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TAXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The tax year for natural persons and trusts ends on the last day of February each year.

Provisional tax payments by natural persons and trusts are due at the end of August (the first provisional tax payment) and the end of February (the second provisional tax payment) of each year, with an opportunity to make a third top-up payment within seven months after the year-end (which is the end of September following the February year-end).

Employment taxes are generally payable on a monthly basis.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

The concept of domicile is not relevant for determining tax liability.

Residence

The income tax system is based on a residence system for South African tax residents (SA tax residents) and on a source basis for non-South African tax residents (non-SA tax residents).

Natural persons. Natural persons are SA tax resident if they are “ordinarily resident” in South Africa or, if not ordinarily resident in South Africa, were physically present in South Africa for certain prescribed periods in the five tax years prior to and during the tax year in question (physical presence test). These periods amount to at least 91 days in each tax year and an aggregate of 915 days during those five preceding years of assessment. A natural person not ordinarily resident in South Africa, but who meets the physical presence test, who is then physically absent from South Africa for a continuous period of 330 days is deemed to have been a non-SA tax resident from the day on which they ceased to be physically present in South Africa.

The residence rules are subject to a provision that even if a person would be a SA tax resident under the above rules, that person is not resident (and in fact will be a non-SA tax resident) if they are deemed to be exclusively a resident of another country for the purposes of a double taxation treaty entered into by South Africa and the other jurisdiction.

Persons other than natural persons. A person other than a natural person is SA tax resident if it is incorporated, established or formed in South Africa, or has its place of effective management in South Africa.

The double tax treaty override also applies to persons other than natural persons, so that a person, even if tax resident in South Africa in terms of the above rules, is not resident if its double tax treaty residence is determined to be in a jurisdiction other than South Africa.

Other

Controlled foreign companies (CFCs). If any non-resident association, corporation, company, arrangement or scheme which falls within the definition of a company in which SA tax residents hold more than 50% of the participation rights or can exercise (directly or indirectly) more than 50% of the voting rights in that foreign company (a CFC), a proportionate amount of the net income and capital gains of the CFC are included in the income of those SA tax residents (subject to certain exclusions). Several exemptions to the CFC imputation tax exist (the more important exemptions relate to CFCs in high-tax jurisdictions and active business establishments in foreign jurisdictions).

Source income. Non-residents are generally (subject to double tax treaty relief) exposed to South African tax on South African-source income of a revenue nature. Non-residents are also exposed to capital gains derived from fixed property (whether held directly or indirectly through a structure) or a permanent establishment located in South Africa.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

South Africa levies an exit charge on a person ceasing to be tax resident in South Africa, or upon a CFC ceasing to be a CFC.

Essentially, when a person’s tax residence or status as a CFC ceases, the person is deemed to have disposed of all his assets at a value equal to the market value on the date of cessation of residence or CFC status. The result is that South Africa would generally tax a person on all appreciation in wealth up to that date.
A recent judgment indicated that South Africa would, in applying the exit charge, have regard to treaty relief on the (unrealised) gains and profits which could arise as a result of the deemed disposal.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

A person is either tax resident or not tax resident. However, the fact that a person is only temporarily in the country can determine whether that person is tax resident in South Africa, as their ordinary residence may be in another country with which a double tax treaty applies, in which case treaty residence will override local residence rules.

For trusts and companies, temporary residence is irrelevant, since only the place of incorporation/formation and the place of effective management determine tax residence.

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Foreign nationals can be tax resident in South Africa (see Question 2). If, however, they are not tax resident in South Africa, the position discussed below will apply.

Non-residents are taxed at the same rates as South African tax residents. Non-residents will generally (subject to double tax treaty relief) be liable to income tax on income (amounts of a revenue nature) from a South African source, which will include amounts such as rental income generated by real estate located in South Africa. The maximum income tax rate for individuals and trusts is 40% and for foreign companies is 28%.

Capital gains generated by non-residents on real estate located in South Africa are taxed at a maximum of:

- 13.3% for non-resident individuals.
- 26.7% for trusts.
- 18.6% for companies.

Included in the South African tax net are:

- Capital gains derived by non-resident shareholders from the disposal (or deemed disposal) of shares held in companies where both:
  - the shareholding equals or exceeds 20%;
  - 80% or more of the value of the shares is derived from fixed property located in South Africa.
- Capital gains derived from the disposal of vested interests in trusts deriving 80% or more of the value from fixed property in South Africa.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

South Africa levies a withholding tax on:

- Royalties, at 12% (the rate is to be increased to 15% with effect from 1 July 2013).
- Dividends, at 15%.

A withholding tax on interest is to be introduced on 1 July 2013, which will be levied at 15%.

The above withholding taxes are levied as a final tax.

When a non-resident sells fixed property in South Africa, an amount must be withheld in respect of the non-resident seller’s South African tax liability. This withholding tax is, therefore, not a final tax. The rate depends on the status of the seller, and is:

- 5% where the seller is a natural person.
- 7.5% where the seller is a company.
- 10% where the seller is a trust.

Inheritance tax and lifetime gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Donations tax is only levied on residents. Donations tax is levied on lifetime gifts, as well as certain amounts which are deemed to be gifts (for example, a disposal of property for inadequate consideration).

Estate duty is levied on the death of a person and is not limited to residents. However, most assets of non-residents are excluded from the estate duty net. Generally, the exposure to estate duty for non-residents is limited to certain assets located in South Africa at the time of their death.

In addition to estate duty, South Africa also levies a death charge under the capital gains tax legislation on the death of a person. The capital gains charge applies to the worldwide assets of residents, but is limited for non-residents to those assets which are subject to South African capital gains (essentially, fixed property investments, whether directly or through a structure and assets of a permanent establishment of a non-resident).

The wealth of the beneficiary, or the amount bequeathed to a beneficiary, does not impact the donations tax, estate duty or capital gains tax position discussed above.

Certain exemptions from these taxes apply with reference to the identity of the beneficiary (for example a charitable organisation which is duly registered and approved as such).
8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Tax rates
The following rates apply:
- Donations tax: 20%.
- Estate duty: 20%.
- Capital gains tax:
  - 13.3% for a natural person;
  - 18.6% for a company;
  - 26.7% for a trust.

Tax-free allowance
Donations tax. Natural persons are exempt from the tax on the first ZAR100,000 of donations made per year (as at 1 October 2012, US$1 was about ZAR8.3).

Estate duty. There is a personal allowance of ZAR3.5 million per person. Spouses can lump together their personal allowances so that, between spouses, the aggregate allowance is ZAR7 million.

Capital gains tax. In the year during which a person dies, the first ZAR300,000 of a gain is tax-free. Natural persons also enjoy a ZAR30,000 tax-free allowance per year. In the year of death, the ZAR30,000 annual exclusion is not allowed.

Exemptions
Donations, bequests and disposals to the following are exempt:
- Spouses.
- Approved charitable organisations, known as public benefit organisations.

Techniques to reduce liability
Generally, it is not possible to reduce the liability by a transfer of assets at no or low value, as the donations tax will be triggered, and in many instances so will capital gains tax.

However, future growth can successfully be ring-fenced by a transfer, at market value, of assets to a discretionary trust.

The ZAR100,000 donations tax allowance may not be utilised by a natural person during a particular year (the allowance is there to cover general gifts, such as birthday gifts). Any surplus not utilised during a year may be gifted without donations tax and if the donation is made in cash there will not be any capital gains tax.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

The gift tax regime is limited to South African tax residents.

Foreign owners of real estate in South Africa will probably be subject to South African inheritance tax (unless the property is owned through a company or trust) and capital gains tax (the capital gains tax cannot necessarily be avoided through a holding of shares/trust interests in a property-rich entity).

10. Are there any other taxes on death or on lifetime gifts?

When an individual was registered for VAT and the enterprise ceases as a result of the person’s death, there could be a VAT charge on the assets of the enterprise.

There may also be certain taxes on the transfer of assets (but there are exemptions for transfers resulting from death).

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes
The transfer of real estate will usually attract a transfer duty for the purchaser, which is levied at the following rates according to the value of the property:
- Property value of ZAR0 to ZAR600,000: 0%.
- Property value of between ZAR600,001 to ZAR1 million: 3% on the value above ZAR600,000.
- Property value of between ZAR1,000,001 to ZAR1.5 million: ZAR12,000 plus 5% on the value above ZAR1 million.
- Property value of ZAR1,500,001 and above: ZAR37,000 plus 8% on the value exceeding ZAR1.5 million.

The transfer of assets can also attract VAT. If the seller is registered for VAT, a transfer of real estate attracts a VAT charge instead of the transfer duty discussed above. Securities transfer tax is levied where the asset concerned is a share.

Wealth taxes
No wealth taxes apply.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

There are no specific tax-advantageous structures, but the following is worth noting for real estate acquired on capital account by non-residents:
- Estate duty is not levied on shares in a foreign company, even if the only asset of that company is real property situated in South Africa. If the property was held by the non-resident personally, the non-resident would have been subject to estate duty.
- If a non-resident owns real estate through shares in a property-rich company, South Africa will only levy capital gains tax if the shareholding is 20% or more and 80% or more of the value of the shares is attributable to fixed property in South Africa.
**Country Q&A**

If the will is signed by the making of a mark or by some other person, anywhere on the page, by the direction of the testator, a commissioner of oaths must certify that he has satisfied himself as to the identity of the testator and that the will is the will of the testator. Each page of the will, excluding the page on which his certificate appears, must also be signed, anywhere on the page, by the commissioner of oaths who certifies it.

**Redirecting entitlements**

A beneficiary can elect to either accept or decline a benefit under a will. Once made, the election is irrevocable. Generally, repudiation causes the benefit concerned to constitute part of the remainder of the estate and is dealt with accordingly (depending on the wording of the will). An exception is made under section 2C of the Wills Act, where if any descendant of a testator, together with the surviving spouse of the testator, is entitled to a benefit and the right is renounced by the descendant to receive that benefit, the benefit then vests in the surviving spouse. It is also possible for beneficiaries to enter into a redistribution of their inheritances amongst themselves by way of a redistribution agreement.

**Validity of foreign wills and foreign grants of probate**

In principle, South Africa recognises foreign wills (even if they are in a form which differs from the South African requirements), provided that the will complies with the internal law of any of the following state or territory:

- The place where the will was executed.
- The place in which the testator was, at the time of the execution of the will or at the time of his death, domiciled or habitually resident.
- The place where the testator was, at the time of the execution of the will or at the time of his death, a citizen.
- Where real estate is disposed of in the will, if the will complies with the internal law of the state or territory in which that property is situated.

**Validity of foreign grants of probate**

The fact that a person has received a foreign grant of probate does not entitle him to deal with the assets of the estate within South Africa. Authorisation must be received from the Master of the High Court, who gives authority either by issuing letters of executorship or by signing and sealing the foreign grant of probate. The procedure of signing and sealing only applies to foreign grants of probate granted in any state to which the provisions of the Administration of Estates Act are, by notice of the relevant Minister in the Government Gazette, declared applicable. Furthermore, a grant of probate will not be signed and sealed by the Master in favour of any person who is by any law prohibited from liquidating or distributing the estate of a deceased.
Distributing to the heirs their respective entitlements.

Discharging those liabilities.

Ascertaining the extent of the estate’s liabilities.

Gathering all the assets of the deceased estate.

Distributing?

Paying taxes?

Establishing title and gathering in assets (including any particular considerations for non-resident executors)?

Paying taxes?

Distributing?

Establishing title and gathering in assets

The executor is responsible for:

- Gathering all the assets of the deceased estate.
- Ascertaining the extent of the estate’s liabilities.
- Discharging those liabilities.
- Distributing to the heirs their respective entitlements.

The executor takes custody and control of the assets and is solely responsible for dealing with the rights and the obligations in the deceased estate.

Procedure for paying taxes

The executor is liable to the South African Revenue Service for the payment of income tax charges due by the deceased and the payment of estate duty (if the estate is not otherwise exempted). The payment of these taxes is integral to the administration and distribution of the estate.

Distributing the estate

Once the executor has taken control and custody of all the assets in the estate and has made a final assessment of all liabilities, a liquidation and distribution account is framed, reflecting all these assets and liabilities. The account is advertised and lies open for inspection. Provided that no objection to the liquidation and distribution account is received or, if received, is adequately dealt with to the satisfaction of the Master of the High Court, the estate can be distributed.

Responsibility for administering

The Master of the High Court is responsible for issuing letters of executorship that entitle the person to whom they are granted to administer all the assets of the estate in South Africa. Immediately after letters of executorship have been granted an executor takes into his custody or under his control all the property in the estate.

Vesting

The estate does not vest in the executor and the executor only initially takes custody and control of the assets. An inheritance or bequest vests in the heir once he becomes entitled to it. Vesting depends on the terms of the will, and in the case of an outright, unconditional bequest, the beneficiary acquires an immediately vested right on the death of the testator. However, the executor is only obliged to distribute the estate amongst the heirs once a liquidation and distribution account has been framed and that account has lain open for inspection, free of any objections (see Question 21, Distributing the estate).

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Establishing title and gathering in assets

The executor is responsible for:

- Gathering all the assets of the deceased estate.
- Ascertaining the extent of the estate’s liabilities.
- Discharging those liabilities.
- Distributing to the heirs their respective entitlements.

The executor takes custody and control of the assets and is solely responsible for dealing with the rights and the obligations in the deceased estate.

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

Regard should be had to the provisions of the Estate Duty Act, which prescribes the manner in which the value of a deceased estate should be calculated in order to determine the dutiable amount. Property is defined as including all property of the deceased as at the date of death, irrespective of whether it is situated inside or outside South Africa.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

A beneficiary can challenge the validity of the will and also the appointment of the executor. The validity of the will can be challenged on the basis that either:

- The will does not comply with the prescribed formalities.
- The testator was mentally incapable at the time of making the will.

Usually the burden of proof for evidencing the testator’s mental incapacity will rest on the person alleging the incapacity. Any person with an interest in the estate can lodge an objection with the Master of the High Court, who can refuse to issue letters of executorship until the validity of the nomination has been determined by a court of law. An administrator (known as a trustee) can also be removed from office by a court on the application of any interested person or the Master of the High Court.

SUCCESSION REGIMES

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

The succession laws allow full testamentary freedom which, in essence, permits a testator to freely dispose of the entirety of his estate, subject only to the law and public policy. There is no forced heirship regime.
Though there is no forced heirship regime, it is currently possible for surviving spouses to receive a greater share of the deceased estate than what was left to them in the will. The basis for the receipt of a greater share will be founded on a maintenance claim. The position is also similar for claims by dependants based on the support and maintenance that the testator was under a duty to provide.

**Forced heirship regimes**

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

There is no forced heirship regime.

**Real estate or other assets owned by foreign nationals**

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national’s original country?

The Administration of Estates Act that applies in South Africa mainly distinguishes between persons who are or are not ordinarily resident within South Africa. For example, if a person is neither ordinarily resident nor the owner of any property other than movable property, the Master of the High Court can, under the Administration of Estates Act, introduce an alternative procedure to the normal one of liquidating and distributing the estate. This involves the exemption of the executor from compliance with certain provisions of the Act, and also simplifies the liquidation and distribution process.

Generally, if the deceased was either resident within South Africa or had immovable property within the jurisdiction of a provincial division of the High Court, jurisdiction lies with the Master for that area. If the deceased was not resident in South Africa, jurisdiction lies with the Master for whom application is made to grant letters of executorship or to sign and seal any such letters already granted in respect of the estate or the property concerned.

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

Generally, South African courts do not apply the doctrine of *renvoi*. However, *ad hoc* statutory powers have been passed into law. In particular and as far as immovable property is concerned, the Wills Act determines that a will, so far as immovable property is disposed within it, is not invalidated merely by reason of its form, provided that the will complies with the internal law of the state or territory in which the property is situated (see Question 18, Validity of foreign wills).

**INTESTACY**

28. What different succession rules, if any, apply to the intestate?

Intestate succession is regulated by the Intestate Succession Act. The order of succession is prescribed under section 1 of that Act, which essentially provides the following:

- In the absence of descendants, the surviving spouse of the deceased inherits the entire estate.
- In the absence of a spouse, the surviving descendant(s) of the deceased inherit the entire estate.
- If the deceased is survived by a spouse and a descendant, the spouse will inherit the greater of either a child’s share of the estate or an amount which is presently determined at ZAR125,000. If the deceased and the spouse were married with joint property, the spouse is entitled to a half share of the joint estate in addition to any intestate inheritance.
- If the deceased is survived by neither a spouse nor descendants, the estate will either devolve to the parents of the deceased, or if that fails, the nearest blood relatives.

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

It is possible for beneficiaries to challenge the adequacy of an inheritance to which they may be entitled under the intestacy laws. Such a challenge would be founded upon a maintenance claim by either the surviving spouse and/or the dependants of the deceased.

**TRUSTS**

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

South Africa recognises trusts.

**Type of trust and taxation**

South Africa does not have any types of trusts which are specific to South Africa. General distinctions are family trusts and business trusts, the first normally being discretionary and the second normally vested trusts. In addition to discretionary and vested trusts, South Africa also recognises bewind trusts (that is, trusts where the beneficiaries retain legal ownership of assets which are administered by trustees).

A special tax regime applies to trusts. Essentially, if and to the extent a trust vests amounts accruing to it during the same tax year in its beneficiaries, the trust is rendered tax transparent and the tax burden falls on the beneficiary. The exceptions to this rule relate to losses (which are trapped in trusts and not vested in beneficiaries) and capital gains vested in non-residents (which are also trapped in a trust). To the extent that amounts accruing to a trust are not vested in beneficiaries during the same tax year, they are taxed in the trust.

Trusts are taxed at a flat rate of 40% on income profits and 26.7% on capital gains.

**Residence of trusts**

A trust is tax resident in South Africa if it either:

- Is formed in South Africa.
- Has its place of effective management in South Africa.
As with other taxpayers, a trust's tax residence is subject to double tax treaty residence overriding local residence rules.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

For South African tax purposes, a foreign trust could meet the definition of a trust, company or foreign partnership, each with different tax regimes.

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

When a trust commences tax residence in South Africa, the tax base for all its assets is stepped up to market value on the date that the tax residence commences. When a South African tax resident trust ceases its tax residence, it is, in turn, deemed to have disposed of all its assets at market value at the time of cessation.

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

Purpose trusts
The law provides for the creation of purpose trusts, even if they are non-charitable in nature.

Perpetuities and accumulations
The rule against perpetuities was not adopted in South African law.

Beneficiaries' rights to information
Apart from some general rules (for example, that the trust deed cannot contain provisions which are unlawful), there are no specific prescriptions as to the contents of a trust deed. The Trust Property Control Act, as well as the internal Directives of the Master (a government official where trust documents are lodged), makes specific provision for interested parties to obtain information about trust affairs. South Africa also has other laws which could be relied on to gain access to information, such as the Access to Information Act and the Promotion of Administrative Justice Act.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

Generally, a trust is honoured as a means of shielding assets against creditors' claims, including claims on the dissolution of a marriage/partnership. However, recent case law in South Africa awarded trust assets to a spouse in the course of divorce proceedings, but that was based on the trust being regarded as a sham, among other things.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Assets can be sheltered from the creditors of a settlor or beneficiary by holding them in a trust.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

36. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Co-ownership is permitted, except in certain instances relating to the ownership of agricultural land.

Co-owners are, in principle, joint owners of the common property in undivided shares. Co-operation between co-owners is required when legal acts concerning the co-owned property are intended. However, each co-owner is regarded as sole owner of, and exercises extensive control over, their undivided share. A co-owner's undivided share is therefore treated as a normal asset.

Familial relationships

37. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

The matrimonial property regimes are as follows:

- In community of property.
- Out of community of property without the accrual system.
- Out of community of property with the accrual system.

In community of property. Couples who are married in community of property have a joint estate and all the assets which they bring into, and acquire during their marriage fall into that joint estate.

Out of community of property. A person who is married out of community of property (with or without the accrual system) retains full ownership, to the exclusion of their spouse, of all the assets that they acquired before and during the marriage. However, in the case of a marriage out of community of property with the accrual system, the spouse whose estate shows, at the dissolution of the marriage, no accrual or a smaller accrual than the other spouse's estate (or the estate if he/she is deceased) acquires a claim against the other spouse (or his/her estate) for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

The South African laws are liberal and generally lend protection to heterosexual, same-sex and customary marriages or unions (the law is contained in the Marriage Act No 25 of 1961, the Civil
Cohabitation (also known as a domestic partnership or a permanent life partnership) is not formally covered in the above legislation dealing with the South African marriage regimes. However, cohabitees are protected under various South African laws (for example, tax, life insurance and medical aid laws).

38. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex couples can get married in the same manner as opposite-sex couples, and are treated the same as opposite-sex couples for tax and succession purposes.

39. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married and civil partnership

Marriage is not defined under the Marriage Act. Under the Civil Union Act, a “civil union” is defined as the voluntary union of two persons who are both 18 years of age or older, which is solemnised and registered by way of either a marriage or a civil partnership, in accordance with the procedures prescribed in the Civil Union Act, to the exclusion, while it lasts, of all others.

A “civil union partner” is defined as a spouse in a marriage or a partner in a civil partnership.

The definition of a civil union:

- Includes common law marriages, being a union of one man and one woman who mutually agree to live together as spouses until death or divorce.
- Includes same-sex marriages.
- Excludes customary marriages, which provide for monogamous and polygamous customary marriages. These are dealt with under the Recognition of Customary Marriages Act.

Divorced

The term “divorce” is not defined in the Divorce Act No 70 of 1979. Generally, “divorce” means the dissolution of a marriage.

Adopted

The term “adopted” is not defined. Adoption is the legal manner in which an adult becomes the legal parent of a child.

Legitimate

The term “legitimate” is not defined. Generally, a legitimate child is born in one of the regulated marriage unions under South African law.

Minority

40. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor’s behalf?

A person below the age of 18 years is a minor (Children’s Act No 35 of 2005).

Generally, a minor can own assets, but there are restrictions on their capacity to perform juristic acts with their assets. Minors below the age of seven years have no capacity to act and their guardians/parents must perform juristic acts for and on their behalf. Minors between the ages of seven and 18 have limited capacity to act, and can deal with their assets with the assistance of their parents or guardians.

CAPACITY AND POWER OF ATTORNEY

41. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

Generally, a person who loses capacity (that is, a person who cannot understand and appreciate the transaction, or the concomitant consequences, into which they purport to enter) cannot perform legal acts. A person who loses capacity must be assisted by a curator ad litem as regards legal proceedings and a curator bonis as regards that person’s property and the lack of capacity to contract.

A power of attorney executed outside of South Africa is recognised in order to permit its use in any court or public office in South Africa, provided that it was duly authenticated by the appropriate person. In addition and in relation to countries that are members of the Hague Convention, any document authenticated in terms of the Hague Convention Abolishing the Requirements or Legislation for Foreign Public Documents is deemed to be sufficiently authenticated for use in South Africa.

PROPOSALS FOR REFORM

42. Are there any proposals to reform private client law in your jurisdiction?

There are no current proposals for reform.
Qualified. Admitted as an attorney, notary and conveyancer in South Africa, 1996

Areas of practice. Tax.

Recent transactions

- Advising a private equity group consisting of a mix of local and foreign investors of an appropriate structure for an investment into a South African mining operation. Advising the investors on their respective offshore and local structures, as well as the combined investment structure.

- Advising a foreign investor on appropriate structures for various investments into Africa.

- Advising a local borrower on complex finance arrangements with a UK-based financial institution.

- Review of, and advising a multi-jurisdictional trust administration and asset management service provider on, various services rendered in the relevant jurisdictions to meet tax residence tests in various jurisdictions.

- Advising a private client group on the restructuring of their South African real estate portfolio, taking into account UK and US tax considerations.

- Advising a foreign investor on an appropriate investment structure for an investment into an agricultural operation in South Africa.
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