not make a clear distinction between B2B and B2C transactions. Clearer rules should be developed to distinguish between B2B and B2C transactions more effectively.<br>• In the case of B2B transactions, the recipient vendor only accounts for VAT on the imported electronic services in so far as the services are not used in the making of taxable supplies (in other words, when the recipient vendor is the final consumer). This relies heavily on the vendor's interpretation of what constitutes 'in the making of taxable supplies'. It is recommended that, in the case of B2B transactions, the recipient vendor must, in terms of the reverse-charge mechanism account for VAT on all imported services irrespective of it being applied in the making of taxable supplies. The recipient vendor should claim an input VAT deduction in cases where such a deduction is allowed. It is however acknowledged that the new changes in the VAT Act that require the foreign supplier to register for VAT in SA eliminates this problem to a large extent. The supplier levies VAT on the supply and the recipient is subject to the normal input tax provisions of the VAT Act.<br>• Foreign suppliers of electronic |

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| | | | services are burdened with the task of identifying the recipient's VAT vendor status. No guidelines exist and foreign suppliers of electronic services run the risk of penalties being imposed on unintended non-taxation. It is recommended that guidelines similar to the EU guidelines must be drafted. However, provision must be made that where the foreign supplier is unable to determine the VAT status of the recipient, the supplier may deem the recipient a non-vendor. Furthermore, where the foreign supplier has followed the guidelines, no penalty should be imposed where the supplier incorrectly identified the recipient's VAT status.<br>• The differentiation in thresholds that apply to domestic vendors and foreign suppliers of electronic services raises concerns. Although the differentiation can be justified in that it is aimed at the protection of domestic markets, further research is necessary to determine whether the differentiation, in fact, balance out the assumed market distortions. In the interim, it is recommended that the VAT registration threshold for foreign suppliers of electronic services should be reconsidered to give effect to tax neutrality.<br>• The concessions made by SARS to streamline the VAT registration of foreign suppliers of electronic services is in line with the OECD Guidelines as well as similar provisions in the EU that will come into operation on 1 January 2015. The |

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| | | | registration process should be closely monitored and reviewed on a regular basis to ensure that the process remains compliant with the OECD simple registration guidelines.<br>• With regards to foreign suppliers, SARS has issued Guidelines for completing the VAT 201. SARS reports that to date 96 foreign taxpayers have registered with SARS. VAT returns are being submitted monthly and that the compliance rate of submitted returns is approximately 87%. To encourage increases registrations and to increase the rate of compliance, it is recommended that measures should be taken to lessen the administrative burdens of completing VAT 201. As foreign suppliers of electronic services are not eligible for a VAT refund, it is recommended that an abridged VAT 201 should be developed specifically for foreign suppliers of electronic services.<br>• The foreign supplier of electronic services is required to issue an invoice compliant with the invoice requirements in the VAT Act. Although this SA requirement is in line with the EU VAT Directive, this requirement would require other non-EU suppliers to change their invoicing system. The requirement to issue an invoice, based on the requirements of an invoice in terms of the VAT Act, should be re-considered.<br>• The foreign supplier of electronic services is required to display prices in |

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| | | | South African Rand and the price so displayed must include VAT at 14 per cent. This would require the supplier to change its accounting and invoicing system. Clause 103 of the TLAB 2014 and the Explanatory memorandum is addressing this matter.<br>• It is recommended that legislation around VAT branch registration and the requirement to maintain a separate independent accounting system should be revised. Foreign suppliers of electronic services should be entitled to register a VAT branch but should not be required to maintain a separate independent accounting system. A proviso should be added to this requirement to apply to foreign suppliers of electronic services, whereby, instead of maintaining an independent accounting system, the foreign supplier or electronic services should merely be required to produce financial accounts which reflect the supplies made to residents in South Africa or where payment was made from a South African bank account.<br>• In the absence of international cooperation, the collection of VAT and enforcing the registration mechanism would be impossible. The negotiation of multilateral treaties, as opposed to bilateral treaties, must be undertaken to ensure greater international and regional cooperation.<br>• The OECD recommends that the registration model should be applied as |

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| | | | an interim measure to balance-out market distortions. In contrast, SARS is of the view that the registration model is the final/optimum solution. It is recommended that the registration model should be applied as an interim measure aimed at balancing out existing market distortions. Alternative VAT collection models should be explored.<br>• The reverse-charge mechanism is an ineffective tool to levy and collect VAT on cross-border trade in digital goods. The registration model, in theory, provides for a better VAT collection model. However, the registration model overly burdens the supplier and enforcement of the registration model remains problematic. Although in terms of SARS records about 96 foreign suppliers have registered to date, this number and the collected could be increased if an alternative model is considered. The implementation of the RT-VAT system should be considered as an alternative VAT collection mechanism where the registration and reverse-charge mechanisms are found to be ineffective tax collection models. As the model remains to be tested, extensive further research into the viability of the RT-VAT system should be undertaken.<br>• In its design of VAT legislation dealing with e-commerce, South Africa should ensure its laws are in line with international developments. It should not reinvent the wheel and draft provisions that are not internationally aligned.<br>• It is important that South Africa monitors the OECD recommendations |

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| | | | and international developments and that it amends its legislation accordingly to ensure it is internationally aligned.<br>• There are concerns that the VAT amendments with respect to e-commerce do not comply with the principle of neutrality which requires that taxation should seek to be neutral and equitable between forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations, carrying out similar transactions, should be subject to similar levels of taxation.<br>• It is recommended that the administrative burden on foreign suppliers of electronic services, who do not otherwise have a presence in South Africa but who satisfy the compulsory requirements to register for VAT, need to be reviewed and reconsidered to ensure that the amendments addressing electronically supplied services are effectively and efficiently imposed and enforced. The administrative burden imposed on foreign suppliers of electronic services should minimise the administrative costs for both the taxpayer and SARS as far as possible.<br>• In a volatile economy, new tax rules should not be drafted so as to negatively impact on international trade or create additional market distortions. While we recommend that new tax rules should be in line with the OECD principles and international best practice, new tax rules should not merely slave-follow international trends in developed |

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| | | | countries. Extensive research on the economic impact of new tax rules on the economy of developing countries should be undertaken and considered before these new rules are implemented. |
| | **Developments in the digital economy:** Exchange controls are a defence against BEPS in relation to e-commerce, digital products, virtual currencies (e.g. Bitcoin), IP royalty payments and other forms of intangible related transfer functions | Exchange controls seem at least in the short term - a major defence against BEPS in relation to e-commerce, digital products, virtual currencies, statutory provisions will be needed in the long run. | • Whilst the use of virtual currencies like Bitcoins is not yet widespread in SA, it is growing and SA legislators would be wise to consider the potential impact of virtual currencies like Bitcoins on tax compliance and to monitor international developments to determine the most suitable approach for in SA. |
| **ACTION PLAN 2: NEUTRALISE THE EFFECTS OF HYBRID MISMATCH ARRANGEMENTS**<br><br><u>OECD Recommendations target</u>**:**<br>• Hybrid entities,<br>• Hybrid instruments. Under the category of hybrid instruments there is included arrangements involving hybrid transfers<br>• Action 2 also covers possible changes to the OECD Model Tax Convention to ensure that dual resident entities are not used to obtain the benefits of treaties unduly<br><br><u>Recommended domestic rules target</u> | **Hybrid entities:**<br>• Definition of "foreign partnership" in s 1 of ITA<br>• Provisos to the definitions of "person" and "company" in s 1 of ITA<br>• Section 24H of ITA amended to ensure that "foreign partnerships" are treated in the same manner as ordinary partnerships are treated for SA tax purposes.<br>• The definitions of "permanent establishment" and "qualifying investor" amended to specifically provide for a "foreign partnership." | South Africa's legislation on hybrid entities is still behind the G20. There is need for further reform of the provisions to ensure that any tax planning schemes that entail hybrid entities as a mechanism for double non-taxation (as well as potentially giving rise to double taxation) are curtailed. | • There is need for refinement of domestic rules on hybrid entities.<br>• There is also need for specific tax treaty anti-avoidance clauses that deal with hybrid entities.<br>• In line with the OECD recommendations, SA should make appropriate domestic law amendments. Similarly SA should adopt the OECD tax treaty recommendations in this regard and adopt appropriate anti-avoidance treaty provisions. |

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| payments that result in:<br>• Deduction/no inclusion or D/NI outcomes<br>• Double deduction or DD outcomes | **Hybrid instruments:**<br>• Section 24J<br>• Interest withholding tax<br>• Section 23M - limits cross-border interest.<br>• Section 23N - limits the use of excessive debt financing to achieve tax savings in reorganisation and "acquisition transactions.<br>• Sections 8F – hybrid debt rules<br>• Section 8FA, denies the deduction of interest incurred or accrued under a hybrid debt instrument<br>• Definition of foreign dividend in s 1 read with s 10B which exempts foreign dividends from normal tax or subjects them to tax at a reduced rate (s 10B(2)).<br>• Section 10B denies an exemption where a deduction is claimed by the foreign company<br>• There are also anti-dividends scheme rules contained in sections 10(1)(k)(i)(ee), (ff), (gg) and (hh). These counter mismatches achieved through the creation of a deduction (e.g. a deductible manufactured dividend) in respect of exempt dividends income. Under these provisions, a dividend exemption is denied.<br>• Section 64EB anti-avoidance provision, prohibits the transfer of dividend income from entities subject to dividends tax to exempt | | • SA's legislation with regard to hybrid investments is keeping up with the pace among the G20.<br>• The legislators should consider introducing or revising specific and targeted rules denying benefits in the case of certain hybrid mismatch arrangements. In doing so, the legislators should ensure that the rules must be simplified to deal with legal principles rather than specific transactions.<br>• SARS should introduce or the revise disclosure initiatives targeted at certain hybrid mismatch arrangements. It should be noted however that disclosure programs are never successful and are overly burdensome from a compliance perspective.<br>• The hybrid debt and interest rules require attention as they are not linked to the tax treatment in the hands of the counterparty and may themselves lead to mismatches and double taxation. A rule needs to be put in place that links the hybrid rules to the treatment in foreign counties. This would prevent tax abuse in cases where there is a denial of deduction in SA but not in other countries.<br>• The rules governing the deductibility of interest need to be developed holistically and without a proliferation of too many sections within the Act. The focus should be based on a principle rule and one should not have to apply too many different sections to a transaction when assessing whether or not interest is |

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| | entities<br>• Section 8E – hybrid equity rules<br>• Section 8EA - third party backed shares | | deductible. The key policy requirement is an emphasis on mismatch rather than merely attacking a particular type of instrument.<br><br>From the analysis of the international jurisdictions, it is clear that OECD rules focus on a deductibility mismatch or other clear tax leakage. This is, it is submitted, correct and is a different approach from what was adopted in sections 8E to 8FA of the Act which looks purely at substance over form, without enquiring whether mischief exists. In other words, it makes no sense to alter the tax treatment of an instrument where no obvious leakage arises – such as in circumstances where a deduction is matched by a taxable receipt, or a non-deductible payment is exempt. NT contends that the rules do not concern themselves with specific tax structures but rather look to those terms of an instrument and/or arrangement that would not be ordinarily be found in either an equity instrument or debt instrument. Nevertheless, there is need to ensure that ss 8E to 8FA do not overly place emphasis on the type of mischief being controlled rather than on the substance of the instrument in question. NT further contends that ss 8E-8FA are structured to capture the “low-hanging” fruit. Hurdles for the application of these provisions range from the presence of guarantees and assurances that are only necessary in debt arrangements (8EA) to unreasonably long repayment periods for |

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| | | | debt (8F) and the non-payment of obligations or increases in payment obligations (8FA) when the debtor attains financial stability. However these provisions are quite very complex and unclear.<br>• Section 23M is a mismatch measure as contemplated in the OECD requirements. However, in its structure it also operates as a matching measure for interest deductions. In other words, an interest deduction is limited (and not denied) until that point in time that the corresponding interest income is subject to South African tax in the hands of the recipient of the interest. However the provision is quite complex and its workings unclear.<br>• It is strongly recommended that South Africa moves away from anti-avoidance sections aimed at particular transactions and establish anti-avoidance principles which can be applied to a broad range of transactions without undue technicality; even if there is a risk that one or two transactions fall through the cracks, a principle approach to drafting legislation is significantly preferential to a transaction-by-a-transaction approach which we currently appear to have. An example explained in the main report is section 8F and 8FA which unintentionally provide a solution to the problems encountered in section 8E and 8EA. This type of unintentional tax effect only arises due to overly complex and poorly thought out tax |

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|  |  |  | legislation.<br>• There is need for specific double tax treaty anti-avoidance clauses.<br>• The inconsistencies between hybrid debt and hybrid equity rules should be addressed. For instance there should be alignment with respect to security for equity as is the case for debt.<br>• It is import that the rules are in line with international best practices otherwise they would result in double taxation or double non-taxation of income.<br>• SA needs to consider the OECD recommendations on hybrid mismatches and adapt domestic provisions as necessary.<br>• SA also needs to consider the changes to the OECD MTC and adopt them as appropriate.<br>• It is important that SA does not move too quickly and undertaking unilateral changes no matter how small, considering the potential knock-on impact for foreign investment. |
|  | **Hybrid transfers**<br>• Section 24J<br>• Section 23G, an anti-avoidance provision dealing with sale and leaseback arrangements |  |  |
| **ACTION PLAN 5: COUNTER HARMFUL TAX PRACTICES MORE EFFECTIVELY, TAKING INTO ACCOUNT TRANSPARENCY AND SUBSTANCE** | Legal instruments to ensure spontaneous exchange of information on rulings in SA:<br>• Chapter 7 of the Tax Administration Act 28 of 2011 | • There are concerns as to whether South Africa's headquarter company regime constitutes a harmful tax practice. However the OECD 2000 Report | On requiring substantial activity:<br>• The requirement for "substantial activity" has got to be examined in SA for instance with respect to the country's headquarter company regime. |

| <u>OECD Recommendations:</u> countries should revamp the work on harmful tax practices with a priority on:<br>- Requiring substantial activity for preferential regimes.<br>- Improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes,<br>- An evaluation of preferential tax regimes in OECD members and in associate counties | (TAA), sets out provisions dealing with "advance rulings".<br>• The DTAs (article 26) that SA has entered into in terms of s 231 of the Constitution and s 108(2) of the ITA, covers spontaneous exchange of information. SA has also signed protocols to some older DTA to ensure transparency and exchange of information.<br>• TIEAS signed with the Bahamas, Bermuda, Cayman Islands, Guernsey, Jersey and San Marino. National Treasury is involved in negotiations with other tax havens to enter into similar agreements and a number of tax haven jurisdictions have signalled an interest in engaging in such negotiations. However there is a need to move from the standard of exchanged "upon request" in TIEAs to "automatic exchange of information", which is in line with international developments.<br>• Section 9I of the ITA – Headquarter company regime<br>• Special investment Zones | entitled "Towards Global Tax Cooperation" notes that holding company regimes and similar preferential tax regimes do not constitute harmful tax practices, although such regimes may constitute harmful tax competition. Until SA's headquarter company regime is reviewed and found wanting in terms OECD September 2014 Report on Action 5, SA's endeavours in creating such a regime would not be in conflict with international expectations | • It is important that SA balances its international obligations not to engage in harmful tax practices with the need to preserve the competiveness of the economy. More so, as the National Development Plan provides that South Africa should aspire to be a gateway for investment in Africa. There is potential for substantial job creation and tax benefits in the form of VAT and employees tax from which SA would benefit as long as it ensures that it complies with the OECD's substance requirements. The bottom line is that BEPS is both a risk and an opportunity for SA.<br>• The headquarter regime is actually a holding company regime which enables MNEs to use SA as a conduit for passive income flows. Consideration should be given to creating a full headquarter regime which incorporates minimum levels of substance as required by the OECD so that it is not considered a harmful tax practice. It is therefore important that SA revises its criteria ~~of~~ for headquarter companies in line with the OECD recommendations.<br>• Care should also be taken to ensure SA's provisions relating to Special Investment Zones to attract investment comply with the OECD's substance requirements.<br><br><u>On Improving transparency, including compulsory spontaneous exchange on rulings</u> |
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| | | | • It is recommended that in line with the OECD recommendations on exchange of information regarding tax rulings, that SARS notifies other tax authorities on a timely and spontaneous basis of the existence of a binding private ruling where SARS is aware that it affects residents in the other country. This is especially so where such where a ruling provides for a downward adjustment that would not be directly reflected in the company's financial accounts)”.<br>• SA’s tax authorities should ensure that they do not sanction tax rulings that foster harmful practices and hamper transparency. This could cover secret rulings that enable taxpayers to get tax haven results even if the country may have a tax system with an acceptable tax rate.<br>• It is recommended that in line with the above OECD recommendation, SA should come up with a provision in the Tax Administration Act that provides for the legal framework to ensure spontaneous exchange of information regarding tax rulings with other countries’ tax authorities.<br>• With regard to confidentiality concerns, Chapter 6 of the TAA provides detailed provisions relating to “confidentiality of information”. These provisions can be applied to ensure confidentiality with respect to exchange of information on tax rulings in SA. |

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<td rowspan="2">ACTION PLAN 6: PREVENT TREATY ABUSE<br><br>OECD Recommendations:<br>• Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.<br>○ For cases circumventing treaty provisions, three pronged approach is recommended:<br>- Title and treaty preamble, treaty non intended for double non-taxation<br>- LOB<br>- Principle purpose test (PPT)<br>○ For cases circumventing domestic provisions, apply domestic avoidance rules<br>• Clarify that tax treaties are not intended to be used to generate non-taxation.<br>• Identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country</td>
<td rowspan="2">Currently in DTAs, the OECD Commentary on Article 1, recommends use of domestic anti-avoidance provisions and specific treaty provisions<br>• In SA: General provisions that can apply are the GAAR and the Substance over form doctrine<br>• Specific treaty provisions applied in SA: Beneficial ownership provision, LOB in treaty with USA.</td>
<td>Regarding use of domestic anti-avoidance provisions to prevent treaty abuse in SA: there could be concerns as to whether applying domestic anti-avoidance rules would amount to treaty override.</td>
<td>• To prevent treaty override disputes, the OECD recommends that the onus is on countries to preserve the application of domestic anti-avoidance rules in their treaties. SA should ensure it categorically preserves the use of the application of domestic anti-avoidance provisions in its tax treaties.<br>• The “main purpose” requirement in the GAAR is akin to the PPT that the OECD recommends. SA should apply its GAAR prevent tax abuse that circumventing domestic provisions.</td>
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<td>Regarding use of specific treaty provisions to prevent treaty abuse in SA: There is lack of clear international meaning of “beneficial ownership”. The effectiveness of the beneficial ownership provision in curbing treaty shopping is questionable in light of international case law developments.<br>- Para 12.5 of the Commentary on Article 10 in the 2014 version of the OECD MTC provides that: “whilst the concept of “beneficial ownership” deals with some forms of tax avoidance (i.e. those involving the interposition of a recipient who is obliged to pass on the dividend to someone else), it does not deal with other cases of treaty shopping and must not, therefore, be considered as restricting in any way the application of other approaches to addressing such cases.”</td>
<td>Regarding the OECD recommendation to use a three pronged approach to address treaty shopping in tax treaties.<br>• South Africa should take steps to renegotiate its older treaties or sign protocols amending the titles and preambles of older treaties to the effect that they are not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements<br>• SA should endeavour to apply the LOB provision in its new treaties and older treaties can be renegotiated.<br>• The “principle purpose test” recommended by the OECD is similar to that required to make an “avoidance transaction” determination under the GAAR in section 80A-80L of the Income Tax Act – in particular, whether the primary purpose of a transaction (or series of transactions of which the transaction was a part) was to achieve a</td>
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| | | | tax benefit, broadly defined. It is therefore recommended that a provision in line with the PPT test as recommended by the OECD should be included in South Africa's treaties. Older treaties could be renegotiated. The adoption of this provision from South Africa's perspective would not be difficult since a PPT is relatively familiar to both South Africa's treaty partners and taxpayers. |
| | | **Treaty Shopping in SA's treaty with Mauritius:**<br>• Issues of sale of shares taxable only in shareholder country<br>• Lower withholding tax rates<br>• Avoiding SA dividends Tax<br>• Avoiding other withholding taxes<br>• Dual residence schemes<br>• Abuse of tax sparing clause<br>• CGT carve-out for property rich companies. | The SA treaty with Mauritius was renegotiated. It was signed on 17 May 2013 and ratified by SA Parliament on 10 October 2013.: It covers:<br>• Mutual agreement on residence<br>• Increased withholding tax rates<br>• It repeals "CGT cut out" clause<br>• It no longer includes a tax sparing clause. Rather, it allows for relief in the form of a foreign tax credit.<br>• It contains the latest OECD standard for the exchange of taxpayer information on tax matters and Assistance in tax collection Article.<br><br>Finalisation of the re-negotiated treated appears to have stalled. |
| | | **Treaties encouraging double non-taxation:**<br>• The treaty with Switzerland was re-negotiated and now provides a tax credit for foreign tax suffered by SA residents in Switzerland | |

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| | | **Treaty shopping in SA's treaties with low withholding tax rates** | • The treaties with zero or low withholding tax rates should be re-negotiated so that they are not used for treaty shopping purposes. These agreements are currently under renegotiation, but the process will obviously take a long time. |
| | | **Treaty between SA and Zambia:** The treaty provides taxing rights to Zambia in respect of interest paid on certain debt instruments advanced by SA residents. SA may not tax such interest This is one of the oldest DTAs in our network (it came into operation in 1956) was renegotiated was first renegotiated in 2002 and was finalised in December 2010. The DTA is now awaiting signature.<br>• In circumstances where interest is tax deductible in terms of SA domestic law, there is no requirement that such amounts be taxed in the other jurisdiction in terms of the OECD Model Tax Convention.<br>• There is also no "subject-to-tax" clause in respect of such amounts in terms of SA domestic tax law. | This matter should be considered by the SA tax authorities at the time of entering into treaties with other jurisdictions. For example, SA has entered into treaties with, *inter alia*, Ireland, Belgium and Luxembourg, which jurisdictions have provisions effectively mitigating the quantum of tax paid in those jurisdictions |
| | | **SA's treaties with tax sparing provisions**: These provisions may be used for treaty shopping purposes. OECD best practice guidelines for drafting tax sparing provisions state: | • Tax treaties are not generally negotiated on tax considerations alone. Often countries' treaty policies take into account their political, social and other economic needs. Nevertheless, care should be taken to adhere to international |

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| | | • Tax incentives should be precisely defined to refer to specific incentives so as to prevent open-ended tax sparing that encourages abusive practices.<br>• Tax sparing should ideally be restricted to local as opposed to export activities.<br>• A maximum tax rate should be set for tax sparing credits to prevent the artificial increase of the rates.<br>• Anti-abuse clauses should be included to prevent abusive practices.<br>• Time limitations or sunset clauses should be included, so that the provision is not indefinitely used for abusive practices.<br>• Tax sparing should ideally be restricted to business income rather than passive income. This would discourage harmful tax practices involving geographically mobile activities. | recommendations when designing tax sparing provisions, so as to prevent tax abuse. The OECD recommends that the design of tax sparing provisions should follow the form set out in its 1998 Report on Tax Sparing.<br>• The problem in the older treaties may be resolved by renegotiation of the treaty or through a protocol. The protocol should, for instance, ensure that the relevant tax sparing provision refers to a particular tax incentive and should contain a sunset clause or expiry date to ensure that it is not open to abuse.<br>• As the process of removing or modifying existing tax sparing provisions to prevent abuses is often slow and cumbersome, SA's legislators should ensure that future tax sparing provisions are drafted circumspectly.<br>• It should be noted that South Africa no longer asks or grant tax sparing its tax treaties.<br>• All the obsolete tax sparing provisions should be brought up to date with the current laws if they are still considered necessary. |
| | | **Base erosion as a result of SA giving up its taxing rights:**<br>• Foreign jurisdictions, especially in Africa, are incorrectly claiming source jurisdiction on services (especially management services) rendered abroad and yet those services should be considered to | • SA needs to develop a coherent policy in respect of treaty negotiation and interpretation, especially with respect to its response to SA's needs. It appears that African countries tend to impose their will on SA.<br>• It is recommended that s 6*quin* be reconsidered. |

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| | | be from a SA sources.<br>• Section 6*quin* provides a rebate for management fees and technical service fees. NT notes that s 6*quin* was intended to be a temporal measure aimed at addressing interpretation issues arising out of three DTAs where the treaty partners did not apply the provisions of the DTAs in respect of services rendered by SA residents in those countries. Although these countries in terms of the DTAs do not have the right to tax management fees they still imposed withholding taxes on services on services rendered within these countries despite the fact that the DTAs with these countries do not have an article dealing with management fees or South African residents have no permanent establishments in these countries. Nevertheless this temporary measure can be interpreted that SA has departed from the tax treaty principles in the OECD MTC in its treaties with African countries, in that it has given them taxing rights over income not sourced in those countries | |
| **ACTION PLAN 8: ASSURE THAT TRANSFER PRICING OUTCOMES ARE IN LINE WITH VALUE CREATION / INTANGIBLES** | • Section 31 of the ITA<br>• EXCON and DTI approval required.<br>• Section 23I of the ITA: An anti- | Concerns on transfer pricing in general:<br>• The legislators should ensure that section 31 of the Income Tax Act refers to the OECD | • Action Plan 8, which requires countries to enact legislation to prevent transfer pricing of intangibles, may not require major legislative attention in SA at this stage, since current exchange controls |

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| Chapters I, II and VI of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* have been revised: The changes to the Guidelines:<br>• Clarify the definition of intangibles under the Guidelines;<br>• Provide guidance on identifying transactions involving intangibles;<br>• Provide supplemental guidance for determining arm's length conditions for transactions involving intangibles;<br>• Provide guidance of distinguishing intangibles from location savings and other local market features. | avoidance provision which prohibits the claiming of an income tax deduction in respect of "tainted IP".<br>• The "beneficial ownership" in terms of Article 12 of DTAs.<br>• The royalty withholding tax at a rate of 15%. | guidelines. This is stated in SARS PN 7, but SARS PNs are not legally binding. A legally binding General Ruling, as provided for in s 89 of the TAA, should be enacted on section 31.<br>• Without departing from the OECD Transfer Pricing Guidelines, the General Ruling should include a set of principles reflecting the SA reality, as well as providing certainty about exactly what transfer pricing documents are required by SARS.<br>• SARS should ensure that the enforcement capacity of its transfer pricing unit is adequate.<br>• SARS should ensure that there is sufficient transfer pricing training and capacity building in its transfer pricing unit. | restrict the outbound movement of intangibles and royalty payments.<br>○ SA developed IP cannot be readily exported without EXCON or the DTI approval and royalty rates are often capped.<br>○ SA CFC rules exclude intangibles for CFC exemption benefits.<br>○ Section 31 of the Income Tax Act – or even the general anti-avoidance provision – can also be applied to challenge the limited remuneration of a SA entity involved in the development process.<br>○ Section 23I of the Income Tax Act is an anti-avoidance provision which prohibits the claiming of an income tax deduction in respect of "tainted IP".<br>○ The "beneficial ownership" in terms of Article 12 of DTAs.<br>○ Royalty withholding tax at a rate of 15%.<br>• Despite the above measures, the undervaluation of local intangibles in determining profit splits is a potential concern for SA.<br>• To reinforce the above provisions, it may be necessary in the future to enact provisions in the ITA to address any schemes that could be developed regarding transfer pricing of intangibles. A hypothetical example could be if a SA company develops a product, then it writes off the expenditure as a tax deduction in SA, and then it registers the IP in a tax haven and charges the local branch a fee for the use of the IP. |

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| | | | • To address challenges relating to the transfer pricing of intangibles, SA should consider adopting the OECD recommendations where appropriate.<br>• If legislative provisions are enacted, the following are some uncertainties and risks that need to be addressed:<br>○ If a low tax entity is the legal owner of intangibles and bears the costs of developing the intangibles, but does not perform any of the important functions, what profits should be attributed under the ALP?<br>○ How is the transfer of intangibles with highly uncertain values going to be priced?<br>• Care should be taken, when developing tax legislation to prevent the depletion of the tax base through the transferring of intangibles and to ensure that the legislation is not so restrictive that it limits South Africa's ambitions to be a global player in the development of intellectual property |
| **ACTION PLAN 13: RE-EXAMINE TRANSFER PRICING DOCUMENTATION**<br><br><u>OECD Recommendation:</u><br>Enhancing transparency for tax administrations by providing them with adequate information to conduct transfer pricing risk assessments and examinations is an essential part of tackling BEPS. Therefore, Chapter V | Provisions that can be applied in SA to ensure that tax taxpayers provide tax administrations with information needed to conduct a thorough transfer pricing audit include:<br>• The annual notice by the Commissioner for SARS requiring the submission of tax returns – s 66 of the ITA.<br>• Tax returns which must contain | • SARS' PN 7 which was issued on 6 August 1999 contains some documentation guidelines.<br>• However, submitting transfer pricing documentation is not compulsory in SA.<br>• SARS states that its documentation guidelines "broadly follow Chapter V of the OECD Guidelines". The OECD Guidelines have however been | • The OECD's view that one of the purposes of transfer pricing documentation guidelines is to ensure that taxpayer's can assessment their compliance with the arm's length principle, is consistent with the fundamental change that was made to SA's transfer pricing provisions in section 31 of the ITA for tax years starting from 1 April 2012. More specifically, whereas transfer pricing adjustments previously |

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| of the Transfer Pricing Guidelines has been revised. It sets out:<br>• Objectives of transfer pricing documentation rules<br>• Three-tiered approach to transfer pricing documentation<br>- Master file - standardised information relevant for MNE group<br>- Local file - material transactions of the local taxpayer<br>- Country-by-country reporting: Reflecting global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group<br>• Recommendations on compliance matters relating to: Contemporaneous documentation; time frames; materiality of documentation; retention of documents; frequency of documentation updates; language of the documentation; penalties; confidentiality; local/regional comparables and certifying of documentation | information as prescribed by the CSAR – s 25 of the TAA.<br>• Sections 29 - 32 of the TAA deal with "returns and records".<br>• Third party returns required by public notice, in terms of s 26 of TAA.<br>• The requirements of the transfer pricing rules in s 31 of ITA.<br>• SARS Practice Note 7. However Practice Notes not legally binding.<br>• Confidentiality matters are dealt with in sections 21, 56 and Chapter 6 of the TAA. | revised several times. SARS PN 7 needs to be revised.<br>• SARS transfer pricing documentation guidelines are rather vague and create uncertainties for taxpayers since submitting transfer pricing documents is not compulsory. | could only be made by SARS (in terms of a discretion), the amended version of section 31 provides in section 31(2), that a taxpayer must itself make any transfer pricing adjustments that might be required in the calculation of its taxable income. This places a significantly greater onus on taxpayers. Thus under the revised version of section 31(2), the onus is placed on each taxpayer with foreign related party transactions to "confirm the arm's length nature of its financial results at the time of filing its tax return". This onus exists, regardless of whether or not the taxpayer has transfer pricing documentation.<br>• Since the current transfer pricing documentation guidelines, as contained in SARS Practice Note 7 (PN 7), are not that clear and are based on the 1995 OECD Guidelines, it is recommended that SARS revises PN 7 to be in line with the OECD revised Transfer Pricing Documentation Guidelines in Chapter V. For several years there have been indications from SARS and Treasury that an updated transfer pricing Interpretation Note is imminent. SARS published on its website a draft Interpretation Note on 3 April 2013 this draft Note needs to be finalised. SARS PN Note 7 is now 15 years old and has not been changed to keep pace with developments at the OECD. As mentioned above, currently preparing transfer pricing documentation is not compulsory in South Africa. It is recommended that documentation |

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| | | | requirements should be introduced in line with the above discussed OECD Guidelines. Consequently, the OECD's recommendation that countries should adopt a standardised approach to transfer pricing documentation that follows a three-tiered structure consisting of a master file, a local file and country-by-country reporting should be adopted in South Africa. This approach will encourage a consistent approach to transfer pricing documentation in different countries which will help contain the cost of global transfer pricing documentation.<br>• SARS PN 7 also makes references to certain provisions of the ITA which have been repealed and now form part of the Tax Administration Act 28 of 2011 (examples are provisions dealing with record keeping requirements and penalty provisions). It is therefore imperative that an updated Interpretation Note be prioritized.<br>• It should be noted that with regard to Country-by country reporting, SA along with other emerging economies are of the view that the country-by-country report should require additional transactional data (beyond that available in the master file and local file for transactions of entities operating in their jurisdictions) regarding related party interest payments, royalty payments and especially related party service fees. Such information would be needed to perform risk assessments where it is found challenging to obtain information on the global operations of an MNE |

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| | | | group headquartered elsewhere. The OECD plans to take these views into consideration and review the implementation thereof no later than end of 2020. It is therefore recommended that SA monitors the OECD's final recommendations in this regard and then implement the same.<br>• It is recommended that preparing a master file, local file and country-by-country reporting should be compulsory for large Multinational businesses. A recommended threshold is businesses over R1 billion group turnover. As the OECD recommends, with regard to compliance matter under the heading "materiality", disproportionate and costly documentation requirements should not imposed on SMEs. SMEs should not be required to produce the same amount of documentation that might be expected from larger enterprises. However, SMEs should be obliged to provide information and documents about their material cross-border transactions upon a specific request of the tax administration in the course of a tax examination or for transfer pricing risk assessment purposes.<br>• Furthermore on the matter of materiality, the OECD recommends that individual country transfer pricing documentation requirements should be based on Annex II to Chapter V of The OECD Transfer Pricing Guidelines and should include specific materiality thresholds that take into account the size and the nature of the local economy, the |

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| | | | importance of the MNE group in that economy, and the size and nature of local operating entities, in addition to the overall size and nature of the MNE group. The OECD recommends that individual countries should establish their own materiality standards for local file purposes, based on local conditions. The materiality standards should be objective standards that are commonly understood and accepted in commercial practice. In this regard, it is important that when SARS updates its PN 7 in line with the OECD transfer pricing documentation guidelines, it should provide taxpayers with much more specific guidance on what information is actually required instead of the current rather vague information in the Addendum to SARS PN 2.<br>• With respect to the compliance matter under the heading "confidentiality", the OECD recommends that tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information (trade secrets, scientific secrets, *etc.*) and other commercially sensitive information contained in the documentation package (master file, local file and country-by-country report). In this regard, there are various provisions in the Tax Administration Act which deal with confidentiality. These include sections 21, 56 and Chapter 6 of the Tax Administration Act. Confidentiality is therefore this is an important element of South Africa's income tax system. It is |

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| | | | however important that these provisions are strengthened in line with the OECD recommendations.<br>• With regard to compliance matters under the heading of “contemporaneous documentation” the OECD recommends that taxpayers should not be expected to incur disproportionately high costs and burdens in producing documentation. SARS should balance requests for documentation against the expected cost and administrative burden to the taxpayer of creating it. This guidance is directly in line with the “Addendum to SARS PN 7: Submission of Transfer Pricing Policy Document”, where it is explicitly stated that: “SARS acknowledges that the preparation of transfer pricing documentation is time-consuming and expensive. The important general rule is that it is not expected of taxpayers to go to such lengths that the compliance costs related to the preparation of documentation are disproportionate to the nature, scope and complexity of the international agreements entered into between the taxpayers and connected persons. Furthermore, where a taxpayer has provided full details of the international agreements that it has entered into with connected parties, the absence of formal transfer pricing documentation will not be regarded as non-disclosure. Taxpayers choosing not to prepare documentation must, however, realise that they are at risk and that it may be more difficult to discharge the onus of proving that an arm’s length price |

| | | | has been established."<br>• With respect to the compliance matter relating to "time frames" the OECD notes that practices regarding the timing of the preparation of the documentation differ among countries. The OECD however recommends that the local file should be finalised no later than the due date for the filing of the tax return for the fiscal year in question. The master file should be updated by the tax return due date for the ultimate parent of the MNE group. And that the country-by-country report, should be submitted when the final statutory financial statements and other financial information are finalised, which may be after the due date for tax returns for a given fiscal year. In view of these OECD recommendations, it is important that SARS clarifies what its expectations are with respect to each of the three reports.<br>• With regard to the compliance matter under the heading "retention of documents", the OECD recommends that taxpayers should not be obliged to retain documents beyond a reasonable period consistent with the requirements of domestic law at either the parent company or local entity level. In South Africa, the rules in relation to retention of documents are contained in Chapter 4 of the Tax Administration Act 28 of 2011, particularly sections 29 to 32 which deal with "returns and records". It is thus probably not necessary for SARS to provide additional detail as regards retention of documents except to the |
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| | | | extent that it is considered necessary to have rules which are specific to transfer pricing documentation.<br>• With regard to the compliance matter under the heading "frequency of documentation updates" the OECD recommends that transfer pricing documentation be periodically reviewed in order to determine whether functional and economic analyses are still accurate and relevant and to confirm the validity of the applied transfer pricing methodology. Furthermore that the master file, the local file and the country-by-country report should be reviewed and updated annually. And that database searches for comparables be updated every 3 years. It is recommended that SARS should consider including the above guidance in the recommended update to the Practice Note 7.<br>• As regard the compliance matter under the heading "penalties" the OECD acknowledges that countries normally have documentation-related penalties imposed for failure to comply with transfer pricing documentation requirements or failure to timely submit required information are usually civil (or administrative) monetary penalties. It however quotations that care should be taken not to impose a documentation-related penalty on a taxpayer for failing to submit data to which the MNE group did not have access. In the South African context, with effect from 1 April 2012, the onus to make transfer pricing adjustments has been shifted to |

| | | | taxpayers. Therefore the general penalty regime applicable in terms of the Tax Administration Act applies to transfer pricing matters as well, specifically in circumstances where a taxpayer fails to make an appropriate transfer pricing adjustment. In this regard it is appropriate to refer to Chapters 15 and 16 of the Tax Administration Act. However, an unresolved issue in South Africa's tax law is the issue of secondary adjustments. Current legislation states that a transfer pricing adjustment by a taxpayer results in a deemed loan to the foreign related party section 31(3) of the Income Tax Act. This has resulted in considerable uncertainty and inconvenience for taxpayers. Because of this, the Budget Documentation associated with the 2014 Budget Speech of the Minister of Finance stated the following:<br>• Applying the secondary adjustment in the form of a deemed loan is an administrative burden, both for the taxpayer and SARS. The accounting treatment of the deemed loan's repayment and interest is difficult, because there is no legal obligation to repay the loan. It is recommended that the transfer pricing provision be amended to state that the secondary adjustment is deemed to be a dividend or capital contribution depending on the facts and circumstances.<br>• The proposed abolition of the deemed loan mechanism is to be welcomed – for the reasons stated in |
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| | | | the Budget Speech. However, it is difficult to understand the reasoning behind suggesting that the secondary adjustment may, in certain circumstances (presumably where the foreign counter-party is a subsidiary rather than a shareholder) be treated as a capital contribution. More specifically, how such treatment will result in a benefit to the South African Fiscus is not clear. It is suggested that the secondary adjustment should take into account the fact that, regardless of the relationship between the SA taxpayer and the counter-party, a transfer pricing adjustment is triggered as a result of economic value being transferred from SA for no, or inadequate, consideration. This transfer of economic value results in depletion in the asset base of the SA taxpayer; and a resultant potential loss of future taxable income for the Fiscus. For this reason it is suggested that transfer pricing adjustments are economically similar to outbound payments of dividends to foreign related parties since they represent a distribution of value from SA to the foreign company. Therefore the secondary adjustment mechanism should result in a tax equivalent to the proposed 15% withholding tax. For example, a tax similar to the old secondary tax on companies (STC) would be appropriate. Because it would be a |

| | | | tax levied on the SA company rather than on the foreign related party, no DTA relief would be available.<br>• Apart from imposing penalties on taxpayers, the OECD recommends that another way for countries to encourage taxpayers to fulfil transfer pricing documentation requirements is by designing compliance incentives. For example, where the documentation meets the requirements and is timely submitted, the taxpayer could be exempted from tax penalties or subject to a lower penalty rate if a transfer pricing adjustment is made and sustained, notwithstanding the provision of documentation. SARS should consider coming up with such an incentive programme to encourage compliance.<br>• With regard to the compliance matters under the heading “other issues”, the OECD recommends that use the most reliable information which is usually local comparables over the use of regional comparables where such local comparables are reasonably available. In this regard, it is important that SARS builds a database of comparable information. In this respect:<br>• SARS needs to establish a highly skilled transfer pricing team to include not only lawyers and accountants but also business analysts and economists, to ensure an understanding of commercial operations. This will require that measures are taken to identify, employ and retain skilled personnel |
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| | | | especially in the regions.<br>• Information required from corporates via the IT14 submissions needs to be improved so that timely decisions can be made on the tax assessment of companies.<br>• The collection and sharing of data should be extended to include other holders of vital information such as exchange control information about capital outflows collected by the SA Reserve Bank. |
| **ACTION PLAN 15: DEVELOP A MULTILATERAL INSTRUMENT** | • Tax Treaty negotiation<br>• Parliamentary legislation processes<br>• SA has signed multilateral agreements with OECD, ATAF & SADC countries | | SA has signed the following multilateral agreements:<br>• African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (singed 17 January 2014)<br>• OECD Multilateral Convention on Mutual Administrative Assistance on Tax Matters (in operation from 1 March 2014) and<br>• Southern African Development Community Agreement on Assistance in Tax Matters ( signed 17 August 2013)<br>o Existing multilateral agreements should be updated in accordance with BEPS proposals, once finalised.<br>o South Africa should wait for OECD BEPS proposals before signing further multilateral agreements;<br>• The proposed OECD multilateral instrument to amend numerous bilateral treaties via a single instrument should |

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| | | | be supported as a general principle, subject to such amendments being appropriate in the context of SA's treaties.<br>• Considering the range of issues handed, the use of a single multilateral treaty to adapt existing bilateral treaties could potentially be managed by a range of agreements. |