

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 2.12 – SOUTH AFRICA OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

It must first be determined whether each entity constitutes a controlled foreign company (“CFC”) under section 9D of the South African Income Tax Act 58 of 1962, as amended (“ITA”).

A CFC is broadly a foreign company in which South African tax residents directly or indirectly hold or exercise more than 50% of the participation or voting rights, or whose results are required to be included in a South African resident’s consolidated financial statements under International Financial Reporting Standards (“IFRS”).

The Z Trust, being a non-resident trust, is not a CFC because it does not constitute a “company” under the ITA.

Opco is a company as defined, but is South African tax resident and therefore cannot be a CFC because it is not a “foreign company”.

XCo was incorporated in Country X and is therefore a “company” for South African tax purposes. However, it will only be a CFC if it is a “foreign company”, which it will not be if it is South African tax resident.

Although incorporated in Country X, XCo arguably has its place of effective management (“POEM”) in South Africa. Following *Oceanic Trust Co Ltd No v CSARS*, South Africa’s interpretation of POEM is consistent with the OECD Commentary. As most directors’ meetings occur in South Africa and employee A takes instructions from the directors, the key management and commercial decisions, and top-level influence over the business, appear to occur in South Africa. XCo is therefore likely to have its POEM in South Africa.

XCo may consequently be tax resident in both Country X and South Africa. However, the proviso to the definition of “resident” in the ITA excludes a person who is exclusively deemed to be resident in another country under a tax treaty.

The South Africa–Country X treaty follows the OECD Model Convention. Article 4(3) provides that where a company is dual resident, its residence is determined through the mutual agreement procedure under Article 25, having regard to factors including POEM and place of incorporation, together with the factors in paragraphs 25.1–25.5 of the OECD Commentary. Depending on the conclusion reached regarding these factors, XCo may or may not be a South African tax resident and therefore a CFC.

YCo is not South African tax resident because it is both incorporated and effectively managed in Country Y. Although South African residents hold no participation or voting rights in YCo, its results must be consolidated into SACo’s IFRS financial statements. YCo is therefore a CFC under section 9D.

For the same reason, BrazCo and ColCo are also CFCs. Accordingly, YCo, BrazCo and ColCo (and potentially XCo) fall within the CFC regime.

Part 2

Section 9D generally requires South African residents to include in their income an amount calculated by reference to the “net income” of a CFC, unless an exemption applies.

A CFC’s net income is broadly its taxable income calculated as if it were a South African taxpayer, based on its foreign tax year ending during the resident’s year of assessment. Where CFC status arises through participation or voting rights, the amount attributed corresponds to the resident’s proportionate interest. Where CFC status arises because the foreign company is consolidated into the resident’s IFRS financial statements, the relevant amount is the amount consolidated in those financial statements.

As YCo, BrazCo and ColCo (and potentially XCo) are CFCs by virtue of consolidation, the amount attributed to SACo depends on the operating results included in SACo’s financial statements: 100% of YCo and potentially XCo, 40% of BrazCo and 60% of ColCo.

Two principal exemptions may reduce a CFC’s net income to zero: the high-tax exemption and the foreign business establishment (“FBE”) exemption.

Under the high-tax exemption, no net income is attributed where the foreign taxes paid by the CFC are at least 67.5% of the South African tax that would have been payable had the CFC been South African tax resident. With South Africa’s corporate tax rate at 27%, the relevant threshold is 18.225%.

The FBE exemption applies where all receipts and accruals are attributable to a qualifying FBE. Section 9D defines an FBE broadly as a fixed place of business outside South Africa, maintained for at least one year, through which the CFC conducts its business, and which is suitably staffed, equipped and facilitated to conduct its primary operations. The location must also be maintained mainly for a purpose other than avoiding or postponing South African tax. *Coronation Investment Management SA (Pty) Ltd v CSARS* is relevant to the interpretation of these requirements.

The FBE exemption is subject to anti-diversionary rules. Relevant here, income attributable to an FBE may nevertheless be included where the CFC sells goods to a non-connected resident after purchasing those goods from connected South African residents, unless those purchases constitute an insignificant portion of its total goods.

YCo is unlikely to qualify for the FBE exemption because it lacks staff and premises. However, it should qualify for the high-tax exemption because Country Y's 25% corporate tax rate exceeds the 67.5% threshold relative to South Africa's 27% rate.

The tax rates applicable to BrazCo and ColCo are unknown. However, both operate factories and manufacture products locally, making the FBE exemption likely. Although BrazCo purchases goods from Opco for resale in Brazil, those purchases are insignificant relative to its total sales and therefore the relevant anti-diversionary rule should not apply.

Accordingly, although YCo, BrazCo and ColCo are CFCs, their net income should not ultimately be attributed to SACo.

If XCo is found to be a CFC, it will not qualify for the high-tax exemption because Country X's tax rate is only 10%. It may also fail the FBE exemption because it is minimally staffed and has no premises. Its net income could therefore be attributed to SACo.

Part 3

Z Trust distributes amounts to SACo derived from dividends received from YCo, which in turn derives profits from dividends and interest received from operating companies, including South African tax-resident Opco. This creates a potential "loop structure" for South African exchange control purposes.

A loop structure is broadly an offshore structure established or funded by a South African resident which, through reinvestment into South Africa or the Common Monetary Area, acquires shares, loan accounts or other interests in a South African resident company or asset.

SACo arguably has such an indirect interest because it is a beneficiary of Z Trust and has indirectly invested in South Africa through YCo. Historically, Regulation 10(1)(c) of the Exchange Control Regulations prohibited transactions intended to export capital from South Africa, effectively prohibiting such structures in many circumstances.

This prohibition was subsequently relaxed by Circular 1/2021, subject to conditions. Although the Circular expressly addresses individuals, companies and private equity funds and does not specifically refer to trusts, the general view is that its intention was also to relax the prohibition in respect of trusts.

On a strict reading of Circular 1/2021, prior approval is not required: following implementation, the relevant "Authorised Dealer" must report the transaction to the Financial Surveillance Department. SACo should therefore place its indirect interest in Opco, through Z Trust and YCo, on record with its authorised dealer and comply with the applicable ongoing reporting requirements to mitigate exchange-control risks and penalties.

Question 2

Part 1

The concept of source remains relevant to South African tax law for two principal reasons.

First, South African tax residents are taxed on their worldwide income, whereas non-residents are generally taxed only on income from a South African source and South African-sourced capital gains. This is reflected, among other things, in the gross income definition applicable to non-residents and the withholding tax regimes applicable to interest and royalties.

Second, source is relevant under section 6quat of the Income Tax Act because a foreign tax credit is generally available only where the foreign tax relates to income from a foreign source.

Section 9 of the Income Tax Act determines the source of certain specified types of income. Where section 9 does not apply, the source must be determined with reference to case law. The established approach is that source is not necessarily the place where payment is made or received, or where a contract is concluded. Rather, the focus is on the real and substantive origin of the income-producing activity.

The leading authority is *CIR v Lever Brothers & Unilever Ltd*, which established the “originating cause” test. The source is the proximate and effective cause of the income, rather than a secondary or incidental factor. Thus, employment and service income generally has its source where the services are rendered; business income where the relevant operations are conducted; and interest or dividends where the relevant capital is employed.

Part 2

A non-resident is generally taxable in South Africa only on South African-sourced income.

Section 9(2)(b) provides that interest is South African sourced where it is incurred by a South African resident and is not attributable to a permanent establishment outside South Africa, or where it is received or accrued in respect of funds used in South Africa. Section 9(2)(c) similarly provides that royalties are South African sourced where they are incurred by a South African resident and are not incurred by a permanent establishment outside South Africa.

On the facts, both the interest and royalty income are therefore South African sourced. However, section 10(1)(h) exempts interest accruing to a non-resident company that does not have a permanent establishment in South Africa. Section 10(1)(l) similarly exempts South African-sourced royalty income accruing to a foreign company where the income is not effectively connected with a South African permanent establishment.

Accordingly, although the interest and royalties are South African sourced, the non-resident will not be subject to ordinary South African income tax on these amounts.

South Africa does, however, impose withholding tax on South African-sourced interest and royalties paid to non-residents. The applicable rate is generally 15%, payable when the amounts become due and payable. The South African payer would therefore generally be required to withhold 15%.

As regards registration, the applicable SARS Government Gazette requires certain foreign companies to register as taxpayers, including those carrying on trade through a South African permanent establishment, deriving South African-sourced income, or deriving certain capital gains. It also specifically requires registration where a non-resident derives South African-sourced interest that is not exempt under section 10(1)(h).

Here, the foreign company's interest and royalty income is exempt under sections 10(1)(h) and 10(1)(l), and it has no South African permanent establishment. Accordingly, it should not have an income tax registration obligation merely as a result of these receipts.

Part 3

The South African company is South African tax resident and is therefore taxable on its worldwide income. The full gross amount of the fees received from the foreign customer must be included in gross income before deducting the 10% foreign withholding tax.

Allowable expenditure may then be deducted under the general deduction formula in section 11(a), read with section 23(g), to determine taxable income. The resulting taxable income is generally subject to the 27% corporate tax rate, subject to applicable losses and other provisions.

Section 6quat provides relief for foreign taxes. Section 6quat(1A) permits a foreign tax credit, while section 6quat(1C) permits a deduction in appropriate circumstances. The taxpayer cannot simply elect between the two. The source of the income is relevant: where the income is from a foreign source, a credit may be available; where it is from a South African source, the foreign tax may instead qualify for a deduction, subject to the statutory limitations.

The source of income from accounting services is not specifically determined by section 9. Case law therefore applies, particularly the originating cause test in *CIR v Lever Brothers & Unilever Ltd*. In *COT v Shein* 1958 FC, the court confirmed that the source of service income is generally the place where the services are actually performed, rather than where payment is made or received or where the contract is concluded.

Since all employees perform the accounting services from the company's premises in Johannesburg, the services are performed in South Africa. The income therefore has a South African source.

Consequently, the South African company cannot claim a section 6quat(1A) foreign tax credit for the 10% foreign withholding tax. It may instead seek a deduction under section 6quat(1C). The deduction is limited to the taxable income derived from the relevant foreign income. An accurate allocation of both direct and indirect expenses is therefore required to determine the taxable income attributable to these activities.

Thus, source is critical in determining whether the foreign tax qualifies for a credit or only a deduction.

Part 4

The analysis changes where the foreign customer is resident in Eswatini because South Africa has a double tax agreement ("DTA") with Eswatini containing a specific technical fees article.

"Technical fees" are defined broadly as payments for technical, managerial or consultancy services, other than payments to an employee of the person making the payment. The accounting services therefore fall within this article.

The article provides that such fees are deemed to arise in the Contracting State where the payer is resident. As the customer is resident in Eswatini, the fees are deemed to arise in Eswatini for purposes of the DTA.

Accordingly, although the services are physically performed in South Africa and would ordinarily have a South African source under domestic law, the DTA allocates the relevant taxing rights differently. The Eswatini withholding tax is therefore foreign tax imposed on income treated as arising outside South Africa under the treaty.

The South African company may consequently seek relief under section 6quat(1A) by claiming a foreign tax credit for the 10% Eswatini withholding tax, subject to the applicable section 6quat limitations.

The key distinction is therefore that, in the non-DTA scenario, the domestic source rules result in South African-source income and only a potential deduction for foreign tax, whereas the Eswatini DTA's technical fees article deems the income to arise in Eswatini, enabling the taxpayer to seek a foreign tax credit.

PART B

Question 3

Attribution of Foreign Dividends to John and the Participation Exemption

An interest-free loan may constitute a “donation, settlement or other disposition” for South African tax purposes and may therefore trigger the attribution provisions where income is generated as a result of the loan funds being used.

Amounts received by or accrued to the Ocean View Trust (“Trust”) by reason of or in consequence of the interest-free loan may, to the extent of the interest foregone that would have constituted income had the Trust been South African tax resident, be attributed to John. The meaning of “by reason of” was considered in CIR v Widan 1955 (1) SA 226 (A). Accordingly, foreign dividends distributed by the Jersey-resident companies acquired by the Trust may be attributed to John where they were derived by the Trust “by reason” of the interest-free loan.

A foreign dividend received by a South African tax resident from a foreign company is generally exempt where the resident holds at least 10% of the total equity shares and voting rights in the foreign company. This is the participation exemption. Therefore, foreign dividends attributed to John from the Trust should be exempt to the extent that the Trust would have qualified for the participation exemption had it been South African tax resident when it received the dividends.

However, an anti-avoidance provision prevents the participation exemption from applying where a foreign trust, together with connected persons, holds more than 50% of the participation or voting rights in the foreign company paying the dividend.

Where the participation exemption does not apply, a natural person may nevertheless qualify for a partial exemption of 25/45 of the foreign dividend. Thus, only 20/45 of the dividend is effectively taxable where John is subject to tax at the highest marginal rate.

Applying these rules:

- CDCo: The Trust holds more than 10% but less than 50% of the shares. The participation exemption therefore applies, and the foreign dividends attributed to John should not be taxable.
- ABCo: The Trust holds more than 50% of the shares. The anti-avoidance provision prevents the participation exemption from applying. John may nevertheless claim the 25/45 partial exemption.
- EFCo: The Trust holds less than 10% of the shares, so the participation exemption does not apply. John may again claim the 25/45 partial exemption.

Accordingly, the dividends from ABCo and EFCo will effectively be taxable in John’s hands at 20%, assuming he is subject to South African tax at the highest marginal rate.

Transfer Pricing, Donations Tax and Attribution

Because John is a South African resident making an interest-free loan to a non-resident connected person, namely the Jersey Trust, the loan constitutes an “affected transaction” under section 31 of the Income Tax Act and is subject to South African transfer pricing rules. Crookes Brothers Ltd v CSARS [2018] ZAGPHC 311 considered the application of these rules to an interest-free loan to a non-resident connected person.

Under section 31, if the income or gains attributed to John as a result of the interest-free loan are less than the arm’s-length return that would have arisen on an equivalent loan, the difference may be included in John’s income for the 2026 year of assessment. This constitutes the primary transfer pricing adjustment.

The primary adjustment also gives rise to a secondary adjustment: the amount included in John’s income is treated as a donation and is therefore potentially subject to donations tax at 20% or 25%.

Section 7C provides a further anti-avoidance rule for interest-free or low-interest loans to trusts. Where John makes a loan to the Trust at an interest rate below the official rate applicable to the currency of the loan, the difference between the official rate and the actual interest charged is generally deemed to be a donation by John. The deemed donation is subject to donations tax at 20% or 25%.

However, section 7C does not apply where the loan has already been subject to a transfer pricing adjustment under section 31. Therefore, where section 31 applies and results in an inclusion in John’s income, section 7C is specifically excluded.

Conversely, if section 31 does not apply—for example, because the attribution provisions already eliminate any tax benefit arising from the failure to charge interest—section 7C may apply. John would then be deemed to have made a donation equal to the interest calculated at the official rate on the interest-free loan, with the deemed donation subject to donations tax at 20% or 25%.

In summary, the interest-free loan potentially triggers three interrelated regimes: attribution, which may bring the Trust's foreign dividends into John's income; section 31 transfer pricing, which may require an arm's-length interest adjustment and secondary donation; and section 7C, which may deem the foregone interest to be a donation if section 31 does not apply.

Question 4

Part 1

The GAAR in Part IIA of the Income Tax Act (“ITA”) applies to an impermissible avoidance arrangement. Section 80L defines “arrangement” broadly to include any transaction, operation, scheme, agreement or understanding, whether enforceable or not, including all steps or parts thereof and arrangements involving the alienation of property.

Under section 80A, an arrangement is an impermissible avoidance arrangement where its sole or main purpose is to obtain a tax benefit and one or more statutory requirements are met.

In a business context, the arrangement must either:

- be entered into or carried out in a manner not normally employed for bona fide business purposes, other than obtaining a tax benefit; or
- lack commercial substance, wholly or partly, having regard to section 80C.

Outside a business context, the arrangement must be entered into or carried out in a manner not normally employed for a bona fide purpose other than obtaining a tax benefit.

In any context, the arrangement may also qualify where it creates rights or obligations not normally created between arm’s-length parties, or where it directly or indirectly results in the misuse or abuse of the ITA, including the GAAR provisions themselves.

Section 80C identifies circumstances indicating that an arrangement lacks commercial substance. These include where the legal substance or effect of the arrangement as a whole is inconsistent with, or significantly differs from, the legal form of its individual steps.

It also includes the presence of:

- round-trip financing under section 80D;
- an accommodating or tax-indifferent party under section 80E; or
- elements that offset or cancel one another.

Section 80D defines round-trip financing as an arrangement where funds are transferred between parties, directly or indirectly producing a tax benefit and significantly reducing, offsetting or eliminating business risk. “Funds” includes cash, cash equivalents and rights or obligations to receive or pay them. The tracing, timing, sequence and manner of the transfers are disregarded when determining whether round-trip financing exists.

Section 80E identifies an accommodating or tax-indifferent party broadly as one whose income from the arrangement is not subject to normal tax or is substantially offset by expenditure or losses, and whose participation produces a tax benefit for another party—for example, converting revenue into capital, creating a deduction for another party, or causing income that would otherwise be taxable to be exempt or excluded.

A party will generally not be regarded as accommodating or tax indifferent where its relevant amounts are subject to foreign tax equal to at least two-thirds of the South African normal tax that would otherwise apply, taking account of applicable DTAs, losses, credits, rebates and recovery rights. The exception may also apply where the party continues substantive active trading activities for at least 18 months through a qualifying foreign business establishment.

Part 2

Powers of the Commissioner

Section 80B gives the Commissioner broad powers to determine the tax consequences of an impermissible avoidance arrangement. The Commissioner may:

- disregard, combine or re-characterise steps or parts of the arrangement;
- disregard an accommodating or tax-indifferent party or treat it and another party as one person;
- treat connected persons as one person for tax purposes;
- reallocate income, capital receipts, expenditure or rebates between parties;
- re-characterise income, capital receipts or expenditure; or
- treat the arrangement as if it had not been entered into or carried out, or otherwise make an appropriate adjustment to prevent or reduce the tax benefit.

Subject to the prescription rules in the Tax Administration Act, the Commissioner must also make appropriate compensating adjustments to ensure consistent treatment of all parties.

Main Difference Between the Old and New GAAR

The principal difference between the former section 103 GAAR and the current Part IIA GAAR concerns subjectivity versus objectivity.

The old section 103 regime arguably required consideration of the taxpayer's intention, making it necessary to investigate whether the parties subjectively intended to obtain a tax benefit.

The current section 80A regime focuses primarily on the objective characteristics and effect of the arrangement, rather than the subjective intentions of the parties. The question is therefore whether the statutory requirements for an impermissible avoidance arrangement objectively exist.

Part 3

GAAR and Double Tax Agreements

GAAR may potentially be applied to arrangements involving benefits under a double tax agreement ("DTA"), particularly where treaty shopping or abusive treaty benefit claims are involved.

The OECD and United Nations recognise that domestic anti-avoidance rules may address abusive treaty arrangements. OECD BEPS Action 6 specifically supports measures designed to prevent taxpayers from obtaining treaty benefits contrary to the object and purpose of the treaty.

In South Africa, section 80B gives SARS broad powers to disregard or re-characterise an impermissible avoidance arrangement. However, DTAs, once properly concluded and incorporated into South African law, have legal force equivalent to domestic legislation. GAAR should therefore not be used simply to override a treaty obligation. Rather, it should operate consistently with the treaty's object and purpose.

South African courts have recognised the relevance of OECD Commentary in treaty interpretation, including in *Secretary for Inland Revenue v Downing* 1975 (4) SA 518 (A) and *CSARS v Tradehold Ltd* 2012 (6) SA 208 (SCA). The development of the OECD BEPS framework, particularly revised treaty preambles and Action 6, strengthens the argument that preventing treaty abuse is itself a recognised treaty objective.

Accordingly, GAAR may be applied to abusive arrangements designed principally to obtain inappropriate treaty benefits, provided its application is consistent with the relevant DTA and does not improperly override treaty rights.

Section 80J

Section 80J prescribes the administrative procedure that SARS must follow before applying GAAR.

The Commissioner must first notify the taxpayer that GAAR may apply and provide reasons for the proposed application. The taxpayer generally has 60 days, or longer if permitted, to provide reasons why GAAR should not apply.

Within 180 days after receiving the taxpayer's representations, or after expiry of the applicable period, the Commissioner may request further information to determine whether GAAR applies.

If satisfied with the taxpayer's reasons, the Commissioner must withdraw the notice. Otherwise, the Commissioner may determine the taxpayer's liability under GAAR.

If additional information subsequently becomes available, the Commissioner may revise or modify the reasons for applying GAAR or, where the notice was previously withdrawn, issue a new notice.

PART C

Question 5

Part 1

The internet services constitute taxable supplies of “electronic services” under the VAT Regulations to the extent that they are supplied to South African consumers, determined by reference to the statutory proxies.

MapleCo must register for VAT and account for output tax on supplies to South African customers once the value of its local taxable supplies exceeds the applicable registration threshold. Supplies of internet services to third-party South African customers are subject to VAT at the standard rate.

However, no South African VAT arises on supplies of electronic services to SubCo, MapleCo's wholly owned subsidiary, because the group of companies exclusion in the definition of electronic services applies.

The supply to ACo, an associated company, is subject to VAT because the group exclusion does not apply. The Regulations require a 70% ownership threshold for entities to constitute a group of companies for this purpose.

The position regarding Branch SA is different. A branch is not a separate legal entity and therefore cannot constitute a separate “company” for purposes of the group exclusion. Nevertheless, MapleCo cannot make a supply to itself. Since Branch SA and MapleCo are legally the same entity, the transaction should not constitute a taxable supply for VAT purposes.

Part 2

The services supplied by Suxco (SA) to Suxco (US) qualify for the zero rate to the extent that they do not relate to goods situated in South Africa when the services are rendered.

Accordingly, repair services relating to products physically located in South Africa cannot be zero-rated. By contrast, marketing services supplied to Suxco (US) should qualify for zero-rating, assuming the other requirements are met.

The accounting services supplied by Suxco (SA) to the South African branch of Suxco (US) cannot be zero-rated. Although Suxco (US) is tax resident in the US for income tax purposes, it is regarded as a South African resident for VAT purposes to the extent that it carries on an enterprise in South Africa through a fixed place of business.

The South African permanent establishment therefore constitutes a taxable presence in South Africa. Services supplied to that establishment are accordingly treated as services supplied to a South African resident and do not qualify for the general zero-rating rule.

The investigation services supplied by the local engineering firm to Suxco (US) should arguably qualify for zero-rating because the recipient is a non-resident. However, the services are directly connected with movable property—the defective vacuum cleaners—which is situated in South Africa when the services are performed. This prevents zero-rating under the relevant rule.

Even if it is argued that the engineers are investigating general repair quality rather than the specific South African products, the presence of a senior Suxco (US) employee in South Africa during part of the investigation creates an additional obstacle to zero-rating for that period.

Part 3

Fastco must account for VAT where services supplied by non-resident advisors constitute “imported services” under the VAT Act.

For services to constitute imported services:

- there must be a supply of services;
- the supplier must be resident or carry on business outside South Africa;
- the recipient must be a South African resident;
- the services must be used or consumed in South Africa; and
- they must be used for purposes other than making taxable supplies.

The advisors' services will therefore constitute imported services to the extent that they are supplied from outside South Africa, used in South Africa and not used in making taxable supplies.

The key issue is whether there is a functional or direct and immediate link between the advisory services and Fastco's taxable supplies.

The issue of shares and the granting of loans constitute exempt financial services. Therefore, where the advisors' services relate solely to raising funds to acquire shares or other assets generating only exempt or investment returns, input tax relief should generally not be available.

However, recent jurisprudence supports relief where the services have a sufficient functional connection with taxable supplies. If the funds raised are directly and immediately linked to Fastco's taxable business activities, the services may not constitute imported services because they are used for making taxable supplies.

Accordingly, the VAT treatment depends on the actual use of the advisory services and funds raised: no input relief should arise to the extent they relate solely to exempt financial or investment activities, whereas a direct and immediate link to taxable supplies may prevent an imported-services VAT liability.

Question 6

2024–2025 Tax Years

The key issue is whether section 10(1)(o)(ii) of the South African Income Tax Act (“ITA”), the foreign earnings exemption, applies to Ethan’s remuneration for services rendered in Country P.

The exemption applies to remuneration earned by a South African tax resident for services rendered outside South Africa, up to R1.25 million, provided that:

the resident spends more than 183 full days outside South Africa in aggregate during any 12-month period;
that period includes a continuous period exceeding 60 full days; and
the services are rendered during the relevant periods outside South Africa.

Qualifying remuneration includes salary, leave pay, wages, overtime, bonuses, gratuities, commissions, fees, emoluments and allowances received for services rendered.

Ethan does not qualify in 2024 because he spends only 180 days outside South Africa. His full remuneration is therefore subject to South African income tax at his marginal rate.

In 2025, Ethan spends more than 183 days outside South Africa and satisfies the other requirements. He therefore qualifies for the exemption, but only up to R1.25 million. Of his R1.5 million remuneration, the remaining R250,000 is taxable in South Africa.

If Country P also taxes the remuneration, Ethan may claim foreign tax credits in South Africa under section 6quat, but only against South African tax on taxable income. Thus, in 2025, the credit is effectively limited to the R250,000 remaining subject to South African tax. There is no DTA between South Africa and Country P, so no treaty relief is available.

2026 Tax Year

When Ethan ceases to be South African tax resident, section 9H generally deems him to have disposed of his assets immediately before cessation at their market value. This creates an exit charge on qualifying capital assets.

The capital gain is broadly the difference between market value at the date of deemed disposal and the asset’s base cost. The gain is subject to the 40% individual inclusion rate, after the R40,000 annual exclusion applicable in 2026. Depending on Ethan’s marginal tax rate, the effective CGT rate may therefore be between 0% and 18%.

The exit charge excludes:

- South African immovable property;
- retirement benefits; and
- personal-use assets.

Accordingly, the exit charge may apply to Ethan’s JSE-listed shares, LSE-listed shares and Country P apartment, based on their market values at 31 December 2025. Given that the shares have been held for more than three years and assuming they are capital assets rather than trading stock, their deemed disposal should give rise to CGT rather than ordinary income tax.

Foreign-currency assets such as the apartment and LSE shares must be translated into South African Rand using the applicable exchange-rate rules when determining the capital gain.

Ethan’s South African primary residence, retirement annuity and motor vehicle are excluded from the exit charge. His bank account is not excluded, but because its market value of R50,000 equals its base cost, no gain or loss arises.

His discretionary beneficiary rights in the South African trust are also not excluded, but because the rights are contingent on trustee discretion and have little or no value, and are deemed to have a nil base cost, no material capital gain should arise.

Ethan’s final tax year ends immediately before cessation. An accelerated provisional tax payment and required return should therefore be submitted on 31 December 2025, covering the exit charge and other taxable income up to that date.

The South Africa–Country Q DTA should not provide relief from the exit charge because it arose immediately before Ethan ceased South African residence, when he was not yet a Country Q resident.

2027 Tax Year

Following cessation on 1 January 2026, Ethan is a non-resident and is generally taxable in South Africa only on South African-source income.

He remains taxable on rental income from his Cape Town property because the source of rental income is generally the location of the underlying immovable property.

The South Africa–Country Q DTA does not prevent South Africa from taxing this rental income. Article 6 permits the state where immovable property is situated to tax income derived from that property.

Ethan cannot immediately access his South African retirement annuity merely because he ceased South African tax residence. Legislation requires an uninterrupted period of at least three years after cessation before the relevant lump-sum benefits can generally be accessed. On these facts, access would therefore only be available from 1 January 2029.

If the South African trust distributes rental income to Ethan, that distribution should not be taxed again in Ethan's hands; the rental income is instead subject to tax at the trust level.

Question 7

Part 1

Section 64E of the Income Tax Act ("ITA") imposes dividends tax at 20% on the value of a dividend paid by a company, other than a headquarter company.

For an unlisted company, a cash dividend is deemed to be paid on the earlier of the date on which it is actually paid or the date on which it becomes due and payable, in terms of section 64E(2)(ii).

Part 2

For dividends tax purposes, "dividend" includes a dividend or foreign dividend as defined in section 1, as well as certain amounts arising under the transfer pricing provisions in section 31(3)(i), where paid by a South African resident company. It also includes certain foreign dividends paid by a foreign company in respect of listed shares, to the extent that the amount does not constitute an in-specie distribution.

Section 1 defines a dividend broadly as any amount transferred or applied by a South African resident company for the benefit of or on behalf of a person in respect of a share in that company, including a distribution or consideration for the acquisition of a share.

The definition excludes amounts to the extent that they:

- reduce the company's contributed tax capital (CTC);
- constitute shares in the company;
- constitute a qualifying general repurchase of the company's securities under applicable JSE or substantially equivalent exchange requirements; or
- constitute an in-specie distribution deemed under the transfer pricing secondary adjustment rules.

A foreign dividend is generally an amount paid or payable by a foreign company in respect of a share where the amount is treated as a dividend or similar payment under the income-tax laws of the country where the company has its place of effective management, or, where that country has no applicable income-tax legislation, the country in which the company is incorporated, formed or established.

The definition excludes amounts constituting the redemption or disposal of certain participatory interests and amounts constituting shares in the foreign company.

Part 3

Where an unlisted company declares and pays a cash dividend, the beneficial owner is generally liable for dividends tax under section 64EA, while the company paying the dividend acts as the withholding agent and must withhold and pay the tax to SARS.

Where a beneficial owner seeks to apply a reduced dividends-tax rate under a double tax agreement (DTA), the company may only apply the reduced rate if it holds a prescribed declaration from the beneficial owner confirming that the DTA applies. The declaration must be renewed every five years.

Part 4

Where a dividend consists of an asset rather than cash, section 64E(3) determines the value on which dividends tax is calculated.

If the asset is a financial instrument listed on a recognised stock exchange and has a quoted price, the dividend is valued at the ruling price at the close of business on the last business day before the date on which the dividend is deemed to be paid.

For any other asset, the dividend is valued at its market value on the date on which the dividend is deemed to be paid.

Part 5

Section 64F provides various exemptions. Two examples are:

- South African resident companies: dividends paid to a South African resident company are generally exempt from dividends tax.

- Approved public benefit organisations: dividends paid to a public benefit organisation approved under section 30(3) are exempt.

Question 8

Part 1

Pillar II applies to multinational enterprise groups with a consolidated turnover of EUR750 million or more.

South Africa has implemented the Pillar II legislation in such a way that the majority of the OECD Pillar II laws are now part of our country's laws. In this regard, under South African domestic laws and in line with the OECD Pillar II rules, before a MNE is considered as a covered person for Pillar II the MNE must have met the EUR750million threshold in at least two of the past four years.

In line with the OECD commentary, the calculation is performed using the consolidated revenue in the group's financial statements, as prepared in accordance with the accounting standard that the parent applies.

The revenue figure must be translated into Euro by applying the average exchange rate for the December in the prior year.

Part 2

The following five types of entity are excluded from South Africa's Pillar II legislation:

- Groups with no foreign operations (ie purely domestic entities)
- Groups below the EUR750 threshold
- Government entities
- Non-profit organisations
- Pension funds

Part 3

The three Pillar II taxing rules are as follows:

1. Qualified Domestic Minimum Top-Up Tax (QDMTT), this rule applies before any other rule if the source country has enacted it. The law allows the source country to collect the top-up tax.
2. Income Inclusion Rule (IIR). This rule applies where the QDMTT rule is not applicable. It allows the tax authority in the country of the ultimate (or intermediate) parent to collect the top up tax where a subsidiary is taxed below 15%. Where the QDMTT has been applied, the IIR will not apply.
3. Undertaxed Profits Rule (UTPR). This rule is a backstop rule when the QDMTT and IIR isn't applied (or not fully applied). It allows another country where the group operates to collect taxes and acts to ensure that the minimum tax is collected somewhere, even if the source state and the parent's country do not apply Pillar Two. South Africa has not adopted this rule.