SARS South African Revenue Service

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ACT	**:**	**INCOME TAX ACT NO. 58 OF 1962**
SECTION	**:**	**SECTIONS 1(1), 6*quat*(4) and (4A*)*, 6*quin*(4), 9A, 9D(6), 25D, 35A(5), 47J, 49H, 50H, 51H AND 64N(4)**
SUBJECT	**:**	**RULES FOR THE TRANSLATION OF AMOUNTS MEASURED IN FOREIGN CURRENCIES OTHER THAN EXCHANGE DIFFERENCES GOVERNED BY SECTION 24I AND THE EIGHTH SCHEDULE**

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Preamble

In this Note unless the context indicates otherwise –

- **"authorised dealer"** means an institution authorised by the Minister of Finance to act as an authorised dealer in foreign exchange for the purposes of the Exchange Control Regulations administered by the Financial Surveillance Department of the Reserve Bank;
- **"average exchange rate"** means average exchange rate as discussed in **4.2**;
- **"buy rate"** means the rate at which an authorised dealer will buy foreign currency;

- **"CMA"** means Common Monetary Area comprising Lesotho, Namibia, Swaziland and South Africa;
- **"CMA currency"** means the currency of any member of the CMA and includes the Lesotho Loti, the Namibian dollar, the Swaziland lilangeni and the rand;
- **"CFC"** means "controlled foreign company" as defined in section 9D(1);
- **"domestic PE"** means a PE located in South Africa;
- **"DTMC"** means "domestic treasury management company" as defined in section 1(1);
- **"foreign currency"** means any currency other than the rand;
- **"foreign currency amount"** means any amount denominated in a foreign currency that is received by or accrues to a person, or expenditure or loss denominated in a foreign currency incurred by a person, during a year of assessment, including any amounts of a capital nature;
- **"foreign PE"** means a PE located outside South Africa;
- **"functional currency"** means functional currency as discussed in **7.2;**
- **"HQC"** means "headquarter company" as defined in section 1(1);
- **"IAS 21"** means International Accounting Standard 21 "The Effects of Changes in Foreign Exchange Rates";
- **"ISC"** means "international shipping company" as defined in section 12Q;
- **"non-trading trust"** means any trust that is not engaged in trade;
- **"PE"** means "permanent establishment" as defined in section 1(1);
- **"recognise"** and **"recognition",** in relation to a foreign currency amount, refer to the receipt or accrual of any amounts denominated in a foreign currency or to the incurral of any expenditure or loss in a foreign currency, as the case may be;
- **"section"** means a section of the Act;
- **"sell rate"** means the rate at which an authorised dealer will sell foreign currency;
- **"spot rate"** means spot rate as discussed in **4.1**;
- **"the Act"** means the Income Tax Act No. 58 of 1962;
- **"translate"** refers to the restatement of a foreign currency amount in rand; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides guidance on the application of the foreign currency translation rules contained in the Act, except for those in –

- section 24I; and
- the Eighth Schedule to the Act.

2. Background

Residents are subject to normal tax on their worldwide taxable income, that is, taxable income derived from sources within and outside South Africa. A person that is not a resident is subject to normal tax only on taxable income derived from a source within South Africa.

In determining taxable income, foreign currency amounts must be translated to an equivalent amount in rand using either a spot rate or an average exchange rate. The Act generally prescribes which rate must be used depending upon the nature of the underlying transaction and the type of taxpayer involved.

This Note discusses the translation rules in sections 6*quat*(4) and (4A), 6*quin*(4), 9A, 9D(6), 25D, 35A(5), 47J, 49H, 50H, 51H and 64N. Depending on the circumstances, the determination of a person's normal tax liability may require the application of more than one of these provisions. For example, a natural person may use the spot rate to translate foreign currency amounts includable in taxable income for a year of assessment in accordance with section 25D(1). In addition, assuming some of the foreign currency amounts were from a foreign source and the natural person qualified for a foreign tax rebate on the foreign tax paid on that income, the natural person would apply the average exchange rate to translate the amount of foreign tax to rand under section 6*quat*.

3. The law

The relevant sections of the Act are quoted in the **Annexure**.

4. General

4.1 Spot rate [section 1(1)]

The term "spot rate" is defined in section 1(1) as the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency. The term is used extensively in the various rules, which are discussed in this Note, for translating foreign currency amounts to rand.

An "appropriate" spot rate will depend on the facts and circumstances of the particular case.

On a strictly technical basis, amounts received or accrued in a foreign currency should, in applying the spot rate, be translated to rand at the appropriate buying rate of exchange, while expenditure or losses incurred should be translated to rand at the appropriate selling rate of exchange. SARS is aware that for practical reasons some persons do not follow this strict technical approach. For example, a person may use a closing spot rate comprising the average of the closing telegraphic transfer buying and selling rates for the particular day. In other cases a person may use a single rate for a short period such as a week to record all transactions during that period. SARS will accept the use of an approximate spot rate[1] provided that –

- it does not give rise to a result which differs materially from the result which would have been obtained had the correct daily spot rate been applied, for

[1] An approximate spot rate is different to and must be distinguished from the average exchange rate discussed in **4.2** which is an annual average calculated for a year of assessment.

example, if the particular foreign currency in question does not fluctuate significantly over the relevant period;

- the same method is applied consistently; and
- the same approximate spot rate is used for accounting purposes.

Generally, accounting records prepared in line with IAS 21 should yield an acceptable result.

Example 1 – Appropriate spot rate

Facts:

ABC (Pty) Ltd is a manufacturer that orders most of its raw materials from 12 suppliers in the United States twice a month.

During the year under review staff focussed on growing the business and neglected the accounting records. At the end of the year a decision was taken to calculate an annual average exchange rate and to record all transactions during the year at that rate. The same basis was applied for accounting and tax purposes.

Result:

SARS is unlikely to accept an annual average exchange rate as an approximate spot rate because even though the annual average exchange rate was applied consistently for tax and accounting purposes, given the fluctuation in the USD/rand exchange rate, an annual average exchange rate is likely to give a materially different result to a correct daily spot rate.

Example 2 – Appropriate spot rate

Facts:

X, a natural person, is a South African resident who has not elected to use the average exchange rate method. During the year of assessment X performed consulting services for a client in Canada.

X presented the invoice for the services rendered on 1 December and the client settled the amount owing of CAD100 000 on the same date by paying the amount directly into X's Canadian bank account. X left the funds on deposit in the account.

Result:

X is a natural person who has not elected to use an average exchange rate. X must therefore translate the fee received in CAD to rand using the appropriate spot rate. An appropriate spot rate in these circumstances would be the closing spot buy rate quoted by an authorised dealer on 1 December.

Example 3 – Appropriate spot rate

Facts:

Y is a South African resident who has not elected to use the average exchange rate method. Y performed consulting services for a client in Canada. Y presented the invoice for the services rendered on 1 December and the client settled the amount owing of CAD100 000 on the same date via a wire transfer into Y's South African bank account. Y notified the bank of the incoming payment on 28 November and fixed the exchange rate for two days at the then current spot buy rate. Y's bank received the CAD100 000 on 1 December and converted the amount to rand at the fixed spot rate.

Result:

Y is a natural person who has not elected to use the average exchange rate method and must therefore translate the fee received in CAD to rand using an appropriate spot rate. An appropriate spot rate in these circumstances would be the fixed spot buy rate to which Y and the bank agreed on 28 November.

Example 4 – Appropriate spot rate

Facts:

Z, a natural person, is a South African resident who has not elected to use the average exchange rate method. Z owns a number of rental properties in Canada as well as a number of interest-bearing Canadian bank accounts. Z receives rent from tenants as well as interest on the Canadian bank accounts on the last day of every month. All of these payments are made in CAD and are left on deposit by Z in the Canadian bank accounts.

Result:

Z is a natural person who has not elected to use the average exchange rate method and must therefore translate the rent and interest received in CAD to rand using the appropriate spot rate. SARS will accept the closing spot buy rate quoted by an authorised dealer on the last day of each month as an appropriate spot rate in these circumstances.

Example 5 – Appropriate spot rate

Facts:

K, a natural person, is a South African resident who has not elected to use the average exchange rate method. K markets and sells jewellery and decorative items over the internet to customers in the European Union. The selling price of K's goods, as well as the shipping and handling charges incurred, are denominated in Euro. K also incurs various expenses in connection with the sale and marketing of the goods in the European Union. These expenses are also denominated in Euro. Euro-denominated receipts and payments are made in and out of a Customer Foreign Currency Account that K maintains with a South African bank.

K does not have a foreign PE.

> *Result:*
>
> K is a natural person who has not elected to use the average exchange rate method. K must therefore translate the foreign currency amounts to rand using an appropriate spot rate. SARS will accept the average buy and sell closing telegraphic transfer rate quoted by an authorised dealer for the days on which foreign currency amounts are received, accrued or incurred as an appropriate spot rate in these circumstances.

4.2. Average exchange rate [section 1(1)]

The term "average exchange rate" is defined in section 1(1), in relation to a year of assessment, as the average determined by using the closing spot rates at the end of daily or monthly intervals during that year of assessment which must be consistently applied within that year of assessment. The term is used extensively in the various rules, which are discussed in this Note, for translating foreign currency amounts to rand.

A person may choose between daily or monthly intervals each year. This choice must, however, be applied consistently in determining the average exchange rates for all foreign currency amounts recognised within that year. For example, a person may *not* use daily intervals to determine the average exchange rate for amounts received in euro and monthly intervals to determine the average exchange rate for amounts received in CAD.

4.2.1 Daily intervals

The average exchange rate for a year of assessment determined at daily intervals must be calculated by –

- adding together the closing spot rates quoted at the end of each day during the year of assessment; and
- dividing the sum of those amounts by the number of days in that year of assessment.

4.2.2 Monthly intervals

The average exchange rate for a year of assessment determined at monthly intervals must be calculated by –

- adding together the closing spot rates quoted at the end of each month during the year of assessment; and
- dividing the sum of those amounts by the number of months in that year of assessment.

4.2.3 Tables of average exchange rates

Tables listing both the monthly average exchange rates and the average annualised exchange rates since December 2003 are available on the SARS website for the following currencies:

- Australian dollar (AUD)
- Canadian dollar (CAD)
- Euro (EUR)
- Hong Kong dollar (HKD)

- Indian rupee (INR)
- Japanese yen (JPY)
- Swiss franc (CHF)
- British pound (GBP)
- United States dollar (USD)

The rates published by SARS are sourced from quarterly reports published by the South African Reserve Bank based on its foreign exchange transactions and may be used for purposes of determining the average exchange rate.

Average exchange rates for currencies not listed on the SARS website may be –

- obtained from an authorised dealer in foreign exchange;
- compiled using spot rates obtained from an authorised dealer; or
- compiled using spot rates from **www.oanda.com**.

Taxpayers are not obliged to use the rates published by SARS. However, those who choose to use average rates which do not appear on the SARS website, or if the currency is not one which is listed on the SARS website, must be able to justify those rates and provide proof of their source if called upon to do so.

The rates published by SARS are based upon the closing spot rates on the last day of each calendar month. Accordingly there may be circumstances in which it is inappropriate to use the published average exchange rates. For example, a company's year of assessment may end on a date other than the last day of a calendar month, for example, 25 June. If such a company chooses to use a monthly average, it must use the closing spot rate on the dates on which its monthly accounting periods actually end and may not use the tables of average exchange rates published by SARS.

4.2.4 Years of assessment of more or less than 12 months or beginning or ending during a calendar month

A year of assessment normally consists of a cycle of 365 days. In some situations, however, a year of assessment may be shorter than 365 days, such as the year in which a person is born or dies or a company is formed or dissolved. Similarly, a company may have a year of assessment that is longer than 12 months, for example, in its first year of assessment or if it changes its year of assessment. The average exchange rate for a year of assessment must be computed over the actual period. For example, if a company's year of assessment is six months, the average exchange rate for that year of assessment must be calculated over the applicable six-month period using the daily or monthly intervals for that period.

It is generally inappropriate to calculate an average rate on a monthly basis if the person's year of assessment does not begin on the first day or end on the last day of the month. For example, a company's first year of assessment may begin on a day other than the first day of a month. Alternatively, a year of assessment may terminate before the final day of a month, for example, in the event of the death of a person or the dissolution of a company. In such situations it will be necessary to determine the average exchange rate using daily intervals or to resort to the spot rate, if permitted.

There is, however, an exception, namely, when a company has permission under section 66(13C) to draw up its accounts to a day that falls short of, or extends after, its year of assessment by up to 10 days.[2] In this situation a company may still determine the average exchange rate using a monthly interval. Thus a company with a year of assessment ending on 30 June would have to determine the average exchange rate on a monthly basis by taking into account the closing spot rates at the end of each of the 12 months during the year of assessment ending 30 June, assuming that the year of assessment is 12 months.

A PE is not a separate person for purposes of the Act and does not have its own year of assessment. Thus, the average exchange rate for a foreign PE must be determined by reference to the resident "owner's" year of assessment even if that foreign PE is in existence only for a portion of that year.

4.3 Rounding

All exchange rates are rounded off to four decimal places since this is the accepted practice of authorised dealers.

5. The default translation rule [section 25D(1)]

In general, section 25D(1) provides that any amount received by or accrued to, or expenditure or loss incurred by, a person during any year of assessment in a foreign currency must be translated to rand by applying the spot rate on the date on which that amount was so received or accrued or expenditure or loss was so incurred.

Although section 25D(1) provides the general rule for currency translation, it is subject to numerous exceptions, special rules and limitations, including –

- section 25D(2);
- section 25D(2A);
- section 25D(3);
- section 25D(4);
- section 25D(5);
- section 25D(6);
- section 25D(7);
- section 6*quat*;
- section 6*quin*;
- section 9A;
- section 9D(6);
- section 35A(5);
- section 47J;
- section 50H;
- section 51H;

[2] In practice a deviation from the end of a month will usually be, say, the last Friday of the financial year and the closing date will thus differ from year to year.

- section 64N; and
- paragraph 43 of the Eighth Schedule to the Act.

Thus, section 25D(1) in effect provides a default rule that applies only to the extent that it is not overridden by an applicable exception, special rule or limitation. The default rule applies to amounts generally and it therefore covers amounts received and accrued or incurred of a revenue and capital nature.

Example 6 – Appropriate spot rate

Facts:

ABC (Pty) Ltd, a manufacturer with a financial year ending on 30 November, purchased plant and equipment for its factory on credit from a supplier in the United States on 6 August 2014. The cost of the plant and equipment, including delivery costs, was USD500 000. The sale agreement specified that the purchase price must be settled by 6 August 2015. At the end of November 2014 no payments had taken place. The machine qualified for a wear-and-tear allowance under section 11(*e*).

Result:

The cost of the plant and equipment for purposes of calculating the wear-and-tear allowance must be determined by translating USD500 000 to rand using the spot rate on 6 August 2014.

The Act does not provide an exception to the default rule in section 25D(1) for a non-resident company that operates through a domestic PE. Such a company must therefore translate any foreign currency amounts of that domestic PE to rand using the spot rate method under section 25D(1). This method applies even if the functional currency of the domestic PE is not the rand.

6. Natural persons and non-trading trusts – election to use an average exchange rate [section 25D(3)]

Under section 25D(3) a natural person or non-trading trust may elect to use the average exchange rate for the relevant year of assessment instead of the spot rate (see **5**) to translate all foreign currency amounts. The election applies to all foreign currency amounts recognised during a year of assessment.

The election is made –

- as and when the relevant return of income is completed; and
- for every year of assessment in which a foreign currency amount forms part of the calculation of the normal tax liability of the natural person or non-trading trust.

The natural person or non-trading trust could elect to use spot rates in one year and the average exchange rate in another year of assessment.

Example 7 – Election under section 25D(3)

Facts:

A resident who is a natural person earns the following amounts from abroad during the 2015 year of assessment:

(a) Interest income USD50 000.

(b) Rental income GBP60 000.

(c) Dividend income Kenyan schilling 20 000.

Result:

For the 2015 year of assessment the resident may choose to apply either the spot rate method of translation or the average exchange rate method of translation in translating the income amounts to rand.

The resident must be consistent in applying the method of translation and may not, for example, elect to translate some amounts such as the interest income earned in USD to rand by using the spot rate while translating other amounts by using the average exchange rate.

The resident is not obliged to use the method chosen for the 2015 year of assessment in future years.

7. Foreign permanent establishments, controlled foreign companies, headquarter companies, domestic treasury management companies and international shipping companies

7.1 General introduction

Subject to certain exceptions and special rules, a foreign PE, CFC, HQC, DTMC or ISC must translate foreign currency amounts from its functional currency to rand using an average exchange rate. The exceptions and special rules, which differ for foreign PEs, CFCs, HQCs, DTMCs and ISCs, generally apply to amounts recognised in rand, CMA currencies or other foreign currencies.

7.2 Functional currency

The term "functional currency" is defined in section 1(1) as the currency of the primary economic environment in which the business operations of a person or a PE, as the case may be, are conducted. This definition corresponds closely with the definition of that term in IAS 21. As a result IAS 21 can provide useful guidance in interpreting and applying the definition for income tax purposes.

IAS 21 describes the primary economic environment in which an entity operates as normally being the one in which it primarily generates and expends cash. The functional currency will usually be the currency in which –

- sales prices of goods and services are denominated and settled; or
- costs of providing goods or services are denominated or settled.[3]

[3] IAS 21 in paragraph 9.

Additional factors which may be considered include –

- the currency of financing activities (debt and equity instruments); and
- the currency in which receipts from operating activities are retained.[4]

As a practical matter, SARS will generally accept the functional currency used by a person for financial accounting purposes provided the choice of that functional currency is consistently applied and made in accordance with IAS 21. SARS may reject the functional currency chosen by a person if that choice is inconsistent with the proper application of the factors mentioned above.

Presentation currency is the currency in which financial statements are presented and may differ from the functional currency of the reporting unit.[5] The presentation currency of a person or PE is generally not relevant for purposes of the Act.

7.3 Foreign permanent establishments – general rule [section 25D(2)]

Under section 25D(2) any foreign currency amounts recognised which are attributable to a foreign PE must be –

- determined in the functional currency of that foreign PE (unless its functional currency is a CMA currency); and
- translated to rand by applying an average exchange rate for the relevant year of assessment.

Amounts denominated in rand do not require translation and must *not* be determined in the foreign PE's functional currency before being translated back to rand at an average exchange rate.

In practical terms it is thus first necessary to determine what may be described as the foreign PE's taxable income in its functional currency,[6] excluding rand amounts, before translating it to rand at the average exchange rate.

A PE is not a separate person for purposes of the Act and does not have its own year of assessment. Thus, the average exchange rate for a foreign PE must be determined by reference to the resident "owner's" year of assessment even if that foreign PE is in existence only for a portion of that year.

7.3.1 Multiple foreign permanent establishments

A resident with multiple foreign PEs must translate each foreign PE's taxable income to rand by using the average exchange rate applicable to the particular foreign PE's functional currency. The resultant rand amounts are then added together to obtain a single rand amount which constitutes taxable income derived from foreign trading operations.

If taxable income from any foreign trade is a loss, it is ring-fenced under paragraph (*b*) of the proviso to section 20(1) and may not be set off against taxable income derived from a source in South Africa.

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[4] IAS 21 in paragraph 10. See IAS 21 paragraph 11 for additional factors.

[5] IAS 21 in paragraph 8 under the heading: Definitions.

[6] This rule does not apply if the functional currency is a currency of a country in the CMA.

Example 8 – Multiple foreign PEs

Facts:

A resident company operated 3 foreign branches during the year of assessment ended 30 June 2014. The branches' taxable incomes and assessed loss, as the case may be, as calculated in their applicable functional currencies were as follows:

(a)	Branch in Australia	AUD50 000.
(b)	Branch in the United Kingdom	GBP60 000.
(c)	Branch in the United States	Current year assessed loss USD20 000.

The relevant average exchange rates for the year of assessment ended 30 June 2014 were as follows:

AUD – 9,5380

GBP – 16,9203

USD – 10,3904

Result:

Taxable income or assessed loss in rand:	R
(a) Branch in Australia (AUD50 000 × 9,5380)	476 900
(b) Branch in the United Kingdom (GBP60 000 × 16,9203)	1 015 218
(c) Branch in the United States (USD20 000 × 10,3904)	(207 808)
Total	1 284 310

Since the total is a positive taxable income figure, the ring-fencing proviso in section 20(1) does not apply and the amount must be included in the resident company's taxable income.

7.3.2 Translating other foreign currency amounts attributable to a foreign permanent establishment to functional currency

Amounts attributable to a foreign PE that are denominated in foreign currencies other than the foreign PE's functional currency must be translated to the foreign PE's functional currency unless the functional currency is a CMA currency. These amounts may not be translated directly to rand.

Section 25D(2) does not state how the translation to the foreign PE's functional currency must be performed. As a practical matter, it will be acceptable to SARS if the spot rate is used.

7.3.3 Rand amounts attributable to a foreign permanent establishment

Section 25D(2) specifically excludes the translation of rand amounts to functional currency.

Example 9 – Translation of the taxable income of a foreign PE

Facts:

A resident company operates through a PE in Country R. The main portion of the PE's profits are generated from sale transactions concluded with persons resident in Country R while the remaining portion of its profits are generated from sale transactions concluded with persons resident in neighbouring Country S. The official currency of Country R is the dinar while that of Country S is the peso.

In addition, rand-denominated interest income from South Africa is attributable to the foreign PE.

The functional currency of the PE is dinar.

Result:

The trading income derived from Country S must be translated from peso to dinar at the applicable spot rates on the earlier of the dates when the amounts attributable to the foreign PE were received or accrued. These amounts form part of the calculation of the taxable income of the foreign PE in its functional currency.

The interest income from South Africa attributable to the foreign PE is not translated to dinar because the original amounts are already expressed in rand.

The taxable income determined in the functional currency of the foreign PE (which excludes the rand-denominated interest income) must be translated to rand at the applicable average exchange rate. A final taxable income calculation must then be performed by adding together the original rand-denominated amounts and the amounts translated to rand at the average exchange rate.

7.3.4 Foreign permanent establishments having a Common Monetary Area currency as their functional currency

Section 25D(2) does not apply to a foreign PE if its functional currency is a CMA currency. The default spot rate rules in section 25D(1) will generally apply in these situations [unless the foreign PE is owned by an individual or non-trading trust that elects to use an average exchange rate under section 25D(2)]. Consequently, each foreign currency amount must be translated to rand on recognition.

Accordingly, as a practical matter, if a foreign PE's functional currency is a CMA currency –

- amounts denominated in rand must be left in rand;
- amounts denominated in any CMA currency (other than rand) must be translated to rand at a rate of 1:1; and
- amounts derived in other foreign currencies must be translated to rand using either –
  - the spot rate at the date of recognition if the foreign PE is owned by a company or trading trust, or by an individual or non-trading trust that does not elect to use an average exchange rate; or
  - an average exchange rate if the foreign PE is owned by an individual or non-trading trust that elects to use the average exchange rate.

The CMA currencies currently trade at par with each other.

A foreign PE that uses a CMA currency as its functional currency must still determine its taxable income separately from its resident "owner", just as in the case of any other foreign PE. This determination is necessary in order to ring-fence any foreign trade losses and to facilitate the calculation of any foreign tax rebates. A resident having multiple foreign PEs must aggregate the rand taxable income figures for the foreign PEs, whatever their functional currency, in order to determine whether ring-fencing is applicable.

7.3.5 Foreign permanent establishment having a hyperinflationary currency

Under section 25D(2A) the general rule requiring foreign currency amounts to be translated to a foreign PE's functional currency (see **7.3.2**) before being translated to rand at the average exchange rate does not apply to the extent that –

- the functional currency of the foreign PE is a hyperinflationary currency; and
- the foreign PE recognises amounts in any other foreign currency.

A hyperinflationary currency is one with an official rate of inflation of 100% or more.

At the time of issuing this Note no hyperinflationary currencies exist. The Zimbabwe dollar is a historical example of a hyperinflationary currency. The use of the Zimbabwe dollar as an official currency was effectively abandoned on 12 April 2009 as a result of the Reserve Bank of Zimbabwe legalising the use of the rand and the US dollar as standard currencies for exchange.

The purpose of section 25D(2A) is to ensure that amounts expressed in a currency other than the functional currency of the foreign PE, which is a hyperinflationary currency, are not translated to the functional currency of the foreign PE. These amounts are translated directly to rand at the applicable spot rates under section 25D(1). Amounts originally expressed in rand retain their original rand values for purposes of section 25D(2). Amounts in functional currency are still translated to rand at the average exchange rate for the relevant year of assessment.

7.3.6 Final taxable income of a foreign permanent establishment – translated elements of taxable income

Once the relevant amounts have been translated to rand the taxable income of the resident's foreign PE can be determined. It may consist of three separate elements, namely –

- the taxable income of the foreign PE translated to rand from its functional currency [section 25D(2)];
- the taxable income of the foreign PE comprising amounts initially denominated in rand; and
- if the functional currency is a hyperinflationary currency, the taxable income of the foreign PE comprising amounts expressed in foreign currencies other than the functional currency which have been translated to rand.

Example 10 – Translation of the portion of the taxable income of a foreign PE with a hyperinflationary functional currency

Facts:

A resident company has a branch in Country Z through which it operates a number of hotels in Country Z. For purposes of section 25D(2) the branch's functional currency is the Country Z dollar. Country Z has an official rate of inflation of 300%.

A large portion of the receipts and accruals attributable to the branch are denominated in USD. The branch also earns interest income in rand.

All amounts are taxable or deductible.

Result:

The Country Z dollar is a hyperinflationary currency for the purposes of section 25D(2A) because Country Z's official rate of inflation is 100% or more.

The branch's taxable income, which will be included in the resident's taxable income calculation assuming the branch does not make a current year assessed loss, has 3 elements, namely:

- A taxable income calculation in Country Z dollar for amounts expressed in that currency. The end result of the calculation must be translated to rand at the applicable average exchange rate.
- The interest income denominated in rand.
- Under sections 25D(2A) and 25D(1) the USD amounts translated directly to rand at the applicable spot rates.

7.3.7 Applicable year of assessment

A foreign PE is not a separate entity and does not have its own independent year of assessment. The average exchange rate for purposes of translating the taxable income of the foreign PE to rand must therefore be determined by reference to the resident's year of assessment even if the foreign PE commenced or terminated operations within that year (see **4.2.4**).

Example 11 – Translation of the net profits of a foreign PE trading for part of a year

Facts:

A resident company has been in existence for several years and has a year of assessment that ends on the last day of December. On 1 November 2014 the company opened a PE in Country A and commenced trading activities on the same day. The official currency of Country A is the schilling.

Result:

The resident company must calculate the taxable income of the foreign PE for the two-month period ending 31 December 2014 in schilling and translate that amount to rand by applying the average exchange rate for the 12-month period ending 31 December 2014.

7.4 Controlled foreign companies – general rule [section 9D(6)]

Section 9D(2) generally requires that a portion of a CFC's net income[7] must be included in the income of any resident, other than an HQC, that directly or indirectly holds any participation rights in the CFC. This deemed income inclusion is commonly referred to as "attribution". The amount which must be attributed to a particular resident is that resident's proportional amount as determined under section 9D(2).

Section 9D(6) provides that a CFC's net income for its foreign tax year must be determined in its functional currency and translated to rand at the average exchange rate for that foreign tax year.

7.4.1 Foreign tax year vs year of assessment

A CFC's foreign tax year may be different to the years of assessment of the residents holding participation rights in that CFC that are required to include a portion of the CFC's net income in their taxable income.

The average exchange rate that is used to translate a CFC's net income from its functional currency to rand must be based upon the foreign tax year of the CFC and not the years of assessment of the residents holding participation rights in it.

7.4.2 Other currency amounts recognised by a controlled foreign company

A CFC may recognise amounts in currencies other than its functional currency. These other currencies may be the rand, a CMA currency or the currency of any other country. Such amounts, including any amounts denominated in rand or CMA currencies, must be translated to the CFC's functional currency in accordance with section 9D(6), which requires the net income of a CFC to be determined in its functional currency before being translated to rand at the relevant average exchange rate (see **7.4.1**).

The amounts may relate to transactions undertaken directly by the CFC or by the CFC's PE that has the same or a different functional currency to the CFC. Neither section 9D nor section 25D prescribe specific rules for translating such other currencies to the functional currency of the CFC. As a practical matter, it will be acceptable to SARS if –

- the spot rate is used to translate other currencies to the CFC's functional currency and, if applicable, to the CFC's PE's functional currency; and
- if the CFC's PE has a different functional currency to the CFC, the average exchange rate is used to translate the net income of a CFC's PE to the CFC's functional currency.

Example 12 – The translation of the net income of a CFC whose year-end occurs before the year-end of a resident holding participation rights

Facts:

A resident company with a 31 December year-end holds 60% of the participation rights in a CFC which has a foreign tax year ending on 30 June.

[7] As determined under section 9D(2A) and calculated for its foreign tax year.

Result:

For the year of assessment ended 31 December 2014 the resident company must attribute 60% of the CFC's net income, as determined for the CFC's year of assessment ended 30 June 2014, by using the average exchange rate for the CFC's foreign tax year ended on 30 June 2014.

Example 13 – CFC having a foreign PE

Facts:

A resident company holds all the shares of a CFC based in the United States. The CFC's functional currency is the USD. The CFC undertakes transactions directly in various other foreign currencies. It also has a branch in the United Kingdom which uses GBP as its functional currency.

Result:

All transactions undertaken by the UK branch in currencies other than GBP, including the rand, must first be translated to GBP at the spot rate. Next, the taxable income of the foreign PE in GBP must be translated to USD at the average exchange rate applicable for the CFC's foreign tax year.

Transactions undertaken directly by the CFC in currencies other than USD (including rand) must be translated to USD at the spot rate.

Finally, the CFC's total taxable income in USD must be translated to rand at the average exchange rate for the CFC's foreign tax year.

7.4.3 Controlled foreign company having a hyperinflationary currency

Any exchange item denominated in a currency other than the functional currency of a CFC is deemed not to be attributable to any PE of that CFC if the functional currency represents a currency of a country which has an official rate of inflation of 100% or more for that foreign tax year. The effect is that the amounts expressed in non-hyperinflationary currencies must be translated directly to rand at the spot rate.

7.5 Headquarter companies [section 25D(4)], domestic treasury management companies [section 25D(5)] and international shipping companies [section(25D(6)]

Sections 25D(4), 25D(5) and 25D(6) apply to HQCs, DTMCs and ISCs, respectively, which have a functional currency other than the rand. These companies must determine taxable income in its functional currency and translate that figure to rand using an average exchange rate for the year of assessment. In circumstances in which the functional currency is rand, the other provisions of section 25D must be considered.

Amounts that are denominated in any other currency, including amounts in rand or CMA currencies, must be translated to the company's functional currency. Sections 25D(4), 25D(5) and 25D(6) do not specify how such other currencies must be translated to the functional currency. As a practical matter, it will be acceptable to SARS if –

- the spot rate is used to translate other currencies (including rand) to the relevant functional currency and, if applicable, to the company's PE's functional currency; and
- the average exchange rate is used to translate taxable income of the PE to the company's functional currency when PE has a different functional currency to that of the company.

Example 14 – Application of the functional currency rule to an HQC

Facts:

Company A is a HQC. Its holding company is resident in the United States. The holding company requires Company A to prepare all its accounts and financial statements in its functional currency which is USD.

For its first year of assessment Company A's taxable income for its South African operations was USD100 000 and the applicable average exchange rate was USD1 = R12,1024.

Result:

Under section 25D(4) Company A must determine its taxable income in its functional currency, which is USD. It must then translate the resulting figure to rand using the average exchange rate for its year of assessment. For its first year of assessment Company A's taxable income was R1 210 240 (USD100 000 × R12,1024).

8. Translation of foreign taxes to rand for purposes of foreign tax rebates and the section 6*quat*(1C) deduction

8.1 Rebate and deduction for foreign taxes on foreign-source amounts [sections 6*quat*(4) and (4A)]

Any foreign taxes proved to be payable for purposes of the section 6*quat*(1) rebate or the section 6*quat*(1C) deduction must be claimed as a rebate or a deduction, as the case may be, in the year of assessment in which the foreign amount to which those taxes relate is included in taxable income and not in the year of assessment in which the foreign taxes are proved to be payable.

The foreign taxes must be translated to rand on the last day of the year of assessment during which the amount is included in the taxable income of the resident by applying the average exchange rate for the year of assessment in which the foreign-source amount is included in the taxpayer's taxable income.

An amount translated to rand that includes a number of cents less than one hundred cents must be rounded off to the nearest rand. By convention, amounts of less than 50 cents are rounded down, while amounts of 50 cents or more are rounded up. Thus R100,50 would be rounded up to R101 and R100,49 would be rounded down to R100.

See Interpretation Note No. 18 (Issue 3) dated 26 June 2015 "Rebate and Deduction for Foreign Taxes on Income" for more detail on the rebate and deduction.

8.2 Rebate for foreign taxes on South African-source service income [section 6*quin*(4)]

Subject to certain criteria and limitations, section 6*quin* provides a foreign tax rebate for foreign taxes paid on South African-source service income that is included in South African taxable income. Section 6*quin*(4) provides that any foreign tax which qualifies for the section 6*quin* rebate must be translated to rand on the last day of the year of assessment in which the tax is levied and withheld or imposed at the average exchange rate for that year of assessment.

See Interpretation Note No. 18 (Issue 3) dated 26 June 2015 "Rebate and Deduction for Foreign Taxes on Income" for more detail on the rebate.

8.3 Rebate for foreign taxes on dividends [section 64N(4)]

A foreign dividend paid to a resident by a foreign company listed on the JSE[8] is subject to dividends tax to the extent the foreign dividend does not consist of a distribution of an asset *in specie*.

Section 64N(1) provides for a rebate which must be deducted from the dividends tax payable on a foreign dividend as set out in the preceding paragraph if that foreign dividend was subject to foreign tax.

The rebate for foreign taxes is determined in rand by translating the foreign currency amount using the same rate used to translate the foreign dividend.

See Interpretation Note No. 18 (Issue 3) dated 26 June 2015 "Rebate and Deduction for Foreign Taxes on Income" for more detail on the rebate.

9. Withholding of amounts from payments to non-resident sellers of immovable property [section 35A(5)]

Section 35A applies when any person purchases immovable property situated in South Africa from a non-resident and the amounts payable in aggregate exceed R2 million. Under section 35A the purchaser is generally obliged to withhold an amount from the purchase price paid to the non-resident.

Section 35A(5) provides that when an amount has been withheld under section 35A(1) from any amount payable in a foreign currency, the amount so withheld must be translated to rand at the spot rate on the date that the amount is paid to the Commissioner.

Example 15 – Application of section 35A(5)

Facts:

A foreign company, resident in Country Y, sold immovable property located in South Africa to a resident on 20 August 2014 for Y$200 000. The purchase price was paid on 29 August 2014. The resident paid the withholding tax due under section 35A to the Commissioner on 8 September 2014.

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8 The securities exchange operated by JSE Ltd.

The following exchange rates are relevant:

Date:	*Exchange rate:*
20 August 2014	Y$1 = R15,1022
29 August 2014	Y$1 = R16,0102
8 September 2014	Y$1 = R17,0022

Result:

The applicable withholding tax rate is 7,5% because the seller is a company.[9] The applicable exchange rate is the spot rate on the date that the amount is paid to the Commissioner, that is, Y$1 = R17,0022.

The withholding tax amounts to R255 033 (Y$200 000 × 17,0022 × 7,5%).

10. Taxation of foreign entertainers and sportspersons (section 47J)

Section 47B provides for a final tax of 15% on an amount received by or accrued to a foreign entertainer or sportsperson for a personal activity exercised in South Africa. Under section 47D a resident is required to deduct or withhold the tax from the amount paid to a foreign entertainer or sportsperson for the activity.

Section 47J provides that if any amount deducted or withheld is denominated in a foreign currency, the amount must be translated to rand at the spot rate on the date on which the amount was deducted or withheld.

Example 16 – Application of section 47J

Facts:

A singer resident in Country Z performed in South Africa in December 2014. A South African promoter paid the singer an amount of Country Z $150 000 for four performances on 15 December 2014.

The spot rate on 15 December 2014 was Country Z $1 = R16,1013.

Result:

The withholding tax amounts to R362 279 (Country Z $150 000 fee × 16,1013 exchange rate × 15% final tax rate).

11. Withholding tax on royalties (section 49H)

Section 49B provides for a withholding tax on royalties of 15% on any royalty that is paid or that becomes due and payable on or after 1 January 2015 by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within South Africa under section 9(2)(*c*), *(d), (e) or (f).* The withholding tax on royalties must generally be withheld by the person making the payment to or for the benefit of the foreign person and paid over to the Commissioner.

[9] Section 35A(1).

Section 49H provides that when an amount withheld by a person is denominated in a foreign currency the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner, be translated to rand at the spot rate on the date on which the amount was so withheld.

12. Withholding tax on interest (section 50H)

Section 50B provides for a withholding tax on interest of 15% on any interest that is paid or that becomes due and payable on or after 1 March 2015 by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within South Africa under section 9(2)(*b*). The withholding tax on interest must generally be withheld by the person making the payment to or for the benefit of the foreign person and be paid over to the Commissioner.

Section 50H provides that when an amount withheld by a person is denominated in a foreign currency, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner, be translated to rand at the spot rate on the date on which the amount was so withheld.

Example 17 – Application of section 50H

Facts:

A foreign company lent USD100 000 to a resident company which used the money to fund its South African operations. Interest of USD15 000 was paid by the resident company to the foreign company on 15 March 2015.

The spot rate on 15 March 2015 was USD1 = R10,7606.

Result:

The withholding tax on interest payable to the Commissioner amounts to R161 409 (USD100 000 interest × 10,7606 exchange rate × 15% rate of withholding tax).

13. Withholding tax on services (section 51H)

Legislation on the withholding tax on services is contained in Part IVC of Chapter II (sections 51A to 51H) of the Act and applies to service fees that are paid or become due and payable on or after 1 January 2016.

Section 51H provides that when an amount withheld by a person is denominated in a foreign currency, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner, be translated to rand at the spot rate on the date on which the amount was so withheld.

14. Blocked foreign funds (section 9A)

Section 9A provides relief when an amount denominated in a foreign currency which forms part of –

- the income of a person for a year of assessment; or
- the net income of a CFC for a foreign tax year,

may not be remitted to South Africa during that year of assessment as a result of currency or other restrictions or limitations imposed under the laws of the country where the amount arose.

Section 9A(1) provides that when an amount of income of a person for a year of assessment may not be remitted to South Africa during that year of assessment for the reasons mentioned above, that amount must be deducted from that person's income for that year.

Under section 9A(2) the amount deducted from income is deemed to be an amount received or accrued in the following year of assessment.

Example 18 – Application of section 9A(1) and (2)

Facts:

A resident owns a block of flats in Country Z. Rental income derived from the property in year 1 amounted to Z$10 million. Under restrictions enforced by the government of Country Z, Z$1 million could be remitted to South Africa in year 1 but the remittance of the remaining Z$9 million was blocked.

Approval for the remittance of the remaining Z$9 million was given in year 4.

The applicable spot rate on the date on which the rental income accrued to the resident was R1 = Z$250. The spot rate on the date on which the restrictions on remitting the blocked funds was lifted was R1 = Z$400.

Result:

Year 1

The rental income which accrued to the resident in rand terms amounts to R40 000 (Z$10 million / Z$250). This amount forms part of the resident's gross income in the year of receipt or accrual.

The portion of the rental income that is blocked amounts to R36 000 (Z$9 million / Z$250). This amount must be allowed as a deduction against the resident's income in year 1.

Effectively R4 000 (R40 000 – R36 000) is taxed in year 1. It represents the rental income which may be remitted to South Africa irrespective of whether the amount is actually converted to rand or remitted to South Africa.

Year 2

The amount allowed as a deduction in year 1, namely, R36 000, must be added to income in year 2. Since this amount may again not be remitted to South Africa it will be allowed as a deduction from income in year 2.

The net tax result in year 2 is R Nil.

Year 3

The tax effect in year 3 is the same as in year 2.

Year 4

The amount allowed as a deduction in year 3, namely, R36 000, is included in the income of the resident in year 4. Since the restrictions on this amount are lifted in year 4, no deduction is allowed under section 9A(1) in year 4 irrespective of whether the amount is actually remitted to South Africa or converted to rand in year 4. The only relevant factor is that the underlying restrictions have been lifted.

Section 9A(3) provides that any amount or any part of an amount of the net income of a CFC for a foreign tax year which may not be remitted to South Africa must be deducted from the income of the CFC for that foreign tax year.

Under section 9A(4) the amount of the blocked funds will, to the extent that it does not exceed the deduction allowed under section 9A(3), be deemed to be an amount received by or accrued to the CFC in the following foreign tax year.

15. Conclusion

In general, subject to the specific provisions governing foreign tax rebates, dividends tax rebates, blocked foreign funds, hyperinflationary currencies, exchange items and capital gains and losses –

- the spot rate must be used by –
  - any natural person and non-trading trust, unless that person or trust elects to use the average exchange rate in a year of assessment in accordance with section 25D(3);
  - any person to translate any foreign currency amount which has been deducted or withheld from amounts payable to a non-resident in accordance with section 35A (sales of immovable property), section 47J (amounts paid to entertainers or sportspersons), section 49H (royalties), section 50F (withholding tax on interest) or section 51F (withholding tax on services, effective in 2016);
  - any foreign PE, CFC, HQC, DTMC or ISC to translate amounts recognised by it in foreign currencies other than its functional currency to its functional currency;
  - any domestic PE; and
  - any foreign PE with a functional currency in a CMA currency to translate other foreign currencies to rand, unless the person is an individual or non-trading trust which has elected to use an average exchange rate; and
- the average exchange rate must be used by –
  - any natural person or non-trading trust that elects to use it in a year of assessment in accordance with section 25D(3); and
  - any foreign PE, CFC, HQC, DTMC or ISC to translate its taxable income in its functional currency to rand.

Depending on whether the person has or is a foreign PE, CFC, HQC, DTMC or ISC, amounts in rand must either be left as is or be translated to the foreign PE, CFC, HQC, DTMC or ISC's functional currency at spot before being translated back to rand at an average exchange rate.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
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Annexure – The law

Section 1(1) – Definition of "average exchange rate"

"average exchange rate" in relation to a year of assessment means the average determined by using the closing spot rates at the end of daily or monthly intervals during that year of assessment which must be consistently applied within that year of assessment;

Section 1(1) – Definition of "domestic treasury management company"

"domestic treasury management company" means a company—

(*a*) incorporated or deemed to be incorporated by or under any law in force in the Republic;

(*b*) that has its place of effective management in the Republic; and

(*c*) that is not subject to exchange control restrictions by virtue of being registered with the financial surveillance department of the South African Reserve Bank;

Section 1(1) – Definition of "functional currency"

"functional currency", in relation to—

(*a*) a person, means the currency of the primary economic environment in which the business operations of that person are conducted; and

(*b*) a permanent establishment of any person, means the currency of the primary economic environment in which the business operations of that permanent establishment are conducted;

Section 1(1) – Definition of "headquarter company"

"headquarter company", in respect of any year of assessment means a company contemplated in section 9I (1) in respect of which an election has been made in terms of that section;

Section 1(1) – Definition of "spot rate"

"spot rate" means the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency;

Section 6*quat* – Rebate or deduction in respect of foreign taxes on income

(4) For the purposes of this section the amount of any foreign tax proved to be payable as contemplated in subsection (1A) or (1C) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be translated to the currency of the Republic on the last day of that year of assessment by applying the average exchange rate for that year of assessment.

(4A) If the amount translated in accordance with subsection (4) includes a number of cents that is less than one rand, that amount must be rounded off to the nearest rand.

Section 6*quin* – Rebate in respect of foreign taxes on income from source within Republic

(4) For the purposes of subsection (2)(*a*)(ii) and (*b*)(ii), the amount of any tax—

(*a*) levied and withheld as contemplated in subsection (1)(*a*); or

(*b*) imposed as contemplated in subsection (1)(*b*),

must be translated to the currency of the Republic on the last day of the year of assessment in which that tax is so levied and withheld or imposed, by applying the average exchange rate for that year of assessment.

Section 9A – Blocked foreign funds

(1) Where any amount, or any portion of any amount, received by or accrued to any person which is required to be included in the income of that person during any year of assessment may not be remitted to the Republic during that year as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount arose, that person shall be allowed to deduct from his or her income for that year an amount equal to so much of the amount or portion which may not be remitted as is required to be included in the income of that person for that year.

(2) The amount or portion which may not be remitted during the year of assessment contemplated in subsection (1) shall be deemed to be an amount received by or accrued to the person contemplated in that subsection in the following year of assessment.

(3) Where any amount, or any portion of any amount, of the net income of a controlled foreign company in respect of a foreign tax year of the controlled foreign company may not be remitted to the Republic for the reasons contemplated in subsection (1), there shall be allowed to be deducted from the net income of the controlled foreign company for that foreign tax year an amount equal to so much of the amount or portion which may not be remitted.

(4) The amount or portion which may not be remitted as contemplated in subsection (3) shall be deemed to be an amount received by or accrued to the controlled foreign company contemplated in that subsection in the following foreign tax year of the controlled foreign company.

Section 9D – Net income of controlled foreign companies

(6) The net income of a controlled foreign company in respect of a foreign tax year shall be determined in the functional currency of that controlled foreign company and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that foreign tax year: Provided that any exchange item denominated in any currency other than the functional currency of that controlled foreign company shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the functional currency is the currency of a country which has an official rate of inflation of 100 per cent or more for that foreign tax year.

Section 12Q – Exemption of income in respect of ships used in international shipping

(1) For the purposes of this section—

“international shipping” means the conveyance for compensation of passengers or goods by means of the operation of a South African ship mainly engaged in international traffic;

“international shipping company” means a company that is a resident that holds a share or shares in one or more South African ships that are utilised in international shipping;

Section 25D – Determination of taxable income in foreign currency

(1) Subject to subsections (2), (3) and (4), any amount received by or accrued to, or expenditure or loss incurred by, a person during any year of assessment in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate on the date on which that amount was so received or accrued or expenditure or loss was so incurred.

(2) Any amounts received by or accrued to, or expenditure incurred by, a person in any currency other than the currency of the Republic which are attributable to a permanent establishment of that person outside the Republic must be determined in the functional currency of that permanent establishment (other than the currency of any country in the common monetary area) and be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

(2A) Subsection (2) shall not apply to the extent that—

(*a*) the other currency contemplated in that subsection is not the functional currency of that permanent establishment; and

(*b*) the functional currency is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment.

(3) Notwithstanding subsection (1), a natural person or a trust (other than a trust which carries on any trade) may elect that all amounts received by or accrued to, or expenditure or losses incurred by that person or trust in any currency other than the currency of the Republic, be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

(4) Where, during any year of assessment—

(*a*) any amount—

(i) is received by or accrued to; or

(ii) of expenditure is incurred by,

a headquarter company in any currency other than the functional currency of the headquarter company; and

(*b*) the functional currency of that headquarter company is a currency other than the currency of the Republic,

that amount must be determined in the functional currency of the headquarter company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(5) Where, during any year of assessment—

(*a*) any amount—

(i) is received by or accrues to; or

(ii) of expenditure is incurred by,

a domestic treasury management company in any currency other than the functional currency of the domestic treasury management company; and

(*b*) the functional currency of that domestic treasury management company is a currency other than the currency of the Republic,

that amount must be determined in the functional currency of the domestic treasury management company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(6) Where, during any year of assessment—

(*a*) any amount—

(i) is received by or accrues to; or

(ii) of expenditure is incurred by,

an international shipping company in any currency other than the functional currency of the international shipping company; and

(*b*) the functional currency of that international shipping company is a currency other than the currency of the Republic,

that amount must be determined in the functional currency of the international shipping company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(7) Any amounts received by or accrued to, or expenditure incurred by—

(*a*) a headquarter company contemplated in subsection (4);

(*b*) a domestic treasury management company contemplated in subsection (5); or

(*c*) an international shipping company contemplated in subsection (6),

during any year of assessment in a functional currency that is a currency other than the currency of the Republic must be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

Section 35A – Withholding of amounts from payments to non-resident sellers of immovable property

(5) If an amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.

Sections 47A to 47K – Taxation of foreign entertainers and sportspersons

47J. Currency of payments made to Commissioner.—If an amount deducted or withheld by a resident in terms of section 47D is denominated in any currency other than the currency of the Republic, the amount so deducted or withheld and paid to the Commissioner must be translated to the currency of the Republic at the spot rate on the date on which that amount was so deducted or withheld.

Section 49A to 49H – Withholding tax on royalties

49H. Currency of payments made to Commissioner.—If an amount withheld by a person in terms of section 49E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 49F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.

Sections 50A to 50H – Withholding tax on interest

50H. Currency of payments made to Commissioner.—If an amount withheld by a person in terms of section 50E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 50F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.

Sections 51A to 51H – Withholding tax on service fees

51H. Currency of payments made to Commissioner.—If an amount withheld by a person in terms of section 51E is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 51F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.

Section 64N – Rebate in respect of foreign taxes on dividends

(4) For the purposes of this section, the amount of any tax paid as contemplated in subsection (2) must be translated to the currency of the Republic by applying the exchange rate used to convert the amount of the dividend in respect of which that tax is paid to the currency of the Republic.