THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

MODULE 2.12 – SOUTH AFRICA OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

Under South African law, partnerships are fiscally transparent: the partnership itself is not taxed, but partners are taxed individually on their share of income (per s24H(5) ITA and s25 TAA).

In treaty terms, partnerships are not treated as residents under the OECD Model Convention. Instead, each partner is viewed as carrying on its own enterprise, and profits are taxed under Article 7.

Loan interest (AUPlat to Company Z):

- AUPlat borrowed R500m at 12% interest from Co Z (a non-resident) to fund mining operations.
- Co Z is taxed on interest from a South African source (s9(2)(b)(ii) ITA), though transfer pricing (s31 ITA) ensures terms are at arm's length.
- AUPlat's mining interest constitutes a South African permanent establishment (PE) under OECD MTC Article 5; thus, the financial transaction falls within SA tax jurisdiction.
- SARS can disallow excessive/non–arm's length interest deductions.

AUPlat's tax position:

- Its 40% share of mining profits is taxable in South Africa (s24H(5), s9(k)(ii) ITA).
- AUPlat may deduct interest on the Co Z loan if terms are arm's length (s24J, s31 ITA, subject to s23M).
- However, interest paid to Co Z is exempt from SA normal tax (s10(1)(h)) but subject to a 15% withholding tax (s50B ITA), reduced if a double tax agreement (DTA) applies.

Treaty provisions (DTA between SA and Country Z):

- Article 11(1): Interest may be taxed in the recipient's country (Country Z).
- Article 11(5): If the loan relates to a PE in SA, interest is deemed to arise in SA.
- Since AUPlat's SA PE incurred the loan, SA has taxing rights over the interest.

Part 2

The annual payment to the non-resident Engineering Design Company for the mine's design qualifies as a royalty under South African tax law (s23I, s9(1), s49A ITA) since it relates to the use of intellectual property.

Domestic tax rules:

- Although the royalty is deemed to be sourced in South Africa (s9(2)(d)), non-residents are exempt from normal SA income tax on royalties (s10(1)(l)).
- MAPlat and AUPlat, through their SA permanent establishments (PEs), may claim a proportional deduction for the royalty payment (s11(f)(iii)).

Withholding tax:

- Royalties paid to non-residents are generally subject to a 15% withholding tax (s49B ITA).

DTA treatment:

- Under Article 12(1) of the SA–Country M treaty, royalties are only taxable in the recipient's state of residence (Country M), provided the Engineering Design Company is the beneficial owner (which it is).
- Article 12(3) could shift taxing rights to SA if the royalties were attributable to a PE in SA, but the facts show no PE was created: Mr Peters, seconded to the mine, performed work for the host company, not on behalf of the Design Company.

The royalties are exempt from SA normal income tax, not attributable to a PE in SA, and taxable only in Country M under the DTA, though SA withholding tax obligations may apply unless treaty relief is invoked.

Part 3

As a non-resident, MAPlat is taxed in South Africa only on SA-sourced income. Under s9(j) and the Eighth Schedule of the ITA, a mining licence is immovable property, so the sale of MAPlat's 60% participation right is deemed to have a South African source, regardless of where the contract was signed.

Capital Gains Tax (CGT):

- Disposal of immovable property by a non-resident triggers CGT under para 2 of the Eighth Schedule.
- MAPlat's sale of its mining rights to AUPlat qualifies as such a disposal.
- If sold at a loss, no CGT arises.

Withholding Tax:

- Under s35A ITA, AUPlat must withhold 7.5% of the purchase price (since MAPlat is a company) and pay it to SARS.

Double Tax Agreement (DTA):

- Article 6(2) and Article 13(1) OECD MTC confirm mining rights = immovable property.
- South Africa (the source state) has taxing rights over gains from disposal.
- Country M does not tax capital gains, so MAPlat will not get a foreign tax credit for SA CGT.

MAPlat's disposal of its mining rights to AUPlat is taxable in South Africa as a disposal of immovable property, subject to CGT and 7.5% withholding, with no relief available in Country M.

Part 4

As a non-resident, MAPlat is taxable in South Africa on income sourced in SA. The disposal of mining equipment is SA-sourced because it is effectively connected to its South African permanent establishment (PE) (s9(2)(k) ITA).

Capital Gains Tax (CGT):

- Disposal of equipment linked to the PE triggers CGT under para 2 of the Eighth Schedule.
- Since only 60% of the equipment is sold to AUPlat (the other 40% already owned by AUPlat), CGT applies only to MAPlat's portion.

Recoupments:

- Any prior capital allowances on the equipment may be recouped and taxed as normal income in South Africa.

DTA implications:

- Under Article 13(2) OECD MTC, gains from disposal of movable property forming part of a PE are taxable in the source state (South Africa).
- Country M does not levy CGT, so no double taxation relief arises.
- However, if recoupments are taxed in South Africa as income, MAPlat may claim a tax credit in Country M for those amounts.

The sale of mining equipment by MAPlat is taxable in South Africa through CGT and possible recoupments, with no CGT relief in Country M.

Part 5

Pension lump sums generally fall within gross income (s1 ITA), but for non-residents like Mr Peters, only South African–sourced income is taxable. Under s9(2)(j), a pension lump sum is SA-sourced if it relates to services rendered in South Africa, so Mr Peters' pension would ordinarily be taxable in SA at special rates (Second Schedule ITA).

However, under Article 18 of the SA–Country M DTA, pensions and similar remuneration are taxable exclusively in the recipient's state of residence. Therefore, despite the domestic source rules, Mr Peters' pension lump sum is taxable only in Country M, not in South Africa.

Domestic law would tax the pension lump sum in SA, but the DTA overrides, giving exclusive taxing rights to Country M.

Question 2

Part 1

South Africa's exchange control rules (reg 10(1)(c)) prevent residents from exporting capital without approval. Since the South African subsidiary is an exchange control resident, it must obtain prior approval to accept loan funding from its Mauritian parent.

Under Section I.3 of the Exchange Control Manual, shareholder loans are allowed but interest may not exceed the South African prime lending rate without approval.

If a higher rate is sought, it must be referred to the Financial Surveillance Department (Finsurv). In practice, Finsurv rarely approves rates above prime + 2%, even with transfer pricing support.

The Mauritian parent should set the loan interest at or below prime + 2% to avoid approval issues under South African exchange controls.

Part 2

South African tax law on hybrid debt instruments (s8F ITA) can reclassify interest on shareholder loans with equity-like features as dividends, making them non-deductible and subject to dividends tax (20%), reduced to 5% under the SA–Mauritius DTA.

- A shareholder loan with no repayment terms or a term longer than 30 years is deemed a hybrid debt instrument.
- If structured this way, interest will be reclassified as a dividend under both domestic law and the treaty.
- To preserve interest deductibility, the loan should be structured as repayable on demand.

Without changes, the loan interest will be taxed as dividends (with 5% withholding under the DTA). To keep it deductible as interest, the loan terms must specify repayment on demand.

Part 3

South Africa's transfer pricing rules (s31 ITA) apply to related-party cross-border loans, including shareholder loans from a Mauritian parent to its SA subsidiary. Since the entities are connected persons, SARS requires that loan terms (quantum and interest rate) must be arm's length.

Key issues for shareholder loans:

- Quantum of debt: whether an independent lender would have advanced such debt (thin capitalisation test).
- Interest rate: whether the rate reflects market conditions.
- No safe harbour exists; an independent transfer pricing study is needed.
- SARS follows OECD Guidelines (per Interpretation Note 127).

Consequences of non-compliance:

- Primary adjustment: disallowance of non-arm's length interest deductions (increasing taxable income).
- Secondary adjustment: excess deemed a dividend, taxed at 20% dividend tax, with SARS taking the view that DTA relief does not apply.

Additional limitation – s23M ITA:

- Applies where the creditor (Mauritian parent) is in a controlling relationship (≥50% ownership).
- Limits deductible interest using a statutory formula, unless subject to interest withholding tax (15%), in which case the limitation may not apply.
- Disallowed interest is not reclassified as a dividend and may be carried forward.

To avoid adverse adjustments, the SA subsidiary must commission a transfer pricing study to set an arm's length loan amount and interest rate, while also testing deductibility limits under s23M.

Part 4

Interest withholding tax (IWT) applies at 15% on South African–sourced interest paid to non-residents (s9(2)(b) ITA). The South African subsidiary must withhold the tax and remit it to SARS when the interest becomes due and payable, as determined by the loan terms.

Source of interest:

- The interest is SA-sourced because it is incurred by a South African resident and not attributable to a foreign PE.

DTA relief:

- Under Article 11 of the Mauritius–SA DTA, the withholding rate may be reduced to 10% if the Mauritius parent is the beneficial owner and provides the required declaration and undertaking before payment.

The SA subsidiary is responsible for withholding tax, but the Mauritius parent can obtain a reduced 10% rate by completing the prescribed DTA forms prior to payment.

PART B

Question 3

Part 1

BCC, a non-resident company from Country P, is taxable in South Africa only on SA-sourced income. Income from BCC-1's cruises between Cape Town and Durban is considered SA-sourced, as the territorial sea is included in South Africa's jurisdiction (s1 & s33 ITA). Certain exemptions may apply if Country P grants similar relief (s10(1)(cG) ITA).

Permanent Establishment (PE) considerations:

- Under OECD MTC Article 7, profits are taxable in South Africa only if BCC-1 has a PE there.
- Article 5 defines a PE as a fixed place of business, requiring:
    - Location test – a distinct, physical place. A ship may constitute a PE if its operations are restricted to a commercially coherent area (Cape Town–Durban territorial sea).
    - Duration test – some permanency. BCC-1 has operated these cruises consistently over three years.
- Therefore, a substantiated argument could be made that BCC-1 has a PE in SA.

Taxable income:

- Only profits attributable to the local cruise (PE) are taxable in South Africa (Article 7(2)), determined as if the PE were an independent enterprise.

Double Taxation Relief:

- If Country P also taxes the income, Article 23 requires a credit or exemption to prevent double taxation.
- Article 7(3) provides for adjustments if one state taxes profits attributable to the PE already taxed in the other state.

BCC-1's cruise profits may be taxable in South Africa if a PE is deemed to exist, with only PE-attributable profits taxed locally, and Country P providing relief under the DTA.

Part 2

Under the South Africa–Country P DTA:

International traffic (Articles 3(1)(e) & 8 OECD MTC):

- Covers transport by ship or aircraft, except purely domestic operations by a non-resident enterprise.
- BCC-2, operating passenger cruises between South Africa and Country P, qualifies as international traffic.
- Profits from international traffic, including closely connected activities such as ticket sales through dependent agencies, are taxable only in the enterprise's state of residence (Country P).
- Legally independent travel agencies are not covered.

Permanent Establishment (PE) considerations:

- Article 5(1)(c) lists "office" as an example of a PE, but Article 5(4) excludes preparatory or auxiliary activities.
- Preparatory activities: conducted in contemplation of the enterprise's main business; auxiliary activities: support functions not essential to the enterprise.
- A travel agency in South Africa performing preparatory or auxiliary functions does not constitute a PE of BCC.

Profits from BCC-2's international traffic and closely related dependent agency activities are taxable only in Country P, and the South African travel agency does not create a PE.

Part 3

Non-resident entertainers on the ship are taxed in South Africa on a source basis under the gross income definition (s1 ITA).

They may claim deductions for business expenses under s11 ITA.

A final withholding tax of 15% applies to amounts received by non-resident entertainers (ss47A–47K ITA). Section 10(1)(IA) exempts these amounts from normal tax since they are subject to the final withholding.

DTA treatment (Article 17):

- Income from personal activities as an entertainer, musician, or sportsperson is taxable in the state where the activities are performed (South Africa).
- Article 17 applies regardless of length of stay or PE existence.
- The residence state may also tax, in which case Article 23 provides relief to prevent double taxation.

Payments to entertainers for performances in South Africa are taxable in South Africa, subject to a 15% final withholding, with potential relief in their country of residence under the DTA.

Part 4

Susan:

- South African resident; taxed on a residence (worldwide) basis under s1 ITA.
- Gross income includes salaries, services, and fringe benefits (paras (c) and (i) of gross income definition).
- Exemption for ship crew: s10(1)(o)(i) exempts remuneration for crew on ships in international traffic if outside SA for more than183 days.
- DTA application (Article 15(3)): Employment aboard a ship in international traffic is taxable only in the residence state.

Susan's income as a ship captain is taxable solely in South Africa.

Mary:

- South African resident; taxed on a residence basis.
- Receives a bursary, which is exempt under s10(1)(q) ITA.
- Part-time job income is taxable.
- DTA application (Article 20): Payments to students for maintenance, education, or training from sources outside the host state are not taxed by the host state.

Mary's bursary is exempt from South African tax; part-time wages are taxable under Article 15 as income from employment.

Question 4

Part 1

A South African resident company is defined in s1 ITA as a company incorporated in SA, unless it is deemed resident in another country under a DTA.

SA taxes residents on a worldwide basis; gross income includes all global receipts and accruals.

If a SA company operates in Botswana through a branch, the branch's income is included in the SA company's gross income for SA tax purposes.

The SA company can claim deductions for expenses and losses of the Botswana branch, including capital allowances under SA tax law.

Botswana branch income is taxed in SA at 27%, negating the benefit of Botswana's 15% corporate tax rate.

Losses from the branch are ring-fenced and can only offset other foreign income of the SA company (s20 ITA).

Part 2

South Africa and Botswana have a DTA to avoid double taxation and fiscal evasion.

The DTA applies to residents of one or both states; a resident includes a person liable to tax in SA on worldwide income. The SA company qualifies as a resident under this definition.

Article 7 of the DTA provides that the SA company's profits are taxable only in SA, unless it carries on business in Botswana through a permanent establishment (PE).

A PE includes a fixed place of business such as a branch, office, factory, or workshop.

By establishing a manufacturing facility in Botswana, the SA company would create a PE there.

Both SA and Botswana may tax the profits attributable to the Botswana PE, with Botswana determining taxable profits as if the PE were a separate, independent enterprise dealing at arm's length with the SA head office.

Part 3

The South African company can claim relief from double taxation either under the SA-Botswana DTA or section 6quat of the ITA, but not both—the taxpayer must elect one.

Article 22 of the DTA allows for an exemption from SA tax for Botswana grants promoting economic development. The parties should verify if the 15% Botswana tax rate qualifies as such a grant and may request confirmation under Article 24.

If the exemption is unavailable, SA must allow a tax credit for Botswana taxes paid, calculated according to section 6quat, limiting the deduction to the proportion of foreign income relative to total income.

This ensures SA taxes on SA-sourced income cannot be reduced by foreign tax credits.

Key points under 6quat:

- Botswana profits, being foreign-sourced, qualify for a credit, not a deduction.
- The credit applies only against SA tax on foreign-sourced income, not SA-sourced income.
- Offshore losses are ringfenced and cannot offset SA-sourced profits.

PART C

Question 5

Part 1

Initial status: Vinesh, a citizen of Country X, was initially a non-resident in South Africa, taxed only on South African-source income when he spent the first four months of each year there from March 2018.

Resident tests under SA law:

- Ordinarily resident test: Requires an intention to reside in SA and steps showing that intention. Factors include fixed residence, nationality, family, social relations, and pattern of visits. Vinesh is likely not ordinarily resident in SA because his family and main residence remain in Country X.
- Physical presence test: A person becomes resident if physically present in SA:

    - 91 days in the current year, and
    - 91 days in each of the preceding 5 years, and
    - 915 days in total over the preceding 5 years.

Application to Vinesh: He meets the physical presence test from the 2025 tax year, making him a SA tax resident from March 2024 onward. He did not cease residency in 2026 as he was not outside SA for a continuous 330-day period.

Worldwide vs. source taxation: As a SA tax resident, Vinesh is taxed on worldwide income; non-residents are taxed only on SA-source income.

Double Tax Agreement (DTA) tie-breaker:

- SA domestic law residency may be overridden if he is deemed exclusively resident in Country X under the SA-Country X DTA.
- OECD Model Article 4 tie-breaker rules apply if a person is resident in both states:

    - Permanent home: If available in both, move to step 2.
    - Centre of vital interests: Family, social, economic relations.
    - Habitual abode: Where the person spends more time.
    - Nationality: Vinesh is a citizen of Country X.
    - Mutual agreement of authorities if unresolved.

Likely outcome: Facts suggest residency may be tied to nationality (Country X) under the DTA, but it depends on the weight of arguments regarding permanent home, centre of vital interests, and habitual abode.

In short: Vinesh is physically resident in SA from 2025 under domestic law, but under the SA-Country X DTA, he may be treated as a resident of Country X, depending on the tie-breaker analysis.

(Students are expected to discuss relevant case law. For example, Oppenheimer v HMRC [2022] UKFTT 122 (TC).)

Part 2

SA residency rules for companies: Under section 1 of the SA ITA, a company is a resident if:

- Incorporated in South Africa, or
- Has its place of effective management (POEM) in South Africa.

A company may not be considered SA resident if it is deemed exclusively resident in another country under a DTA.

TK (Pty) Ltd facts:

- Incorporated in South Africa, therefore meets the SA resident test.
- Could also be tax resident in Country Y if its POEM is located there.

Double Tax Agreement (DTA) rules:

- Article 4(3) of the OECD MTC: In case of dual residence, competent authorities of the contracting states determine residency by mutual agreement, considering POEM, place of incorporation, and other factors.

- If no agreement is reached, treaty benefits may be denied, potentially causing double taxation.

Place of Effective Management (POEM):

- Defined in OECD commentary as the place where key management and commercial decisions are made.
- Factors considered:
    - Location of board meetings and senior executives,
    - Day-to-day management,
    - Headquarters location,
    - Shareholders making strategic decisions.
- SARS Interpretation Note 6 aligns with these factors.

Application to TK (Pty) Ltd:

- In 2024, no board meetings were held; Mr. Smith made all strategic and policy decisions and sent documents for signature elsewhere.
- Case law (Laerstate, Smallwood, Oceanic Trust, Tradehold) supports that actual decision-making, not mere signing, determines POEM.
- POEM likely in Country Y, as Mr. Smith exercised full control there.

Tax authorities must weigh POEM vs. place of incorporation (SA) under mutual agreement procedure (MAP) of the DTA to determine TK (Pty) Ltd's ultimate tax residence.

In short, incorporated in SA but managed from Country Y means dual residence, requiring DTA tie-breaker analysis.

Part 3

The character of payment depends on the nature of rights acquired.

Service income?

- Payments for services involve work performed using knowledge, skill, or expertise without transferring that knowledge.
- Examples: after-sales service, warranty support, technical assistance, advice.
- Thabo's R5,000 for MS Word is not service income.

Royalty payment?

- Defined as consideration for the use or right to use intellectual property (copyright, patent, design, trademark, know-how).
- OECD Commentary distinguishes:
    - Payments for a license to use software or partial copyright rights: royalties.
    - Payments for simply using a copy of software (like MS Word): not a royalty.
- Thabo's payment does not grant rights beyond normal use, so not a royalty.

Acquisition of software:

- Software is a digital product (application or operational) that can be sold in various forms.
- Buying software like MS Word is an outright acquisition, not a license to intellectual property.

Tax treatment:

- Payments for software constitute business profits under Article 7 of the OECD MTC.
- Outright purchase of software is taxed as business income or capital gain, not royalties.

In conclusion, Thabo's R5,000 payment for MS Word is a software acquisition, taxed as business profits, not service income or royalties.

Question 6

The definition of indirect export

Supply of goods at a zero VAT rate when the goods are relinquished in South Africa for further beneficiation (repair, improvement, manufacture, assembly, or alteration) by another SA vendor before export.

Qualifying purchasers

Only certain purchasers can trigger zero-rating, including:

- Foreign diplomats, non-residents, tourists, or foreign enterprises not VAT-registered in SA.
- Certain international organisations or NGOs based outside SA.
- Non-residents buying goods to sell to another non-resident (not via road/rail).

Conditions for zero-rating

- Goods must undergo further processing by another vendor in SA.
- Goods must be delivered to the vendor performing the processing.
- Processed goods must be exported through designated harbours or airports.
- Strict documentary requirements must be met.

Obligations of the processing vendor

- Deliver goods to a designated harbour/airport.
- Obtain and retain export documentation under the Customs & Excise Act.
- Goods must be exported within 90 days of beneficiation.
- Provide the supplying vendor with a statement confirming processing and export within 21 days.

Documentation to be retained by vendor supplying zero-rated goods

- Zero-rated invoice
- Passport of qualifying purchaser/representative
- Trading license or proof of foreign business
- Letter of authorisation for representatives
- Purchase order or contract
- Proof of payment (SARB compliant)
- Proof of delivery to processor or designated port
- Customs export documentation (SAD 500/501, MRN/LRN)
- Statements from processing vendor
- Bill of lading, export permits, certificates of origin

Customs documentation (indirect export via sea)

- Commercial invoice
- Contract/order
- Freight payment proof
- Sea freight documents
- Delivery proof
- Release notifications
- Passports
- Trading licenses
- Authenticated bill of lading.

Zero-rating is highly conditional and heavily documented; the supplier remains ultimately responsible for VAT compliance.

Question 7

Part 1

CFC Rules (Section 9D, ITA):

- Income of a Controlled Foreign Company (CFC) is generally attributed to South Africa unless it is attributable to a Foreign Business Establishment (FBE).
- Section 9D(9)(b) excludes net income from a bona fide FBE, even on disposal of assets, subject to exceptions.

Definition of a Foreign Business Establishment (FBE):

- A fixed place of business outside South Africa used for carrying on the CFC's business for at least one year.
- Must have:
    - Offices, factories, warehouses, or other structures.
    - On-site managerial and operational staff conducting primary operations.
    - Suitable equipment and facilities for primary operations.
    - A legitimate purpose other than tax avoidance.

Application to Company X:

- Pill production in Country X qualifies as an FBE: 5-year lease, on-site machinery, managers, and employees conducting primary operations.
- Independent contractors' work is incidental.
- Therefore, CFC attribution rules do not apply to Company X's income.

Key Case: Coronation Investment Management SA (Pty) Ltd v CSARS:

- Facts: Coronation disputed SARS's taxation of its Irish subsidiary (CGFM), claiming FBE exemption.
- Tax Court: Recognised CGFM as an FBE; primary operations (fund management) in Ireland.
- SCA: Overturned Tax Court, citing outsourced functions as disqualifying FBE.
- Constitutional Court: Reinstated FBE exemption. Key points:
    - Focus on actual business operations over theoretical models.
    - Outsourcing does not automatically disqualify FBE if economic substance and oversight are maintained.
    - CGFM's day-to-day operations in Ireland satisfied economic substance.

Implications:

- South African companies with offshore subsidiaries conducting core business abroad may qualify for FBE exemption.
- Delegated or outsourced operations do not automatically negate FBE status if economic substance and primary operations remain offshore.

Part 2

Section 7(8) – Anti-Tax Avoidance for Donations to Non-Resident Trusts:

- Applies when a South African resident donates or settles income-producing assets to a non-resident trust.
- Income arising from the donation is deemed to accrue to the donor and taxed in South Africa.
- Requires an appreciable element of liberality/generosity.
- Case example: CIR v Widan – income generated "by reason of" a donation includes income from subsequent investments funded by the original donation.
- Capital gains tax mirror: para 72 of the Eighth Schedule attributes capital gains from gratuitous transfers to the resident donor.

Section 7(10) – Disclosure:

- Donations, settlements, or dispositions to non-resident trusts must be disclosed to SARS.
- Failure to disclose may lead to criminal sanctions (s 234) and penalties (s 201 of the Tax Administration Act).

Section 7C – Loans to Connected Trusts:

- Targets interest-free or low-interest loans to trusts where the donor is connected.
- Forgone interest is treated as a continuing donation and subject to donations tax.
- Scope includes: loans to trusts where the donor or their relatives are beneficiaries or hold control (directly or indirectly).
- Motivation for interest-free structuring (commercial sense, trust incapacity) is irrelevant.
- In this case, Mr Tito is a connected person: founder of the trust, father of beneficiaries, and director of Company R wholly owned by the trust.

Transfer Pricing Consideration (s 31 ITA):

- Could also apply if the loan terms deviate from arm's-length principles.

Mr Tito's interest-free loan to his children's offshore trust is likely caught by s 7(8) and s 7C, making the income attributable to him for South African tax purposes, and forgone interest subject to donations tax, irrespective of commercial justification. Disclosure is mandatory.

Part 3

Global Minimum Tax Act, 2024

Implements OECD Pillar Two GloBE rules, introducing a 15% global minimum corporate tax for MNE groups with annual revenue greater than EUR 750 million.

Applies to large MNEs like E-Herbals Group with annual revenue above the threshold.

Top-Up Tax Mechanism:

- Income Inclusion Rule (IIR): Taxes the parent company on its share of low-taxed foreign income within the MNE group.
- Domestic Minimum Top-Up Tax (DMTT): Taxes domestic subsidiaries on low-taxed income within South Africa, calculated per jurisdiction, with joint and several liability for domestic entities.

Global Minimum Tax Administration Act sets obligations for GloBE Information Returns, filing deadlines, payments, refunds, interest, penalties, record-keeping, and limitation periods.

Impact on South Africa as Parent Jurisdiction:

- IIR: Collects top-up tax on low-taxed foreign income of South African MNEs.
- DMTT: Ensures South Africa taxes its low-taxed domestic subsidiaries first, protecting revenue and aligning with OECD GloBE rules.
- Certain entities like Investment Entities, Joint Ventures, and Minority-Owned CEs are excluded and taxed separately under DMTT.

DMTT takes precedence over IIR, giving South Africa first taxing rights over low-taxed domestic subsidiaries before other jurisdictions.

South Africa's Global Minimum Tax rules aim to prevent base erosion and profit shifting, ensuring large MNEs pay at least a 15% effective tax rate, with domestic subsidiaries prioritised for top-up taxation.

Substance-Based Income Exclusion (SBIE) under GloBE Rules

Exempts a portion of income tied to tangible assets and payroll costs from the top-up tax.

5% of the carrying value of tangible assets and payroll costs in a jurisdiction is excluded.

Encourages MNEs to maintain substantial economic activity and investments in South Africa while protecting legitimate tax incentives that promote local development.

Companies like E-Herbals Ltd may qualify for the SBIE exemption for income linked to tangible assets and payroll.

Balances global minimum tax enforcement with the preservation of meaningful investment incentives, though administrative challenges must be managed to ensure both compliance and continued economic development.

Question 8

Part 1

South Africa operates a system of exchange controls as espoused in the Exchange Control Regulations.

Regulatory Framework:

- Governed by the Exchange Control Regulations, enforced by the Finance Minister but delegated to the Financial Surveillance Department (Finsurv) of SARB under regulation 22E.

Authorised Dealers (ADs):

- Certain South African banks appointed by Finsurv to deal in foreign exchange, following guidance from the Exchange Control Manual for Authorised Dealers.

Resident Restrictions:

- South African residents cannot export capital without prior exchange control approval (regulation 10(1)(c)).

Transaction Processing:

- All cross-border transactions must go through an AD to be recorded in the Finsurv balance of payments system, with the Manual specifying which transactions can be processed without direct Finsurv approval.

Part 2

The Manual allows the AD to process the application provided the investment amount falls below R5 billion. Requests for capital transfers above R5billion must be referred to Finsurv for approval. Therefore, in the case of a R200million investment it should be possible for the AD to process and approve the application. In accordance with the Manual the AD must request the following information:

- Applicant company's name and registration number.
- Shareholder details (names, domicile, equity %) for private companies.
- Latest financial statements, including business verification.
- Funding details (cash, share capital, loans, guarantees) and any capital goods to be exported.
- Holding structure for the foreign target (directly or via holding company).
- Offshore target company details and description of its business activities.

Part 3

Once the investment is made, the South African shareholder must comply with the following rules:

- Annual Reporting: Submit financial statements of foreign target entities and holding companies to Finsurv.
- Sale of Foreign Investments:
    - To non-residents: net proceeds must be repatriated under Regulation 6 with Finsurv advice.
    - To South African residents: prior Finsurv approval required.
- Business Expansion: Allowed if financed within R5 billion FDI dispensation or without South African recourse.
- Investing Back in South Africa: Must report transactions via AD with annual progress report and arm's-length verification by independent auditor.
- Inward Loans: Must comply with inward loan rules in the Manual.
- Equity Changes: Increases allowed; reductions below 10% equity/voting rights must be reported to Finsurv.
- Dividends:
    - Declared annually; can be retained offshore or repatriated for any purpose if no recourse to SA.
    - Annual reporting required for dividends and their offshore utilisation.
- Guarantees: Payments under SA-issued guarantees must be reported immediately to Finsurv.
- Place of Effective Management: Company must remain managed from South Africa; re-domiciliation requires prior written approval.
- Enforcement: Finsurv may instruct disposal of foreign investments and repatriation of proceeds if conditions are not met.