

Double Taxation Conventions / Agreements

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Purpose of Agreements

⇒ To remove barriers to cross-border trade and investment.

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

South Africa – Swiss 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.
- ⇒ A number of articles are different from the normal SA approach. These articles and other articles of interest in the South Africa – Swiss Double Tax Convention are as follows...

Article 2: Taxes Covered

⇒ Paragraph 5: The Convention shall not apply to the Federal anticipatory tax withheld at the source on prizes in a lottery. No double taxation is involved.

Article 5: Permanent Establishment

⇒ Construction

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

Article 9: Associated Enterprises

⇒ Paragraph 3 provides that a corresponding adjustment need not be made if fraud or wilful default is proved.

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 – Swiss DTC
 - 5% for shareholding of at least 20%
 - 15% on all others

Articles 11: Interest

- ⇒ Withholding tax of 10% proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Swiss DTC: 5%

Article 12: Royalties

⇒ Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

Article 14: Independent Personal Services

⇒ Independent personal services are dealt with separately in this Article. The threshold for taxation in the source State is the existence of a fixed base or 183 days physical presence.

Article 18: Pensions

⇒ Pensions and other similar remunerations in consideration of past employment, and other retirement benefits for which the contributions were deductible in determining taxable income, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

Article 24: Mutual Agreement Procedure

⇒ Paragraph 5: Any difficulty or doubt as to the Convention cannot be resolved by the competent authorities by mutual agreement procedures within the three years after the question was raised, can at the request of either of the Contracting State be submitted for arbitration only after fully exhausting the procedures in paragraph 1 to 4 of this Article, provided the taxpayers involved agree in writing to be bound by the decision of the arbitration board.

Article 25: Exchange of Information

⇒ An exchange of information Article is introduced for the first time between SA and Switzerland.

Protocol

- ⇒ 1. Clarity on Article 18 in relations to the meaning of “other retirement benefits”. For SA, it includes annuities and lump sum benefits

- ⇒ 2. As long as SA levies STC Switzerland shall allow, upon request, a relief in accordance with subparagraph (b) of paragraph 2 of Article 22 for this tax, to the extent that the beneficial owner is a resident of Switzerland other than a company referred to in paragraph 2(a) of Article 10. This is merely an additional relief method by Switzerland for its residents

Protocol

⇒ 3. Tax fraud:

- Bank secrecy neither prevents the procuring of documentary evidence from banks nor the transmission of such evidence, if competent authority shows a direct link between the fraudulent conduct and the requested measures of administrative assistance
- Exchange of information is based on reciprocity



South Africa – Saudi Arabia 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.
- ⇒ A number of articles are different from the normal SA approach. These articles and other articles of interest in the South Africa – Saudi Arabia Double Tax Convention are as follows...

Article 4: Resident

⇒ A provision is added in paragraph 1 (b) to clarify the resident status of exempt bodies. This is relevant for Saudi Arabia.

Article 5: Permanent Establishment

⇒ Construction

- 12 months in OECD Model
- 6 months in UN Model
- South Africa – Saudi Arabia DTC
 - Building site, a construction, installation or assembly project or any supervisory activity in connection therewith – more than six months.
 - Services through employees – physical presence of more than six months.

Article 5: Permanent Establishment

The concept of “delivery” in both paragraphs 4 and 5 is not regarded as being of an auxiliary or preparatory nature and will create a permanent establishment.

Article 7: Business profits

- ⇒ Paragraph 4 specifies that profits derived from the export of goods to a Contracting State will not be taxed in that State. However, if that export includes activities to be carried out in that other State then the other State may tax the profits arising from the activities. This follows general principles.
- ⇒ Paragraph 5 specifies that profits from insurance business will be taxed by each State under its domestic law.

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 – Saudi Arabia DTC
 - 5% for shareholding of at least 10%
 - 10% on all others

Articles 11: Income from Debt-Claims

- ⇒ Withholding tax of 10% proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Saudi Arabia DTC: A limit of 5% in the source State.

Article 12: Royalties

- ⇒ No withholding tax proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Saudi Arabia DTC: a limit of 10% in the source State.

Article 13: Capital Gains

⇒ Paragraph 5 specifies that any gain on the sale of shares representing a participation of 25 percent in a company may be taxed in the State in which the company is a resident.

Article 14: Independent Personal Services

⇒ Paragraph 1 (c) adds a further threshold for taxation in the source State in relation to remuneration in excess of 100 000 USD for independent services.

Article 15: Dependent Personal Services

- Paragraph 4 specifies that employees of international transport companies operating in international traffic and rendering their services in the other State shall be exempt in the other State for a period of five years.

Article 21: Teachers and Researchers

⇒ This Article provides an exemption from tax in the host State for two years in respect of visiting professors, teachers or researchers. However, the remuneration must be derived from outside the host State.

Article 27: Miscellaneous

⇒ This Article confirms the principle that income which is derived by either State, including the central banks, will not be subjected to tax by the State in which the income arises.



South Africa – Portugal 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
- ⇒ A number of articles are different from the normal SA approach. These articles and other articles of interest in the South Africa – Portugal Double Tax Convention are as follows...

Article 5: Permanent Establishment

⇒ Construction

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

Article 6: Income from Immovable Property

- ⇒ Paragraph 4 provides that paragraphs 1 and 3 also applies to income from immovable property used for the performance of independent personal services.
- ⇒ Paragraph 5 provides that the foregoing paragraphs of this Article applies to income from movable property and income derived from services connected with the use or the right to use the immovable property.

Article 8: International Transport

- ⇒ Paragraph 1 provides that profits of an enterprise of a Contracting State from the operation of ships and aircrafts in international traffic shall be taxable only in that State.
- ⇒ Paragraph 3 provides that when companies from different countries have agreed to carry on air transportation business together in the form of a consortium the provisions of paragraph 1 applies to that part of profits of the consortium as corresponds to the participation held in that consortium by a company that is a resident of a Contracting State.

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 – Portugal DTC:
 - 10% for shareholding of at least 25%
 - 15% on all others

Articles 11: Interest

- ⇒ Withholding tax of 10% proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Portugal DTC: 10%
- ⇒ Paragraph 3 provides that interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the other Contracting State or a political or administrative subdivision or a local authority or any entity wholly owned and controlled by the State or subdivision or local authority.

Article 12: Royalties

- ⇒ No withholding tax proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Portugal DTC
 - Royalties limited to 10%

Article 14: Independent Personal Services

⇒ Independent personal services are dealt with separately in this Article. The threshold for taxation in the source State is the existence of a fixed base or 183 days physical presence.

Article 18: Pensions

- ⇒ Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
- ⇒ An annuity paid to an individual may be taxed in the State of the insurer at a rate not exceeding 12 per cent on the income portion of that annuity which exceeds \$10,000 per annum or its equivalent in the currency of the Contracting States.

Article 20: Professors and Researchers

- ⇒ This Article provides an exemption from tax in the host State for two years in respect of visiting professors or researchers. However, the remuneration must be derived from outside the host State.
- ⇒ The provisions of this Article shall not apply to remuneration in respect of research if such research is undertaken not in public interest but primarily for the private benefit of a specific person or persons.

Article 25: Mutual Agreement Procedure

⇒ Paragraph 4 provides that the competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Protocol

⇒ Clarifies Article 24 paragraph 3 which provides that under the SA tax system, there is an exemption for dividends declared by non-resident companies where the participation by the SA shareholder is more than 25%. The provisions of paragraph 5 will only apply while the exemption from STC is in effect.





South Africa – Lesotho 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 – Lesotho Double Tax Agreement are as follows...

Article 4: Resident

⇒ Paragraph 3 provides that when 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 determine the mode of application of the Agreement to the person. In the absence of such agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Agreement.

Article 5: Permanent Establishment

- ⇒ The term “permanent establishment” includes an installation or structure used for exploration of natural resources.
- ⇒ Construction
 - 12 months in OECD Model
 - 6 months in UN Model
 - South Africa – Lesotho DTA
 - Building site, a construction, assembly or installation 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 in aggregate 90 days in any 12 month period.
 - Performance of professional services - periods or periods exceeding in aggregate 90 days in any 12 month period.

Article 7: Business profits

- ⇒ Paragraph 3 provides that:
- No deduction will be allowed in respect of amounts paid by the permanent establishment to the head office of the enterprise or any of its offices, by way of royalties, fees, or other similar payments. The exception a banking enterprise, by way of interest on moneys lent to the permanent establishment.
 - No account shall be taken in determining the profits of the permanent establishment for amounts charged by the permanent establishment to the head office, by way of royalties, fees, or other similar payments. The exception a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

Article 8: International Transport

- ⇒ Paragraph 1 provides that profits of an enterprise of a Contracting State from the operation of ships aircrafts or rail or road transport vehicles in international traffic shall be taxable only in that State.
- ⇒ Paragraph 2 provides that profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include profits derived from the rental of rail or road transport vehicles.

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 – Lesotho DTA
 - 10% for shareholding of at least 10%
 - 15% on all others
- ⇒ This agreement will not prevent a Contracting State from imposing a branch profits tax on the repatriated income of a company which is a resident of the other Contracting State, in addition to the income tax imposed, provided that the branch profits tax imposed does not exceed 10% of the amount of the repatriated income.

Articles 11: Interest

- ⇒ Withholding tax of 10% proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Lesotho DTA: 10%

Article 12: Royalties

- ⇒ No withholding tax proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Lesotho DTA: 10%

Article 13: Fees for Technical Services

- ⇒ Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- ⇒ Technical fees derived from one Contracting State by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first mentioned State at a rate not exceeding 10 per cent of the gross amount of such fees.

Article 15: Income from Employment

- Paragraph 2 (a) provides that remuneration derived by a resident of Contracting in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if, the recipient is present in the other State for period or periods not exceeding 182 days in any 12 month period.

Article 17: Entertainers and Sportspersons

- ⇒ Paragraph 1 provides that income derived by a resident of a Contracting State as an entertainer or sportsperson from the person's personal activities exercised in the other Contracting State may be taxed in that other State.
- ⇒ Paragraph 3 provides that income derived by a resident of a Contracting State from activities exercise in the other Contracting State, if the visit to the other State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political subdivision or local authority thereof. The income shall be taxable only in the first-mentioned Contracting State.

Article 18: Pensions

⇒ Paragraph 3 provides that pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that State.

Article 21: Professors and Teachers

- ⇒ This Article provides an exemption from tax in the host State for two years in respect of visiting professors or teachers. However, the remuneration must be derived from outside the host State.
- ⇒ The provisions shall not apply to remuneration in respect of research if such research is undertaken not in public interest but wholly or mainly for the private benefit of a specific person or persons.

Article 27: Assistance in Recovery

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

Article 23: Elimination of Double Taxation

⇒ Paragraph 3 provides that “Lesotho tax payable” and “South African tax payable” shall be deemed to include the amount of tax which would have been paid in Lesotho or South Africa but for the exemption or reduction granted in accordance with the laws which establish schemes for the promotion of economic development in Lesotho and South Africa. Such schemes having been mutually agreed, by the competent authorities of the Contracting States as qualifying for the purpose of this paragraph.

Protocol

- ⇒ 1. Clarifies that in any Agreement entered into between Lesotho and any other State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income subsequent to this Agreement, a lower rate than that specified in Article 11, 12, or 13 of this Agreement is provided for, Lesotho agrees that such lower rate shall apply to this Agreement.

Protocol

- ⇒ 2. Clarifies paragraph 3 of Article 23 and provides that it is understood that the benefits thereof will not apply in respect of:
- (a) financial intermediation activities such as banking and insurance;
 - (b) the licencing of intellectual property;
 - (c) shell businesses which are not engaged in substantive business operations; or
 - (d) passive income.

South Africa – Sudan 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 – Sudan Double Tax Agreements are as follows...

Article 4: Resident

⇒ Paragraph 3 provides that where 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 determine the mode of application of the Agreement to the person. In the absence of such agreement by the competent authorities of the Contracting State, the person shall not be entitled to any relief or exemption from tax provided by the Agreement.

Article 5: Permanent Establishment

- ⇒ The term “permanent establishment” includes a warehouse or premises used as a sales outlet.
- ⇒ Construction
 - 12 months in OECD Model
 - 6 months in UN Model
 - South Africa – Sudan DTA
 - Building site, a construction, assembly or installation project or any supervisory activity in connection therewith – more than 12 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 in aggregate 183 days in any 12 month period.

Article 5: Permanent Establishment

- ⇒ The concept of “delivery” is not regarded as being of an auxiliary or preparatory nature and will create a permanent establishment.
- ⇒ Paragraph 6 provides that activities of an agent which are wholly or almost wholly on behalf of an enterprise and conditions are made and imposed between the enterprise and agent which differ from those which would be made between independent enterprises, the agent would not be considered an agent of independent status.

Article 7: Business profits

- ⇒ Paragraph 3 provides that:
- No deduction will be allowed in respect of amounts paid by the permanent establishment to the head office of the enterprise or any of its offices, by way of royalties, fees, or other similar payments. The exception a banking enterprise, by way of interest on moneys lent to the permanent establishment.
 - No account shall be taken in determining the profits of the permanent establishment for amounts charged by the permanent establishment to the head office, by way of royalties, fees, or other similar payments. The exception a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

Article 9: Associated Enterprises

⇒ Paragraph 3 provides that a Contracting State shall not change the profits of an enterprise after the expiry of the time limit in its domestic law or after 5 years from the end of the year in which the profits subject to the such change would have accrued to that enterprise. This paragraph will not apply in the case of fraud or wilful default is proved.

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 – Sudan DTA:
 - 5% for shareholding of at least 25%
 - 10% on all others

Articles 11: Interest

- ⇒ Withholding tax of 10% proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Sudan DTA: 10%
- ⇒ Paragraph 3 provides that interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a political subdivision or local authority thereof, the Central Bank of Sudan, the South African Reserve Bank or any wholly owned institution of that Government or subdivision or authority.

Article 12: Royalties

- ⇒ No withholding tax proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Sudan DTA: 10%

Article 14: Independent Personal Services

⇒ Independent personal services are dealt with separately in this Article. The threshold for taxation in the source State is the existence of a fixed base or 183 days physical presence.

Article 16: Directors Fees

⇒ Paragraph 2: Salaries wages and any other similar remuneration, derived from the company in respect of the discharge of functions as an employee, shall be taxable in accordance with the provisions of Article 15.

Article 17: Entertainers and Sportspersons

- ⇒ Paragraph 1 provides that income derived by a resident of a Contracting State as an entertainer or sportsperson from the person's personal activities exercised in the other Contracting State may be taxed in that other State.
- ⇒ Paragraph 3 provides that income derived by a resident and performed under a cultural agreement or arrangement between the Contracting States, is exempt from tax in the Contracting State in which the activities are exercised, if the visit to that State is wholly or mainly supported by funds of one or both of the Contracting States, a political subdivision, a local authority or public institution thereof.

Article 20: Teachers and Researchers

⇒ This Article provides an exemption from tax in the host State for two years in respect of visiting teachers or researchers. However, the remuneration must be derived from outside the host State.

Article 21: Students and Trainees

⇒ Paragraph 2 provides that in respect of grants, scholarships and remunerations from employment not covered under paragraph 1, a student or business trainee shall be entitled to the same exemption, relief or reductions in respect of taxes available to residents of the Contracting State being visited.

Article 25: Mutual Agreement Procedure

⇒ Paragraph 4 provides that the competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.