

# **PROMOTING SOUTH AFRICA AS AN INVESTMENT GATEWAY: THE INFLUENCE OF TAX LEGISLATION**

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Submitted in partial fulfilment of the requirements for the degree  
MCom in Taxation

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA

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Date of submission:

**16 September 2013**

## **Abstract**

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The South African government announced in 2008 that it intends to promote South Africa as a suitable company headquarter jurisdiction for investment in Africa in general and the sub-Saharan region in particular. The 2010 Taxation Laws Amendment Bill introduced a number of tax changes to lure headquarter companies to South Africa. The new South African headquarter company regime attempts to attract foreign direct investment through these changes. The government plans to make South Africa a gateway for African investments. In order to achieve this goal the regulatory, economic and legal frameworks need to be suitable for international investment. This study analyses the tax characteristics of an ideal holding company regime and investigate the importance that is placed on tax considerations compared to non-tax considerations by companies when faced with investment decision making and whether tax is a primary driver of such decisions.

A single source ethnographic case study is used to analyse the process followed by an organisation, and the considerations used by the key decision makers within this organisation, for setting up a holding company in South Africa to drive an investment and business expansion.

The case study consists of an investigation into the process followed, the strategy formulated and the structuring of the business for making the investment in selected African countries. It further investigates where the ultimate holding company will be located as a headquarter company for all further Africa business expansion.

It was found that the tax considerations are mainly a favourable capital gains tax regime, low income taxes, no or low tax on dividends, a favourable tax treaty network, the absence of controlled foreign company legislation and a liberal thin capitalisation and transfer pricing regime. Non-tax factors also play a significant role in decision making when considering the investment destination. These factors include: economic and political stability; adequate physical, business, accounting and legal infrastructure; the absence (or limited presence) of bureaucratic obstacles; adequate communication channels; the ability to repatriate profits freely; an effective banking system; and the availability of an adequate dispute resolution mechanism.

There is a definite distinction between tax specific strategies where enterprises are set up to take advantage of tax incentives provided by certain jurisdictions and where an investment decision is taken and aligned with business decisions to align these strategies to take advantage of a favourable tax regime

Jurisdictions that only concentrate on tax incentives will find it difficult to attract foreign direct investment. Decision makers that are held responsible for investors' capital will take tax as well as non-tax aspects into account when deciding to invest in a country and to set up holding company in that jurisdictions. It is therefore important for a jurisdiction to provide an environment that is conducive to do business in order to attract foreign direct investment.

**KEY WORDS:**

Foreign direct investment

Headquarter company

Holding company regime

Favourable tax regime

## **Abstrak**

# **BEVORDERING VAN SUID AFRIKA AS 'N BELEGGINGS-DEURGANG: DIE INVLOED VAN BELASTING-WETGEWING**

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Die Suid-Afrikaanse regering het in 2008 aangekondig dat die regering van voornemens is om Suid-Afrika te bevorder as 'n geskikte hoofkwartier maatskappy jurisdiksie vir belegging in Afrika in die algemeen en die belegging in die sub-Sahara-streek in besonder. Die 2010-belasting wetwysiging poog om met 'n aantal belastingvoordele maatskappye te ooreed om hulle hoofkwartier-maatskappye in Suid-Afrika te vestig. Die nuwe Suid-Afrikaanse hoofkwartier-maatskappy wetgewing poog om direkte buitelandse beleggings te lok deur middel van hierdie belastingvoordele. Ten einde hierdie doel te bereik sal die regulerende, ekonomiese en wetlike raamwerke in plek gestel moet word wat geskik is vir internasionale beleggings. Hierdie studie analiseer die belasting-eienskappe van 'n ideale houermaatskappy en ondersoek die belang van belasting-oorewegings teenoor nie-belasting oorewegings deur maatskappye wanneer beleggingsbesluite geneem word en of belasting 'n primêre dryfveer is wanneer sulke besluite geneem word.

Deur 'n enkele etnografiese gevallestudie, word die proses analiseer wat gevolg is deur 'n organisasie, en oorewegings wat gebruik word deur die sleutel-besluitnemers binne die organisasie, in terme van die opstel van 'n houermaatskappy in Suid-Afrika.

Dit is bevind dat die belasting-oorewegings hoofsaaklik 'n gunstige kapitaalwinstbelasting regime, lae inkomste belasting, geen of 'n lae belasting op dividende, 'n gunstige belastingverdrag netwerk, die afwesigheid van beheerde buitelandse maatskappy wetgewing en 'n liberale dun kapitalisasie en oordrag-pryse regime is. Nie-belasting

faktore speel ook 'n belangrike rol in besluitneming in die oorweging van 'n beleggingsbestemming. Hierdie faktore sluit in: die ekonomiese en politieke stabiliteit, rekeningkundige- en wetlike infrastruktuur; die afwesigheid (of beperkte teenwoordigheid) van burokratiese struikelblokke; voldoende kommunikasiekanale, die vermoë om winste te repatrieer; 'n effektiewe bankstelsel, en die beskikbaarheid van 'n voldoende dispuut-oplossings meganisme.

Daar is 'n definitiewe onderskeid tussen belasting-spesifieke strategieë waar ondernemings opgestel word rondom belastingaansporings wat deur sekere jurisdiksies aangebied word en diegene waar 'n beleggingsbesluit geneem word en die beleggingsstrategie en die beskikbare belasting voordele in ag geneem word as deel van die strategie.

Jurisdiksies moet 'n gunstige omgewing skep wat besigheidsbedryf sal bevorder om beleggings te lok. Besluitnemers neem belasting en nie-belasting aspekte in ag wanneer 'n houermaatskappy opgestel word. Jurisdiksies wat slegs fokus op belastingvoordele kan dit moeilik vind om buitelandse beleggings te lok.

## **SLEUTEL WOORDE**

Direkte buitelandse belegging

Hoofkwartier maatskappy

Houer maatskappy

Voordelige belasting omgewing

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# **PROMOTING SOUTH AFRICA AS AN INVESTMENT GATEWAY: THE INFLUENCE OF TAX LEGISLATION**

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 BACKGROUND**

South Africa is perceived as the economic power house of Africa. South Africa's location, sizable economy, political stability and overall strength in financial services make the country an ideal location for the establishment of regional holding companies by foreign multinationals when expanding their business into Africa (Seccombe, 2012:63).

The establishment of a holding company requires an infrastructure that is conducive to the performance of its operations and the achievement of its goals. Factors that affect the choice of location will differ from one holding company to another, depending on the objectives of the investment (Legwaila; 2012:24).

Both tax and non-tax factors are taken into account by the decision makers of the holding companies that will determine where companies invest. From a tax perspective the structure of the legal vehicles used to drive such investments is critical. This is influenced by factors such as low income taxes, tax treaty networks, thin capitalisation and transfer pricing rules. Non-tax factors also play a role in decision making when considering the investment destination. These factors include: economic and political stability; adequate physical, business, accounting and legal infrastructure; the absence (or limited presence) of bureaucratic obstacles; adequate communication channels; the ability to repatriate profits freely; an effective banking system; and the availability of an adequate dispute resolution mechanism (Udal & Cinnamon in Legwaila, 2010:24).

Capital has become more mobile and differences in tax systems have become more important for attracting investment. Some countries have positioned themselves to take advantage of the increasing international mobility of capital (Carroll, 2009:7).

The tax literature has recognised that due to the mobility of capital and the integration of economies, increased pressure is placed on tax policies as increasing tax rates in one country will provide the incentive for tax payers to relocate abroad (Benassy-Quere, Fontagne & Lahreche-revil in Botha, 2010:1). The importance of tax competition between countries has also been recognised by Friedman (Biswas in Botha, 2010:1) in his statement “...competition among national governments in the public services they provide and in the taxes they impose is every bit as productive as competition among individuals or enterprises in the goods or services they offer for sale and innovation; to improvement in the quality of goods and services and a reduction of their cost. A governmental cartel is no less damaging than a private cartel”.

Often countries will offer low tax rates or tax relief in the belief that by doing so they will be able to attract greater foreign investment and activities into that country. Tax havens as a group exhibited annual growth in Gross Domestic Product (GDP) of 3.3 percent per annum in 1982–1999 as opposed to the world average of 1.4 percent per annum over the same period (Hines, 2004:1).

The 2010 Taxation Laws Amendment Bill introduced a number of tax changes to lure headquarter companies to South Africa. The new South African headquarter company regime attempts to attract foreign investment through these changes. The government plans to make South Africa a gateway for Africa investments.

Legwaila (2011 & 2012) and Botha (2010) investigated the tax characteristics of an ideal holding company and did an analysis of low tax jurisdictions as a means to attract foreign direct investment from a South African point of view. Despite this, and after an extensive search of leading electronic journal databases, it was found that little research exists on whether executives and decision makers of companies have taken cognisance of these changes and whether taxation is one of the primary factors taken into account when deciding to invest in Africa. This study will investigate the importance that is placed on tax

considerations compared to non-tax considerations by companies when faced with investment decision making and whether tax is a primary driver of such decisions.

## **1.2 PROBLEM STATEMENT**

Will the adoption, by South Africa, of a tax regime similar to those practiced in low tax jurisdiction be able to attract foreign direct investment? “Investing in Africa” is a common phrase these days, yet, the question begs, how does one approach a continent of 54 countries with a diverse array of economic, socio-cultural, political, and environmental landscapes for investments (Deloitte & Touche, 2013:1).

Although other researchers have addressed the changes to the South African Tax legislation with regards to the holding company regime and the theory behind Section 9I of the Income Tax Act No. 58 of 1962 (hereafter referred to as the Act), little research has been done with regards to the behaviour of decision makers with regards to foreign direct investment and whether tax is a primary consideration in these decisions to invest elsewhere or even in South Africa to date.

## **1.3 PURPOSE STATEMENT**

The purpose of this study is to analyse the factors that influence foreign investment choices and determine whether the recent changes in the South African tax legislation are likely to affect these decisions.

## **1.4 RESEARCH OBJECTIVE**

The research objective of the study is to use a multinational company in an ethnographic single source case study to analyse decision making in organisations with regard to direct investment in Africa and to what extent taxation is a consideration in the setting up of a holding company.

## **1.5 IMPORTANCE AND BENEFITS OF THE STUDY**

Fiscal incentives and tax rates are often critical ingredients of where to locate investments (Biswas in Botha, 2010:4). Some studies have indicated that a strong link exists between corporate tax rates and location of foreign direct investment, specifically in developing countries (Azemar & Deliosin in Botha, 2010:4).

With effect from 1 January 2011, a new tax regime, regarding headquarter companies was enacted in the Act to ensure that the tax system did not act as a barrier to the use of South Africa for a regional headquarter company, especially for Sub-Sahara Africa.

This case study will review whether taxation is a critical aspect that drives the decision making process in an organisation when taking investment decisions to make investments specifically into Africa taking into account the recent changes in tax legislation.

## CHAPTER 2

### DELIMITATIONS AND ASSUMPTIONS

#### 2.1 DELIMITATIONS

The study will limit its scope to the points emphasised in the purpose statement. It addresses the changes in the South African tax legislation to attract foreign direct investment and will not attempt to address efforts by other countries.

The study will not attempt to analyse or address the following:

- The practical considerations associated with low tax rate jurisdictions and foreign direct investment.
- Other aspects that also influence foreign direct investment such as political and economic stability in a region.
- The availability of technical support and personnel.
- The ease of importing and exporting of goods and services.

#### 2.2 ASSUMPTIONS

The following statements are assumed by the study:

- Organisations are free to invest in any country in the world they choose to, provided they meet the required legal obligations.

## CHAPTER 3

### DEFINITION OF KEY TERMS

**Ethnographic research:** Observation of and interactions with the people or group being studied in the group's own environment.

**Foreign direct investment:** The acquisition of controlling interest by governments, institutions or individuals of a business in another country.

**Category 1 Global Business Company (GBC1):** A body corporate registered in Mauritius and which is licensed by the Financial Services Commission as holding a Category 1 Global Business Licence to conduct business outside Mauritius.

**Holding company:** A parent corporation that owns enough voting stock in another corporation to control its board of directors (and, therefore, controls its policies and management).

**Tax incentives:** Specific provisions in the tax code that provide favourable tax treatment to individuals and businesses to encourage specific behaviour or activities.

**The Act:** The South African Income Tax Act No 58 of 1962.

Table 1 gives the abbreviations used in this document.

**Table 1: Abbreviations used in this document**

Abbreviation	Meaning
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CGT	Capital Gains Tax
EBIT	Earnings before interest and taxes
EVA	Economic Value Added
FFIHC	Foreign Financial Instrument Holdings Company
GBC1	Global Business Company Category 1
IHC	International Holding Company

<b>Abbreviation</b>	<b>Meaning</b>
IRCC	Import Rebate Credit Certificates
MIDP	Motor Industry Development Program
OECD	The Organisation for Economic Co-operation and Development
PAA	Productive Asset Allowance
RONA	Return On Net Assets
The Act	Income Tax Act No 58 of 1962
WTO	World Trade Organisation



## CHAPTER 4

### LITERATURE REVIEW: FOREIGN DIRECT INVESTMENT

#### 4.1 INTRODUCTION

In this chapter the role of foreign direct investment and the role taxation plays in attracting foreign direct investment will be addressed. The chapter will be used to address the practice of low tax jurisdictions to attract foreign direct investment, the benefits and the constraints in doing so.

#### 4.2 FOREIGN DIRECT INVESTMENT

Foreign direct investment is defined as an investment made by a company or entity based in one country, into a company or entity based in another country (Easson, 2004:4). Foreign direct investments differ substantially from indirect investments such as portfolio flows, wherein overseas institutions invest in equities listed on a nation's stock exchange. Entities making direct investments typically have a significant degree of influence and control over the company into which the investment is made. Open economies with skilled workforces and good growth prospects tend to attract larger amounts of foreign direct investment than closed, highly regulated economies.

Many developing economies have joined the race to attract foreign direct investment by adopting certain traits of a low tax jurisdiction but in order to do this there are some barriers that need to be reduced in relation to foreign direct investment (Legwaila, 2012:22). Many of these developing countries have endeavoured to create a policy framework to attract such foreign direct investment. This is because of the view that foreign direct investment will assist in the processes to accelerate economic development in this country. Optimism about the economic consequences of foreign investment and the additional awareness of possible new technologies and possibilities of growth has

contributed to the changes in policies with regards to foreign direct investment (Hanson, 2001:3).

### 4.3 THE BENEFITS OF TAX INCENTIVES FOR FOREIGN DIRECT INVESTMENT

It would appear that the benefit of foreign direct investment is not only limited to that of the investor and the country in which such investment is made, but this will also benefit the communities where such businesses are located. There is limited literature available on the effects on communities in which these investments are made. In the United States of America different states and counties often lobby investors to convince the investors to setup foreign plants in those counties (Botha, 2010:13). Figlio and Blonigen have tried to quantify this impact on local communities (Figlio and Blonigen (1999:362) in Botha (2010:13)). They concluded that there are very different results when the effect on local investment is measured and that there are not one set of rules that drives investment. There are a number of case specific factors that will influence an investor, both tax and non-tax.

### 4.4 CONSTRAINTS OF TAX INCENTIVES ON FOREIGN DIRECT INVESTMENT

According to Easson (quoted by Botha; 2010:13) there are a number of constraints, both internal and external that need to be addressed when considering tax incentives to attract foreign direct investment. These are:

- **Internal constraints.** These can be either practical or political in nature. Additional tax incentives might mean a reduction in tax revenue for the state and might therefore not be affordable;
- **External constraints.** The competition to attract investment has led to a universal decrease in tax rates and an incentive war between countries in some cases;
- **World Trade Organisation (WTO) rules.** These rules will apply to member countries. In 1999 a dispute between the European Union and the United States of America imposed important constraints on the use of tax incentives as a means of promoting exports;

- **Non-discrimination rules.** The WTO rule is the basis of non-discrimination. The essence is that any products and services originating from member countries should be treated in the same manner regardless of the country of origin;
- **Export subsidies.** The use of export subsidies are restricted by the WTO; and
- **Organisation for Economic Co-operation and Development (OECD) impact.** The OECD has a broad impact on the tax policies imposed by its members. Although the rules of the OECD are not supranational powers its members undertake a binding obligation to adhere to the rules.

#### 4.5 THE STATUS OF FOREIGN DIRECT INVESTMENT IN AFRICA

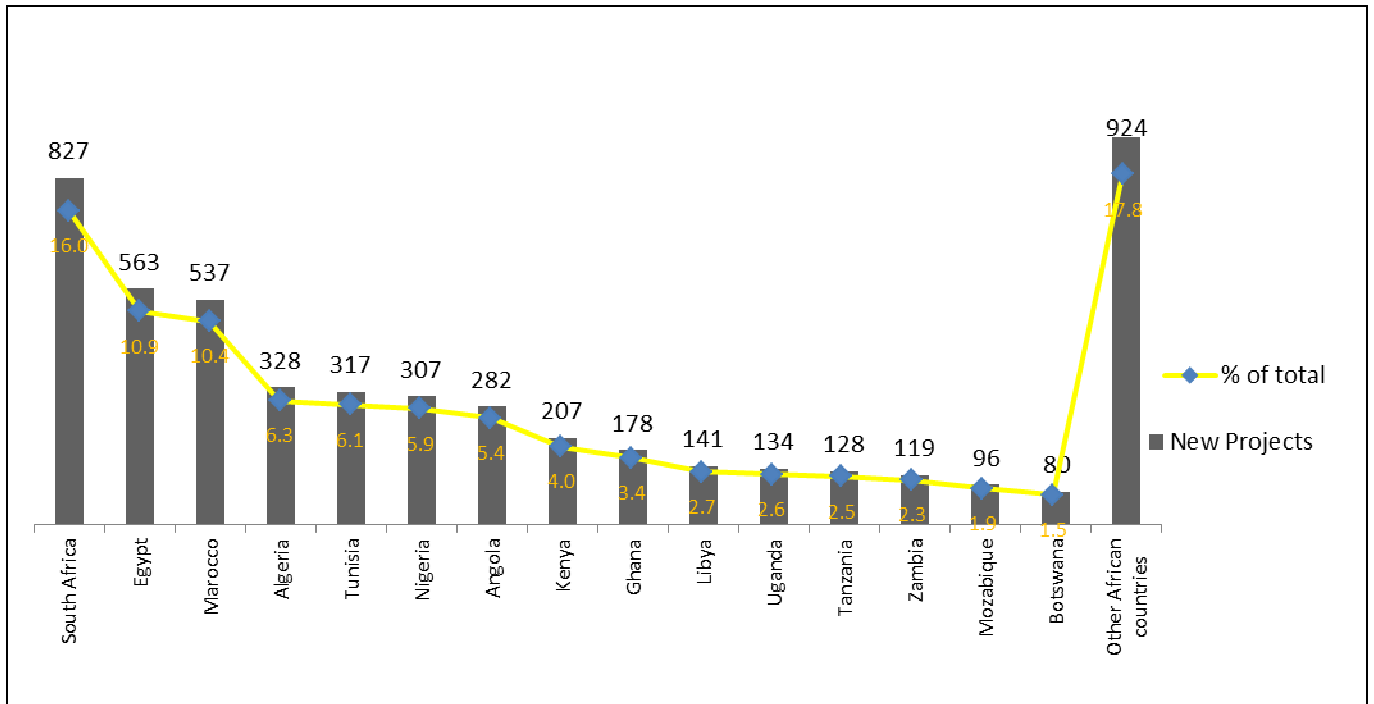
The “African Renaissance” has been much promoted in the past decade. There has been an increase in political stability and democracy has spread. Furthermore, sound economic management and a growing commitment in many countries to stem out corruption has increased the ability of African businesses to become more successful, and to compete not only in Africa but across the world. Many African governments are creating more business- and investor-friendly environments (Ernst & Young; 2012:10).

According to Ernst & Young (2012:12) the focus for foreign direct investment moves from developed to rapid-growth economies, and African countries have unique opportunities to break the constraints that have marginalized the continent. This will, however, only be achieved by its 54 countries co-operating better. Many of these countries have small populations, underdeveloped economies, limited capacities, low per capita income levels and few resources.

From the research conducted by Ernst & Young in 2013, South Africa is perceived as the most attractive investment destination in Africa. According to their research the large majority of respondents view South Africa as the most attractive African country in which to do business: 41% of all respondents put South Africa in first place, while 61% included it in their top three. The primary reasons for South Africa’s popularity appear to be its relatively well-developed infrastructure, a stable political environment and a relatively large domestic market. The diagram in Figure 1 depicts how the percentage of the total foreign direct

investment attracted to the African content of is distributed among the number of new projects that was invested in through foreign direct investment from 2003 to 2001 (Ernst & Young, 2012:32).

**Figure 1 Foreign direct investment in Africa in 2012**



Source: Adapted from Ernst & Young Attractiveness survey on Africa, 2012 (Ernst & Young, 2013).

South Africa managed to attract 16% of all new investment in Africa during 2012. That is the single highest attraction rate of foreign direct investment in all African countries, with Egypt and Morocco coming in second and third with 10.9% and 10.4% respectively.

The growth in intra-African investment is being led by the respective regional powerhouses of Kenya, Nigeria and South Africa. All three of these African economies are ranked among the top 20 investors into the rest of the continent between 2003 and 2011. Importantly too, in the last four years, all three of these African countries have been growing their investments in terms of compound growth of new foreign direct investment projects. Over this period, investment from Kenya and Nigeria into the rest of the continent has grown at a faster rate than from anywhere else in the world, at 77.8% and 73.2% respectively, while South African investment has grown at a rate of 64.8%. (Ernst & Young, 2012:32).

## 4.6 THE CASE FOR SOUTH AFRICA

The South African National Treasury announced in 2010 that it intends to create a business orientated environment that will promote South Africa as a gateway to investment into Africa. In pursuance of this goal, the National Treasury is reviewing the South African corporate and business framework as well as exchange control and corporate tax laws to determine if the corporate, business, legal and tax environment stifles the ability of South Africa to serve as a base through which investors could access investment opportunities in Africa (National Treasury Budget review, 2010:78-79).

South Africa has attracted foreign direct investment in the past (Ernst & Young, 2013). One of the areas where South Africa was able to secure large foreign direct investment was where substantial tax incentives were made available to such investments.

For example: The Motor Industry Development Program (MIDP) is widely regarded as a major success of South Africa's post-apartheid trade and industrial policies. The program was introduced in 1995. The program, by way of export rebates, allowed vehicle manufacturers to neutralise import duties and reduce the *ad valorem* duty on presentation of import rebate credit certificates (IRCC). It further allowed manufacturers additional tax allowances on assets used in the manufacturing of vehicles in the form of a productive asset allowance (PAA). The program has been modified and/or extended several times, and was scheduled to continue until 2012. At the same time, high-level discussions were underway in several ministries and agencies about future industrial policy strategies for South Africa. The MIDP's success makes it an obvious model for new approaches to industrial development policy, and in particular for increased emphasis on sectorial strategies and interventions (Flatters, 2005:1).

Despite this, the main source of foreign investment into South Africa was in the form of portfolio investment (mainly shares and bonds). These are liquid types of foreign investment and investors will extract their capital when uncertainty arises in global markets or in South Africa (Botha, 2010:29).

## CHAPTER 5

### LITERATURE REVIEW: DECISION MAKING

#### 5.1 INTRODUCTION

In recent years there has been a heightened effort by numerous countries to convince decision makers to invest in their countries, in the form of setting up holding companies. At the forefront of this development are countries such as Belgium, Denmark, Luxembourg, Mauritius, the Netherlands, Singapore and the United Kingdom. With the announcement in the 2010 Budget review, South Africa has also joined this race. (National Treasury Budget review, 2010)

#### 5.2 INVESTMENT DECISION MAKING

Recent headlines of the Business Day newspaper read “New Anglo CEO vows group will stay in SA”, “Mauritius acts as gateway for SA companies’ African property funds” and “Anglo CEO vows group will not disinvest from SA”. It is headlines like these that stares decision makers in the face when opening business publications. In these articles the journalists comment that investors and analysts are worried about the unsettling and prolonged violent nature of labour relations disputes, the ballooning of costs, power constraints, political and regulatory constraints and exchange controls in South Africa.

Margo (1999:64) outlines a number of tasks and contextual characteristics that drive or stifle investment choices. These include familiarity, ambiguity, instability, complexity, irreversibility of response, significance of outcomes, accountability, time constraints, response modes and information display. Further, tax planning and compliance problems share some of these characteristics.

When considering investment destinations the primary consideration is an infrastructure that is conducive to the performance of its operations and the achievement of its goals. The factors that influence the choice of location will differ from company to company,

depending on the nature and objective of such investments. These factors include (Legwaila, 2012:24):

- economic and political stability,
- adequate business facilities,
- accounting and legal frameworks and infrastructure,
- bureaucratic obstacles,
- communication infrastructure,
- exchange controls, and
- effective banking systems.

The social, economic and political stability in a country is a determining factor considered by the decision makers when considering a country as an investment destination, especially when raising finance is important. Supplementary to this is the legal system in a country and the functioning of such a legal system. The legal system should allow for ease of transacting in a country as well as the ability of a company to enforce its legal rights (Legwaila, 2012:24).

As per Oliver and Honiball (2011:697): “... a combination of operational business activities with an intermediary holding company in a single legal structure could expose an operational company’s assets and investments to commercial risks. Stable laws and ease of compliance could assist in offsetting such risks.”

Holding companies mainly establish companies that deal with management and control and therefore require only a few highly skilled individuals in such a location where a holding company is located to assist in the areas of law, financing, accounting and auditing (Legwaila, 2012:25).

### **5.3 TAX AS A PRIMARY CONSIDERATION IN INVESTMENT DECISION MAKING**

Tax, although not the only consideration when it comes to investment decisions has been increasing in importance relative to other consideration (Botha; 2010:39). The characteristics of countries’ tax legislation also play a major role in the investment

decision-making when deciding on foreign direct investment. These considerations include tax on dividends and capital gains tax. A tax system with zero or low tax on dividends or the repatriation of income will influence decision makers when considering foreign direct investments. The double tax agreement of such a host country is also important to the suitability of the host country to allow for the ease of declaring dividends at a low tax rate (Legwaila, 2012:26).

Tax on capital gains can negatively influence the growth expectations of investors in a company. The rules within the capital gains tax calculation can also play an important role in terms of determining the tax event, the provision of deferral opportunities and the governing of related parties' transactions (Legwaila, 2012:26).

Other tax factors that decision makers may consider are (Legwaila, 2012:26):

- Low income taxes;
- A favourable tax treaty network;
- Unilateral avoidance of double taxation;
- The absence of controlled foreign company legislation; and
- Thin capitalisation and transfer pricing rules.



## CHAPTER 6

### RESEARCH DESIGN AND METHODS

#### 6.1 DESCRIPTION OF INQUIRY STRATEGY AND RESEARCH DESIGN

From the literature review it is event that there are important tax and non-tax factors that are taken into account by the decision makers of ultimate holding companies that will determine where companies invest. From a tax perspective the structure of the legal vehicles used to drive such investments is critical.

A single source ethnographic case study is used to analyse the process followed by an organisation, and the considerations used by the key decision makers within this organisation, for setting up a holding company in South Africa to drive an investment and business expansion. Further aspects reviewed include the process, support structures and information at their disposal in taking the decision to invest in Africa and the format of the investment.

Ethnographic research is a qualitative research design aimed at exploring cultural phenomena. The fundamental question in ethnographic research is the cultural characteristics of a group of people.

The case study consists of an investigation into the process followed, the strategy formulated and the structuring of the business for making the investment in selected African countries. It further investigates where the ultimate holding company will be located as a headquarter company for all further Africa business expansions.

The researcher is in the employ of this organisation and has access to all the decision makers, presentations and minutes of meetings relating to the planned business expansion. Furthermore, the researcher is able to observe the daily activities relating to this decision making process, with access to the individuals in a natural setting rather than

an artificial interview situation. This increases the researcher's access to potentially rich data (Jorgensen & Massner, 2010:189).

The research is based on three types of data:

- a review of minutes of board and senior management meetings;
- participation in discussions, preparation for meetings and presentations; and
- structured interviews using a questionnaire.

The tables in the next section outline the documents used as well as the interviewees that formed part of the research.

## **6.2 DATA**

### **6.1.1 Review of presentations and minutes of meetings**

In investigating the decision process followed, the strategy formulated and the structuring of the business for making the investment in selected African countries and the role of tax information, certain documents were selected from discussions, meetings and presentations used during the decision making process.

Documents used by the organisation's management for decision making included:

- board review reports;
- presentations prepared by various departments relating to the development of the Africa growth strategy;
- the monthly management reporting reports; and
- the planning documents used as part of the operative planning cycle for the previous and current years.

These documents were reviewed to determine the primary driver in decision making, as well as any secondary driver(s) such as the role of tax legislation in both South Africa and the investing company's host country. The documents reviewed are listed in Table 2.

**Table 2: Documents reviewed**

Document types	Example / Description	Date prepared
<b>Minutes of meetings</b>	Board report July 2012 Board report December 2012	July 2012 December 2012
<b>Presentations and reports</b>	"Review of sub-Sahara Africa September 2012" "Review of sub-Sahara Africa November 2012" "Business Case Zambia November 2012" "Nigeria: Abstract of the strategic roadmap and financial articulation November 2012" "Zambia: Abstract of the strategic roadmap and financial articulation November 2012" "ABC Africa Holdings: The implementation of the headquarter Strategy in Africa November 2012" "ABC Africa Strategy: 2013 to 2017 and beyond"	September 2012 November 2012 November 2012 November 2012 November 2012 November 2012 June 2013
<b>Monthly management reports.</b>	Monthly closing meeting financial results and divisional scoreboard for Nigeria, Zambia and Botswana operations.	January 2013 to June 2013
<b>Other</b>	Operative and planning documentation for Nigeria, Zambia and Botswana operations.	OP 2012 & 2013

### 6.1.2 Interviews

Interviews were conducted with employees including the board members and senior managers of the organisation, tasked with decision making regarding the organisation's current business and the development of the Africa growth strategy.

The interviews were documented to analyse the responses in understanding the decision making process. The discussion of the interviewee's responsibilities and daily activities revealed their level of tax legislation knowledge and the use of that knowledge in decision making with regard to investment in African countries.

Both the formal interviews and informal discussions were summarised after the contact with the interviewees in order to be able to revert back to information during the later analysis of the information gathered. Table 3 provides a summary of the data collected through structured interviews and informal discussions.

**Table 3: Interviews**

	June to July 2013	July to August 2013	December 2012 to August 2013
<b>Time</b>	<b>Questionnaire</b>	<b>Formal interview</b>	<b>Informal discussions</b>
<b>Interviewees</b>	CEO CFO Senior Manager Sales Manager Spare sales and Dealer development  Sales consultant Manager Legal Manager Financial controlling General Manager North Manager Logistics	CEO CFO Senior Manager Sales Manager Spare sales and Dealer development	CEO CFO Senior Manager Sales  Manager Legal  Manager Financial controlling

### 6.1.3 Questionnaire

A questionnaire has been developed to ensure a more structured approach to interviewing. The questionnaire has been used during formal interviews and it was circulated to the individuals not formally interviewed.

The questionnaire contained 21 questions broken in four sections. The questions are partly based on the African Attractiveness survey done annually by Ernst & Young and was compiled to be able assess the following:

- Section 1 collected information regarding the interviewee: Their role in the organisation, their knowledge of tax legislation and what role tax plays in their daily tasks.
- Section 2 tested their perception of Africa as a continent for business development.
- Section 3 tested their perception of specific African countries, the reasons for investing in these countries or avoiding it, as well as the ease of doing business in Africa.
- Section 4 gauged the organisation's current Africa business strategy and the thinking on the future strategy in terms of investing in Africa.

Throughout the questionnaire tax played an important role in determining whether taxation and the changes in the Act have influenced any of the strategies in the Africa growth strategy.

Pilot interviews were held with two of the managers, one tasked with the business development in Africa and the other who is currently dealing extensively with customers in Africa. They were asked for additional input and any further suggestions to improve this process and the clarity of the questionnaire.

### 6.3 DATA ANALYSIS

Copies of all minutes of meetings, presentations and all supporting documentations circulated to the participants of these meetings were saved in chronological order to determine the patterns of information available to decision makers during this time frame. All information were saved, regardless whether the Africa strategy was discussed, to ensure the completeness of the data obtained.

This data was reviewed for any discussions regarding the Africa strategy and the base of the discussion documented to determine whether tax legislation was a primary factor and if it was discussed in the meetings.

### 6.4 RESEARCH ETHICS

During the study, research ethics was dealt with as outlined in table 4.

**Table 4: Research ethics**

Issue	Method
Copyright	Information contained in the gathered data might contain information that is protected under a copyright of the organisation. All data was saved on the company's data servers and never removed from the company premises.
Voluntary participation and the right of subjects to withdraw from the study at any point without	The issue of voluntary participation was communicated to the participants and they signed the consent form.

negative consequences	
Confidentiality / privacy	The information contained in the data is sensitive as it included business strategies for possible future business expansion and the organisation's direction. All data was saved on the company's data servers and never removed from the company premises.
Anonymity	The identities of the organisation and the participants were respected and maintained to avoid any information being published before the full strategy is implemented. The names of participants and that of the organisation were never made public or published.
Permission from organisations in the case of research involving employees and/or customers	A signed consent form from the management of the organisation was obtained.
Archiving and storage of research data	All research data were saved on the company's data servers.

## CHAPTER 7

### RESULTS: A MULTINATIONAL COMPANY CASE STUDY

#### 7.1 INTRODUCTION

The researcher is employed at the South African subsidiary of a multinational manufacturing company, as the Financial Controller for the Northern region and Sub-Saharan Africa. In the past 18 months the need to secure existing business in Africa and to further expand this business into Africa has been on the agenda of meetings in both South Africa and in Europe at the holding company level.

#### 7.2 BACKGROUND

The names of the companies were changed to preserve anonymity.

Hold Co is a manufacturer of commercial equipment founded in the early nineteenth hundreds, and is based in Europe. The company first built an experimental car in 1919, with the first production model introduced two years later at the Berlin Motor Show. Between 1921 and 1940, the company produced various classic opulent vehicles.

The company also continued to build heavy duty commercial equipment for marine and rail purposes during the Second World War. Today the company manufactures heavy duty commercial equipment for trains, ships, oil and gas installations, military vehicles, agriculture, mining and construction equipment, as well as large diesel generators.

The corporate strategy of the company consists of the following four core elements:

- **Maintaining leadership in product innovation:** To set the standard in their defined key technologies and this subsequently applies to the end products as well.

- **Broadening the business and customer portfolio:** To ensure that their market share continues to increase, they continuously search for new applications and new customers based on their current product portfolio.
- **Developing and extending systems and services:** They strive to offer the best solutions and are the preferred partner for their customers. Their aim is to provide customers with solutions that will make them more successful throughout the entire life cycle of the product.
- **Profitable growth and continuous increase in corporate value:** To them, profitable growth means an adjusted Earnings Before Interest and Taxes (EBIT) margin exceeding 10% throughout an entire economic cycle, return on net assets (RONA) of over 20% and a continuous improvement in economic value added (EVA).

To enable the company to achieve these core elements in the long term, the company has established initiatives in the course of the last few years designed to bring about planned growth and to secure business excellence at the same time. Customer satisfaction is an integral part of their strategy and the basis for all their business activities. Included in these initiatives is the expansion of the business into Africa.

### 7.3 CASE ORGANISATION

The case organisation was established in South Africa in 2001. This was done by the Hold Co acquiring a South African based company which held the distributors agreement in South Africa. The shares in this company are now 100% held by the Hold Co based in Europe. The South African company is responsible for the distribution of the equipment in South Africa and also the after sales service. The company also supports the current dealers in sub-Saharan Africa which only hold the dealer agreements. These dealers are responsible for after sales support in their respective countries. Dealers that hold a distributor's agreement is supported directly from the Hold Co. These dealers have the rights to sell new equipment and also supply after sales support.

This single source case study focuses on the following:



- the process followed within the organisation on the business decisions for expanding the Africa business;
- the role of tax legislation in this process in determining the structure of the required investments to facilitate such growth in the long term; and
- whether the changes in the South African tax legislation in terms of the holding company regime influenced the investment decisions.

## **7.4 DATA REVIEW**

A review of the minutes of the meetings held over the 18 months and the presentations done at these meetings indicated that the need to grow the business was a clear central theme. The current business within South Africa has reached a point where only organic growth is possible if no projects materialise which will leave the growth expectation on a 6% to 10% per annum for the operations in South Africa. This is in contrast with shareholders expectation of a higher growth rate in the medium term to meet the revenue growth targets. Africa has been identified as a key growth area to achieve these targets.

Many African countries use the equipment manufactured by the holding company. These countries include Nigeria, Zambia, Botswana, Tanzania and Angola. This equipment is used by multinational companies operating in these countries and was acquired by these companies by their holding companies and deployed in Africa and not sold via the South African subsidiary.

Currently this equipment is maintained and serviced via the dealers in each of these countries but these dealers only support the equipment with parts and no other required after sales servicing. If a failure does occur, the dealer will contact the field service department which will dispatch a technician to assist in these countries to repair the equipment.

The field service department currently consists of eight technicians operating in South Africa and when required in the rest of Sub-Saharan Africa as well. The revenue for the parts sales and technical support in Africa is less than 10% of the current revenue of the South African subsidiary.

The common theme in all these documents pointed to:

- the need to grow the business;
- Africa as a key growth area;
- business reasons were the main discussion points rather than tax reasons; and
- little information was discussed relating to tax in any of the key growth countries.

Upon further enquiries with the CEO and CFO as to whether tax has been discussed or considered it was confirmed that it was and that the CFO was tasked to investigate this and give feedback.

## **7.5 CONSIDERATIONS IN THE DEVELOPMENT OF THE STRATEGY**

Refer to Appendix A for the complete questionnaire. The questionnaire was given to employees across the organisation that deal with business in Africa or play a role in the decision making in terms of investment into Africa:

- The answers in question one revealed that 14% of the respondents have formal tax training and the remaining 86% had no formal tax training of any kind. 14% had an extensive knowledge regarding tax, 14% had a moderate understanding, 29% had very little understanding and 43% had no understanding of tax.
- In section two the countries identified as the most attractive to do business in was Botswana, Namibia and Zambia. This was mainly due to the proximity to South Africa. Factors that played a role in these answers were the ease of doing business in these countries, the political and labour stability, and the market that exists in these countries for the products distributed by the company. The first aspect considered by all the respondents was whether there is potential market for the company's products in a country. None of the respondent identified tax or tax incentives as a consideration in their answers.
- From the answers in section three it became clear that there was a definite drive in the organisation to grow into other African markets. The key growth areas for the organisation in the short and medium term are Nigeria, Zambia and South Africa.

Even though Nigeria was not perceived as an ideal country to invest in, the market size of that country made it an obvious choice to invest in. Factors identified by the respondents that would influence the decision not to invest in any country were inflexible employment laws; ineffective administrative and regulatory environment; unstable political environment and poor access to skilled labour. Only the CEO, CFO and the Legal Manager made mention regarding an ineffective tax regime and customs procedures. This is due to the fact that they are tasked with this as part of their daily tasks in the organisation. None of the other respondents made any mention of tax as an aspect that would deter from investing in a country.

The CEO and CFO were the only employees taking tax into account at the beginning of any investment decision and further discussions were held with them to understand the role tax play in investment decision-making. During the discussion with the CFO various options in terms of the structure of the company was discussed. One of these options was to set up a headquarter company in either South Africa or Mauritius. The main reason for this were the fact that both South Africa and Mauritius offer favourable tax incentives to companies to set up a holding company in these jurisdiction in the form of the Headquarter company regime in South Africa and the Global Business Company Category 1 (GBC 1) structure in Mauritius. Tables 4, 5 and 6 below outline the major differences in the statutory requirements to set up holding companies in these jurisdictions as well as the tax benefits in both.

**Table 5: South Africa and Mauritius headquarter company qualifying criteria compared**

South African headquarter company regime	Mauritian GBC1 regime
<p>The headquarter company must be tax resident in South Africa, which generally would require it to be effectively managed in South Africa, or to be incorporated in South Africa and not be effectively managed in a treaty country.</p> <p>Prescribed minimum percentages:</p> <ul style="list-style-type: none"> <li>• All shareholders must at all times hold a minimum of 10% of the equity shares and voting rights in the headquarter company.</li> <li>• At the end of each year, 80% or more of the cost of the total assets (excluding cash or bank deposits) of the headquarter company must be attributable to foreign investments in the form of</li> </ul>	<p>The emphasis is on a Mauritius presence:</p> <ul style="list-style-type: none"> <li>• The GBC1 Company must be tax resident in Mauritius, which generally requires central management and control to be in Mauritius.</li> <li>• The company must have at least two Mauritian directors.</li> <li>• The company is required to have a bank account in Mauritius.</li> <li>• Its accounting records must be kept in Mauritius.</li> <li>• Its financial statements must be audited in Mauritius.</li> <li>• At least two Mauritius directors must attend</li> </ul>

<p>equity or equity and debt in, or IP licensing rights to, a foreign company in which the headquarter company holds at least 10% of the equity and voting rights. This requirement is, in practice, fairly easy to comply with by interposing a foreign wholly-owned subsidiary between the headquarter company and its investments.</p> <ul style="list-style-type: none"> <li>• Fifty percent of its gross income must comprise income from foreign subsidiaries (not applicable if gross income is less than R5million).</li> </ul> <p>An annual election to be treated as a headquarter company is required. Annual reporting (non-onerous) is required.</p>	<p>directors meetings of the company. Annual application for tax residence certificate in relation to a specific treaty is required.</p>
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Source: Private Equity Investments: SA Headquarter Company vs Mauritius GBC1 Regime 2012 (Werksmans Attorneys, 2012)

**Table 6: Comparison of tax benefits offered by the regimes**

Sources of income/transactions	South African headquarter company	Mauritius GBC1
Profits and gains generated in the underlying structure	The company is exempt from the Controlled Foreign Company (CFC) rules, and as such the profits and gains in the underlying structure will not be attributable to, or taxable in, the company. (The CFC rules could, however, be applicable to shareholders of the headquarter company if they are residents in South Africa and none of the CFC exemptions apply.)	There are no CFC rules in Mauritius, so that the profits and gains in the underlying structure will not be taxed in the GBC1.
Interest received	<p>The South African transfer pricing rules do not apply to loans to subsidiaries, so that it is possible to avoid interest receipts in the headquarter company by making interest-free loans to subsidiaries. Interest paid on money borrowed to on-lend to foreign subsidiaries is tax deductible against interest received from the foreign subsidiaries. If the loan is from a connected person, the thin capitalisation and transfer pricing rules do not apply to this liability.</p> <p>Other interest receipts are subject to the normal tax rules and can, in principle, attract tax at 28%.</p> <p>Any such taxable interest could be avoided by interposing a wholly-owned subsidiary of the headquarter company in a tax-free jurisdiction. The subsidiary can charge the interest and the headquarter company can receive the “interest” in the form of tax-free dividends from the subsidiary (but this might have adverse withholding tax results in the country of the borrower in the absence of a treaty with the country in which the</p>	Interest received is taxable at a maximum rate of 3% (but the amount is eligible for reduction by foreign withholding taxes). No transfer pricing rules exist.

Sources of income/transactions	South African headquarter company	Mauritius GBC1
	interposed company is a resident).	
Dividends received	The dividends received by the headquarter company from its foreign subsidiaries will be exempt from South African tax in terms of the participation exemption.	Dividends received from the underlying investments are taxable at a maximum rate of 3%, but reduced by foreign withholding taxes, which often means that the effective tax rate on dividends received would be nil.
Capital gains on the disposal of shares in foreign subsidiaries	The headquarter company would likely qualify for the capital gains tax (CGT) participation exemption if it held the shares for 18 months or longer and the foreign subsidiaries are not foreign financial instrument holdings companies (FFIHCs). In terms of draft legislation the 18 months and FFIHC requirements are to be removed. Consequently, it is unlikely that CGT would arise on a disposal of shares in underlying investments.	Mauritius does not levy CGT on foreign capital gains.
Dividends declared to shareholders	South Africa does not levy dividends tax on dividends declared by companies with headquarter status.	Mauritius does not have a dividend withholding tax.
Interest paid on borrowings	South Africa will not levy an interest withholding tax on interest payments by headquarter Companies. Interest paid by headquarter Companies on money borrowed to on-lend to foreign subsidiaries is tax deductible against interest received from the subsidiaries. Interest received by non-South African lenders from a headquarter company will not be subject to South African tax, unless the lenders have a permanent establishment in South Africa.	Mauritius does not levy an interest withholding tax. Interest received by foreign shareholders from a GBC1 is not subject to Mauritius tax, provided the shareholders do not carry on business in Mauritius.

Source: Private Equity Investments: SA Headquarter Company vs Mauritius GBC1 Regime 2012 (Werksmans Attorneys, 2012)

In both cases legislation and statutory requirements have been considered by the CFO who is tasked to find the most appropriate jurisdiction to set up the Africa Holdings company. Tax did play a role in this consideration but was not the sole driving factor behind this. Other factors that did also play a role were:

- “indigenisation legislation” requirements in various jurisdictions e.g. Broad-Based Black Economic Empowerment (BBBEE) in South Africa;
- statutory requirements for setting up companies in a jurisdiction; and

- annual statutory cost involved in having these companies set up a jurisdiction.

A meeting was held with the company's attorneys in Cape Town in early September where the location, structure and implementation of the strategy were discussed. Various issues were discussed surrounding the proposed structure of the organisation going forward. During this discussion the issue of setting up a headquarter company were discussed and where this will be located. The options were to base this in either South Africa to take advantage of the changes in section 9I of the Act or alternatively to register this company in Mauritius under the GBC1 regime in Mauritius. The CFO made it clear in the meeting that is the policy of the holding company and the primary focus not to do any of this for tax reasons but for business reasons. Any tax benefits that might flow from this decision will be investigated at that stage but will not be used as a driver for decision making. "...the group does not like to setup structures for tax purposes. They do it for commercial reasons and tax takes a back seat to this until this need to be addressed. The tax is a consideration to optimise the tax liability with the available tax incentives in a country and not to optimise profits..."

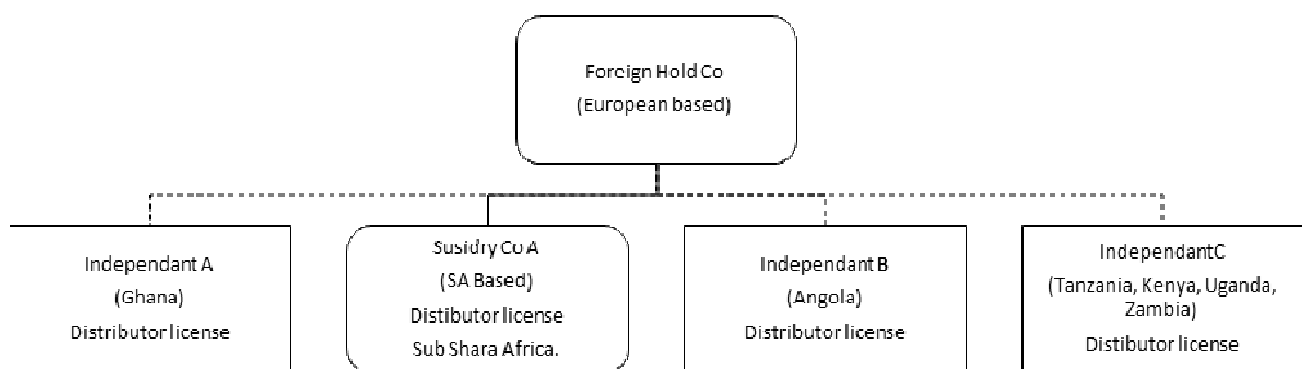
Despite all these considerations the general perception and consideration of tax as a primary reason to locate the headquarter company in a jurisdiction did not feature on any agenda during the review of documents, interviews or questionnaires. Any tax consequences are seen by the company as a cost of doing business rather than as a benefit and is likewise included in the feasibility studies and business plans for each of the countries. The tax consequences of any decision will be the responsibility of the Accounting department together with the assistance of business consultants in the form of legal firms in South Africa and a big five auditing firm located in the country where the holding company will be located.

## **7.6 IMPLEMENTATION OF STRATEGY AND BUSINESS MODEL TO SUPPORT THIS STRATEGY**

The current model of having only dealers in Sub-Saharan Africa with little or no involvement of either the holding company or the subsidiary in South Africa has served the purpose up

to now, but in order to grow the company, it needs to be more directly involved in the business activities in each of the Sub-Sahara countries. The main reason for this is that the current dealer agreements are not exclusive and this allowed the dealers to be multi-franchise dealers. As these dealers distributed and supported other equipment manufactures in these regions the product of the case organisation is not promoted exclusively by these dealer. Figure 2 depicts the current organisational structure of the Africa business.

**Figure 2 Current organisational structure of the Africa business**



One of the aspects that were identified in both the review of the available literature and reports generated in the organisation as well as during both the formal and in formal discussions were that the interest of the organisation was not promoted exclusively in sub-Sahara Africa.

The current dealers, because of their nonexclusive dealer agreements, only saw the relationship as a short-term one where a product will be supplied based on a customer requirement in a country and then sold at a margin. There was no incentive or initiative to grow one particular brand or to become exclusive.

The strategy is to become more directly involved in the business activities relating to their own product in each of the countries identified as key growth areas and engage with both the locally based and internationally based companies operating in these sub-Sahara countries, to support the products of the company exclusively.

This will be done in the form of an African holding company where the shareholder will be the holding company and the South African subsidiary as a subsidiary of the African Holding company. This holding company will take the form of a headquarter company for all African business consolidating all companies and operations in Botswana, Nigeria South Africa and Zambia. The question still remains where to locate this African Holding company as there are other non-tax considerations that will have to be considered before the final decision is taken. The options are either South Africa or Mauritius due to the ease of doing business and possible tax benefits that both these countries may offer in either the Headquarter regime in South Africa or the GBC1 regime in Mauritius.

## **7.7 NON TAX CONSIDERATIONS**

Despite the tax factors under consideration in the implementation and structuring of the African Holding company that will serve as the headquarter company for all the African business there is non-tax considerations that played a more significant role in the decision making process in all the levels of management that was required to either supply information or even take the final decisions. The most prominent factors that played a role in the decision making process are the following:

- inflexible employment law;
- corruption;
- unstable political environment;
- unstable labour environment;
- cumbersome customs procedures;
- difficult to move goods into and out of a country;
- lack of entrepreneurial culture and entrepreneurship;
- difficult to access local finance or credit; and
- poor access to highly skilled labour.

All the above factors played a role in the decision of where to set up this business and the daily operations, rather than the statutory or tax environments in which business will be conducted. The business factors considered far outweighed any statutory or tax benefits



provided by any jurisdiction. A reason for this might be the level of tax experience within the organisation, but tax is seen as a cost of doing business in the organisation.

## **CHAPTER 8**

### **CONCLUSION**

#### **8.1 INTRODUCTION**

Internationally, many jurisdictions are popular for establishing holding and headquarter companies for multinational groups. Mauritius has established itself as a favourable headquarter jurisdiction, especially as a gateway for investments in Africa. Up to now, local tax and exchange controls have prevented South Africa from gaining favour as gateway for investment in Africa.

The new South African headquarter company regime attempts to remedy this position. The government plans to make South Africa a gateway for African investments by introducing tax incentives that will benefit these holding companies and thereby persuade the decision makers in companies to set up their holding companies in South Africa to drive their expansion into Africa.

#### **8.2 PURPOSE STATEMENT AND OBJECTIVE**

The purpose of this study was to analyse the factors that influence foreign direct investment choices and to determine whether the recent changes in the South African tax legislation will influence these decisions.

The research objective of the study was to use a multinational company in an ethnographic single source case study to analyse decision making in organisations with regards to direct investment in Africa and to what extent taxation is a consideration in the setting up of a holding company.

### 8.3 SUMMARY OF FINDINGS

There have been a number of studies on foreign direct investment in the past (Legwaila (2011 & 2012) and Botha (2010) but there seems to be contradictory views on whether this aided growth in a particular jurisdiction, to what extent, if any, or even at what cost. Like any other fiscal policy changes, the execution and implementation of these policies are as important as the intent thereof. These policies can only influence decision makers and investors if the correct economic environment is created by these policy changes.

The establishment of a holding company requires an infrastructure that is conducive to the performance of its operations and the achievement of its goals. Factors that affect the choice of location will differ from one holding company to another, depending on the objectives of the investment. There are important tax and non-tax factors that are taken into account by the decision makers of the ultimate holding companies that will determine where companies invest.

From a tax perspective the structure of the legal vehicles used to drive such investments is critical. This is influenced by factors such as low income taxes, tax treaty networks, thin capitalisation and transfer pricing rules. Non-tax factors also play a significant role in decision making when considering the investment destination. These factors include:

- economic and political stability;
- adequate physical, business, accounting and legal infrastructure;
- the absence (or limited presence) of bureaucratic obstacles;
- adequate communication channels;
- the ability to repatriate profits freely;
- an effective banking system; and
- the availability of an adequate dispute resolution mechanism.

It was found that tax consequences are seen by the case company purely as a cost of doing business rather than as a major benefit and is likewise included in the feasibility studies and business plans for each of the countries considered. The tax consequences of

any investment decision are seen as the responsibility of the Accounting department, assisted by business consultants in the country where the holding company is located.

## 8.4 CONCLUSIONS

There is no single formula for foreign direct investment, or for investing in Africa for that matter. The decision to invest in Africa will ultimately differ from country to country depending on a whole array of factors. These factors are both tax and non-tax in nature and only when all these factors for a country are taken into account can the decision be made by investors to invest in a country.

While tax might not be the main reason why companies will make use of the headquarter regime, tax do play an increasingly important role in the decision where these headquarter companies will be located. For any new investment decision the tax cost on the general profitability of the business will play a significant role in such a decision. The desirable situation will be one where the tax considerations will not significantly influence the pure business and economic reasons for setting up a headquarter company and conducting business in that jurisdiction.

Poor tax planning will affect the company's cash flow and viability negatively. It is therefore necessary to make the tax consequences in a jurisdiction part of the business planning, as much as the marketing strategy, business model strategy and management decisions.

There is a definite distinction between:

- tax specific strategies where enterprises are set up to take advantage of tax incentives provided by certain jurisdictions; and
- where an investment decision is taken and aligned with business decisions to align these strategies to take advantages available in a favourable tax regime.

The one is tax-driven and the other business-driven. The first will only weigh the tax benefits and the other will take all tax as well as non-tax factors into account before reaching a decision to investing a jurisdiction.

Based on the single case study the recent changes in the South African tax legislation are unlikely to affect investment decisions to a great extent. However, this should be considered within the context of lack of generalisability of case study research. Jurisdictions that only concentrate on tax incentives will find it difficult to attract foreign direct investment. Decision makers that are held responsible for investors' capital will take tax as well as non-tax aspects into account when deciding to invest in a country and to set up holding company in that jurisdictions. It is therefore important for a jurisdiction to provide an environment that is conducive to do business in order to attract foreign direct investment.

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# **APPENDIX A**

## **- Data collection instrument(-s) -**

## Documents reviewed

Document types	Example / Description	Date prepared
<b>Minutes of meetings</b>	Board report July 2012 Board report December 2012	July 2012 December 2012
<b>Presentations and reports</b>	"Review of sub-Sahara Africa September 2012" "Review of sub-Sahara Africa November 2012" "Business Case Zambia November 2012" "Nigeria: Abstract of the strategic roadmap and financial articulation November 2012" "Zambia: Abstract of the strategic roadmap and financial articulation November 2012" "ABC Africa Holdings: The implementation of the headquarter Strategy in Africa November 2012" "ABC Africa Strategy: 2013 to 2017 and beyond"	September 2012 November 2012 November 2012 November 2012 November 2012 November 2012 June 2013
<b>Monthly management reports.</b>	Monthly closing meeting financial results and divisional scoreboard for Nigeria, Zambia and Botswana operations.	January 2013 to June 2013
<b>Other</b>	Operative and planning documentation for Nigeria, Zambia and Botswana operations.	OP 2012 & 2013

## Interviews

	June to July 2013	July to August 2013	December 2012 to August 2013
<b>Time</b>	<b>Questionnaire</b>	<b>Formal interview</b>	<b>Informal discussions</b>
<b>Interviewees</b>	CEO CFO Senior Manager Sales Manager Spare sales and Dealer development  Sales consultant Manager Legal Manager Financial controlling General Manager North Manager Logistics	CEO CFO Senior Manager Sales Manager Spare sales and Dealer development	CEO CFO Senior Manager Sales  Manager Legal  Manager Financial controlling

## Questionnaire

### **A. General questions**

#### **Q1. What is your job title?**

- Chairman / President / CEO
- Financial director/CFO
- Senior Manager
- Manager
- Sales executive
- Other

#### **Q2. Do you have any formal tax training?**

- Post graduate
- Degree
- Diploma
- Tax course
- None

#### **Q3. Do you have an understanding of tax?**

- Extensive
- Moderate
- Very little
- None at all

#### **Q4. To what extent does tax play a role in the day to day performing of your tasks?**

- Extensive
- Moderate
- Very little
- None at all

#### **Q5. Does your company already have an international presence in Africa?**

- Yes
- No

## **B. Perception of African countries**

**Q6. Which three African countries do you consider as most attractive to do business in?**

***(Give three answers – In first position / in second position / in third position)***

Algeria	Cape Verde	Ethiopia	Libya	Namibia	Somalia	Zambia
Angola	Chad	Gabon	Madagascar	Niger	South Africa	Zimbabwe
Benin	Comoros	Gambia	Mali	Nigeria	Sudan	None
Botswana	Congo Democratic	Ghana	Morocco	Rwanda	Tanzania	Other
Burkina Faso	Côte d'Ivoire	Guinea	Mauritania	Senegal	Togo	Can't say
Burundi	Djibouti	Kenya	Mauritius (Island)	Seychelles	Tunisia	
Cameroon	Egypt	Liberia	Mozambique	Sierra Leone	Uganda	

**Q7. Does SA have DTA's with the countries in your choices in Q 12?**

- Yes
- No
- Can't say

**Q8. Does these DTA's influence the attractiveness to do business in these countries?**

- Yes
- No
- Can't say

**Q9. Do you know what the role of DTA's are?**

- Yes
- No
- Can't say

**Q10. Why do you think [Q12 most attractive country (in first position)] is most attractive?**

***(Open ended question, do not prompt)***

- Stable political environment
- Bigger internal market and accessible customer
- Better transport and logistics infrastructure
- Stronger entrepreneurial culture and entrepreneurship
- Attractive tax incentives for direct investment
- Other
- Can't say (do not specify)

**C. Questions specific to the company**

**Q11. Does the company have a specific strategy for investment ...?**

**a) in emerging markets**

- Yes
- No
- Not concerned by international strategy for investment
- Can't say

**b) in Africa**

- Yes
- No
- Not concerned by international strategy for investment
- Can't say

**Q12. Is the company considering...?**

- Increasing operations in Africa
- Maintain operations in Africa
- Withdrawing from Africa / closing operations
- Relocating to another region

**Q13. What will the reasons be for not investing in Africa / withdrawing from Africa / closing operations / relocating to another region?**

***Open question***

- Inflexible employment law
- Inefficient administrative / Regulatory environment

- Weak security
- Corruption
- Unstable political environment
- Inefficient tax regime and customs procedures
- Customers are inaccessible
- Lack of entrepreneurial culture and entrepreneurship
- Poor quality research centres
- Difficult to access credit
- Poor transport and logistics infrastructure
- Poor telecommunication infrastructure
- Poor utilities and energy security
- Unattractive tax policies and financial incentives
- Poor access to highly skilled labour
- Low quality of life
- Complex language, culture and values
- It is too far away from us
- No knowledge about the African market
- We are only a local company / No interest to invest
- Other (open)
- Can't say (do not specify)

**Q14. How are the company planning to invest?**

- Expansion of facility
- Greenfield investments
- Acquisition
- Joint venture/alliance
- Increasing labour force
- Other
- Can't say

**Q15. What are the main types of direct investment the company is planning in Africa?**

***Prompt - Yes / No***

- Manufacturing for the African market
- Manufacturing for global market
- Headquarters
- Regional Hub for the African market
- Business support services for internal operations

- Business support services for global customers
- Warehouse / logistics centre
- Sales and marketing office
- Representative Office
- Discovering or extracting natural resources for the African market
- Discovering or extracting natural resources for global market
- Agribusiness (business involved in food production and distribution) for the African market
- Agribusiness (business involved in food production and distribution) for global market
- Other
- Can't say

**APPENDIX B**  
**- Informed consent form -**





**Informed consent for participation in an academic  
research study**

**Dept. of taxation**

**PROMOTING SOUTH AFRICA AS AN INVESTMENT GATEWAY: THE INFLUENCE OF  
TAX LEGISLATION.**

Research conducted by:

Mr JC Buys (96068452)

Cell: 083 296 3560

Dear Respondent

You are invited to participate in an academic research study conducted by Johan Buys, a Masters student from the Department Taxation at the University of Pretoria.

The purpose of the study is to review the decision-making process in organisations and the factors that influence these decisions and to what effect the South African tax legislation will have on these decisions to use South Africa as a gateway for these investments.

Please note the following:

- This study involves an anonymous interview. Your name will not appear in the study and the answers you give will be treated as strictly confidential. You cannot be identified in person based on the answers you give.
- Your participation in this study is very important to us. You may, however, choose not to participate and you may also stop participating at any time without any negative consequences
- Please answer the questions during the interview as completely and honestly as possible. This should not take more than 20 minutes of your time
- The results of the study will be used for academic purposes only and may be published in an academic journal. We will provide you with a summary of our findings on request.
- Please contact my supervisor, Prof E R Venter (012 420 6710 / elmar.venter@up.ac.za) if you have any questions or comments regarding the study.

Please sign the form to indicate that:

- You have read and understand the information provided above.
- You give your consent to participate in the study on a voluntary basis.

---

**Respondent's signature**

**Date**