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Double Taxation

Conventions / Agreements

05 September 2006

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Purpose of Agreements

⇨ To remove barriers to cross-border trade and investment

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How treaties remove tax barriers

⇨ Elimination of double taxation
⇨ Certainty of tax treatment
⇨ Reduce withholding tax rates
⇨ Prevention of fiscal evasion
⇨ Assistance in collection
⇨ Resolution of tax disputes/interpretation

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South Africa – Spain
Double Taxation Convention

Introduction

⇨ Closely follows the OECD Model Convention, which forms the foundation for the vast majority of Double Taxation Agreements (DTA's) worldwide

⇨ Some provisions are different from the normal SA approach. These articles and other articles of interest in the South Africa – Spain Double Tax Convention are as follows...

Article 5: Permanent Establishment

⇨ Construction
- 12 months in OECD Model
- 6 months in UN Model
- South Africa – Spain DTC
  - Building site, a construction, installation or assembly project or any supervisory activity in connection therewith – more than 12 months.

Article 6: Immovable Property

⇨ Paragraph 4

- Where ownership of shares entitles the shareholder to use of immovable property owned by the company, the benefit may be taxed in the hands of the shareholder.

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Article 10: Dividends

⇨ Withholding tax of 5% or 15% proposed by OECD Model

⇨ In practice, withholding taxes vary widely internationally

⇨ Dividend rate in South Africa – Spain DTC

- 5% for shareholding of at least 25%
- 15% on all others

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Articles 11: Interest

⇨ Withholding tax of 10% proposed by OECD Model

⇨ In practice, withholding taxes vary widely internationally

⇨ South Africa – Spain DT Convention: 5%

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Article 12: Royalties

⇨ No withholding tax proposed by OECD Model

⇨ In practice, withholding taxes vary widely internationally

⇨ South Africa – Spain DT Convention

- Royalties limited to 5%

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Protocol

⇨ Paragraph 2 inserts a limitation of benefits provision with regard to passive income and capital gains in respect of companies which have more than 50% shareholding by shareholders not resident of that State. If the company conducts substantive business the benefits will still be given.

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Protocol

⇨ Paragraph 3 provides for the imposition of a branch profits tax in Spain and the normal imposition by South Africa of its tax on branches of non-resident companies. Branch profits tax is allowed at a maximum of 5% and the South African tax may be 5 percentage points higher than the corporate rate.

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South Africa – Tanzania Double Taxation Agreement

Introduction

- ⇨ Closely follows the OECD Model Convention, which forms the foundation for the vast majority of Double Taxation Agreements (DTA's) worldwide
- ⇨ A number of articles are different from the normal SA approach. These articles and other articles of interest in the South Africa – Tanzania Double Tax Agreement are as follows...

Article 5: Permanent Establishment

- ⇨ Construction
  - ➢ 12 months OECD Model/ 6 months UN Model
  - ➢ South Africa – Tanzania DTA
    - ➢ Building site, a construction, installation or assembly project or any supervisory activity in connection therewith – more than 6 months.
    - ➢ Furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose – periods or periods exceeding 183 days in any 12 month period.
    - ➢ Performance of professional services - periods or periods exceeding 183 days in any 12 month period.

Article 8 : International Transport

- Paragraph 2 of Article 8 provides for taxation at source of profits from shipping or rail transport. The profit is limited to 5% of turnover and the tax thereon shall not exceed 50% of the amount of the profits so limited.
- Profits from the use or rental of containers is taxable only in the State of residence.

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Article 10: Dividends

- Withholding tax of 5% or 15% proposed by OECD Model
- In practice, withholding taxes vary widely internationally
- Dividend rate in South Africa – Tanzania DTA
  - 10% for shareholding of at least 15%
  - 20% on all others

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Articles 11: Interest

- Withholding tax of 10% proposed by OECD Model
- In practice, withholding taxes vary widely internationally
- South Africa – Tanzania DTA
  - 10% per cent of the gross amount of interest

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Article 12: Royalties

⇨ No withholding tax proposed by OECD Model

⇨ In practice, withholding taxes vary widely internationally

⇨ South Africa – Tanzania DTA:

- 10% of the gross amount of the royalties in all other cases

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Article 17: Pensions

⇨ Paragraph 3: Payments made under the Social Security system of a State are taxable only in that State.

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Article 25: Assistance in Recovery

⇨ Under this Article the two States are empowered to collect taxes on behalf of each other on the basis of reciprocity.

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