

The taxation of foreign investment income

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Abstract

This article analyses the principles for determining the source of income in South Africa for tax purposes. The fact that South Africa is increasingly becoming part of the international community, has resulted in changes in the economic environment. This means that current legislation is inadequate to prevent the erosion of the South African tax bases. The South African Revenue Services therefore introduced new legislation to prevent this loss of income.

In this article the legislation is examined and illustrated in a practical situation and problems with the application of the various sections are identified.

Key words

Controlled foreign entity

Source-based tax system

Foreign entity

Investment income

Passive income

I Introduction

In his maiden budget speech in parliament in March 1997, the Minister of Finance, Mr Trevor Manuel, announced that certain foreign exchange controls would be relaxed. The relaxation of these controls meant that South African citizens would for the first time be allowed to invest capital in foreign countries. The Minister pointed out that these changes would have an adverse effect on state revenue, as South African tax is levied on the source principle. This would imply that income being earned outside the Republic would not be subject to South African tax. In order to protect the current tax basis Section 9C and 9D were introduced in the Income Tax Act, No 58 of 1962, as amended (hereafter the Act).

To determine whether an amount is taxable, the Income Tax Act has to be investigated. In terms of the Act, taxable income is determined by gross income minus exempt income minus deductible expenses incurred in the production of income (Section 1).

Therefore for an amount to be taxable it has to comply with the definition of gross income as set out in section I of the Act:

"in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within the Republic, excluding receipts or accruals of a capital nature" (Danzinger & Stack 1988:19)

From the above it is clear that for an amount to be taxable in South Africa, it has to be from a source within the Republic or deemed to be within the Republic. The Act does not state when an amount is from a source within the Republic. The result of this is that a number of court cases have been decided to clarify this issue. The deemed source provisions are set out in Section 9 of the Act. These provisions will have preference over the source as determined by case law (Huxham and Haupt 1998: 14).

2 Source of income before the introduction of section 9c and section 9d

2.1 Background

Two tax systems have been developed by which to determine the source of income, namely a *"residence based"* tax system and a *"source based"* tax system. If a country adopts the residence principle as a basis for its tax system, it seeks to tax all residents on all their income regardless of the source of income (Huxham and Haupt 1998: 13). The Katz Commission describes the *"source base"* principle as a system under which income is taxed in the country where the income originates, regardless of the physical or legal residence of the recipient of the income (Katz 1997: 1).

Since the introduction of the first Income Tax Act in South Africa in 1914, South Africa has used a source basis system (Vorster, Coetsee & Jordaan 1998: 1.3).

The application of the source basis in determining source of income depends on two basic steps. Firstly, it has to be established whether the Act deems the amount to be from a South African source, or not. If it is not, the true source of the amount received must then be determined.

2.2 Deeming provision before 1 July 1997

2.2.1 Introduction

Section 9 of the Act contains a number of provisions deeming certain income to be from a South African source. The result of this is that income earned from a source outside the country would still be taxed in South Africa. For the purpose of this article Only those sections relating to investment income are analysed.

2.2.2 Interest deeming Provisions before 1 July 1997

Sections 9(2) to 9(5) contain a number of provisions deeming interest to be from a South African source. These sections may be summarised as follows:

- Section 9(2) deems interest received from any building society registered under the Building Societies Act, or mutual building society registered under the Mutual Building Societies Act, which is received by a natural person who is ordinarily resident in the Republic, or a domestic company, to be from a South African source (Meyerowitz 1997: 3.7).
- Section 9(3) determines that interest received by a person who is ordinarily resident in South Africa or by a domestic company, in respect of a loan or deposit in any banking institution that is registered under the Banks Act or any similar institution, to be from a South African source (White 1998: 79).
- Section 9(4) states that interest received in respect of a loan, deposit, interest-bearing security or debt claim, where the source is located in a neighbouring country, will be deemed to be from a source within the Republic. The only exception to this is if the interest can be effectively connected to a business carried on by the receiver of the interest through a permanent establishment in the neighbouring country.

- Section 9(5) of the Income Tax Act states that:

" any gain made by any person (other than a company~ who is ordinarily resident in the Republic or by any domestic company in respect of any banker's acceptance or similar instrument upon maturity or disposal thereof shall be deemed to have been derived from a source within the Republic if such banker's acceptance or similar instrument was issued in - the Republic or any neighbouring country " (Danzinger & Stack 1996.- 65).

2.2.3 Provisions deeming royalties and annuities to be from a South African source before 1 July 1997

Where a person receives royalties, Section 9(i)(b) deems the royalties or similar income to be from a South African source if the object on which the royalties were payable was being used in South Africa. This section does not apply if the recipient of the royalty was not a resident and received the income after 1 October 1987 in respect of any motion picture film (Vorster *et al* 1998: 8-6).

In terms of Section 9(l)(g) an annuity or pension is taxable in South Africa if it is received from the government or if a person received *the* pension or annuity in respect of work where he performed at least two of the last ten years of duty in South Africa (Vorster *et al* 1998: 8-10),

2.2.4 Conclusion

It is therefore clear that the current deeming provisions only apply in very limited situations and that it would be inadequate to deem all investment income from investments outside the Republic to be from a source within the Republic.

If South African citizens were to be allowed to invest capital outside the Republic as envisaged by the Minister of Finance (Manuel 1997: 4) it would mean that the source of income, which is not subject to the deeming provisions, would have to be determined by the true source rules.

2.3 True source of income

2.3.1 Introduction

The Act does not contain any sections, which clarify the meaning of true source of income. To establish what the source of income is, a number of court cases will be investigated. Only cases, which would apply if South African citizens

were allowed to invest offshore and no additional deeming provisions were introduced, are examined.

2.3.2 *True source as set. out in case law*

The, leading case regarding the source of income in South Africa is CIR v Unilever and Lever Brothers (1946 AD 441). The facts of the Unilever case were that to protect certain American assets held by Unilever in Holland at the outbreak of *the* Second World War, a South African company was formed, which acquired shares in the United States companies as well as the related loan account, which arose when the Dutch company itself acquired the American shares from Lever Brothers in the United Kingdom (UK). The South African company therefore received dividends from America and used these dividends to Pay the interest *on* its loan account to Lever Brothers UK. The Commissioner for Inland Revenue said that the interest, which accrued to Lever Brothers UK, was from a South African source. In the majority Appellate Division judgement given by Judge Watermeyer, it was held that the source of the income was not South Africa. The source was not where the debtor resided, but where the credit was made available. All the agreements and contracts were concluded in the UK, and therefore the credit was made available in the UK.

De Koker (1997: 5.8) pointed Out that the source of income can thus be determined by determining the following:

" What is the o7iginating cause of the income and is this in the Republic?"

The Katz Commission recommended in its Fifth Interim Report that specific~ rules with regard to the primary source of interest be introduced (Katz 1997:5). The Act did not contain any statutory definition of the primary source of interest. The general rules was laid down by the court in CIR v Unilever and Lever Brothers (1946 AD 441), as analysed above. In this case the source of interest is inter alia the location where the capital is made available. The minister announced in his Budget Review this year that rules relating to the source of interest are to be introduced to provide that the source of interest shall be where the capital or credit in respect of which the interest is payable, is utilised or applied (Manuel 1998: 21). The Act was amended in 1998 to give effect to this proposal and Section 9(6) was incorporated in the Act (Department of Finance 1998a: I 1). Section 9(6) provides further that the place of utilisation or application of the funds shall, unless the contrary is

proved be deemed to be, in the case where such funds are utilised or such credit is applied by-

- A natural person, the place where such person is ordinary resident; (Or
- A person other than a natural person, its place of effective management.

The provisions of Section 9(6) shall be deemed to have come into operation on 1 July 1998 and shall apply in respect of any interest received or accrued on or after that date (Department of Finance 1998a: I 1) - The new section overrules any previous case law in respect of the source of interest.

In *Rhodesia Metals (In Liquidation) v COT* (11 SATC 244) a UK company sold Rhodesian mining rights to another UK company. It was held that the source of the income on the transaction was in Rhodesia, as the location of the assets was in Rhodesia. This was so, despite the fact that the transaction was carried out in London. It could therefore be concluded that profits involving the sale of fixed assets would usually be sourced at the physical location thereof.

The leading case on royalties involved the novelist, Ms Millin, who wrote a book in South Africa and granted the copyright thereof, for a period of five years, to publishers in the UK. It was held that the source of the income was in South Africa as this was the place where the copyright was created (*Millin v CIR*, 3 SATC 170)- The result was the same as that of *Transvaal Hide and Skins Merchants v CIR* (29 SATC 97) where the manufacturing and curing of the hides took precedence over the sale thereof.

If there is a multiplicity of originating causes, it is necessary to establish the dominant cause of the income (*CIR v Black*, 21 SATC 226). If it is not possible to determine the dominant cause of income, the court may apportion the income between the two countries (*Mining and Manufacturing Company v COT*, 13 SATC 146),

Application of the true source rules has been extended by a number of deeming provisions. These provisions are given in Section 9 of the Act and were examined in paragraph 2.2. The provisions deal with specific situations in which the source of the income is deemed to be from a South African source (*Huxham & Haupt* 1998: 14). It is important to note that where an amount is deemed to be from a South African source, no apportionment is possible (*Broomberg & Kruger* 1997: 155).

2.3.3 Conclusion

From the cases above and the existing deeming source rules, it is clear that in terms of the provisions available and the true source of income, the South African tax base would be eroded if no additional deeming provisions were introduced.

3 The implementation of sections 9c and 9d

3.1 Introduction

As a result of the relaxation of exchange controls and based on the recommendations by the Katz Commission (Katz 1997: 10) Section 9C was introduced. This section deems most investment income received from outside the Republic by a South African resident to be from a source within the Republic. Section 9D was introduced as an anti-avoidance measure. The Purpose of this section is to include a portion of the 'investment income, of a 'controlled foreign entity' in the taxable income of a resident' with a 'participation right'.

3.2 Section 9C

3.2.1 Introduction and definitions

Investment income from a non-South African source accruing to a resident is deemed to be from a South African source.

The Act defines investment income in Section 9C(1) as follows:

"any Income in the form of an annuity, Interest, rental income or royalty or any Income of a similar nature"

Where a resident or a person (other than a resident) receives investment income

- arising from activities carried on by him through a permanent establishment (refer to paragraph 3.2.2) situated in the Republic, and
- this investment income accrued from a country outside the Republic, it would be deemed to be from a South African source (Huxham and Haupt 1998: 297).

Section 9C(1) defines a resident as:

"any person who is ordinarily resident in the Republic and any person other than a natural person which have its place of effective management in the Republic "

The term 'ordinary resident' is not defined in the Act. In *Levene v IRC* (1928 AC 217) it was held that 'ordinary resident' connotes residence in a place with some degree of continuity, apart from accidental or temporary absences. In *H v Cot* (1960(2) SA 695 (SR)) it was suggested that a taxpayer was ordinarily resident in the place where his permanent place of abode was, where his belongings were stored~ which he left for temporary absences and to which he regularly returned after such absences.

Therefore if a person is a resident of the Republic and earns investment income from a source outside the Republic, the income would be taxable as- if it were from a source within the Republic.

3.2.2 Investment income not subject to income tax

Section 9C(3) does however provide for a number of instances where the income from a foreign country would not be subject to South African income tax:

"The provisions of this section shall not apply to investment income of a resident-

- (a) arising from and effectively connected to the business activities of a substantive business enterprise conducted by such resident through a permanent establishment in any country other than the Republic, where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise, or*
- (b) arising from any assets acquired by any natural person before he became an ordinary resident in the Republic for the first time in respect of the first three consecutive years of assessment ending on or after 28 February 1998 -.*

For a business to qualify for an exemption in terms of sub-section (a) it first has to constitute a permanent establishment. In terms of the Act, a permanent establishment means a permanent establishment as defined from time to time in Section 5 of the Model Tax Convention on Income and on Capital of the Organisation of Economic Co-operation and Development (Danzinger & Stack 1998: 71).

In general, a permanent establishment means a fixed place of business in which the business of the enterprise is wholly or partly carried on. This includes a place of management, a branch, an office, a factory, a workshop, a mine or place of extraction of natural resources and a building site or construction or assembly project, which has existed for more than twelve months. It does not include facilities used solely for the purpose of storage, display or delivery of goods or merchandise or the maintenance of stock or goods or merchandise for these purposes, or for the purpose of processing by another enterprise. It also does not include the maintenance of a fixed place of business solely for the purpose of purchasing goods and merchandise, advertising, collecting or supplying information, scientific research or similar activities, having a preparatory or auxiliary character (Stack and Cronje 1998: 349).

The place of control of a permanent establishment can therefore be determined by the place of management. The place of effective management is the place where the executives who conduct the day-to-day business of the company actually operate from (Broomberg 1998: 80).

If a resident receives investment income arising from assets acquired by a natural person before he became ordinarily resident in the Republic for the first time he will not be taxed on the income for the 1998, 1999 and 2000 years of assessment (Meyerowitz 1997: 82).

In terms of the 1998 Amendment Act, if a taxpayer establishes to the satisfaction of the Commissioner that the investment income or any portion of such income accruing to the resident may not be remitted during the year in which it accrues, because of currency or other restrictions or limitations imposed by the laws of the country where the investment income was received or accrued, then the receipt or accrual to the extent that it may be remitted to the Republic, will be taxable. The remainder will be deemed to be income of the year in which it is remitted to the Republic (Department of Finance 1998b:9).

3.2.3 Expenses incurred in the production of income

If a person is taxed on a portion of the investment income he received, a similar deduction will be allowed in terms of Section 11, 20 and 28 of the Act if costs were incurred in the production of the income (Vorster *et al* 1998: 8-19). Where the income related to the expenditure is subject to exchange controls or the portions of the expenses relating to the income being taxed will be deductible

The remainder will be deductible in the years of assessment in which the income is taxable (Department of Finance 1998b: 9).

3.2.4 Application of the Provisions of Section 9C

A taxpayer (natural person), who became an ordinary resident of the Republic in 1985, received the following amounts on his investments during the 1998 year of assessment:

Dividends from shares in South Africa	R10 000
Dividends from shares in Japan	R12 000
Interest on savings account at a bank in Netherlands	R2 000
<i>The taxpayer invested the money during 1982 before he became a resident of the Republic. This interest is invested annually in shares in Japan.</i>	
Interest on fixed deposit in Hong Kong	R3 000
<i>The taxpayer visited Asia in 1988. He decided to invest in a fixed deposit there, because he could earn interest on his investment at a rate of 15 % p. a. This interest is paid annually to the taxpayer,</i>	
Rental income - Pretoria	R55 000
<i>Five years ago the taxpayer inherited money from his mother, which he used to buy blocks of flats in Pretoria and London.</i>	
Rental expenses in respect, of the flats in Pretoria (deductible)	R25 000
Rental income - London	R120 000
Rental expenses in respect of flats in London (deductible)	R40 000

For the purpose of this example it is assumed that all interest, rental income and expenses were earned/incurred evenly throughout the year and dividend income was earned in two equal amounts, namely one half on 1 September 1997 and the other half on 25 February 1998.

The amounts to be included in the taxpayer's income for the 1998 year of assessment are as follows:

Dividends received from Japan and South Africa

All dividends received by a person who is an ordinary resident in the Republic will be deemed to be from a South African source (Danzinger & Stack 1997.-24). All the dividends received by the taxpayer from the South African and foreign companies are therefore included in his taxable income.

Section 100)(k) has the following exemption for dividends received:

There shall be exempt from tax, dividends received by or accrued to or in favour of any person.

All the dividends received by the taxpayer are therefore exempt from tax.

Interest on savings account at a bank in the Netherlands

In terms of Section 9C(2) of the Act all investment income, which includes interest, received by a resident of South Africa, will be deemed to be from a source within the Republic. Section 9C(3) gives an exemption for interest arising from assets, which the person acquired before he became ordinarily resident in the Republic for the first time. This income will not be taxable for the first three years of assessment ending on or after 1998. The R2 000 interest received from the Netherlands will not be taxable in the 1998 year of assessment.

Interest on fixed deposit in Hong Kong

In terms of Section 9C(2) all investment income, which includes interest, received by a resident of South Africa on or after 1 July 1997, will be deemed to be from a source within the Republic. As the taxpayer was a resident of the Republic at the time he made the deposit, the exemption in terms of Section 9C(3) will not apply. The portion of the R3 000, which the taxpayer receives after 1 July 1997, will be subject to tax in the current year.

The result of this section is that R2 000 of the R3 000 received is included in gross income for the 1998 Year of assessment. In the following years of assessment the whole amount must be included in gross income. The first R2 000 interest received by the taxpayer is exempt from income tax in terms of Section 10(l)(k).

Section 10(l)(w) of the Act provides that certain interest received from a foreign bank institution to be exempt from tax, However, this section has been repealed by the 1998 Tax Amendments Act.

Rental income from Pretoria

The source of the income must be determined by applying the principles of the Rhodesia Metals Ltd v COT-case. The source of the income is therefore where the flats are located, namely Pretoria. As the source of the income is in the

Republic, the R55 000 will be subject to tax as being from a source within the Republic.

The expenses in respect of flats in Pretoria

Section 11(a) of the Income Tax Act gives the following requirement for an amount to be deductible from income:

'for the purpose of determining the taxable income derived by any person from carrying on any trade within the Republic, there shall be as deductions from the income of such person so derived -

- (a) *expenditure and losses actually incurred in the Republic in the production of income, provided such expenditure and losses are not of a capital nature -*

As the rental received is income and the expenditure is therefore in the production of income, the R25 000 will be allowed as a deduction.

Rental income from London

In terms of Section 9C(2) all investment income, which includes rental income, received by a resident of South Africa on or after 1 July 1997, will be deemed to be from a source within the Republic. As the taxpayer was a resident of the Republic at the time he acquired the flats the exemption in terms of Section 9C(3) will not apply. The portion of the R120 000, which the taxpayer received after 1 July 1997, will be subject to tax in the current year. An amount of R80 000 must be included in gross income.

Rental expenses in res

As the introduction to section 11(a) states that deductions are only allowed in respect of a "trade carried on within the Republic," the expenditure will normally not be deductible in terms of this section, Section 9C(4) however makes provision for the deduction of the expenditure:

"Where any investment income is received or accrued in accordance with this section in the course of carrying on a trade outside the Republic, such trade shall for the purpose of Section 11, 20 and 28 be deemed to have been carried on in the Republic. "

3.2.5 Problems in the application of the exemption of investment income

A taxpayer invested R100 000 (f50 000) in 1960 in an interest bearing account in the United Kingdom. The interest on the account was capitalized annually, On 1 July 1997 his investment had grown to E240 000. Due to the devaluation of the rand this amounted to R800 000. From 1 July 1997 to 28 February 1998 interest amounting to E7 200 accrued on the investment. This amounted to R57 600.

The question arises whether the interest that was capitalised since 1960 forms part of the assets, for the purpose of Section 9C(3):

The provisions of this section shall not apply to investment income of a resident -

- ...
- (b) *arising from any assets acquired by any natural person before he became ordinarily resident in the Republic for the first time in respect of the first three consecutive years of assessment ending on or after 28 February 1998.*

If the interest capitalised since 1960 does form part of the original investment then Section 9C(3)(b) will apply to all the income earned from 1 July 1997 to 28 February 2000.

Alternatively, if the interest accumulated since 1960 is deemed to be acquired after he became a resident of the Republic, the exemption in Section 9C(3) will not apply. In this scenario the interest earned during the period must therefore be apportioned, to determine which part qualifies for an exemption in terms of Section 9C. The basis of apportionment may be the Pound value of the investment or the Rand value. If the Rand value is used, a further problem arises because the initial investment will form a very small portion of the total value invested. As this is not a realistic basis for apportionment, it is therefore held that the correct basis for apportionment will be the use of the foreign currency, in this case the Pound.

The South African Revenue Service is of the opinion that the interest accumulated as part of the investment will qualify for the exemption in terms of Section 9C(3)(b),

3.3 Section 9D

3.3.1 Introduction

To prevent the avoidance of tax by means of a foreign entity, Section 9D was introduced in the Act. These provisions are to prevent a situation whereby a resident invests capital offshore in passive investments not in his own name, but through an offshore entity, whereby

- taxable passive income is re-characterised and converted into passive income (for example dividends) which is not taxable; or

where the taxation of income is deferred or avoided, by accumulating or capitalising this income in a foreign entity.

3.3.2 Amount taxable in terms of Section 9D

The effect of Section 9D is that from 1 July 1997 a proportional amount of any investment income received by or accruing to such a controlled foreign entity, should be included in the income of the resident who has a participation right in the controlled foreign entity. This proportional amount is calculated by dividing the portion of the participation rights of the resident with the total participation rights of the entity. The investment income received by or accrued to the controlled foreign entity is then multiplied by the ratio calculated (Section 9D(2)).

The amount in foreign exchange must be converted to Rand at a date no later than the end of the financial year of the resident. Therefore, where a specific date for the transaction is known to the resident, the exchange rate on the date of the transaction could also be used.

3.3.3 Definitions and concepts

Foreign entity

Section 9D of the Act defines a foreign entity as:

*... any person, other than a natural person, which has its place of effective management in a country other than the Republic ...*¹¹

In a United Kingdom case (*Wansleydale's Settlement Trustees v CIR*) Special Commissioner DA Shirley sitting in private remarked that "'effective' implies a realistic, positive management. The place of effective management is *where* the shots were called to adopt a vivid transatlantic colloquialism" (Taxpayer 1998: 84).

The place of effective management is the place where the executives who conduct the day-to-day business of the company actually operate (Broomberg 1998: 80).

In the case of a trust, the place of effective management will normally be the place where the trustees meet to deal with the affairs of the trust. Where the board of directors or the trustees appoints an agent, the place of effective management would be where the agent carries out his mandate (Taxpayer 1998: 84).

Controlled foreign entity

Section 9D of the Act defines a controlled foreign entity as -

.... any foreign entity in which any resident or residents of the Republic, whether individually or jointly, and whether directly or indirectly, hold more than 50 per cent of the participation rights, or are entitled to exercise more than 50 per cent of the votes or control of such entity "

To determine whether an entity is a controlled foreign entity, it must be determined whether there is a participation right or not.

Participation rights

Section 9D of the Act defines a participation right as:

..the right to participate directly or indirectly in the capital or profit of, dividends declared by, or any other distribution or allocation made by, any entity "

For a person to be taxed on the income of the foreign entity he must have participation rights of more than 50%. Based on the definition of participation rights, it is not clear what the position would be if 100% of the right to capital were held by a non-resident, while 100% of the right to income were held by a South African resident. Can it be said that the resident holds more than 50% of the participation rights (Clegg 1998: 106).

The question, which then also arises, is whether discretionary beneficiaries have a right for the purpose of this section (Clegg 1998:- 106).

3.3.4 Problems in applying Section 9D

The application of this section may result in an amount being taxed, once in the hands of the entity and once again in the hands of the participant. During the 1998 amendments this section was amended to prevent the double taxation.

The application of this section is not subject to any distribution by the corporate body. It is a purely notional amount, which Section 9D requires to be included in a resident's income. This could result in a taxpayer being out of pocket due to the fact that he has to pay the tax (Taxpayer 1998: 83).

3.3.5. Donations subject to Section 9D

Where a resident makes a donation, settlement or other disposition (including disposal of assets at less than market value) to a non-resident or a resident and if it had been from a Republic source, it would have been deemed in terms of section 7(3), (4), (5), (6) and (7) to be the donor's income, this investment--income will be included in the donor's income (Section 9D(4)).

3.3.6 Exclusions

Introduction

The provisions of the anti-avoidance section (Section 9D) will not apply in the following situations:

where the foreign tax paid or payable is more than 85 % of the South African tax payable;

where the investment income arises from and is effectively connected to the business activities of a substantive business enterprise carried on through a permanent establishment in a foreign country. (This permanent establishment must be suitably equipped to conduct the principal business of the enterprise.);

- the investment income arising from any asset acquired by an immigrant, or by a controlled foreign entity in relation to that immigrant before he became ordinarily resident in the Republic for the first time. (This

exemption is only in respect of the 1998, 1999 and 2000 years of assessment.);

to any investment income which is subject to tax in a country which has been identified by the Minister of Finance by way of a notice in the Government Gazette as a country whose tax system is on a similar basis and level with the Republic (Section 91)(9)).

Foreign tax

The Republic tax attributable is determined by the ratio of total tax to total income. of the resident. The question is however, what is meant by income. Under the provisions of Section 9D, investment income refers to gross income. The editors of "The Taxpayer" are of the opinion that income refers to taxable income (1.998: 87).

If a taxpayer pays tax in a foreign country, this tax will qualify as a rebate in terms of Section 6quat of the Act. In the application of this section the tax-ratio is based on the taxable income of the taxpayer. To determine whether the tax paid in a foreign country is more than 85 % of the Republic normal tax, the ratio has to be calculated with reference to the taxable income.

Immigrants

Sub-section (c) gives an exemption to immigrants where they receive investment income before the 2000-year of assessment. If an immigrant becomes a resident after 29 February 2000 and has been a contingent beneficiary under an off-shore trust since 1997, and thereafter receives a vested right to investment income., he will be liable for tax on the entire amount of the accumulated income in one year (Taxpayer 1998: 87).

4 Conclusion

The introduction of sections 9C and 9D coincided with the partial lifting of exchange controls. It is therefore clear that the revenue authorities are trying to keep up with the changes in the business environment. These attempts to keep up with a changing environment should be applauded and encouraged.

The introduction of sections 9C and 9D did however result in a number of uncertainties regarding the application thereof. It is hoped that these uncertainties will be addressed by the South African Revenue Service as swiftly as they introduced the sections.

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Millin v CIR (1928 AD 207; 3 SATC 170)

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