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A research report to be submitted to the Faculty of Commerce, Law and Management in partial fulfilment of the requirements for the degree of Master of Commerce specialising in Taxation.

How the South African Headquarter company regime compares to other jurisdictions

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Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Commerce in the University of the Witwatersrand, Johannesburg. It has not be submitted before any other degree or examination in any other university.

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Abstract

Attraction of foreign direct investment has been identified as one of South Africa's strategic economic focuses. In 2011 a headquarter tax regime was introduced with the aim of attracting multinationals to set up headquarters for investment into the rest of Africa through South Africa. The headquarter company regime has not been as successful as expected and was identified by the Davis Tax Committee as a regime that needs to be examined by National Treasury. This study examines and compares tax incentives, policy, anti-avoidance and practical considerations of what multinational companies consider attractive to the headquarter company regime and contrasts these with similar incentives offered by selected countries.

Key words: headquarter company, foreign direct investment, multinational companies, tax incentives

Chapter 1: Introduction

1.1 Introduction

1.1.1 South Africa’s goal for attracting foreign direct investment

In 2011, South Africa established the 2030 National Development Plan, which aims to encourage economic growth and boost foreign direct investment. The South African economy, as a developing economy, relies on foreign direct investment as well as trade with foreign countries for growth. Increased foreign direct investment also leads to increased employment which is sorely needed in South Africa. (Davis Tax Committee, 2018, pp. 2-12)

Multinational companies also have the ability to add value to a country by bringing in large scale investment, stimulating innovation and productivity (Clausing, 2018, p. 37).

There are also indirect benefits of foreign investment by multinational companies such as the acquisition of knowledge from multinational corporations, even if their business is operated through a wholly-owned subsidiary within the multi-national group. Examples of how this can be achieved are by local companies hiring workers that previously worked for multinational corporations, South African companies providing services to the multinational companies, or even the increased competition which forces local firms to innovate to be able to compete with multinational companies. (Blomstrom, 2002, p. 165) There are also advantages such as increased charitable donations by headquarter companies (Clausing, 2018, p. 39).

1.1.2 A brief history of the South African headquarter company regime

The Organisation for Economic Co-operation and Development (“OECD”) have concluded that a tax regime is an instrument that can either positively or negatively impact the decision to invest in a country. A country offering more favourable tax incentive compared to another country with similar profit opportunities and other incentives to promote growth will likely be seen as a more attractive investment. (OECD, 2006, p. 104).

A country may therefore be incentivised to give multinational financial incentives in order to attract the investment and benefit from the activities of the multinational corporation. Such financial incentives include lower tax rates for foreign investors, grants and preferential rights. (Blomstrom, 2002, p. 165).

The South African headquarter company tax regime was introduced in 2011 in order to encourage the use of South Africa as an ideal jurisdiction as a headquarter for investments into the rest of Africa. South Africa's location and infrastructure makes it an attractive option for investment, especially as a gateway for investment into the rest of Africa. (National Treasury, 2010, p. 77). The Katz Commission recommended in 1997 that South Africa introduces legislation that provides headquarter companies a favourable tax status. At the time of the 1997 Katz Commission recommendation for the introduction of headquarter company regime, there had not been significant incentives offered by other countries to provide incentives to or actively attract multinational companies to set up headquarters in Africa. (Katz Commission, 1997, p. 7.1.7)

The recommendation made by the Davis Tax Committee in 2018 is that National Treasury needs to examine the South African headquarter tax regime in light of the shortcomings of the regime. (Davis Tax Committee, 2018, pp. 8,88)

1.1.3 A brief summary of the incentives offered by the current headquarter company regime

The incentives offered by the South African headquarter company regime introduced in 2011 were aimed at decreasing the financial and regulatory burden placed on multinational companies (Davis Tax Committee, 2018, p. 88). South African headquarter companies are subject to tax at a rate of 28%, but qualifying headquarter companies receive a number of tax benefits outlined below (National Treasury, 2019, pp. 6,88).

A South African company qualifying as a headquarter company receives tax benefits in the form of being excluded from the definition of a Controlled Foreign Company ("CFC") as defined in s9D(1) of the Income Tax Act No. 58 of 1962 ("Income Tax Act"), relief from dividends tax when a dividend is paid by a headquarter company in terms of section 64E(1) of the Income Tax Act, relief from certain capital gains tax in terms of an exemption provided for in paragraph 64B of the Eight Schedule to the Income Tax Act and the transfer pricing anti-avoidance rules are not applicable to certain transactions constituting financial assistance in terms of section 31(5) of the Income Tax Act. A South African Headquarter company is considered a resident in terms of section 1 of the Income Tax Act and can benefit from South Africa's treaty network (Davis Tax Committee, 2018, p. 88).

South African companies meeting the definition of a Headquarter Company in section 9I of the Income Tax Act will meet the definition of an International Headquarter company in the Currency and Exchange guidelines for business entities dated 13 December 2019 ("Currency and Exchange guidelines"). International Headquarter Companies will be treated as non-resident companies when it comes to the reporting requirements. This means that South African Headquarter companies have fewer restrictions placed on them in terms of Exchange Control Regulations (Davis Tax Committee, 2018, p. 88).

1.1.4 Shortcomings of the South African headquarter regime

South Africa already has a number of advantages in terms of a developed financial system, as well as infrastructure that could lead to an attractive location for investment into the rest of Africa. In 2018 the Davis Tax Committee acknowledged, however, that despite the regulatory and fiscal incentives offered by the South African headquarter company regime, the regime has been used by very few multinational companies. (Davis Tax Committee, 2018, p. 88)

The reasons suggested by the Davis Tax Committee is that the regime is difficult to comply with practically. There are countries that have more attractive and user-friendly headquarter company regimes such as Mauritius. (Davis Tax Committee, 2018, p. 88)

The Davis Tax Committee believes that a lower corporate tax rate would increase the above factors which would make South Africa an attractive destination for a head office, a management company or a finance company. This sentiment was echoed by Honiball and Killoran who explained that the fact that a South African headquarter company is still taxed at 28% means that the South African Headquarter Company tax regime is not efficient (Honiball & Killoran, 2011, p. 36).

Further disadvantages of the current headquarter regime include the fact that headquarter companies will not be considered tax resident for certain group “roll over relief” in terms of restructuring transactions, a headquarter company’s subsidiaries may still be treated as Controlled Foreign Companies and transfer pricing rules will still apply to certain transactions, as only funding transactions in terms of section 31(5) of the Income Tax Act are excluded from the transfer pricing provisions. (Honiball & Killoran, 2011, p. 37).

Internationally there may also be a difference between an intermediary holding company and a headquarter company. A company interposed between a holding company and an operating subsidiary or subsidies in a group is commonly known as an intermediary holding company. The role of an intermediary holding company is to hold shares. A headquarter company may perform functions above just that of holding shares in operating subsidiaries. A headquarter company may also perform management functions and earn fees such as management fees. In terms of the South African headquarter regime these fees will be taxed. (Honiball & Killoran, 2011, p. 38)

South African headquarter companies will be taxed on the management fees at a rate of 28% if that company plays more of a headquarter company role. (Honiball & Killoran, 2011, p. 37)

1.1.5 Considerations that should be taken into account when designing tax relief to attract investment from multinational companies

As established above the Davis Tax Committee has recommended that National Treasury examine the headquarter tax regime (Davis Tax Committee, 2018, pp. 8,88).

The OECD has recommended that when tax relief is used to attract investment, a country needs to carefully plan to ensure the relief is targeted and does not result in a decrease in the tax revenue due to non-targeted activities taking advantage of tax relief or activities that would have resulted in investment whether the incentive was available or not (OECD, 2006, p. 117).

The risk versus the return on investment is considered when companies decide where to invest. The levels of profit as well as the risk should be considered by companies before entering a country. (OECD, 2006, p. 110)

When potential investors consider the tax burden (or tax cost) of a country both the statutory tax rates need to be considered, as well as the compliance costs. Other factors that are seen to discourage investment are overly-complex rules and uncertainty that make it difficult for potential investors to estimate profitability before investing in the country. A deterrent to investors is a high level of discretion given to tax officials. This discretion could be abused and lead to corruption and detract from inviting investment into a country. (OECD, 2006, p. 104)

While governments design tax policy to attract investors, multinational enterprises have standards and responsibilities that serve as a code to promote positive contributions by multinational enterprises in the countries they operate. These standards and responsibilities include standards and responsibilities that are applicable to the management of taxes in countries where multinational enterprises have a presence. (OECD, 2011, p. 60)

As mentioned by the Davis Tax Committee, base erosion and profit shifting ("BEPS") should be considered when BEPS is the exploitation of tax rules to move profits to locations where these is little or no tax being paid despite the fact that there is little or no substance or economic activity in that jurisdiction. It is the responsibility of governments to examine or revise tax law to prevent BEPS. (OECD, n.d.)

1.1.6 Recommendations made by the Davis Tax Committee

The Davis Tax Committee has recommended that the South African Headquarter company regime should be designed in a manner that provides suitable tax incentives, a minimal administrative burden as well as addressing BEPS concerns (Davis Tax Committee, 2018, p. 88).

A decrease in the tax burden of multinational companies is sometimes deemed to be necessary to increase competitiveness but at the same time relief granted should prevent corporate BEPS (Clausing, 2018, p. 40).

Countries also should avoid providing tax relief in excess of the relief required to make the investment attractive. At the same time, companies investing in a country should contribute to the infrastructure they benefit from. (OECD, 2006, p. 104).

Government should, therefore, ensure there is a balance between attracting foreign investment into the jurisdiction and ensuring that the tax base is protected and can sustain the development of infrastructure required by the country (OECD, 2006, p. 104).

1.1.7 Conclusion

The headquarter company regime could be an instrument to attract investment as well as skills into South Africa if the regime was appropriately designed. Increased investment and skills in the country could stimulate economic growth in South Africa. As mentioned by the Davis Tax Committee, South Africa is currently competing with countries offering more attractive and more user-friendly regimes. The South African headquarter company regime should be analysed to ensure it is attractive from a tax perspective, the compliance burden is minimal and BEPS concerns are taken into account. (Davis Tax Committee, 2018, p. 88)

1.2 The Research Problem

This research report will compare the South African headquarter company regime to headquarter company regimes in selected jurisdictions in light of certain criteria that contribute to a favourable headquarter company regime to determine if and where the South African headquarter company regime falls short of the regimes in selected jurisdictions.

1.2.1 Sub-problems

The following sub-problems will be addressed:

The first sub-problem is to determine what criteria are important for various stakeholders when considering which jurisdiction to use as a headquarter for its multinational operations.

The second sub-problem is to set out the current South African headquarter company regime and to evaluate it against the criteria identified in the first sub-problem.

The third sub-problem is to set out the current headquarter company regime in Rwanda and to determine how it compares to the criteria set out in the first sub-problem as well as the South African headquarter company regime.

Rwanda was ranked number one for its ability to attract direct foreign investment in Africa by a study performed by Ernst and Young in 2018 on foreign investment in Africa and has been identified as a country which is easy to do business in (EY, 2018).

For every one billion United States Dollars ("USD") of the gross domestic product of Rwanda, it receives 1.5 foreign direct investment projects. In contrast South Africa receives 0.32 projects for every one billion USD of the gross domestic project. (EY, 2018).

The fourth sub-problem is to set out a headquarter company regime that has been successful at attracting multinational headquarter companies in South East Asia which is also a developing area like Africa and to determine how it compares to the criteria set out in the first sub-problem as well as the South African headquarter company regime. The country selected is Singapore.

Singapore received the largest proportion of foreign investment in the Association of South East Asian Nations in 2017 (ASEAN). ASEAN consists of Vietnam, Thailand, Singapore, Philippines, Myanmar, Lao PDR, Cambodia and Brunei Darussalam (ASEAN Secretariat and UNCTAD, 2018, p. XVIII).

The fifth sub-problem is to set out the headquarter company regime of the country with the most multinational companies headquartered in the jurisdiction world-wide which is the United States of America and to determine how it compares to the criteria set out in the first sub-problem as well as the South African headquarter company regime.

The sixth sub-problem is to set-out the headquarter company regime of a country in Africa that was traditionally known for attracting the headquarters for multinational companies and determine how it compares to the South African headquarter company regime. The country selected is Mauritius.

1.2.2 Chapter outline:

Chapter 1: Introduction

The introductory chapter establishes the background and significance of the research, the problems and sub-problems identified and the research methods used.

Chapter 2: Characteristics of an ideal headquarter company

The purpose of this chapter is to examine the characteristics of a headquarter company regime that should be considered by policy makers when evaluating or revaluating a headquarter company regime considering the regime should be attractive from a tax perspective, have a minimal compliance burden and address BEPS concerns. High level considerations of non-tax characteristics will also be examined.

Chapter 3: The South African headquarter company regime

This chapter sets out and analyses the South African headquarter company regime against the characteristics examined in Chapter 2.

Chapter 4: The Rwandan international company regime

This chapter sets out and analyses the Rwandan international company regime at a high level against the characteristics examined in Chapter 2.

Chapter 5: The incentives available in Singapore under the Economic Expansion Incentives (Relief from Income Tax) Act / Part IIIB

This chapter sets out and analyses the tax incentives available in Singapore under the Economic Expansion Incentives (Relief from Income Tax) Act / Part IIIB at a high level against the characteristics examined in Chapter 2.

Chapter 6: The tax relief available to United States of America (USA) multinational companies in terms of the Tax Cuts and Jobs Act

This chapter sets out and analyses the tax relief available to US Multinational companies in terms of the Tax Cuts and Jobs Act at a high level against the characteristics examined in Chapter 2.

Chapter 7: The Mauritius GBC headquarter regime

This chapter sets out and analyses the tax incentives available in Mauritius GBC headquarter regime at a high level against the characteristics examined in Chapter 2.

Chapter 8: Comparison between the tax incentives offered to South African headquarter company regime, the Rwandan international company regime, the USD multinational companies in terms of the Tax Cuts and Jobs Act as well as the Mauritius GBC headquarter regime

This Chapter will compare the incentives offered to 'headquarter companies' in South Africa, Rwanda, Singapore, the USA and Mauritius to identify the differences between South Africa and these countries.

Chapter 9: Conclusion

This chapter will summarise the findings of the research, and propose areas requiring further research.

1.3 Research methodology

Research will be performed in the form of a literature review. The Income Tax Act, OECD publications, reputable websites and journal articles will be used. A comparative analysis will be performed in terms of which the rules relating to the tax treatment of headquarter companies in selected jurisdictions will be compared to that of South Africa.

1.4 Scope and limitations:

The purpose of this research is limited to the comparison of selected headquarter regimes against the criteria identified in Chapter 2.

Exchange control considerations and group taxation are excluded from this report.

The analysis of the South African headquarter company regime's tax characteristics is limited to section 9I, section 31(5), section 1 (definition of a resident, gross income paragraph (k)), section 9(2)(a), section10(1)(k)(i), section 9D(1), section 64E(1), section 6quat(1), section 6quat(1C), section 64N and paragraph 10(1)(c), section 10B paragraph 64B of the Eighth Schedule to the Income Tax Act.

The analysis of the Rwanda headquarter company tax regime is limited to an analysis of article 1 and article 2 of the annex to the Rwandan Investment Law relating to Investment Promotion and Facilitation as well as article 11, article 60, article 33, article 3(6) and article 3(7) of the Direct Law No. 16/2019 of 13 April 2018.

The analysis of the Singapore headquarter company regime is limited to a review of section 5D, section 6(2), section 19K(2), section 19J(6), section 19J(5C) and section 19J(4) of the Singapore Economic Expansion Incentives (Relief from Income Tax) Act and section 43(a), section 50A(1), section 50(2), section 34D and section 34F of the Singapore Income Tax Act (cap 134).

The analysis of the United States headquarter company regime will be limited to section 245A, section 951A, section 250, section 965(1), section 114.2, section 951(a), section 960, section 385 and section 59 of the U.S Code Title 26 – Internal Revenue Code

The analysis of the Mauritius headquarter company regime will be limited to section 29(1) and (2), section 77(1) and section 75 of the Mauritius Income Tax Act 1994.

The analysis of the non-tax characteristics is limited to a high level review of the economic and political stability of the country, adequately developed infrastructure and the financial system, the ease of doing business as well as the commercial language of the country. The above high level review will be limited to the reporting of the ranking of the country reported by the Global Competitiveness Report for 2019 and the 2019 Doing Business Report in each of the above categories.

The anti-avoidance considerations will be limited to a review of the membership to the Inclusive Framework on BEPS and the outcome of reviews performed in terms of Action 5 and Action 6.

The compliance burden placed on the taxpayer in complying with tax legislation will be compared using the 2019 Doing Business study ranking 190 countries in terms of the ease in which taxes and paid and the average time in hours spent complying with tax legislation.

Chapter 2: Criteria considered when determining which jurisdiction is favourable for a holding company jurisdiction

2.1 Introduction:

In this chapter, consideration will be given to the characteristics of an ideal headquarter company regime. The potential benefits of foreign direct investment explored in Chapter 1 mean that governments and policy makers should assess tax rules to ensure they are attractive to foreign companies. While at the same time, governments and policy makers need to ensure that an appropriate level of tax is collected by the country being invested in. (OECD, 2008, p. 1)

Although tax regimes are an important factor to consider when a company makes the decision to invest in a country, it has been recognised that tax regimes are not the most important factor. Non-tax factors such as the opportunities to make a profit in the country, the access to markets, a fair legal system and the infrastructure in a location are all important factors to consider by multinational companies that would like to maximise the long-term profitability of their project. (OECD, 2008, p. 2)

Below, characteristics that may be considered by policy makers when determining a headquarter company tax policy that will attract foreign direct investment have been split into four sub-groups consisting of tax considerations, non-tax considerations, anti-avoidance and tax compliance costs.

2.2 Tax considerations

The below tax criteria were identified as important tax factors for determining whether a multinational would consider a jurisdiction appropriate for a holding company and what policy makers should consider when assessing a headquarter regime.

2.2.1 The capital gains tax regime (Legwaila, 2012, p. 26).

Headquarter companies hold shares in investments and it is therefore important that the tax system of a company does not treat the disposal of the shares harshly as this may deter investment by headquarter companies (Legwaila, 2012, p. 26).

The OECD have also explained that potential investors consider whether they will be subject to capital gains tax on the disposal of assets as well as whether any capital losses will be allowed to offset capital gains (OECD, 2006, p. 117).

2.2.2 The corporate income tax rate (Legwaila, 2012, p. 30)

There has been a trend amongst countries of the OECD of decreasing corporate tax rates between the early 1980s and the late 2010s. The decrease in the corporate tax rate is seen as a way to increase the competitiveness of companies. (Clausing, 2018, p. 37).

A trend identified by Clausing is that between 1981 and 2017 the average corporate tax rate has decreased, but in spite of this the corporate tax collected by governments has remained constant and corporate profits have increased. This implies that the tax base has increased and that less tax is being paid on the profits earned by these companies (Clausing, 2018, p. 38).

The Global Competitiveness Report 2019 reported similar conclusions by proving that the corporate effective tax rate is decreasing while the share of profits generated by companies situated in tax havens has increased (World Economic Forum, 2019, p. 35).

A decreased tax burden placed on companies is often seen as required to increase the competitiveness of a country, especially due to the fact that companies can shift their multinationals to more favourable jurisdictions. At the same time governments aim to prevent the erosion of the tax base. (Clausing, 2018, p. 2)

There is, however, not always a decrease in investment if the tax rate in a jurisdiction is increased. This is due to the fact that the corporate tax rate and related tax costs are a factor that needs to be considered when deciding whether to invest in a country but it is not the ultimate factor taken into account when making the decision. (OECD, 2006, p. 107)

2.2.3 Dividends tax rate (Legwaila, 2012, p. 30)

A company is considered successful by certain investors if that company can declare a dividend to shareholders as well as grow the value of the company (Legwaila, 2012, p. 30). It is, therefore, expected that a headquarter company would declare dividends to shareholders from the operating companies.

Corporate investors expect either no taxation of dividends paid within a group of companies or at least tax relief (OECD, 2006, p. 116). If dividends tax is levied when the profits are repatriated to the shareholders of the headquarter company an additional costs is added when profits are declared to the shareholders (National Treasury, 2010, p. 77).

2.2.4 Treaty Network available to the investor (Legwaila, 2012, p. 32)

An extensive treaty network is a positive attribute for a country to have when attracting foreign investment as well as domestic investment (OECD, 2006, p. 104).

A concern for companies doing business across multiple jurisdictions is the possibility of double taxation. Double tax treaties, therefore, decrease the cost of investment by preventing or reducing this double taxation. (OECD, 2006, p. 121)

Double tax treaties also have the ability to create procedures to resolve tax disputes between jurisdictions (OECD, 2006, p. 121).

Taxpayers may also benefit from withholding tax rates that are reduced under a double tax treaty when compared to the statutory rates prescribed by local legislation for dividends, royalties and interest (OECD, 2006, p. 121).

The fact that countries avoid the violation of double tax treaties and provide certainty to investors makes a wide treaty network an attractive characteristic for a headquarter company regime. A disadvantage of the use of double tax treaties to avoid double tax is that any amendment of the double tax treaty cannot be changed unilaterally and takes time to negotiate with the other party. (Legwaila, 2012, p. 34)

2.2.5 Unilateral avoidance of double taxation (Legwaila, 2012, p. 34)

Unilateral avoidance of double taxation is attractive to investors considering whether to invest in a country, (Legwaila, 2012, p. 34). Unilateral avoidance of double taxation can take the form of a tax credit that fully or partially offsets the foreign tax suffered in another jurisdiction. A tax credit that fully or partially offsets the foreign taxes suffered are particularly important when a country hoping to attract foreign investment operates a residence based tax system. (OECD, 2006, p. 111)

An example of a unilateral avoidance of double taxation in South Africa is the rebate allowed in respect of foreign taxes paid on income allowed in terms of section 6*quat* of the Income Tax Act. Simplistically speaking, a section 6*quat* rebate can be deducted from the normal tax payable if a South African tax resident has included income from a source outside South Africa in their taxable income and foreign taxes can be proved to be payable to another jurisdiction without any right of recovery by a person in terms of section 6*quat*(1) and (1A). The rebate claimed by a South African tax resident is limited by section 6*quat*(1B) of the Income Tax Act. Section 6*quat*(1B) limits the rebate to the taxable income attributable to the foreign tax suffered dividend by the total taxable income multiplied by the total normal tax payable.

An advantage of the use of unilateral avoidance provisions are also much easier to change than a double tax treaty. (Legwaila, 2012, p. 34)

2.2.6 Absence of controlled foreign company legislation (Legwaila, 2012, p. 35)

Countries that tax residents on world-wide income generally tax residents on the income earned by non-resident subsidiaries if a significant number of shares are owned by the resident. This anti-avoidance legislation is commonly known as controlled foreign company legislation. (Legwaila, 2012, p. 35)

For example, South Africa has controlled foreign company anti-avoidance legislation. The South African controlled foreign company ant-avoidance rules are governed by section 9D of the Income Tax Act. Simplistically speaking, section 9D requires a proportional amount of 'net income' of a 'controlled foreign company' to be included in the taxable income of the resident. A 'controlled foreign company' is defined as a foreign company where more than 50% of the participation rights or voting rights are held by a resident. 'Net income' is broadly speaking the passive income earned by a company as well as the 'diversionary income' which is primarily income earned from transactions with South African connected persons.

The application of the controlled foreign company rules in the instance of a headquarter company would mean that the shareholders of the headquarter company could be required to comply with controlled foreign company rules in the jurisdiction of the headquarter company as well as in their jurisdiction of residence. (National Treasury, 2010, p. 77)

Controlled foreign company legislation can have a significant effect on the tax burden of a resident company; therefore the lack of or exemption from controlled foreign company legislation is attractive when determining the location of an international holding company (Legwaila, 2012, p. 36).

2.2.7 Thin capitalisation and transfer pricing rules (Legwaila, 2012, p. 40)

A holding company or headquarter company is often responsible for the funding of entities within the group in addition to acquiring investments. It is, therefore, expected that there would be transactions occurring between the holding company and other entities within the group both domestically and internationally. (Legwaila, 2012, p. 40)

A company can be financed through the use of either debt or equity or both. Companies that use a relatively high level of debt in relation to equity are referred to companies that are thinly capitalised, highly leveraged or highly geared. The use of debt or equity have different tax consequences. Typically interest on debt is allowed as a deduction by a company paying the interest which reduced the tax payable. There are opportunities for multinational groups to use debt and equity in such a manner that means that the interest income is received by a company in a low tax jurisdiction while the borrower received a deduction for the interest incurred (OECD, 2012, p. 3)

Thin capitalisation rules regulate the expenditure incurred or income earned as a result of cross-border funding. Thin capitalisation regulations are aimed at preventing the excessive deduction of interest. The excessive interest is usually treated as a dividend. (Legwaila, 2012, pp. 40-43)

Connected persons in different jurisdictions may be incentivised to charge either above or below market related rates for goods or services as a method to shift tax liability to a jurisdiction with a more favourable tax rate. (Legwaila, 2012, pp. 40-41)

Countries introduce transfer pricing legislation in order to prevent the shift of tax profit outside their tax jurisdiction. In other words transfer pricing legislation protects the tax base of a country. At the same time, transfer pricing should not create double taxation or uncertainty around the tax cost in a jurisdiction. Transfer pricing legislation uses the arm's length principle in order to ensure that tax profit is not shifted outside the jurisdiction, reduces uncertainty around the tax cost as well as not creating double taxation. (OECD, 2011)

2.3 Non-tax considerations

Non-tax factors are also important when determining whether a jurisdiction is adequate for a holding company. Below are some non-tax considerations considered in this research report:

2.3.1 Economic and political stability (Legwaila, 2012, p. 24)

When considering the cost of investment in a country, companies also need to consider risks potentially faced when investing in the country. These risks include the stability of the political system, the access the company would have to a fair legal system, the predicted level of inflation, exchange rates as well as interest rates. (OECD, 2006, p. 109)

The Global Competitiveness Report 2019 ranked 141 countries according the macro-economic stability of the country as well as the strength of institutions. The strength of institutions is determined amongst other criteria including government ensuring political stability, the strength of auditing and accounting standards, instances of corruption and judicial independence (World Economic Forum, 2019, p. v). For the purpose of this report the ranking allocated to each of the countries for the macroeconomic stability and institutions in that country by the Global Competitiveness Report 2019 will be used to compare the economic and political stability of a country.

2.3.2 Adequately developed infrastructure (physical, business, accounting and legal) (Legwaila, 2012, p. 24)

There is a strong statistical correlation between the location of headquarters as well as the level of education in a country and the technological advancement of the country (Clausing, 2018, p. 40).

The infrastructure of a country as well as the education and skills found in a country can make investment in the country attractive. The main source of funds for such development in a country is tax revenue collected by government. Government can therefore impact the decision of whether a company invests in a country by spending tax revenue on making the country an attractive location for investment, such as improving infrastructure as well as the skills of workers in the country. (OECD, 2006, p. 107)

The Global Competitiveness Report 2019 ranked 141 countries according to infrastructure as well a financial structure in the country. The Global Competitiveness Report will be used to compare the infrastructure of a country. (World Economic Forum, 2019, pp. v - xiii) For the purpose of this report the ranking allocated to each of the countries for the infrastructure by the Global Competitiveness Report 2019 will be used to compare the infrastructure of a country.

2.3.3 Ease of doing business (Legwaila, 2012, p. 24)

Obstacles to doing business in a country is a factor that multinational companies will consider when doing business (Legwaila, 2012, p. 24)**.**

The Global Competitiveness Report 2019 has compared factors including institutions, infrastructure, information and communication technology adoption, macro-economic stability, health, skills, product market, labour market, financial system, market size, business dynamism and innovation capabilities of 141 countries to create an overall rank for each country (World Economic Forum, 2019, pp. v - xiii). For the purpose of this report the overall ranking allocated to each of the countries by the Global Competitiveness Report will be used to compare the ease of doing business.

The 2019 Doing Business study ranked 190 countries in terms of the ease of doing business (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5). For the purpose of this research report the ranking allocated to the country for the ease of doing business will be used as a further tool to compare the ease of doing business across each of the selected jurisdictions.

2.3.4 Commercial language (Legwaila, 2012, p. 25)

Jurisdictions that have a commercial language that is the same as the commercial language of the investor are considered to be more attractive for investors. Investors prefer jurisdictions that use either English or French (languages that are considered common) in instances where their commercial language is not common. This is due to the fact that efficient communication is required to do business. An extension of this criteria could be that the infrastructure required for communication is reliable. (Legwaila, 2012, p. 25)

2.4 Anti-avoidance (Davis Tax Committee, 2018, p. 88)

As mentioned previously countries also need to protect their tax bases. When determining tax policy countries also need to consider the below points when determining an appropriate headquarter company policy such as BEPS considerations (Davis Tax Committee, 2018, p. 77).

International coordination has been identified as essential in combating the profit shifting opportunities used by multinational companies to shift profits to tax havens (World Economic Forum, 2019, p. 35)

The OECD have developed 15 action plans to address tax avoidance. The aim of the actions plans is to ensure that tax is paid where value is created and economic profits are generated (OECD, 2019).

There is an Inclusive Framework on BEPS established in June 2016. The Inclusive Framework on BEPS has members in more than 135 countries. Membership to the Inclusive Framework on BEPS have their compliance with four minimum standards peer reviewed. Countries that are not members of the Inclusive Framework on BEPS can also be peer reviewed on one or more of the minimum standards. The four minimum standards are Action 5, Action 6, Action 13 and Action 14. Below a high-level summary is given for each of the 15 Actions. (OECD, 2019)

Four actions focused on establishing coherence (OECD, n.d.):

Action 1 is the tax challenges arising from digitalisation. An important question that needs to be answered is what jurisdiction would have taxing rights (both direct and indirect) in the modern global economy (OECD, 2019).Action 2 is the neutralising the effects of hybrid mismatch arrangements. Tax planning can result in the long-term deferral of taxation or achieve double non-taxation. (OECD, 2019)

Action 3 is the controlled foreign company aims to attribute certain income of foreign companies to the shareholders in another jurisdiction to prevent the shifting of income (OECD, 2019).

Action 4 is the limitation in interest deductions. A company using related party debt or even third party debt to high tax jurisdictions and is often use to shift profits. (OECD, 2019)

Five actions focused in aligning taxation and substance (OECD, n.d.):

Action 5 is harmful tax practices and is one of the four minimum standards. Action 5, like the other minimum standards, are peer reviewed in an effort to promote appropriate and correct implementation of standard (OECD, 2019).

Action 6 is the prevention of treaty abuse. Action 6 is a minimum standard and aims to have jurisdictions to address certain policy considerations before deciding to enter into a double tax agreement (OECD, 2019).

Action 7 is the permanent establishment status. Action 7 is aimed at the use of structures to avoid creating a permanent establishment for the purpose of applying tax treaties. (OECD, 2019)

Action 8 to 10 relate to transfer pricing. Actions 8 to 10 assist on the application of arm's length principles when determining a transfer price. (OECD, 2019)

Four actions to ensure transparency, while improving certainty (OECD, n.d.):

Action 11 relates to BEPS data analysis. Action 11 is aimed at the gathering and analysis of the impact of tax avoidance on economies. (OECD, 2019)

Action 12 relates to mandatory disclosure rules. Action 12 is aimed at forcing taxpayers to disclose tax planning arrangements to relevant tax revenue authorities (OECD, 2019).

Action 13 is country-by-country reporting. The country-by-country report will be shared with jurisdictions multinationals do business and include information such as income, taxes paid as well as economic jurisdictions. (OECD, 2019)

Action 14 is the mutual agreement procedure. The mutual agreement procedure aims to resolve tax related disputes between different jurisdictions. (OECD, 2019)

Action 15 is the multilateral instrument. The aim of the multilateral instrument is to create solutions to loopholes created by using double tax agreements. (OECD, 2019)

2.5 The compliance burden placed on the taxpayer in complying with tax legislation (Davis Tax Committee, 2018, p. 88)

The OECD have stated that tax policy-makers often do not consider the cost of investors complying with the relevant tax legislation. The cost of compliance can vary based on a number of factors such as the complexity of tax legislation, the predictability of the tax burden as well as predictability of a company's tax liability. (OECD, 2006, p. 112)

The cost of understanding a tax system that is more complex relative to other tax systems could add to the expense of an investment in a project compared to the project in other countries (OECD, 2006, p. 112).

A lack of transparency in the tax system may also lead to an increase in the cost of compliance as tax returns and information may be difficult to obtain and the meaning of tax laws may be unclear. A suggestion made by the OECD is that tax laws should be drafted clearly and information such as tax returns, explanatory memorandums and circulars should be readily available. Governments should also provide services such as tax rulings for complex transactions or where the tax outcomes are not clearly determinable. (OECD, 2006, p. 112)

Regular and extreme changes in tax legislation can also be seen as adding to the lack of certainty of the tax liability and as increasing the costs of compliance (OECD, 2006, p. 113).

To the extent possible, the OECD recommends that the tax relief granted to increased investment should be automatic and not require the approval by tax officials. An automatic application of incentives reduced the risk of corruption and increases the level of certainty for the taxpayers. (OECD, 2006, p. 119)

The Doing Business 2019 study compared business regulation for companies in 190 economies. As part of the ranking paying taxes was a category. The average number of payments made per year, the average time spent in hours doing taxes as well as the total tax and contributions made as a percentage of profit is compared (International Bank for Reconstruction and Development / The World Bank, 2019, p. 23) The ranking in terms of paying taxes will be used to compare the compliance burden placed on the taxpayer across each of the selected jurisdictions.

A government that is seen to have a high-level of discretion is seen as adding to the tax burden as this adds to the level of uncertainty of the final tax liability. A standard application of tax laws is more desirable. (OECD, 2006, p. 113)

The power granted to tax officials should not be too great. For example, the ability of tax officials to remove a tax incentive after an audit could foster corrupt activities (OECD, 2006, p. 119).

The dispute resolution avenues available to investors should be fair, simple to access, timely as well as cost-effective (OECD, 2011, p. 51).

2.6 Conclusion

In conclusion both tax and non-tax considerations should be evaluated when reassessing a headquarter tax regime (OECD, 2008, p. 2). The burden of tax compliance should not be overlooked by policy-makers when introducing tax incentives (OECD, 2006, p. 112). Anti-avoidance and BEPS should not be ignored when reassessing the headquarter company regime (Davis Tax Committee, 2018, p. 88).

Chapter 3: The South African Headquarter Company Regime

Chapter 3 analyses the current tax incentives introduced to make South Africa an attractive choice for multinationals wishing to invest in South Africa via the headquarter company regime.

3.1 Introduction

The explanatory memorandum on the Taxation Laws Amendment Bill of 2010 provided three reasons why the South African tax legislation at the time had a few potential tax barriers for the use of South Africa as a headquarter company jurisdiction. The three barriers identified were the special inclusion in a resident taxpayer's taxable income of the net income of a controlled foreign company, the additional cost that is added when a headquarter company declares a dividend to shareholders (at the time it was Secondary Tax on Companies, which was subsequently replaced by dividends tax), and South Africa's thin capitalisation rules. (National Treasury, 2010, p. 77)

The explanatory memorandum on the Taxation Laws Amendment Bill of 2012 explained that the headquarter company regime was aimed at companies in which investment is originated from another jurisdiction and redistributed offshore. In other words, the investment flows through South Africa. The South African headquarter company regime aims to prevent additional tax being levied on a company that obtains little value from South Africa. Ensuring an additional layer of tax is not in South Africa should make South Africa a more attractive jurisdiction to set up a headquarter company. (National Treasury, 2012, p. 123)

3.1.1 Requirements for a headquarter company

Section 9I(1) and (2) of the Income Tax Act set out the requirements that need to be met in order for a company to be considered a Headquarter company. A company needs to be a resident (section 9I(1)). There are four criteria that must be met in order for a company to qualify as a headquarter company. These four criteria are the minimum participation by shareholders, the 80% cost of assets rule, 50% or more of gross income as an election must be made (SARS, 2018, pp. 4-20)

The minimum participation criteria found in section 9I(2)(a) of the Income Tax Act means that for the year of assessment each shareholder (either alone, or together with any other company forming part of the same group of companies) held 10% or more of the equity shares and voting rights of the company.

The 80% cost of assets rule outlined in section 9I(2)(b) requires that a company must at the end of the year and all previous years of the company have at least 80% of the cost of the total assets of the company attributable to interest in equity shares, debt owed by or intellectual property in any qualifying foreign company. A qualifying foreign company is a foreign company in which the company (either alone or together with a company forming part of the same group of companies) holds at least 10% of the equity shares and voting rights. When determining the value of the total assets of a company cash or bank deposits should not be taken into account.

The 50% gross income rule is set out in section 9I(2)(c) and requires that where the gross income of a company exceeds R5million, 50% or more of the gross income must consist of one or more of the following: (a) rental income, dividends, interest royalties, or service fees paid or payable by a qualifying foreign company. A qualifying foreign company is a foreign company in which the company (either alone or together with a company forming part of the same group of companies) holds at least 10% of the equity shares and voting rights; or (b) any proceeds from disposal of any interest in equity shares or intellectual property. Provided that the interest in the equity shares is in a qualifying foreign company (defined above) or the intellectual property was licensed to a qualifying company.

Section 9I(3) requires an election to be made on an annual basis. The election is effective from the first day of the year of assessment the election is made. The election is currently made on the Income Tax Return for Companies by answering “yes” to the question “Does the company elect to be a headquarter company in terms of section 9I? (SARS, 2018, p. 4).

Qualifying headquarter companies are excluded from accessing the corporate roll-over relief. (SARS, 2018, p. 64)

In 2011 the amendments also introduced a law that deemed a disposal of all the company's assets before becoming a qualifying headquarter company. This amendment was introduced in order to prevent the use of the headquarter company regime to avoid capital gains tax. (National Treasury, 2012, p. 95)

In addition to the tax benefits that are available to the headquarter company there are also tax benefits available to a non-resident earning interest and royalties from a South African qualifying headquarter company in the form of an exception in certain circumstances (SARS, 2018).

The current South African headquarter company regime will be compared against the tax characteristics outlined in Chapter 2:

3.2 Tax considerations

3.2.1 The capital gains tax regime

In terms of section 9H(3) of the Income Tax Act, when a company becomes a headquarter company the company will suffer an 'exit charge' in the form of a deemed disposal of all the company's assets at market value. The assets are then deemed to be acquired at market value. (de Koker & Williams, 2019, p. 13.41) A company without any assets will therefore not suffer the 'exit charge'.

The effective capital gains tax rate for resident companies as well as qualifying headquarter companies is 22.4% in terms of paragraph 10(1)(c) of the Eighth Schedule to the Income Tax Act read with Schedule 1 of the Rates and Monetary Amounts and Amendment Bill, 2019.

The relief provided to headquarter companies from capital gains tax are found in paragraph 64B(2) of the Eighth Schedule to the Income Tax Act. A qualifying headquarter company must disregard a capital gain or capital loss on the disposal of the equity shares in a foreign company if immediately before the disposal the qualifying headquarter company (either alone or together with any other person forming part of the same group of companies) hold at least 10% of the equity shares and voting rights in the foreign company. (SARS, 2018, p. 46)

In terms of paragraph 64B(1) of the Eighth Schedule to the Income Tax Act, a South African resident company may be able to disregard a capital gain or a capital loss on the disposal of shares in a foreign company. The requirements that need to be met in order for a South African resident company other than headquarter companies are more stringent than headquarter companies. In addition to the requirements that must be met by a headquarter company (that the headquarter company must either alone, or together with a connected person own at least 10% of the equity shares and voting rights) to disregard the capital gain and capital loss, the interest in the foreign company must have been held for a period more than 18 months and the interest must be sold to a non-resident person that is not a connected person for an amount that equals or exceeds the market value of the interest.

3.2.2 Corporate income tax rate

The corporate income tax rate for companies in South Africa is 28% in terms of the Income Tax Act read with Schedule 1 of the Rates and Monetary Amounts and Amendment Bill, 2019.

A lower corporate income tax rate could increase the attractiveness of the headquarter company regime. (Davis Tax Committee, 2018, p. 39)

The Davis Tax Committee have argued that a lower corporate income tax rate could actually assist with preventing companies from moving profits offshore (Davis Tax Committee, 2018, p. 39).

3.2.3 Dividends tax rate

National Treasury has acknowledged that an additional layer of costs added when profits are repatriated would be a barrier to using South Africa as a headquarter company (National Treasury, 2010, p. 78).

In 2010 National Treasury proposed that a dividend declared by a qualifying headquarter company should not be subject to secondary tax on companies (which was subsequently replaced by the dividends tax). (National Treasury, 2010, p. 78).

A resident company may elect to be a headquarter company in terms of section 9I(1)(a). A headquarter company is a resident. (SARS, 2018, p. 29)

A dividend declared by a qualifying headquarter company to shareholders will be included in the gross income of both a resident and non-resident in terms of the definition of Gross Income (paragraph (k)) in section 1 read with section 9(2)(a) of the Income Tax Act (SARS, 2018, p. 32).

The dividend will not qualify for an exemption under section 10(1)(k)(i) which dividends declared by South African resident companies normally qualify for, as section 10(1)(k)(i) specifically excluded a dividend paid or declared by a headquarter company. Section 10B may, however, provide relief to the shareholder of the qualifying headquarter company. Section 10B provides an exemption or a partial exemption of ‘foreign dividends’. The definition of foreign dividends includes a dividend paid or declared by a qualifying headquarter company in terms of section 10B(1)(b). (SARS, 2018, p. 32).

Dividends tax is not levied on dividends declared by qualifying headquarter companies in terms of section 64E(1) of the Income Tax Act (SARS, 2018, p. 32).

In conclusion, a dividend declared by a headquarter company may be exempt from normal tax in terms of section 10B and is not subject to dividends tax in terms of section 64E(1).

3.2.4 Treaty Network available to the investor

South Africa has treaties with most countries South Africa considers to be major trading partners. There has been an increase in the treaty network since 1987. (Katz Commission, 1997, p. 2.2.6)

The persons covered by a convention are usually discussed in article 1 of the double tax agreement in the instance of the OECD tax model convention. Conventions generally apply to ‘residents’ of one or both of the contracting states. The definition of a resident is usually found in article 4. The term ‘resident of a contracting state’ refers to the definition of residence found in domestic legislation and refers to certain criteria for the definition of a resident. Such criteria include the domicile and place of effective management. (OECD, 2010, pp. 45,84)

As mentioned, a qualifying headquarter company is a resident in terms of the definition of a ‘resident’ in section 1 and section 9I(1)(a) of the Income Tax Act.

South Africa has tax treaties with 79 countries (PWC, 2019).

3.2.5 Unilateral avoidance of double taxation

South Africa provides unilateral double tax relief in terms of sections 6*quat*(1), 6*quat*(1C) and 64N (SARS, 2018, p. 48).

Section 6quat(1) provides for a rebate to be deducted by South African residents equal to the sum of taxes payable to any sphere of government of any country other than South Africa on income from a source outside South Africa (Legwaila, 2012, p. 35).

South Africa also provides a deduction by a South African resident equal to the taxes paid on South African sourced income paid or proved to be payable to any sphere of government of a country outside South Africa in terms of section 6quat(1C).

Dividends tax is levied on dividends paid by any company (resident or non-resident) other than a headquarter company in terms of section 64E(1)(a). A dividend is defined in section 64D of the Income Tax Act as any dividend or foreign dividend paid by a company that is resident or by a foreign company to the extent the foreign dividend is paid in relation to a share that is listed and to the extent a dividend is not a dividend *in specie*. Section 64N of the Income Tax Act provides for a rebate in respect of foreign taxes on dividends. Section 64N is a rebate that can be claimed by South African tax residents against dividends tax. (SARS, 2019, pp. 3,168-170). As mentioned previously a headquarter company is a resident in terms of section 1 (definition of a resident) and section 9I.

The above-mentioned provisions are a positive attribute to the South African headquarter company regime (Legwaila, 2012, p. 35).

3.2.6 Absence of controlled foreign company legislation

National Treasury has acknowledged the fact that the controlled foreign company legislation is a potential barrier for multinational companies. Controlled foreign company legislation could result in companies within multinational groups suffering an increased tax burden if the host holding company has similar controlled foreign company legislation. (National Treasury, 2010, p. 77)

In the definition of a controlled foreign company in section 9D(1) of the Income Tax Act the excludes interests held by a headquarter company.

3.2.7 Thin capitalisation and transfer pricing rules

A serious barrier to the use of a South African headquarter company in instances where the headquarter company is financed using debt, is thin capitalisation rules. It is common practice that a foreign investor uses a headquarter company to on-lend funds to another company in a different jurisdiction. If the transfer pricing rules were used the interest would not be deductible in the hands of the South African headquarter company but the interest income would be taxable. (National Treasury, 2010, p. 78)

To address the abovementioned barrier National Treasury proposed in 2010 that the transfer pricing rules should not apply on loans that are on-lent to other companies in different jurisdictions (back-to-back loans) (National Treasury, 2010, p. 78). The relief was provided in terms of section 31(5) of the Income Tax Act.

Section 31(5)(b) and (d) of the Income Tax Act provide that where financial assistance (or granting of the use, right of use or permission to use any intellectual property) is provided by a headquarter company to a foreign company in which the headquarter company holds a minimum of 10% of the equity shares and voting rights the anti-avoidance provisions of section 31 will not apply to that financial assistance (or use of that intellectual property). (SARS, 2018, pp. 32-33)

Section 31(5)(a) and (c) of the Income Tax Act provides that where financial assistance (or granting of the use, right of use or permission to use any intellectual property) by a non-resident to a headquarter company and the financial assistance is directly applied (or the use of that intellectual property) to a foreign company in which the headquarter company holds at least 10% of the equity shares and voting rights the anti-avoidance provisions of section 31 will not apply. (SARS, 2018, pp. 32-33)

3.3 Non-tax considerations

3.3.1 Economic and political stability

At the time of introduction of the headquarter company regime South Africa considered itself a powerful African economy with a good location and a strong financial services sector which provide an opportunity for multinational companies to use the country as a gateway into Africa (National Treasury, 2010, p. 77).

The Heritage Foundation has described South Africa’s judicial system as being susceptible to political interference while government integrity has been undermined by infighting by political parties and political scandals (The Heritage Foundation, 2019).

South Africa was ranked 59th out of 141 countries in terms of macro-economic stability and 55th out of 141 countries in terms of institutions in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 518)

3.3.2 Adequately developed infrastructure (physical, business, accounting and legal)

The financial system of South Africa was ranked 19th out of 141 countries for the financial system of the country in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 518).

South African infrastructure was ranked 69th out of 141 countries in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 518).

3.3.3 Ease of doing business

Overall, South Africa was ranked 60th out of 141 economies in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 518).

The 2019 Doing Business study ranked South Africa 82nd out of 190 countries in terms of the ease of doing business ranking (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

3.3.4 Commercial language

English is the official language for business and commerce (South African Embassy, 2013). The use of English as a commercial language is therefore beneficial to South Africa.

3.4 Anti-avoidance

South Africa is a member of the Inclusive Framework on BEPS. No harmful tax regime exists (Action 5) (OECD, 2019). The South African headquarter company regime was reviewed and found to be not harmful (OECD, 2018, p. 4).

South Africa was reviewed and no recommendations were made for the exchange of information on tax rulings. (OECD, 2019)

In terms of preventing treaty abuse (Action 6) South Africa was reviewed in 2018 and no recommendations were made on that review and the 2019 review is still ongoing (OECD, 2019).

A legal framework is in place for country-by country report ("CbC") – domestic law (Action 13) as well as CbC information exchange network (Action 13) has been activated (OECD, 2019).

In terms of effective dispute resolution (Action 14) stage 1 has been reviewed and recommendations have been made (OECD, 2019).

The multilateral instrument has (Action 15) been signed (OECD, 2019).

3.5 The compliance burden placed on the taxpayer in complying with tax legislation

Annually a company is required to elect in the form and manner prescribed by the commissioner to be a headquarter company for the year of assessment of the company.

Currently, the election is made on the companies income tax return by answering “yes” to the question “does the company elect to be a headquarter company in terms of section 9I”. (SARS, 2018, p. 4)

If a company answers “yes” to the abovementioned question the RCH01 form must be completed and submitted with the company’s corporate income tax return (SARS, n.d., p. 62)

Three further questions will be generated on the company’s corporate income tax return. The company will need to answer “yes” or “no” to the three questions: “Does the company comply with the requirement that each of its shareholders (alone or together with any other company that forms part of the same group of companies as the shareholders) hold at least 10% of the equity shares and voting rights in the company throughout the year of assessment and all previous years of assessment?”, “Does the company comply with the requirement that at least 80% of the cost of its total assets (excluding cash and bank deposits payable on demand) is attributable to assets as listed in s9I(2)(b)?” and “Does the company comply with the requirement that where its gross income (excluding exchange differences determined in terms of s24I) exceeds R5 million, at least 50% of that gross income consists of amounts described in s9I(2)(c).” (SARS, n.d., p. 62)

The election is done annually and can only be determined at the end of the year if all the requirements have been met. The election is applicable from the beginning of the year of assessment for which the election is made. (SARS, 2018, p. 4)

The 2019 Doing Business study ranked South Africa 46th out of 190 countries in terms of paying taxes. An average of seven tax payments are made each year and 210 hours are spent on average doing tax for a company. On average 29.1% of a company’s profit is paid in the form of tax and contributions. (International Bank for Reconstruction and Development / The World Bank, 2019, p. 203)

3.6 Conclusion

South Africa has provided tax relief to South African headquarter companies. The South African headquarter regime provides relief from capital gains tax on disposal of shares in foreign companies in terms of paragraph 64B of the Eighth Schedule to the Income Tax Act. South African headquarter companies pay tax at a rate of 28% of taxable income in terms of schedule 1 of the Rates and Monetary Amounts and Amendment Bill, 2019. A dividend declared by a headquarter company may be exempt from normal tax in terms of section 10B and not subject to dividends tax in terms of section 64B(1). South African headquarter companies can use the 79 double tax agreements South Africa has with other countries as well as unilateral avoidance of double taxation provisions in terms of section 6quat(1), 6quat(1C) and 64N. In order to increase the attractiveness of South Africa as a headquarter company, the controlled foreign company legislation is not applicable to South African headquarter companies. South African headquarter companies are also excluded from South Africa’s transfer pricing legislation for certain transactions.

South Africa was ranked in the top 50% of economies in terms of the Global Competitiveness Report 2019 in terms of macro-economic stability (World Economic Forum, 2019, p. 518). The South African financial system was in the top 14% of countries evaluated in the Global Competitiveness Report 2019 but only in the top 49% in terms of infrastructure. South Africa was ranked in the top 43% of economies overall in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 518).

The South African headquarter company regime was found to be not harmful by the OECD in 2018 (OECD, 2018, p. 4).

In terms of the 2019 Doing Business study South Africa was in the top 24% of countries in terms of paying taxes (International Bank for Reconstruction and Development / The World Bank, 2019, p. 203).

Chapter 4: Rwanda’s International Company Regime

4.1 Introduction

Rwandan tax residents are taxed on worldwide income and non-residents are taxed on income derived from a Rwandan source in terms of article 44 of the Rwandan Direct Tax Law. Profits are taxed at company level (article 44 of Direct Law No. 16/2018 of 13 April 2018 (“Rwandan Direct Tax Law”)) as well as when profits are distributed to shareholders (article 60 of the Rwandan Direct Tax Law). Even dividends paid by one resident company to another resident company are subject to tax as there is currently not an exemption available in this instance (article 60 of the Rwandan Direct Tax Law) (IBFD - Tax Research Platform, 2018, p. 1.1).

The corporate income tax rate in Rwanda is 30% (article 49 of the Rwandan Direct Tax Law) (IBFD - Tax Research Platform, 2018, p. 1.6.1). In Rwanda, the sale of business assets for a selling price in excess of the acquisition price is subject to capital gains tax. Capital gains tax will also be payable on the disposal of shares in term of article 37 of the Rwandan Direct Tax Law. (IBFD - Tax Research Platform, 2018, p. 1.4)

Rwanda has a tax regime that provides benefits to ‘international companies’ that choose to have their headquarters or regional offices located in Rwanda. The name of the Rwandan equivalent of a headquarter company regime is the International Companies’ Regime (IBFD - Tax Research Platform, 2018, p. 1.7.2).

International companies that meet certain requirements can benefit from a 0% corporate tax rate in terms of article 1 of the annex to Rwandan Investment Law relating to Investment Promotion and Facilitation (Rwandan Government, 2015, p. 27).

4.1.1 Requirements for an international company

The Law Relating to Investment Promotion and Facilitation No 06/2015 (“Rwandan Investment Law”) was introduced to increase investment in Rwanda. An international company that has a headquarter or regional office in Rwanda is required to meet a number of requirements in order to qualify for a 0% corporate income tax rate. (IBFD - Tax Research Platform, 2018, p. 1.7.2)

The definition of an international company in Article 2 of the Rwandan Investment Law is a business company that controls or owns production or service facilities in at least one country except its home country (IBFD - Tax Research Platform, 2018, p. 1.7.2).

The requirements that an international company must meet in order to take advantage of the 0% corporate income tax rate are:

1) The company must invest a minimum of 10 million USD (or the equivalent) in either, or both, tangible or intangible assets in Rwanda;
2) Employment and training must be provided to people in Rwanda;
3) Transactions of a minimum of 5 million USD (or the equivalent) a year must be entered into through a commercial bank in Rwanda;
4) The company must be “well established” in the country it operates in;
5) At least 2 million USD (or equivalent) must be spent per year in Rwanda;
6) The company must perform at least three of the below services in Rwanda:
    a. Purchase of raw materials, components or finished products;
    b. Market and sales promotion planning
    c. Information and data management services
    d. Treasury management services
    e. Research and development work
    f. Training and personnel management

As well as set up actual and effective administration and coordination of operations in Rwanda article 1 of the annex of the Rwandan Investment Law (Rwandan Government, 2015, p. 27). .

The current Rwandan headquarter company regime will be compared against the tax characteristics of the ideal holding company location as outlined in Chapter 2:

4.2 Tax considerations

4.2.1 The capital gains tax regime

In Rwanda taxable income includes capital gains in terms of article 11 of the Direct Law No. 16/2018 of 13 April 2018 ("Rwandan Direct Tax Law").

A corporate income tax rate of 0% is available to 'international companies' with a head office in Rwanda provided certain requirements are met in terms of article 1 of the annex to the Rwandan Investment Law (PWC, 2019). Thus even if there was a capital gain it would be taxed at 0%.

4.2.2 The corporate income tax rate

A corporate income tax rate of 0% is available to 'international companies' with a head office in Rwanda provided certain requirements are met in terms of article 1 of the annex to the Rwandan Investment Law (PWC, 2019).

4.2.3 Dividends tax rate

Dividends tax at a rate of 15% is levied on the gross dividend paid to non-resident companies in terms of Article 60 of the Rwandan Direct Tax Law. From 16 April 2018 a dividends tax rate of 5% is applicable to dividends paid to a Rwandan resident or a resident of the East African community in terms of the Rwandan Tax Law. (IBFD - Tax Research Platform, 2018, p. 6.3.1)

4.2.4 Treaty network available to the investor

Rwanda has double tax agreements with seven countries. These countries include Barbados, Belgium, Jersey, Mauritius, Morocco and South Africa (PWC, 2019)

4.2.5 Unilateral avoidance of double taxation

Rwanda provides unilateral avoidance of double taxation in the form of a foreign tax credit. The foreign tax credit can be utilised when income is generated outside Rwanda by a Rwandan resident and will be equal to the lower of the foreign tax on income and the tax that would have been payable on the income in Rwanda. Evidence is required for the tax payable in the form of a tax declaration or a withholding tax certificate. (PWC, 2019)

The corporate income tax rate for qualifying international companies is 0% in terms of article 1 of the annex to law No 06/2015 of 28/03/2015 Related to Investment Promotion and Facilitation. The credit would thus be equal to nil.

4.2.6 Absence of controlled foreign currency legislation

There are currently no controlled foreign company anti-avoidance rules in Rwandan tax law (IBFD - Tax Research Platform, 2018, p. 7.4).

4.2.7 Thin capitalisation and transfer pricing rules

To the extent that the total interest-carrying debt exceeds four times the level of equity measured in terms of the generally accepted accounting principles, interest will not be deductible (IBFD - Tax Research Platform, 2018, p. 7.3).

The Rwandan Revenue Authority may adjust the transfer prices on transactions to the extent that documentation supporting the prices are at arm's length are not maintained. The Rwandan transfer pricing rules require the use of arm's length prices between related parties (both resident and non-resident) in terms of article 33 read with article 3(6) and (7) of Rwanda's Direct Tax Law. (IBFD - Tax Research Platform, 2018, p. 7.2)

A corporate income tax rate of 0% is available to international companies with a head office in Rwanda provided certain requirements are met in terms of article 1 of the annex to law No 06/2015 of 28/03/2015 Related to Investment Promotion and Facilitation (PWC, 2019). Thus even if transfer pricing adjustments were made the corporate tax paid would still be nil.

4.3 Non-tax considerations

4.3.1 Economic and political stability

Rwanda has shown consistent and fast economic growth (EY, 2018). Rwanda has made large improvements in political and economic stability since the Rwandan genocide in 1994. There is, however, an "imagine gap" in which Rwanda is still viewed as much more unstable than it is in reality. (United Nations , 2006, p. 18)

Rwanda was ranked 98th out of 141 economies in terms of macro-economic stability and 36th out of 141 economies in terms of institutions in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 486).

4.3.2 Adequately developed infrastructure (physical, business, accounting and legal)

Rwanda was ranked amongst the most improved jurisdictions in terms of securing a more reliable power supply, improved delivery efficiency as well as clearness in terms of tariffs by the World Bank in 2019. Rwanda also made it easier to trade with other countries as well as improving infrastructure for both imports and exports (International Bank for Reconstruction and Development / The World Bank, 2019, pp. 17,18).

Rwanda was ranked 90th out of 141 countries in terms of the financial system by the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 486).

The Global Competitiveness Report 2019 ranked Rwanda 111th out of 141 countries in terms of infrastructure (World Economic Forum, 2019, p. 486).

4.3.3 Ease of doing business

Rwanda was ranked as the number one country in Africa in terms of “business friendly destinations” by the EY Attractiveness Programme in 2018 (EY, 2018). Rwanda also ranked 29 out of 190 countries in terms of ease of doing business by the World Bank in 2019 and as the 10th economy most improved in the ease of doing business ranking since 2018. (International Bank for Reconstruction and Development / The World Bank, 2019, p. 11).

Overall Rwanda was ranked 100th out of 141 countries overall by the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 486).

The 2019 Doing Business study ranked Rwanda 29th out of 190 in terms of the ease of doing business ranking (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

4.3.4 Commercial language

Kinyarwanda, French and English are the official languages spoken in the country. The government has emphasised an increase use of English since Rwanda joined the Commonwealth in 2009 (United Nations Conference on Trade and Development, 2012, p. 7).

4.4 Anti-avoidance

Rwanda is not a member of the Inclusive Framework on BEPS (OECD, 2019).

4.5 The compliance burden placed on the taxpayer in complying with tax legislation

Rwanda was one of the economies that reduced or simplified the regulatory complexity of doing business in the country in the category of post-registration procedures, including tax registration, licensing and social security registration (International Bank for Reconstruction and Development / The World Bank, 2019, p. 17).

Rwanda is ranked 35th out of 190 in terms of paying taxes by the World Bank in 2019 in the Doing Business study. In Rwanda an average of eight tax payments are made per annum and 95.5 hours are spent paying taxes per year. 32.2% of profit is paid on average as tax and contributions. (International Bank for Reconstruction and Development / The World Bank, 2019, p. 199)

4.6 Conclusion

Rwanda has provided tax relief to Rwandan headquarter companies in the form of a 0% corporate income tax rate in terms of article 1 of the annex to law No 06/2015 of 28/03/2015 Related to Investment Promotion and Facilitation.

Rwanda was ranked in the top 70% of economies in terms of the Global Competitiveness Report 2019 in terms of macro-economic stability. The Rwandan financial system was in the top 64% of countries evaluated in the Global Competitiveness Report 2019 and only in the top 79% in terms of infrastructure. Rwanda was ranked in the top 71% of economies overall in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 486).

The Rwanda is not a member of the Inclusive Framework on BEPS (OECD, 2019).

In terms of the 2019 Doing Business study Rwanda was in the top 15% of countries in terms of paying taxes (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5)

Chapter 5: The incentives available in Singapore under the Economic Expansion Incentives (Relief from Income Tax) Act / Part IIIB

5.1 Introduction

Singapore has two incentives to promote the growth of companies' capabilities as well as to expand or perform new activities in Singapore, the Pioneer Certificate Incentive and the Development and Expansion Incentive. Companies that perform headquarter activities may also apply for the Pioneer Certificate Incentive and Development and Expansion Incentive (Singapore Economic Development Board, 2019, p. 1.1)

The Pioneer Certificate Incentive and Development and Expansion Incentive tax income at a rate of 5% or 10% of income above a certain level in terms of section 5D of the Singapore Economic Expansion Incentives (Relief from Income Tax) Act (“Singapore Relief from Income Tax Act”). (Deloitte, 2019)

The period for which the incentive is available is 5 years in terms of section 6(2) and section 19K(2) of the Singapore Relief from Income Tax Act (Singapore Economic Development Board, 2019, p. 1.2).

5.1.1 Requirements of a Pioneer Certificate and Development and Expansion Incentive

In order for a company to take advantage of the Pioneer Certificate Incentive and the Development and Expansion Incentive a company must meet a number of criteria both quantitative and qualitative. The qualitative and quantitative criteria include a level of total business expenditure, creating employment, commitment to increasing capabilities of the company (including skills and technology). (Singapore Economic Development Board, 2019, p. 2.2)

The current Singapore headquarter company regime will be compared against the tax characteristics outlined in Chapter 2:

5.2 Tax considerations

5.2.1 The capital gains tax regime

Singaporean tax law does not impose capital gains tax (IBFD, 2019, p. 1.7.1).

5.2.2 The corporate income tax rate

The company’s income 10% or 5% on qualifying activities in terms of section 19J of the Singapore Relief from Income Tax Act. Expansion income is defined in section19J(6) of the Singapore Relief from Income Tax Act as income from qualifying activities referred to section 19M that exceeds the average corresponding income. The average corresponding income defined in section 19J(6) is one third of the total corresponding qualifying income for the 3 years immediately preceding the day the incentive is granted.

Non-qualifying activities will not qualify for the concessionary rate in terms of section 19J(5C) and section 19J(4) of the Singapore Relief from Income Tax Act (Singapore Economic Development Board, 2019, p. 1.3).

The corporate income tax rate in Singapore is 17% in terms section 43(a) of the Singapore Income Tax Act (cap 134) ("Singapore Income Tax Act") (IBFD, 2019, p. 1.10.1).

5.2.3 Dividends tax rate

There is no dividends withholding tax in Singapore (IBFD, 2019, p. 7.2.6.2).

5.2.4 Treaty network available to the investor

Singapore has signed and ratified 86 comprehensive double tax agreements with other jurisdictions (PWC, 2019).

5.2.5 Unilateral avoidance of double taxation

A taxpayer in Singapore may either utilise a unilateral or a bilateral double taxation credit. The unilateral relief is available for use when foreign taxes have been paid by a Singapore resident on foreign income in a country that does not have a double tax treaty with Singapore. The unilateral relief is available in terms of section 50A(1) of the Singapore Income Tax Act. Bilateral relief is available in the form of a tax credit on foreign income from jurisdictions which have a tax treaty with Singapore and a tax credit is not provided in the tax treaty. The bilateral relief is provided in terms of section 50(2) of the Singapore Income Tax Act. The amount of the foreign tax credit, both for the unilateral relief and bilateral relief, is limited to the lower of the tax in Singapore or the foreign tax payable after taking into account allowable deductions (IBFD, 2019, p. 7.2.6).

5.2.6 Absence of controlled foreign currency legislation

There are no controlled foreign company anti-avoidance rules in Singapore (IBFD, 2019, p. 10.4)

5.2.7 Thin capitalisation and transfer pricing rules

All businesses that are either carrying on business in Singapore or registered in Singapore are subject to local transfer pricing regulations and are required to carry out a transaction with related parties at arm's length in terms of section 34D of the Singapore Income Tax Act. In addition certain transfer pricing documentation must be prepared, maintained and be available for submission to the Inland Revenue Authority if requested in terms of section 34F of the Singapore Income Tax Act. (Singapore Economic Development Board, 2019, p. 3.2)

Singapore does not have any thin capitalisation rules but transfer pricing rules and general anti-avoidance provisions may be applied to transactions (PWC, 2019).

5.3 Non-tax considerations

5.3.1 Economic and political stability

Singapore is one of the most politically stable countries in the South East Asian region (Department of International Trade, 2016).

Singapore was ranked 38th out of 141 countries in terms of macro-economic stability and second out of 141 countries in terms of institutions in the Global Competitiveness Report in 2019 (World Economic Forum, 2019, p. 506).

5.3.2 Adequately developed infrastructure (physical, business, accounting and legal)

Singapore also ranked best for the least amount of time (hours per year) spent paying taxes out of 190 countries in terms of the 2019 doing business ranking (International Bank for Reconstruction and Development / The World Bank, 2019, p. 127).

Singapore ranked first in terms of infrastructure out of 141 economies in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. ix).

The Singaporean financial system was ranked second out of 141 in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 506).

5.3.3 Ease of doing business

Singapore was ranked second out of 190 countries in terms of the ease of doing business in 2019 (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

Singapore was the best performer out of 141 economies in terms of the 2019 Global Competitiveness Report (World Economic Forum, 2019, p. viii).

The 2019 Doing Business study ranked Singapore 2nd out of 190 countries in terms of the ease of doing business ranking (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

5.3.4 Commercial language

English is the commercial language in Singapore (Singapore Infopedia (A Singapore Government Agency Website), 2016).

5.4 Anti-avoidance

Singapore is a member of the Inclusive Framework on BEPS, no harmful tax regime exists (Action 5), Singapore was reviewed and no recommendations were made for the exchange of information on tax rulings (Action 5). (OECD, 2019)

The Development and Expansion Incentive and Pioneer Certificate regime were found to be not harmful in the OECD harmful tax practice peer review in 2018 (OECD, 2018)

In terms of preventing treaty abuse (Action 6) Singapore was reviewed in 2018 and no recommendations were made on that review and the 2019 review is still ongoing (OECD, 2019).

A legal framework is in place for CbC – domestic law (Action 13) as well as CbC information exchange network (Action 13) has been activated (OECD, 2019).

In terms of effective dispute resolution (Action 14) stage 1 has been reviewed and recommendations have been made (OECD, 2019).

The multilateral instrument (Action 15) is in force (OECD, 2019).

5.5 The compliance burden placed on the taxpayer in complying with tax legislation

As mentioned previously this is a discretionary incentive and approval must be obtained by the Economic Development Board (EY, n.d.).

A company must maintain a separate set of accounts for non-qualifying activities undertaken during the period the incentive is used by the company (Singapore Economic Development Board, 2019, p. 1.1).

A company utilising the Pioneer Certificate Incentive and the Development and Expansion Incentive is required to prepare and submit progress reports which serve as an evaluation of performance to the Singapore Economic Development Board. A breach by the company of any of the requirements or conditions of the Pioneer Certificate Incentive or the Development and Expansion Incentive will result in the benefits of the incentive being recovered and the availability of the incentives revoked (Singapore Economic Development Board, 2019, p. 3.1)

Singapore was ranked 8th out of 190 in the 2019 Doing Business Report in terms of paying tax with five tax payments made each year and 64 hours a year spent doing taxes. An average of 20.6% of profits were paid as taxes and contributions in 2019. (International Bank for Reconstruction and Development / The World Bank, 2019, p. 202)

5.6 Conclusion

Singapore has provided tax relief to Singapore headquarter companies in the concessionary rate of 10% or 5% on certain income in terms of section 19J of the Singapore Relief from Income Tax Act.

Non-qualifying activities will not qualify for the concessionary rate in terms of section 19J(5C) and section 19J(3) of the Singapore Relief from Income Tax Act.

Singapore was ranked in the top 27% of economies in terms of the Global Competitiveness Report 2019 in terms of macro-economic stability. The Singapore financial system was in the top 1.5% of countries evaluated in the Global Competitiveness Report 2019 and the highest ranked country out of 141 in terms of infrastructure. Singapore was ranked second of 141 economies overall in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 506).

Singapore is a member of the Inclusive Framework on BEPS (OECD, 2019). The Development and Expansion Incentive and Pioneer Certificate regime were found to be not harmful in the OECD harmful tax practice peer review in 2018 (OECD, 2018)

In terms of the 2019 Doing Business study Singapore was in the top 4% of countries in terms of paying taxes (International Bank for Reconstruction and Development / The World Bank, 2019, p. 202)

Chapter 6: United States resident multinational companies

6.1 Introduction

The United States of America is headquarters to the largest number of the top 2 000 of the world’s largest public companies. The Forbes Global 2 000 states that American companies have benefited from newly introduced taxation legislation (Murphy, et al., 2019).

The United States of America was ranked second out of 141 economies in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. ix).

In the United States of America companies are subject to federal income tax but could also be subject to state income taxes (IBFD, 2019, p. 1.1). The United States of

America's tax regime taxes profits at the company level and when profits are distributed to shareholders (IBFD, 2019, p. 1.1.3).

Before the introduction of the Tax Cuts and Jobs Act of 2017 the United States taxed United States residents on worldwide income but tax would be payable when the foreign income was paid to the United States resident company. The result of this was that companies were disincentivised from repatriating income and it also resulted in companies moving headquarters outside the United States of America. (Pomerleau, 2018, p. 2).

The fact that companies were discouraged previously from repatriating profits as well as the movement of headquarters outside the United States of America prompted the changes introduced by the Tax Cuts and Jobs Act in 2017. Certain foreign profits are now exempt from tax and anti-base erosion and profit shifting anti-avoidance provisions were introduced. (Pomerleau, 2018, p. 2)

There are four provisions that changed the way that multinational companies based in the United States of America are taxed. At a high-level these provisions are the "participation exemption", the "Global Intangible Low Tax Income", "Foreign Derived Intangible Income" and the "Base Erosion and Anti-Abuse Tax" provision. (Pomerleau, 2018, p. 4)

The participation exemption provision is the provision that changed the United States tax system from a worldwide tax system to a territorial tax system. The participation exemption provisions allow for a deduction of foreign dividends from taxable income meaning that foreign profits are not taxed again by the United States of America. Section 245A of the U.S Code Title 26 – Internal Revenue Code ("US Income Tax Act") governs the "participation exemption" and simplistically requires that in order for the foreign dividends to be deducted United States resident companies should own 10% of the shares in the foreign company (Pomerleau, 2018, p. 4)

The Global Intangible Low Tax Income is a category of income that is subject to a rate lower than the 21% statutory corporate income tax rate. The income included in this category is determined on an annual basis by subtracting 10% of the Qualified Business Asset Investment (which is all the depreciable assets that are owned by the controlled foreign company of the United States of American holding company) from the Net Tested Income which is the foreign profit earned from the controlled foreign company of the United States of America holding company. The purpose of this is to tax the profit that is in excess of a normal return on investment as the excess is assumed to be attributable to either intellectual property or could be profit shifting from another jurisdiction. Once the Global Intangible Low Tax Income has been determined, 50% of this is allowed as a deduction while the remainder is taxed at the statutory income tax rate of 21%. The effect of this is an effective tax rate of 10.5%. The Global Intangible Low Tax Income is governed by section 951A of the US Income Tax Act (Pomerleau, 2018, pp. 5-6)

The Foreign Derived Intangible Income provisions is another form of income taxed at a rate lower than the United States corporate income tax rate of 21%. Foreign Derived Intangible Income is taxed at a rate of 13.125% and is used as an incentive to import and maintain intellectual property (as well as the income associated with the intellectual property) in the United States of America. The mechanism to achieve this incentive is similar to the Global Intangible Low Tax Income provisions in that the aim is to tax returns from investment over the level considered normal. Foreign Derived Intangible Income is defined as the foreign profits in excess of 10% of Qualifying Business Asset Investment. Qualifying Business Asset Investment is defined as the value of the tangible assets that are used to generate foreign sourced income. A deduction of 37.5% of the Foreign Derived Intangible Income provisions is allowed from the taxable income of the United States company resulting in an effective rate of 13.125%. The Global Intangible Low Tax Income is governed by section 250 of the US Income Tax Act (Pomerleau, 2018, pp. 7-8)

The deduction of Global Intangible Low Tax Income and Foreign Derived Intangible Income cannot create an assessed loss. In other words, the Global Intangible Low Tax Income and the Foreign Derived Intangible Income are limited to the level that would bring the taxable income of the United States company to nil. This limitation is found in section 965(1) of the US Income Tax Act (Pomerleau, 2018, p. 8)

The last provision introduced by the Tax Cuts and Jobs Act was the Base Erosion and Anti-Abuse Tax provision. The Base Erosion and Anti-Abuse Tax provision is a new tax that is aimed at preventing the shifting of profits outside the United States by domestic companies. The Base Erosion and Anti-Abuse Tax provisions is only applicable to multinational companies that earn receipts that are in excess of USD500 million on average over the last three years and if “base erosion payments” are made. “Base erosion payments” are defined as payments that exceed three percent of deductions applied by the United States company made to a foreign company. The Base Erosion and Anti-Abuse Tax is a tax equal to 10% of modified taxable income. Modified taxable income is determined by adding back “base erosion payments” to the taxable income of the United States company. The Base Erosion and Anti-Abuse Tax is governed by section 59 of the US Income Tax Act (Pomerleau, 2018, p. 9)

6.2 Tax considerations

6.2.1 The capital gains tax regime

Capital gains are subject to tax in the United States of America at the corporate income tax rate (IBFD, 2019, p. 1.10.1.1.1 and 1.7.4.2).

6.2.2 The corporate income tax rate

The income tax rate for companies is 21% in terms of section 26 of the US Tax Act (IBFD, 2019, p. 1.10.1.1.1). As discussed above Global Intangible Low Tax Income and Foreign Derived Intangible Income are taxed at a rate of 10.5% and 13.125% respectively in terms of section 951A and section 250 of the US Tax Act. (Pomerleau, 2018, pp. 5-9)

6.2.3 Dividends tax rate

Dividends are not subject to a dividends withholding tax when dividends are paid to United States residents, citizens or domestic companies (IBFD, 2019, p. 1.10.3.1).

A dividend paid to a foreign person is however usually subject to a 30% withholding tax in terms of section 114.2 of the US Income Tax Act (PWC, 2019).

6.2.4 Treaty network available to the investor

The United States of America has tax treaties with more than 60 countries (PWC, n.d.).

6.2.5 Unilateral avoidance of double taxation

A foreign tax credit can be claimed on income included in the US shareholder's income in terms of section 951(a) with respect of a controlled foreign company. The US shareholder will be deemed to have paid foreign tax equal to the proportion of the foreign tax paid by the controlled foreign company in proportion to the income included in the US shareholder's income in terms of section 960 of the US Income Tax Act.

6.2.6 Absence of controlled foreign currency legislation

The controlled foreign company legislation is located in Subpart F of the US Income Tax Act. At a high level US resident companies are required to include in income a portion of income of a controlled foreign company in the US resident's taxable income in terms of section 951 of the US Income Tax Act. (IBFD, 2019, p. 10.4.1)

At a high level a controlled foreign company is defined in section 957(a) of the US Income Tax Act as a foreign company if more than 50% of the voting rights or the total value of stock is owned by US residents (IBFD, 2019, p. 10.4.2).

As mentioned above for years of assessment beginning after 31 December 2017 a new category of controlled foreign companies was included in the form of global intangible low-taxed income (IBFD, 2019, p. 10.4.1).

Although not included in Subpart F of the US Income Tax Act the foreign derived intangible income provisions may also impact shareholders of controlled foreign companies (IBFD, 2019, p. 10.4.1).

6.2.7 Thin capitalisation and transfer pricing rules

Tax legislation in the United States of America contains rules applied to determine whether the interest in a company is considered debt or equity for tax purposes. The rules consist of five factors to guide the treatment of the interest as debt or equity. These five factors include the ratio of debt to equity in the company, whether the instrument is convertible into equity, the relationship between the person holding the instrument and the company, the preference the instrument has over the other debt owed by the company as well as any obligation of the company to pay the principal or interest (and at what interest rate). The thin capitalisation rules are governed by section 385 of the US Income Tax Act. (IBFD, 2019, p. 10.3.2)

Transfer pricing anti-avoidance rules are included in the US Income Tax Act in terms of section 482. The United States Secretary has the power in terms of the transfer pricing legislation to adjust income, deductions, credits or allowances between two or more companies owned or controlled by the same interests whether the companies are United States residents or not (IBFD, 2019, p. 10.2.1.1).

6.3 Non-tax considerations

6.3.1 Economic and political stability

Government integrity has increased in 2019 from 2018 according to the 2019 Index of Economic Freedom (The Heritage Foundation, 2019).

In terms of macroeconomic stability the United States of America was ranked 37th out of 141 in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 582).

6.3.2 Adequately developed infrastructure (physical, business, accounting and legal)

The United States of America was ranked 13th out of 141 countries in terms of Infrastructure (World Economic Forum, 2019, p. 582).

The United States of America’s financial system was ranked third out of 141 economies and 20th out of 141 countries in terms of institutions in the Global Competitiveness Report for 2019 (World Economic Forum, 2019, p. 582).

6.3.2 Ease of doing business

The United States of America was ranked 8th out of 190 countries in terms of the ease of doing business in 2019 (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

The United States of America ranked second out of 141 countries in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. xiii).

The 2019 Doing Business study ranked the United States of America 8th out of 190 countries in terms of the ease of doing business ranking (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

6.3.3 Commercial language

English is the official language in the United States of America (Senate and House of Representatives of the United States of America, 2017, p. 161).

6.4 Anti-avoidance

The United States of America is a member of the Inclusive Framework on BEPS, The harmful tax regime exist review has been scheduled but not completed (Action 5), the United States of America was reviewed and no recommendations were made for the exchange of information on tax rulings (Action 5). (OECD, 2019)

In terms of preventing treaty abuse (Action 6) the United States of America was reviewed in 2018 and no recommendations were made on that review and the 2019 review is still ongoing (OECD, 2019).

A legal framework is in place for CbC domestic law (Action 13) as well as CbC information exchange network (Action 13) has been activated (OECD, 2019).

In terms of effective dispute resolution (Action 14) stage 2 has been reviewed and recommendations have been made (OECD, 2019).

The multilateral instrument (Action 15) has not been adopted (OECD, 2019).

6.5 The compliance burden placed on the taxpayer in complying with tax legislation

The United States of America was ranked 37th out of 141 countries in the 2019 Doing Business Report in terms of paying tax with an average of 10.6 tax payments made each year and 175 hours a year spent doing taxes. An average of 43.8% of profits were paid as taxes and contributions in 2019 (International Bank for Reconstruction and Development / The World Bank, 2019, p. 212)

6.6 Conclusion

An American resident company will not qualify for a participation exemption in terms of section 245A of the US Income Tax Act but also have anti-avoidance provisions to prevent profit shifting to low tax jurisdictions such as the Global Intangible Low Income tax governed by section 915A of the US Income Tax Act.

The United States of America was ranked in the top 27% of economies in terms of the Global Competitiveness Report 2019 in terms of macro-economic stability. The American financial system was in the top 2% of countries evaluated in the Global Competitiveness Report 2019 and ranked in the top 27% of economies in terms of infrastructure. The United States of America was ranked in the top 1.5% economies overall in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 382).

The United States of America is a member of the Inclusive Framework on BEPS (OECD, 2019). The harmful tax review has been scheduled but not finalised (OECD, 2019)

In terms of the 2019 Doing Business study the United States of America was in the top 4% of countries in terms of paying taxes (International Bank for Reconstruction and Development / The World Bank, 2019, p. 212)

Chapter 7: The Mauritius GBC headquarter company regime

7.1 Introduction

Mauritius ranked higher than South Africa on the Global Competitiveness Report for 2019. In fact, Mauritius was ranked the most competitive country in sub-Sahara Africa. (World Economic Forum, 2019, p. ix)

A Mauritius Global Headquarters Administration Licence can be obtained by a Mauritian company that has a physical office in Mauritius, employs a minimum of 10 professional staff and incurs annual expenditure of at least MUR5million. The Mauritian company must provide three of the following services, administration and general management, business planning and development and co-ordination, economic or investment research and analysis or service related to international corporate headquarters in Mauritius, to at least three companies (Anexgroup, n.d.)

A company holding a Global Headquarters Administration Licence issued on or after 1 September 2016 will receive an exemption from income for a period of eight years in terms of section 29(1) and (2) of Part C of the Mauritius Income Tax Act 1994 ("Mauritius Income Tax Act").

This chapter will compare the relevant elements of the Global Business Company regime against the characteristics of the ideal headquarter jurisdiction.

7.2 Tax considerations

7.2.1 The capital gains tax regime

There is no capital gains tax in Mauritius (IBFD, 2019, p. 1.4).

7.2.2 The corporate income tax rate

The corporate income tax rate in Mauritius is 15% (IBFD, 2019, p. 1.6.1).

A company holding a Global Headquarters Administration Licence issued on or after 1 September 2016 will receive an exemption from income for a period of eight years in terms of section 29(1) and (2) of Part C of the Mauritius Income Tax Act 1994 ("Mauritius Income Tax Act").

7.2.3 Dividends tax rate

Dividends are not subject to withholding tax (IBFD, 2019, p. 1.6.2).

7.2.4 Treaty network available to the investor

Mauritius currently has signed double tax treaties with 44 countries (PWC, 2019).

7.2.5 Unilateral avoidance of double taxation

A credit in respect of double taxation suffered is available in terms of section 77 of the Mauritius Income Tax Act. A credit is allowed against the income tax payable in respect of that income (section 77(1)).

A company holding a Global Headquarters Administration Licence issued on or after 1 September 2016 will receive an exemption from income tax for a period of eight years in terms of section 29(1) and (2) of Part C of the Mauritius Income Tax Act 1994 ("Mauritius Income Tax Act"). There will not be double tax levied for a period of 8 years.

7.2.6 Absence of controlled foreign currency legislation

Mauritius does not have controlled foreign company rules (IBFD, 2019, p. 7.3). Controlled foreign company rules will however be introduced in July 2020 (PWC, 2019).

7.2.7 Thin capitalisation and transfer pricing rules

Mauritius does not have specific thin capitalisation provisions limiting the deductibility of interest expense in the tax legislation (IBFD, 2019, p. 7.3). The Mauritius Revenue Authority does have the power to change the tax liability of a taxpayer in instances where the transaction did not take place at arm's length in terms of section 75 of the Mauritius Income Tax Act (IBFD, 2019, p. 7.2).

A company holding a Global Headquarters Administration Licence issued on or after 1 September 2016 will receive an exemption from income for a period of eight years in terms of section 29(1) and (2) of Part C of the Mauritius Income Tax Act 1994 ("Mauritius Income Tax Act"). Any transfer pricing adjustment will therefore not be taxed for a period of 8 years.

7.3 Non-tax considerations

7.3.1 Economic and political stability

Mauritius has strong corporate governance (ranked 14th out of 141 economies by the Global Competitiveness Report 2019) and is one of the most open economies in the world (ranked 6th out of 141 economies by the Global Competitiveness Report 2019). The macroeconomic stability of the country has decreased slightly than compared to 2018. (World Economic Forum, 2019, p. 18)

The macro-economic stability of Mauritius was ranked 57th out of 141 countries and 29th out of 141 countries in terms of institutions in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 382).

The Heritage Foundation has identified a decrease in government integrity (The Heritage Foundation, 2019).

7.3.2 Adequately developed infrastructure (physical, business, accounting and legal)

Mauritius has improved the tax audit process in terms of corporate income taxes as well as making it easier to do business with other economies in 2019 (International Bank for Reconstruction and Development / The World Bank, 2019, p. 20).

Mauritius is the highest ranked jurisdiction in Sub-Sahara Africa by the 2019 Global Competitiveness Report (World Economic Forum, 2019, p. ix).

The Global Competitiveness Report 2019 ranked Mauritius 64th out of 141 economies in terms of infrastructure (World Economic Forum, 2019, p. 382).

Mauritius was ranked 27th out of 141 economies in terms of the financial system by the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 382).

7.3.3 Ease of doing business

Mauritius was the only sub-Saharan African country to be ranked in the top 20 economies for the ease of doing business in 2019. Mauritius has over the past 10 years methodically increased the ease of doing business in the country. (International Bank for Reconstruction and Development / The World Bank, 2019, p. 4)

Mauritius was ranked 52nd overall out of 141 economies in terms of the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 382).

The 2019 Doing Business study ranked Mauritius 20th out of 190 countries in terms of the ease of doing business ranking (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).

7.3.4 Commercial language

English is the official language of Mauritius. French is also widely spoken. (Government of Mauritius, n.d.).

7.4 Anti-avoidance

Mauritius is a member of the Inclusive Framework on BEPS, no harmful tax regime exists (Action 5), Mauritius was reviewed and no recommendations were made for the exchange of information on tax rulings (Action 5). (OECD, 2019)

The global headquarters administration regime was peer reviewed in 2018 and found to be not harmful (OECD, 2018, p. 6).

In terms of preventing treaty abuse (Action 6) Mauritius was reviewed in 2018 and no recommendations were made on that review and the 2019 review is still ongoing (OECD, 2019).

A legal framework is in place for CbC domestic law (Action 13) as well as CbC information exchange network (Action 13) has been activated (OECD, 2019).

In terms of effective dispute resolution (Action 14) is to be scheduled (OECD, 2019).

The multilateral instrument (Action 15) has been approved (OECD, 2019).

7.5 The compliance burden placed on the taxpayer in complying with tax legislation

Since 2017/2018 Mauritius has also been successful in decreasing the administrative burden of paying taxes by enhancing electronic systems (International Bank for Reconstruction and Development / The World Bank, 2019, p. 19).

Companies must apply and register with the Financial Services Commission to be recognised as a Global Business Licence company (PWC, 2019).

For a Global Business Company to take advantage of Mauritius tax treaties they must be tax resident in Mauritius and obtain a Tax Residence Certificate (PWC, 2019).

Mauritius was ranked sixth out of 190 countries in terms of paying taxes by the 2019 Doing Business study and companies make an average of eight tax payments per year and spend an average of 152 hours per year on tax (International Bank for Reconstruction and Development / The World Bank, 2019, p. 188).

7.6 Conclusion

A company holding a Global Headquarters Administration Licence issued on or after 1 September 2016 will receive an exemption from income tax for a period of eight years in terms of section 29(1) and (2) of Part C of the Mauritius Income Tax Act 1994 ("Mauritius Income Tax Act").

Mauritius was ranked in the top 5% of economies in terms of the Global Competitiveness Report 2019 in terms of macro-economic stability. The Mauritius financial system was in the top 19% of countries evaluated in the Global Competitiveness Report 2019 and ranked in the top 45% of economies in terms of infrastructure. Mauritius was ranked in the top 37% economies overall in the Global Competitiveness Report 2019 (World Economic Forum, 2019, p. 382).

Mauritius is a member of the Inclusive Framework on BEPS (OECD, 2019). The global headquarters administration regime was peer reviewed in 2018 and found to be not harmful (OECD, 2018, p. 6).

In terms of the 2019 Doing Business study Mauritius was in the top 3% of countries in terms of paying taxes (International Bank for Reconstruction and Development / The World Bank, 2019, p. 202)

Chapter 8: Comparison of the headquarter regimes

Chapter 8 summarises the findings of tax, non-tax characteristics, anti-avoidance and compliance with tax legislation of South Africa, Rwanda, Singapore, the United States of America and Mauritius headquarter regimes.

8.1 The table below provides a high level comparison of the tax characteristics of the headquarter company tax regimes in South Africa, Rwanda, Singapore, the United States of America and Mauritius.

	South Africa	Rwanda	Singapore	United States of America	Mauritius
Name of regime	Headquarter Company regime governed by the Income Tax Act No 58 of 1962 (National Treasury, 2010, p. 77)	International Companies' Regime which is government by the Law Relating to Investment Promotion and Facilitation No 06/2015 (IBFD - Tax Research Platform, 2018, p. 1.7.2).	Headquarter Programme which governed by the Singapore Economic Expansion Incentives (Relief from Income Tax) Act (Deloitte, 2019)	US based multinational corporations governed by the Tax Cuts and Jobs Act 2017 (Pomerleau, 2018, p. 2).	Global Headquarters Administration Licence governed by the Mauritius Income Tax Act 1995. (IBFD, 2019)
Capital gains tax	The effective capital gains tax rate is 22.4%. Certain relief is available for the disposal of shares in	No capital gains tax as the corporate income tax rate is 0% in terms of article 1 of the annex to the	No capital gains tax (IBFD, 2019, p. 1.7.1).	Capital gains are taxed at the corporate income tax rate (IBFD, 2019, p. 1.10.1.1.1).	No capital gains tax (IBFD, 2019, p. 1.4)

	South Africa	Rwanda	Singapore	United States of America	Mauritius
	foreign companies in terms of paragraph 64B(2) of the Eighth Schedule to the Income Tax Act (SARS, 2018, p. 46)	Rwandan Investment Law (United Nations Conference on Trade and Development, 2012, p. VI)			
Corporate income tax rate	The corporate income tax rate is 28% Income Tax Act read with Schedule 1 of the Rates and Monetary Amounts and Amendment Bill, 2019.	The corporate income tax rate is 0% in terms of article 1 of the annex to the Rwandan Investment Law (Rwandan Government, 2015, p. 27)	The income earned equal to the average of the company's income for the last three years is taxed at the prevailing corporate income tax rate in terms of section 19J(5C) and section 19J(4) of the Singapore Relief from Income Tax Act.. Any	The corporate income tax rate for companies is 21% in terms of section 26 of the US Income Tax Act. Any income considered to be Global Intangible Low Tax Income is taxed at 10.5% in terms of section 951A of the US Income Tax Act while Foreign	The corporate income tax rate in Mauritius is 15%. A company holding a Global Headquarters Administration Licence receive an exemption from income tax in terms of section 29(1) and (2) of the Mauritius Income Tax

	South Africa	Rwanda	Singapore	United States of America	Mauritius
			income received from qualifying activities above this level is taxed at either 5% or 10% in terms of section 5D of the Singapore Income Tax Act (EY, n.d.). The prevailing corporate income tax rate in Singapore is 17% in terms of section 43(a) of the Singapore Income Tax Act (IBFD, 2019, p. 1.10.1).	Derived Intangible Income is taxed at 13.125% in terms of section 250 of the US Income Tax Act (Pomerleau, 2018, pp. 5-9)	Act (IBFD, 2019).
Dividends tax rate	There is no dividends tax levied on dividends declared by headquarter	15% when dividends are paid to non-residents and 5% when a	There is no dividends withholding tax in Singapore	Dividends are not subject to a dividends withholding tax when	There is no dividends withholding tax in Mauritius

	South Africa	Rwanda	Singapore	United States of America	Mauritius
	companies in terms of section 64E(1) (SARS, 2018, p. 32).	dividend is paid to residents in terms of article 60 of the Rwandan Tax Law (IBFD - Tax Research Platform, 2018, p. 6.3.1)	(IBFD, 2019, p. 7.2.6.2).	dividends are paid to United States residents, citizens or domestic companies (IBFD, 2019, p. 1.10.3.1). A dividend paid to a foreign person is usually subject to a 30% withholding tax in terms of section 114.2 of the US Income Tax Act (PWC, 2019).	(IBFD, 2019, p. 1.6.2).
Tax treaty network available to investor	79 countries (PWC, 2019).	Seven countries (PWC, 2019)	86 countries (PWC, 2019).	More than 60 countries (PWC, n.d.).	44 countries (IBFD, 2019, p. 1.6.2).
Unilateral avoidance of double taxation	Foreign tax credit equal to the lower of the foreign tax	Foreign tax credit equal to the lower of the foreign tax	Foreign tax credit equal to the lower of the foreign tax	Foreign tax credit is allowed in terms of	A company holding a Global Headquarters

	South Africa	Rwanda	Singapore	United States of America	Mauritius
	incurred and the income tax on the foreign income levied in South Africa in terms of section 6quat(1) as well as a section 6quat(1C) and a dividends tax rebate in terms of section 64N (Legwaila, 2012, p. 35).	incurred and the income tax on the foreign income levied in Rwanda in terms of article 1 of the annex to the Rwandan Tax Law (PWC, 2019)	incurred and the income tax of the foreign income in Singapore in terms of the Singapore Income Tax Act (IBFD, 2019, p. 7.2.6).	section 951(a) of the US Income Tax Act is allowed to be claimed by US shareholders of a controlled foreign company (Pomerleau, 2018, p. 6).	Administration Licence will be exempt from income tax for a period of eight years in terms of section 29(1) and (2) of the Mauritius Income Tax Act. A credit is available for double taxation suffered available in section 77 of the Mauritius Income Tax Act.
Control foreign company legislation	Controlled foreign company legislation is not applicable to headquarter companies in terms of	There is no controlled foreign company legislation in Rwanda (IBFD - Tax Research	There is no controlled foreign company legislation in Singapore (IBFD, 2019, p. 10.4)	There are is controlled foreign companies anti-avoidance legislation in terms of Subpart F of	There is no controlled foreign company legislation in Mauritius (IBFD, 2019, p. 7.3).

	South Africa	Rwanda	Singapore	United States of America	Mauritius
	section 9D(1) (National Treasury, 2010, p. 77)	Platform, 2018, p. 7.4). In addition there is a 0% corporate income tax rate. (PWC, 2019).		the US Income Tax Act. There is a Global Intangible Low Tax Income (section 951A of the US Income Tax Act), the Foreign Derived Intangible Income (in terms of section 250 of the US Income Tax Act).	
Thin capitalisation and transfer pricing legislation	There are not thin capitalisation rules applicable to headquarter companies in terms of section 31(5) (National Treasury, 2010, p. 78).	There are thin capitalisation rules and provision for the Rwandan Revenue Authority to make transfer pricing adjustments but there is a 0% corporate income tax	There are no thin capitalisation rules in Singapore but in instances of abuse general anti-avoidance provisions may be applicable as well as transfer pricing regulations in	There are thin capitalisation rules in the United States of America governed by section 385 of the US Income Tax Act (IBFD, 2019, p. 10.3.2) as well as transfer pricing rules in	There are no thin capitalisation rules in Mauritius (IBFD, 2019, p. 7.3) but there is provision for Mauritius to make transfer pricing

	South Africa	Rwanda	Singapore	United States of America	Mauritius
		rate (PWC, 2019).	terms of section 34F of the Singapore Income Tax Act (PWC, 2019). Singapore businesses are required to do business with related parties at an arm's length (Singapore Economic Development Board, 2019, p. 3.2)	terms of section 482 of the US Income Tax Act (IBFD, 2019, p. 10.2.1.1).	adjustments in terms of section 75 of the Mauritius Income Tax Act (IBFD, 2019, p. 7.2).

In conclusion Rwanda, Singapore as well as Mauritius have the most favourable capital gains tax regimes while South African headquarter companies and headquarter companies in United States of America still possibly suffer capital gains tax on disposal of certain assets. Rwanda is again in the most favourable category in terms of the corporate income tax rate at 0% available to qualifying International Companies, while South Africa has potentially the highest corporate income tax rate at 28%. South Africa, Singapore and Mauritius have the most favourable dividends tax regime with no dividends tax payable by a headquarter company on dividends declared by headquarter companies and the United States of America has the highest rate of dividends tax at 30% of the dividends paid to a non-resident. Singapore has the greatest access to double tax treaties with access to 86 countries while Rwanda grants access to the fewest double tax treaties at seven. South Africa, Rwanda and Singapore have similar and the most favourable unilateral avoidance of double taxation provisions while Mauritius does not allow any foreign tax credit for taxes suffered but companies holding the Global Headquarters Administration Licence will not pay tax in Mauritius for a period of 8 years. South Africa, Rwanda, Singapore and Mauritius all do not have any controlled foreign company legislation applicable to headquarter companies while United States of America based headquarters may pay tax on income earned by controlled foreign companies. There are no thin capitalisation or transfer pricing rules applicable to headquarter companies in South Africa and Rwanda, there are not any thin capitalisation rules applicable in Singapore and Mauritius but the respective revenue authorities have the power to make transfer pricing adjustments. Mauritius will not pay corporate income tax for a period of 8 years of they have a Global Headquarters Administration Licence.

<u>8.2 The table below provides a high level comparison of the non-tax characteristics of the headquarter company tax regimes in South Africa, Rwanda, Singapore, United States of America and Mauritius.</u>

	South Africa	Rwanda	Singapore	United States of America	Mauritius
Economic and political stability (Macro-economic ranking in terms of Global Competitiveness Report 2019 out of 141)	59^{th} (World Economic Forum, 2019, p. 518)	98^{th} (World Economic Forum, 2019, p. 486)	38^{th} (World Economic Forum, 2019, p. 506)	37^{th} (World Economic Forum, 2019, p. 582)	57^{th} (World Economic Forum, 2019, p. 382)

	South Africa	Rwanda	Singapore	United States of America	Mauritius
Infrastructure (Financial system ranking followed by the infrastructure ranking in terms of the Global Competitiveness Report 2019 out of 141)	19th in terms of the financial system and 69th in terms of infrastructure (World Economic Forum, 2019, p. 518).	90th in terms of the financial system and 111th in terms of infrastructure (World Economic Forum, 2019, p. 486).	Second in terms of the financial system and first in terms of infrastructure (World Economic Forum, 2019, p. 506).	Third in terms of the financial system and 13th in terms of infrastructure (World Economic Forum, 2019, p. 582).	27th in terms of the financial and 64th in terms of infrastructure (World Economic Forum, 2019, p. 382).

Obstacles faced by business. The overall ranking in terms of the Global Competitive-ness Report 2019 out of 141 economies and the ranking out of 190 countries in terms of the 2019 Doing Business study	Global Competitive-ness Report 2019: 60th (World Economic Forum, 2019, p. 518). The 2019 Doing Business: 82nd (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).	The Global Competitive-ness Report 2019: 100th (World Economic Forum, 2019, p. 486). The 2019 Doing Business: 29th (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).	The Global Competitive-ness Report 2019: first (World Economic Forum, 2019, p. viii). The 2019 Doing Business: second (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).	The Global Competitive-ness Report 2019: second (World Economic Forum, 2019, p. xiii). The 2019 Doing Business: 8th (International Bank for Reconstruction and Development / The World Bank, 2019, p. 5).	The Global Competitive-ness Report 2019: 52nd (World Economic Forum, 2019, p. 382). The 2019 Doing Business study: 20th (International Bank for Reconstructi on and Development / The World Bank, 2019, p. 5).

	South Africa	Rwanda	Singapore	United States of America	Mauritius
Commercial language	English is the commercial language in South Africa (South African Embassy, 2013).	Kinyarwanda, French and English are the official languages of Rwanda 2009 (United Nations Conference on Trade and Development, 2012, p. 7).	English is the commercial language in Singapore (Singapore Infopedia (A Singapore Government Agency Website), 2016).	English is the official language in the United States of America (Senate and House of Representatives of the United States of America, 2017, p. 161)	English is the official language of Mauritius (Government of Mauritius, n.d.).

Singapore and the United States of America have the most positive political stability while South Africa and Mauritius appear to be struggling with political stability. Again Singapore and the United States of America have the most highly ranked infrastructure as well as financial systems while the lowest ranked country researched as part of the research report is Rwanda. Singapore and United States of America are again the best ranked in terms of the Global Competitiveness Report in 2019 while Rwanda is again the lowest ranked. However, while Singapore and the United States of America are ranked the easiest in terms of doing business in 2019, while Rwanda outranked South Africa in terms of the ease of Doing Business in 2019. All the countries selected have English as the commercial language of the country.

8.3 The table below provides a high level comparison of the anti-avoidance on the headquarter company tax regimes in South Africa, Rwanda, Singapore, the United States of America and Mauritius.

	South Africa	Rwanda	Singapore	United States of America	Mauritius
Anti-avoidance considerations	Member of the Inclusive Framework on BEPS. South Africa was reviewed in terms of Action 6 (preventing treaty abuse) and no recommendations were made after that review. A legal framework is in place for CbC. In terms of effective dispute resolution stage 1 has been reviewed and recommendati	Member of the Global Forum. Not a member of the Inclusive Framework on BEPS (OECD, 2019)	Member of the Inclusive Framework on BEPS. Singapore was reviewed in terms of Action 6 (preventing treaty abuse) and no recommendations were made after that review. The multilateral instrument is in force. (OECD, 2019)	Member of the Inclusive Framework on BEPS. The United States of America was reviewed in terms of Action 6 (preventing treaty abuse) and no recommendations were made after that review. A legal framework is in place for CbC. In terms of effective dispute resolution stage 1 has been reviewed and recommendati	Member of the Inclusive Framework on BEPS. Mauritius was reviewed in terms of Action 6 (preventing treaty abuse) and no recommendations were made after that review. A legal framework is in place for CbC. In terms of effective dispute resolution a review is to be scheduled.

	on have been made. The multilateral instrument has been signed. (OECD, 2019).			on have been made. The multilateral instrument has not been adopted. (OECD, 2019).	The multilateral instrument has been approved. (OECD, 2019)

South Africa, Singapore, the United States of America and Mauritius are very similar in terms of the commitment to anti-avoidance while Rwanda is not a member of the Inclusive Framework on BEPS.

8.4 The table below provides a high level comparison of the administration tax burden placed on the headquarter company tax regimes in South Africa, Rwanda, Singapore, the United States of America and Mauritius.

	South Africa	Rwanda	Singapore	United States of America	Mauritius
Administrative burden tax placed on companies (The ranking in terms of the World Bank Doing Business study out of	46th and an average of 210 hours are spent paying taxes per year (International Bank for Reconstruction and Development / The World	35th and an average of 95.5 hours are spent paying taxes a year (International Bank for Reconstruction and Development / The World	8th and an average of 64 hours are spent paying taxes per year (International Bank for Reconstruction and Development / The World	37th and an average of 175 hours are spent paying taxes per year (International Bank for Reconstruction and Development / The World	Sixth and an average of 152 hours are spent paying taxes per year (International Bank for Reconstruction and Development / The World

190 is provided)	Bank, 2019, p. 203)	Bank, 2019, p. 199)	Bank, 2019, p. 202).	Bank, 2019, p. 212)	Bank, 2019, p. 188).

Mauritius was ranked sixth in terms of paying taxes by the World Bank Doing Business study in 2019 which is the best ranked country in this research report while South Africa received the lowest ranking in terms of the ease of paying taxes. There is no exchange control in Rwanda, Singapore or Mauritius while South African headquarter companies are treated as non-residents are the purpose of exchange control regulations.

Chapter 9: Conclusion

South Africa has identified the need to encourage economic growth and increase foreign direct investment (Davis Tax Committee, 2018, pp. 2-12).

A tax incentive could attract foreign direct investment but the design of the incentive should be carefully considered (Davis Tax Committee, 2018, p. 88). There are, however, both tax and non-tax factors that multinational companies consider when investing in a country (OECD, 2008, p. 2).

When policy makers are evaluating a tax incentive the compliance burden that will be placed on the taxpayer also needs to be considered (OECD, 2006, p. 112). BEPS should be taken into account as well when assessing a tax incentive. (Davis Tax Committee, 2018, p. 88)

Governments and policy makers should not just rely on decreasing the tax burden in a country in an effort to increase foreign investment. There may be a number of other reasons why the country is not an attractive destination for foreign direct investment. Governments should also focus attention on potentially creating a stronger economic environment and a more skilled workforce (OECD, 2006, p. 115).

In addition, special incentives offered to foreign investors coming into a country may actually increase the compliance cost of a project if the incentives are complex. At the same time, by offering incentives, a country may be losing out on tax revenue it could be using to increase infrastructure, economic stability as well as skills and education in a country which would increase the attractiveness of a country for foreign investment (OECD, 2006, p. 115).

An increased tax incentive may not equate to increased investment in a country. In other words, the level of investment would be unaffected by the tax incentive offered which means that a country is therefore, giving up an opportunity for increased tax revenue without benefiting from increased investment (OECD, 2006, p. 115).

The headquarter company tax incentives offered by the selected jurisdictions summarised in this research report were varied from the International Companies in Rwanda and Mauritius Global Headquarters Administration Licence holders have a zero percentage corporate income tax rate in terms of article 1 of the Rwandan Investment Law and section 29(1) and (2) of the Mauritius Income Tax Act respectively. While Singapore offers a reduced corporate income tax rate of either 5% or 10% of certain income in terms of section 5D of the Singapore Income Tax Act, no dividends tax levied on dividends declared by Singapore companies and an absence of controlled foreign company legislation. Companies in the United States of America are taxed at 21% in terms of section 26 of the US Income Tax Act and have controlled foreign company legislation that include income into the income of the US resident shareholder in terms of section 951A and 250 of the US Income Tax Act and dividends are subject to 30% withholding tax when paid to non-residents in terms of section 114.2 of the US Income Tax Act. The taxable income of South African headquarter companies are taxed at 28% but controlled foreign company anti-avoidance rules are not applicable and dividends are not levied on a dividend declared by the headquarter company. There are therefore jurisdictions with more attractive tax incentives.

There are also non-tax factors that may make other jurisdictions more attractive locations for a headquarter company opposed to South Africa. The United States of America and Singapore consistently ranked higher than South Africa in terms of macro-economic stability, financial system, infrastructure and obstacles faced by business.

South Africa also had the highest administrative burden placed on taxpayers out of the selected jurisdictions and the highest average hours spent paying taxes.

In terms of anti-avoidance considerations South Africa, Singapore, The United States of America and Mauritius are all members of the Inclusive Framework on BEPS.

In conclusion, a review of the headquarter company and introduction of attractive tax incentives may attract foreign direct investment but non-tax factors should also be considered and improved if South Africa is to attract foreign direct investment.

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