

The New Headquarter Company Regime



Internationally, many jurisdictions are popular for establishing holding and headquarter companies for multinational groups, like Luxembourg, The Netherlands, Switzerland and Singapore. Closer to home, Mauritius has established itself as a favourable headquarter jurisdiction, especially for investments into Africa. Up to now, local tax and exchange controls have prevented South Africa from being suitable for these purposes.

South Africa has always had certain commercial advantages for use as an African headquarters location, including a sizeable economy and a wide network of tax treaties. Despite these commercial advantages, South Africa lacked the favourable tax treatment that other jurisdictions offer to multinationals. While tax is never the sole reason for using a particular jurisdiction, it remains an important determinant.

The new South African headquarter company regime attempts to remedy this position. The government plans to make South Africa a gateway for African investments. The main negative tax issues were identified as being the controlled foreign company ('CFC') rules, secondary tax on companies ('STC') and transfer pricing rules. The new headquarter regime is generally exempt from all these rules.



The new regime starts on 1 January 2011, provided the following requirements are met.

- A headquarter company must be a tax resident company in which each shareholder holds 20% or more of the shares. At the end of each tax year, 80% or more of the cost of its total assets must be attributable to equity shares, loans, or intellectual property licensed by that company to any foreign company in which that company held at least 20% of the equity shares and voting rights. In addition, 80% or more of the total receipts and accruals must consist of
 - o Dividends, interest, royalties or fees paid by any foreign company, or
 - o Proceeds from realised interests in equity shares or intellectual property

If the above requirements are met, the following tax concessions will apply

- The foreign subsidiaries of the headquarter company will not be CFCs of the headquarter company. They will, however, be CFCs in relation to any South African resident shareholders, if they indirectly hold more than 50% of the participation or voting rights in the headquarter company
- Dividends declared by a headquarter company will be exempt from STC and income tax for shareholders
- A headquarter company will be exempt from CGT on gains from the sale of a 20% or more equity stake in a foreign company
- Special rules apply to connected person financial assistance, exempting it from transfer pricing rules in certain circumstances.
- While exchange control restrictions have been removed, they remain exchange control residents



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The new headquarter regime is a positive development. Nevertheless, it has the following disadvantages

- It remains fully taxable on all other income, including donations tax and CGT
- It will not be a resident for corporate restructuring relief purposes
- If South African residents collectively hold more than 50% of the headquarter company, then its subsidiaries will be CFCs
- Transfer pricing provisions will apply to non-funding transactions with foreign subsidiaries, like management services

Internationally, there is a difference between headquarter regimes and intermediary holding company (IHC) regimes. An IHC is generally interposed between the holding company and the operating subsidiaries of a multinational group. The purpose of an IHC is primarily to hold shares. The most beneficial location for an IHC depends on the specific circumstances of each multinational group. There are, however, certain characteristics that must be met for multinational groups to benefit from utilising an IHC. The principal features of an ideal IHC jurisdiction are the following