

PART A

Answer-to-Question-1

1.1 A CFC is defined in s 9D of the ITA as any foreign company where more than 50% of the total participation rights are directly or indirectly held by a person or persons residents other than headquarter companies OR where the financial results of the foreign company is consolidated in terms of IFRS 10 of a company that is resident. (s9D(1)(b)).

Participation rights are voting rights/shares or the ability to influence the vote substantially where no other shareholders have more than 10% of the voting rights.

A person is defined as an individual, company or trust and the Z Trust does not mitigate the SACo from including the income under CFC rules.

SACo is a resident of SA and is taxed on its income on a worldwide basis. SACo is a MNE as defined. SACo is a beneficiary of Z Trust who in turn holds shares in Xco (100%) through 100% in Yco. SACo owns more than 50% of the participation rights in Z trust (100%), Xco is a CFC.

Xco in turn holds 40% in BrazCo which is below the 50% participation requirement, however the company is included under IFRS10 in the AFS and therefore a CFC. It can further be argued that if no other shareholder holds more than 10% of the voting rights in BrazCo, that SACo will have sufficient influence over the company to have the majority participation rights.

Xco holds 55% of Colco which meets the 50% participation rights requirement. And 100% of OpCo which also does.

Based on the facts, All of the companies are CFCs because they are consolidated into SACos AFS under IFRS 10 and SACo holds the majority of the participation rights indirectly through the trust structure.

1.2 Attribution of profits of a CFC may be exempt if the company is in a high tax jurisdiction of at least 67,5% of SA CIT (27%) or if it meets the foreign business establishment definition (FBE). The facts do indicate that the income is highly taxed, in fact Country Z has no tax on the

trust income distributed to SACO.

Therefore we have to look at the FBE to see if the profits may be excluded. Certain transactions will have to be included in the IT10B return under the anti-divisionary rules even if the FBE definition is met. These transactions include related party transactions between connected persons. Further dividends and interest income may be excluded if a final withholding tax was applied to these income streams in accordance with the applicable DTA.

When looking at the FBE definition we have to consider relevant case law on the matter, most recently the constitutional court ruled in favour of *Coronation v C:SARS* where the definition of FBE was in dispute. The court held that one must look at the primary function of the business activities to determine if even when certain activities are contracted out, the FBE still has substance.

A FBE is defined in s9D as a fixed place of business located in a country other than SA where the business is conducted through one or more offices, shops or factories, the place is suitably staffed with on-site managerial personnel and operational who conduct the primary operations, the place of business is suitably equipped for the primary operations and the business is located outside of SA solely or mainly for a purpose other than reducing tax.

Considering the facts, Xco tax rate is 10%, no high tax exemption, the FBE applies as follows:

Xco has rented office and employees one person an accountant (not primary operations). The directors meet online, Person A takes orders from directors more than half time in SA thus POEM will be in SA not Country X and FBE test fails even when considering *Coronation*. No factory, warehouse or shop present.

Yco has no staff, but a CIT rate of 25% which is more than the high tax exemption requires, and directors meet in Country Y thus POEM should be there. The high tax exemption applies but FBE fails, only one has to apply.

Based on the facts that BrazCO, ColCO and OpCo has warehouse, factories in the jurisdictions, the FBE rule seems to be met even sales to related

parties are not significant and the Coronation principal holds. No attribution necessary here. SA company (OpCo) already taxed in SA and thus no included irrespective of FBE/High tax exemption.

The attribution of the companies to SACO will be based on the percentage ownership. For instance BrazCo will be 40% of the ownership of SACo in Xco, ColCo 55% of ownership in Xco and 100% of ownership of Xco and 100% of Yco. Bearing in mind that this will be reduced depending on the rights it has as a beneficiary in Z Trust. Thus the calculation should look something like: 100% Z trust x 100% Yco x 100% Xco x 55% Colco.

1.3 SA has exchange control regulations that are overseen and administered by FinSurv. Transactions below R5 Billion may be approved by an authorised dealer (AD) as regulated by SARB and FinSurv. Most big banks in SA are ADs. For transactions above R5 Billion, the AD will have to apply to FinSurv for approval.

There are certain requirements and documentation that SACo will have to provide the AD to process international transactions such as the financial statements, what the funds will be used for, where the funds were obtained and where the funds will be used (which country).

The exchange rules only apply to SA residents and since SACo is incorporated in SA, it is a resident of SA and must adhere to the exchange control regulations.

Certain intra group transactions are excluded from the exchange control procedures to ease trade, especially where there is sufficient substance in SA.

Answer-to-Question-2

2.1 In 2001 SA switched from a sourced based jurisdiction to residence based jurisdiction. However source rules remain relevant both for outbound and inbound transactions. This is especially relevant to foreign investment and foreigners doing business in SA as they are only taxed on the income that is from a SA source. This includes territorial

waterways.

Source of income is determined either by case law or by the source rules in the ITA under S9. Case law is important for interpretation for instance in COT v Black it was stated that one should look at the domination cause of the origin of the income, i.e. what gave rise to the income being received and CIR v Nell gave us the apportionment rule where it can be apportioned should there be more than one dominate cause. Originating cause was determined in Unilever and Lever Brothers case where you have to look where the services are performed. Also see COT v Shein.

2.2 The source rules state where a resident pays interest and royalties SA may tax. This is based on where the know-how is used (consumed) and where the debts funds are used.

s 9(2)(b)(i) constitutes interest as defined in s24J of the ITA where it is attributable to a person that is resident who incurred payment unless attributable to a PE outside of SA. As stated a PE does not apply and thus SA has taxing rights. Under s 50B(1)(a)(i) a 15% withholding tax is payable by the resident to SARS on the last day of the month after which the payment of interest was made is due. The Foreign debt bearer does not have to register in SA as the withholding tax is a final tax. However the rate may be reduced if the foreign debt bearer provides in writing that Art 11 of the DTA lowers the rate to 10% if it is the beneficial owner. If the lower rate was not applied, the foreigner will have to register with SARS and apply for a recovery of the funds.

s 9(2)(c), (d), (e), and (f) deals with Royalty or know-how payments. s 9(2)(c) of the ITA constitutes a royalty that is incurred by a person that is resident and is not attributable to a PE. As stated a PE is not applicable. Under s 49B(1)(a)(i) a 15% withholding tax is payable by the resident to SARS on the last day of the month after which the payment of interest was made is due. The Foreign debt bearer does not have to register in SA as the withholding tax is a final tax. However the rate may be reduced if the foreign debt bearer provides in writing that Art 12 of the DTA lowers the rate to 0% if it is the beneficial owner. This is because Art 12 (1) states that the royalties shall be taxable only in the state which they are beneficially owned. Thus SA does not have taxing rights if the DTA is applicable. If the lower rate was not applied, the

foreigner will have to register with SARS and apply for a recovery of the funds.

DTA relief is available in the residence state under Art 23 and MAP is available under Art 25 if the taxpayer does not agree with the application of the DTA.

2.3 As stated above the concept of source was determined in case law Shein and Unilever and Lever Brothers as where the services are performed not where the income comes from/is paid. As the services are rendered in SA, SA has taxing rights and not the other jurisdiction.

SA Source law under s9 only deals with services from public or government entities (s9(h)).

Since no DTA is applicable we cannot consider PE requirements although this would be moot as the foreign company has no presence in SA. Even under AB LLC and AD Holdings, the foreign company has no presence here. The employees are SA residents working for the SA company and questions is where the services are performed by the SA company to the foreigner. The Answer is in SA and SARS will most definitely tax the income. As there is no DTA one cannot argue tax in contravention of the DTA and if no relief is given double taxation will incur.

Under the current conditions s 6quat should be applied by the SA company on the 10% withholding tax. The SA company should ask for the supporting documentation and invoice as proof to SARS. s 6quat provides unilateral relief to double taxation. Under the section the formula $X = A \times B / C$ will apply where A is the normal foreign taxes paid (10%) times foreign income divided by total taxable income. This should ensure that a 27% tax rate is maintained on the income and where it is restricted it may be rolled over to the following year.

2.4 Services performed in SA and thus Art 5 and Art 7 (PE) is not applicable. The OECD model does not have a technical services article and the employment article under Art 15 or 21 will apply. As these are business profits and assuming article 21 is applicable the income is only taxable in SA. The SA company must apply for a refund to Eswatini under the DTA, they should also in writing apply to the company withholding the tax that the DTA rate is applicable (0%). In this case

Art 23 credits must be provided by SA as residence country and if Eswatini does not refund the taxes, the SA company can apply to SARS for MAP under Art 25.

Answer-to-Question-3

PART B

3.1 The amount transferred is below R2 million and John does not have to apply for AIT with SARS, only application through AD as exchange control provisions are applicable.

As John is a SA resident CFC rules will be applicable under s9(D). He and his family is the sole beneficiaries of the Ocean View Trust and therefore meets the 50% participation requirement.

In terms of the companies only ABC meets the 50% participation requirement and the facts do not state who consolidates the AFS. The shares are also not listed as the facts go. The shares are held by unrelated parties and it is not stated if these parties are South African as the act allows for collective ownership.

Therefore CDCo and EFCo does not meet the CFC definition and attribution of profits are not required. However this should be reviewed annually.

Profits from ABC and the trust must be imputed into the beneficiaries income under CFC income on the ITR14 and a IT10B submitted.

3.2 CFC profit attributions will be exempt if in a high taxed jurisdiction which is not the case, Jersey is considered a tax haven. Or if the FBE requirement as explained in question 1 above is met.

A FBE is defined in s9D as a fixed place of business located in a country other than SA where the business is conducted through one or more offices, shops or factories, the place is suitably staffed with onsite managerial personnel and operational who conduct the primary

operations, the place of business is suitably equipped for the primary operations and the business is located outside of SA solely or mainly for a purpose other than reducing tax.

The trust does not meet the FBE definition as the place of effective management is in South Africa. The trust has no operations in Jersey other than holding the shares and can be considered a conduit if no discretion is allowed to distributions and the beneficial owner is Mr John (Swiss Swaps). However it does seem that trust is the beneficial owner as the trust did not distribute any dividends to the beneficiaries (Prevost).

The dividends may be exempt from inclusion in income under CFC if a final withholding tax was applied, however this information was not given.

This is a non-resident trust and s 25 may impose additional restrictions on the transactions between the non-resident trust and SA beneficiaries.

3.3 s31 of the ITA speaks to transfer pricing provisions along with Article 9 of the DTA. A related party transaction is one where at least 20% control exists, the Trust is 100% owned by him and his family and thus a related party. These provisions ensure that the transaction is at arm's length terms (as would be with a unrelated party) in both Capital and interest proportion. As mentioned below S23M thin capitalisation may also be applicable.

If SARS finds that loan is not at arm's length it may make a primary adjustment under s31(2) to bring the interest/capital up to arm's length and then also apply a secondary adjustment under s31(3) which will be a deemed donation of 20% on difference of the amount charged and what should have been charged.

TP documentation is not required as the transaction is below R100 million (Local File) and R10 billion (CBCR). However John should document how the terms were set.

3.4 S23M and S7(c) applies to interest free loans. S23M makes sure under thin capitalisation rules that interest deductions are limited, not

applicable here. S 7(c)(3)(a) of the ITA speaks to interest free loans to trust specifically where it reclassifies the difference of the repo/SARS interest rate and the interest rate charged as a donation for the year. A connected person is defined as where at least 20% ownership threshold is met (This is the case (s7(C)(ii)(a)). This means 20% of the deemed interest will be payable to SARS in the 2026 year of assessment (S7(C)(4)) and a IT3t needs to be submitted to SARS to declared the loan values.

Answer-to-Question-6

PART C

6.1 For the 2024 year of assessment Ethan is a ordinary resident (born here) of SA and taxed on his world wide income. There is no DTA with country P and Art 4 is not applicable.

Under the physical presence test under section 10(1)(o) of the ITA, Ethan must be out of the country for a conitious period of 60 days and 183 days in total. Ethan does not meet this as he is 3 days short. Thus Ethan is taxed in SA on his R1,2m income. No double tax arise as country P does not tax the income.

For the 2025 year of assessment Ethan does meet the critera as stated above for Section 10(1)(o) and thus he is entitled to the exclusion of R1,25m for the year. The amount above R250000 (R1,5m -1,25m) will be taxable in SA. Downing determined that actual tax paid is not a requirement for tax relief to be applied as long as it was subject to taxation.

No foreign tax credits are avaible to relieve taxation as Country P did not levy tax. If foreign tax was paid, s6quat could also provide relief but severly limited under the formula.

6.2 Under the 2026 year of assessment assuming Ethan meets all the requirements, S9H will be applicable (SA exit tax). Ethan will have to pay capital gains tax on all his SA assets as at 31 Dec 2025 the day

before ceasing residency.

The exit tax will be calculated at his 40% inclusion rate and he will have his R40000 abatement (now R50000).

For the primary residence he will also have his R2million abatement (now R3million). Since the gain is R1,5m (R3m-R1,5m) the full capital gain will be excluded.

The apartment is a secondary home and he will have no abatement except the annual allowance. He will thus have a capital gain inclusion of R3,96m (R8m-R4m-R0,04). Included at 40%.

The shares will also trigger a capital gain of R300000 (R500000-R200000), included at 40%.

The foreign shares will also be taxable since SA residents are taxed on worldwide income, however he will be able to apply s6quat foreign tax credits for any foreign UK taxes suffered. The gain is calculated as R600000 (R1m - R400000). Included at 40%. Tax credits will be limited to foreign taxes paid and subject to the formula $X = A \times B / C$ will apply where A is the normal foreign taxes paid times foreign income divided by total taxable income.

The retirement fund annuity has specific rules where the funds are locked in for a minimum period before it may be withdrawn. The fund administrator is responsible to withhold the applicable taxes at the withdrawal rate not retirement rate as Ethan is below retirement age.

The personal savings is monetary funds as defined and not taxable.

The motor vehicle is a personal use asset and excluded from taxes.

Under s25 of the ITA, Ethan will now be considered a non-resident beneficiary of the trust and thus any distributions made by the trust to him will be taxable in the trust and not in his hands.

Since the Trust is the owner of the SA property, no CGT will arise on this amount and the base cost will stay R5m should the trust ever sell it.

6.3 As stated above, s25 will apply and the trust will be taxed not Ethan on the rental income which is received from SA property.

For the 2027 year of assessment:

Since the income is recieved only from immovable property both the DTA under Article 6 and the ITA under s9(j) only SA has taxing rights. Source country. Thus Ethan should not be taxed in Country Q. However if the residence state does tax, credits must be provided under Art 23 of the DTA.

Answer-to-Question-8

8.1 GloBE was introduced into SA law applicable from 1 January 2024 where returns are do 18 months after year end and the first GIRs are being filed now (filing season 1-30 June 2026).

The GMT (Global Minimum Tax Act) and GMTA (Global Minimum Tax Administration Act) is now law in SA to ensure MNEs (Multinational enterprices) pay at least 15% minimum effective tax rate.

The Scope for applicable MNEs are EUR750 million for 2 out of the past 4 financial years and are inline with the OECD GloBE model rules.

The ETR must be calculated based on adjusted profits starting with the IFRS profit and working back from there adjusting for IFRIC 23, IAS 12 and other provisions and legislation as stated in Article 4 of the OECD Model rules.

8.2 IPE (Intermediate Parent Entity)
CETT (Constitute Parent Entity top up tax)
POPE (Partically owned Parent Entity)
DPE (Designated Parent Entity)
UTPR (Ultimate Parent Entity Top Up Tax)

8.3 IIR (Income Inclusion Rule)

QDMTT (Qualified Domestic Top Up Tax)

UTPR (Ultimate Parent Entity Top Up Tax)

These taxes work on a top down approach where you first start with the QDMTT, SA enacted this to ensure it collects additional taxes from companies in taxhavens. Then you apply the IIR which is pay by a designated entity in a country with GloBE but no QDMTT or where the QDMTT did not catch all the taxes payable. And then lastly you use the UTPR under the UPE if the ETR is still below 15%. SA did not enact the UTPR which in line with the OECD recommendations if a QDMTT is enacted.

SIBE (Substance Income Based Exclusion)

This is a transitional safeharbour rule where 5% of the qualifying employee tax costs maybe deducted as well as 5% of the carrying value of the tangible assets in the country applicable. These are economic contribution exclusions to relieve the burden on MNEs who are contributing to the economy of the country of operations.

Another transitional safeharbour rule is if the county of the UPE applies CIT of 20% or higher which SA does at 27%.