

VRAAG 2

48 punte

Al die maatskappye waarna in die vraag verwys word, is kategorie C Belasting op Toegevoegde Waarde (BTW) -ondernemers en alle bedrae sluit BTW uit, tensy spesifiek anders aangedui. Aanvaar 'n BTW-koers van 15%.

Zethu Izihlangu Bpk ('ZI') is 'n maatskappy wat in Suid-Afrika geregistreer is met sy hoofkantoor in Kaapstad. ZI het 'n Desember jaareinde. ZI is in 1998 deur mnr Lwazi Mhlengeni, 'n entrepreneur, opgerig. Die maatskappy vervaardig hoëgehalte-sportskoene vir mans, vroue en kinders. Die skoene word onder die gewilde handelsnaam 'Zeizi' verkoop.

ZI het 'n aantal takke en filiale wat betrokke is by die verskillende aspekte van die vervaardigings-, verspreidings- en kleinhandelbedrywighede van die skoene. ZI koop hul grondstowwe in Suid-Afrika, Kenia en Taiwan, en die Zeizi-skoene word in twee fabriekke in Suid-Afrika vervaardig. Albei fabriekke word deur ZI besit. Die Kaapstad-fabriek vervaardig 'n reeks kinderskoene onder die handelsnaam ZeiziKids, en die Durban-fabriek vervaardig Zeizi-skoenreekse vir mans en vroue. Die maatskappy versprei die voltooide produkte na al die Zeizi-takke wat in 20 lande, met inbegrip van Suid-Afrika, geleë is.

ZI se rekenmeester het die belasbare inkomste van die maatskappy vir die 2018 jaar van aanslag as ZAR9 740 000 bereken, voor inagneming van die transaksies beskryf in aantekeninge 1 tot 5 hieronder. Sy is onseker hoe hierdie transaksies hanteer moet word en het jou raad vir die finalisering van die belastingberekeninge gevra.

Al die partye tot hierdie transaksies maak gebruik van enige moontlike keuses wat hul belastingaanspreeklikheid wettiglik sal minimaliseer.

Die rekenmeester het die onderstaande aantekeninge aan jou gestuur:

1 ZI-vervaardigingsfasiliteite

1.1 ZI het 'n huurooreenkoms op die onderstaande voorwaardes met Siyenze (Edms) Bpk ('Siyenze'), 'n onverbonde derde party, gesluit:

- ZI verhuur 100m² in 'n gebou aangrensend aan die Kaapstad-fabriek vir 'n tydperk van tien jaar aan Siyenze;
- Die huurooreenkoms het op 1 Desember 2018 'n aanvang geneem;
- Siyenze moet op 1 Desember 2018 'n aanvanklike huurpremie van ZAR60 000 aan ZI betaal; en
- Siyenze moet vanaf 1 Januarie 2019 en daarna maandeliks huurgeld van ZAR20 000 op die eerste dag van elke maand aan ZI betaal.

1.2 Elke ZI-fabriek het 'n uitstalversameling waarin ten minste een paar van elke soort Zeizi-skoene wat ooit vervaardig is, ten toon gestel word. In ZI se rekeningkundige rekords word skoene wat deel van die uitstalling uitmaak, vanaf voltooide goedere na 'n baterekening bekend as 'uitstalbates' oorgedra. ZI se direkteure het op 30 November 2018 besluit om 'n spesiale paar skoene wat gedurende ZI se 2018 jaar van aanslag vervaardig is, aan 'n organisasie sonder winsoogmerk (wat nie 'n openbare weldaadsorganisasie vir inkomstebelastingdoeleindes is nie) te skenk. Die skoene is in die lys uitstalbates teen 'n koste van ZAR1 200 per paar opgeteken. Die markwaarde op 30 November 2018 was ZAR3 500 per paar.

1.3 Die administratiewe en verkoopkantoor by ZI se Kaapstad-fabriek het 'n hoëresolusie-kleurdrukker van PH Printer World ('PH'), 'n plaaslike maatskappy in Kaapstad, gehuur. Die bepalinge van die huurooreenkoms was soos volg:

- Die huurtermyn was vier jaar en het op 1 Julie 2014 'n aanvang geneem;
- Huurbetalings: 48 maandelikse betalings van ZAR2 275 elk, betaalbaar op die eerste dag van elke maand; en
- ZI mag die drukker aan die einde van die huurtydperk vir ZAR1 000 by PH koop.

1.4 ZI het die drukker in hul besigheid gebruik en die direkteure het daarom besluit om die koopopsie uit te oefen. ZI het gevolglik op 1 Julie 2018 ZAR1 000 aan PH betaal en eienaarskap van die drukker oorgeneem. Op daardie datum was die markwaarde van die drukker ZAR12 500. Die Suid-Afrikaanse Inkomstediens (SAID) se Bindende Algemene Beslissing No. 7 maak voorsiening vir 'n driejaar afskryftydperk vir elektroniese kantoortoerusting. Die oorblywende nutsduur van die drukker is drie jaar.

1.5 ZI het 12 vakleerlinge in hul Kaapstad- en Durban-fabriek in diens gehad. Hierdie vakleerlinge was almal leerlinge met 'n 24-maande NKR vlak4-leerlingooreenkoms wat by die Onderwys-en-opleidingsektor-owerheid vir Veselverwerking en Vervaardiging (Eng.: 'Fibre Processing and Manufacturing Sector Education and Training Authority' (FP&M SETA)) geregistreer is. Hierdie leerlingooreenkoms is op 1 Januarie 2017 aangegaan en is op 1 April 2017 deur die FP&M SETA geregistreer. Een vakleerling het ZI se diens op 1 Julie 2018 verlaat en het nie die leerlingskap voltooi nie. Die ander 11 vakleerlinge het hul leerlingskappe op 31 Desember 2018 suksesvol voltooi.

1.6 ZI het gedurende 2017 en 2018 omvattende opknappingswerk aan hul Durban-fabriek onderneem. ZI het die oorspronklike fabrieksgebou in 2002 opgerig en die vraag na Zeizi-skoene het die opknappingswerk 'n prioriteit gemaak ten einde ZI in staat te stel om die besigheid te laat groei. Die totale koste van die opknappingsprojek was ZAR30 miljoen, en die opknappingsonkoste is soos volg uiteengesit:

		ZAR miljoen
Koste van herstelwerk aan die fabriek	Tussen Maart en Julie 2018	5
Uitbreiding van die fabrieksgebou om die produksievermoë te verhoog	Aanvang: 1 November 2017 Voltooi en in gebruik geneem: 1 Maart 2018	25

Die bostaande opknappingsprojek is gedeeltelik by wyse van 'n lening van SA2 befonds (kyk aantekening 4).

2 ZI-hoofkantoor

ZI se hoofkantoor is in Constantia, Kaapstad geleë. ZI het die grond in Mei 2018 teen 'n totale bedrag van ZAR5 miljoen van 'n onverbonde persoon, wat nie 'n geregistreerde BTW-ondernemer was nie, gekoop. Die maatskappy het onmiddellik met die oprigting van die kantoorgebou begin. Die gebou is teen 'n koste van ZAR8 miljoen voltooi en is op 1 November 2018 in gebruik geneem.

3 Suid-Afrikaanse filiaal 1: Shoeman of Africa (Edms) Bpk

ZI besit 80% van die ekwiteitsaandele van Shoeman of Africa (Edms) Bpk ('SA1'), wat 'n vervaardigingsproses beoefen. SA1 het toerusting gehad wat teen 'n koste van ZAR650 000 aangeskaf is en op 2 Januarie 2018 in die vervaardigingsproses in gebruik geneem is.

SA1 het die toerusting op 1 September 2018 teen die billike markwaarde van ZAR1 290 000 aan ZI verkoop vir gebruik in hul Durban-fabriek. ZI se Durban-fabriek het die toerusting op dieselfde datum in hul vervaardigingsproses in gebruik geneem.

4 Suid-Afrikaanse filiaal 2: Shoez for Africa (Edms) Bpk

Shoez for Africa (Edms) Bpk ('SA2') is 'n Suid-Afrikaanse belastinginwoner met kantore in Durban. Die ekwiteitsaandele word soos volg besit:

- ZI – 65%
- Lwazi Mhlengeni – 25%
- Lwazi Familietrust – 10%.

4.1 SA2 het 'n volfiliaal, Ta-Chaussure Bpk ('TAC'), wat in Mauritius geregistreer en geleë is. Alhoewel TAC ten volle deur 'n Suid-Afrikaanse inwonermaatskappy besit word, het TAC 'n buitelandse besigheidsaak (Eng.: 'foreign business establishment') in Mauritius en gevolglik is artikel 9D van die *Inkomstebelastingwet*, Wet 58 van 1962, nie van toepassing nie. TAC het op 1 Desember 2017 'n lening, in Amerikaanse dollar gedenomineer, van USD2,5 miljoen aan ZI toegestaan om die koste van die uitbreiding van hul Durban-fabriek te befonds. Die leningsooreenkoms het voorsiening gemaak vir rente teen 'n koers van 15% per jaar, betaalbaar aan die einde van elke finansiële jaar. Die kapitaal is ten volle terugbetaalbaar op die vervaldatum. Alle rentebetalinge is op datum, maar die volle kapitaalbedrag was op 31 Desember 2018 steeds uitstaande. Die SAID ag die verhouding van skuld tot ekwiteit aanvaarbaar te wees, en dat die markverwante rentekoers op 'n USD-gedenomineerde lening wat in Mauritius ontstaan het, oor die hele tydperk 4% sou wees.

Die wisselkoerse tussen die Amerikaanse dollar (USD) en Suid-Afrikaanse rand (ZAR) oor die tydperk van die lening was soos volg:

	USD1 : ZAR
Sigkoers	
1 Desember 2017	13,0000
31 Desember 2017	12,3000
31 Desember 2018	13,9000
Gemiddelde wisselkoers vir die jaar geëindig	
31 Desember 2017	13,3129
31 Desember 2018	13,0000

4.2 SA2 het op 1 Junie 2018 'n afleweringvoertuig aan ZI verkoop vir gebruik in hul Kaapstad-fabriek. SA2 het die afleweringvoertuig oorspronklik op 1 September 2016 teen 'n koste van ZAR450 000 gekoop en die voertuig op dieselfde dag in gebruik geneem. SA2 het die voertuig op 1 Junie 2018 teen ZAR400 000 aan ZI verkoop. Die markwaarde van die voertuig was ZAR300 000. Die SAID se Bindende Algemene Beslissing No. 7 maak voorsiening vir 'n vierjaar afskryftydperk vir afleweringvoertuie. Die oorblywende nutsduur van die voertuig is vier jaar.

5 Mauritiaanse tak

ZI het 'n tak in Port Louis, Mauritius, wat Zeizi-skoene vanaf maatskappye in die ZI-groep invoer en die skoene in Mauritius verkoop. Die Mauritius-tak versprei ook Zeizi-skoene na kliënte in Australasië en Suid-Amerika, wat onverbonde persone met betrekking tot die ZI-groep is. ZI se Mauritius-tak word vanaf 'n gehuurde perseel in Port Louis bedryf. Die funksionele geldeenheid van Mauritius is die Mauritiaanse Roepee (MUR). Die SAID is tevrede dat alle transaksies tussen die Mauritiaanse tak en verbonde persone teen armlengte markwaardes uitgevoer is.

Die resultate van die Mauritius-tak se besigheidsaktiwiteite vir die 2018 finansiële jaar (FJ2018) was soos volg:

	MUR
Verkope	35 000 000
Min: Koste van verkope	(19 250 000)
Bruto wins	15 750 000
Min: Ander onkoste (almal ingevolge Mauritiaanse en Suid-Afrikaanse belastingwetgewing aftrekbaar)	(9 750 000)
Netto inkomste	6 000 000

Alle inkomste en onkoste val eweredig gedurende die jaar toe.

Die wisselkoerse tussen die ZAR en MUR gedurende FJ2018 was soos volg:

	MUR1 : ZAR
Sigkoers	
31 Desember 2017	0,3654
31 Desember 2018	0,4000
Gemiddelde wisselkoers vir die jaar geëindig	
31 Desember 2017	0,3720
31 Desember 2018	0,3875

EXTRACT FROM THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME

The Convention was published in *Government Gazette* No 471 dated 17 June 2005.

Article 1
Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2
Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which this Agreement shall apply are:
 - (a) in Mauritius, the income tax:
(hereinafter referred to as "Mauritius tax"); and
 - (b) in South Africa—
 - (i) the normal tax;
 - (ii) the secondary tax on companies;
 - (iii) the withholding tax on royalties; and
 - (iv) the tax on foreign entertainers and sportspersons;
(hereinafter referred to as "South African tax").
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3
General Definitions

1. In this Agreement, unless the context otherwise requires—
 - (a) the term "Mauritius" means the Republic of Mauritius and includes—
 - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea bed and sub-soil and their natural resources may be exercised;
 - (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be

- designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Mauritius or South Africa as the context requires;
 - (d) the term “business” includes the performance of professional services and of other activities of an independent character;
 - (e) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes; (f) the term “competent authority” means—
 - (i) in Mauritius, the Director General of the Mauritius Revenue Authority or an authorised representative of the Director General; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
 - ...
 - (g) the term “enterprise” applies to the carrying on of any business;
 - (h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (j) the term “national”, in relation to a Contracting State, means—
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person or association deriving its status as such from the laws in force in that Contracting State;
 - (k) the term “person” includes an individual, a company and any other body of persons which is treated as an entity for tax purposes; and
 - (l) the term “tax” means Mauritius tax or South African tax, as the context requires.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 **Resident**

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows—
 - (a) the individual shall be deemed to be a resident of the State in which a permanent home is available to the individual, if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual does not have a permanent home available to that person in either State the individual, shall be deemed to be a resident of the State in which the individual has an habitual abode;

- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident of the State of which the individual is a national;
(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase “an habitual abode” is intended to be “a habitual abode”.)
 - (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and determine the mode of application of the Agreement to such person. In the absence of such agreement such person shall be considered to be outside the scope of the Agreement except for the provisions of Article 25.

Article 5 ***Permanent Establishment***

- 1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
 - 2. The term “permanent establishment” shall include—(a) a place of management; (b) a branch; (c) an office; (d) a factory; (e) a workshop; (f) a warehouse, in relation to a person providing storage facilities for others; (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and (h) an installation or structure used for the exploration of natural resources.
- ...
- 7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 7 ***Business Profits***

- 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
- 2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
- 3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent

establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 21 Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

AANVANKLIKE TOETS VAN BEVOEGDHEID, JANUARIE 2019

PROFESSIONELE VRAESTEL 4

VRAAG 2 – VERLANG		Punte	
		Sub-totaal	Totaal
(a)	<p>Bereken die belasbare inkomste van ZI vir die 2018 jaar van aanslag, deur met die belasbare inkomste bereken deur die rekenmeester te begin en die inligting verstrek in die rekenmeester se aantekeninge (transaksies 1 tot 5) in ag te neem.</p> <p>Verstrek redes om berekeninge vir die belastinghantering wat toegepas is, te ondersteun.</p> <p><i>Kommunikasievaardighede – duidelike uitdrukkingswyse; uitleg en struktuur</i></p>	36	
		2	38
(b)	<p>Bespreek die BTW-implikasies vir ZI met betrekking tot transaksies 1.1 tot 1.3 en 2 in die scenario.</p> <p><i>Kommunikasievaardighede – toepaslike styl</i></p>	9	
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Totaal vir vraag 2			48