FORMAL RATIFICATION: TAX TREATY WITH CHILE AND MAURITIUS, AND MALTA TAX TREATY PROTOCOL

Standing Committee On Finance

Presenter: Lutando Mvovo and Charles Makola | Directors, Tax Policy, National Treasury | **19 June 2013**

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REPUBLIC OF SOUTH AFRICA

Introduction

- National Treasury's presentation will only be limited to the ratification of Chile tax treaty, Mauritius tax treaty, Malta STC Protocol and preliminary hearing of Cameroon and Qatar tax treaties;

- Tax information exchange agreements are agreements between tax administrations;

- National Treasury's involvement in tax administration agreements limited to where such agreement forms part of the broader DTA negotiation

DTA BETWEEN SA AND MAURITIUS

Background

- The current (old) treaty was signed in 1996 and came into effect on 1 July 1997

- Revision of DTA at the behest of SA, mainly because:
  - Improve tax cooperation amongst the two countries;
  - Changing domestic tax landscape (e.g. introduction of withholding tax on interest)
  - Increased intermediation of Mauritius for inbound (and outbound) investments. Discourage potential abuse of the DTA through base erosion and profit shifting practices

- The new tax treaty was signed on 17 May 2013 in Maputo

Intermediation of low tax jurisdictions

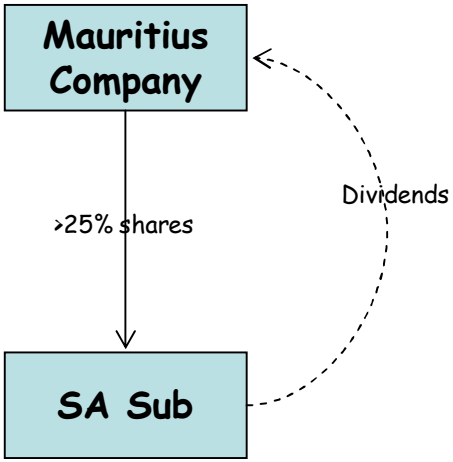
- Theoretically, a DTA is intended for use by residents of contracting states; however, a favourable DTA with a low tax jurisdiction often attracts third party residents
- Intermediation can take a variety of forms in respect of shareholdings, loans, intellectual property, services, etc.
- The DTA needs to balance the quest for inbound investments and potential for base erosion
- Mauritius is a tax friendly jurisdiction and therefore, the renegotiated DTA must be partly seen against the above international trade and finance paradigm

Key tax policy items

- Dividends
- Interest
- Royalties
- Tax sparring
- Capital gains
- Co-operation in tax matters

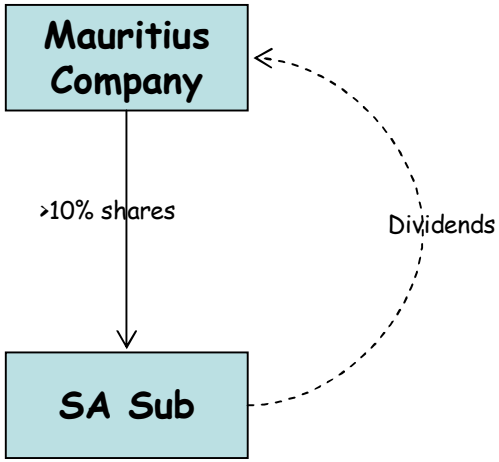
Inbound investment dividends withdrawal

- **BEFORE**



•SA Subsidiary earns income of R100;
•SA Subsidiary pays corporate tax of R28;
•Domestic dividends tax rate is 15% but the treaty reduces it to 5% or 10%
•Dividends subbject to 5% withholding tax
•The same situation apply if SA invest in Mauritius

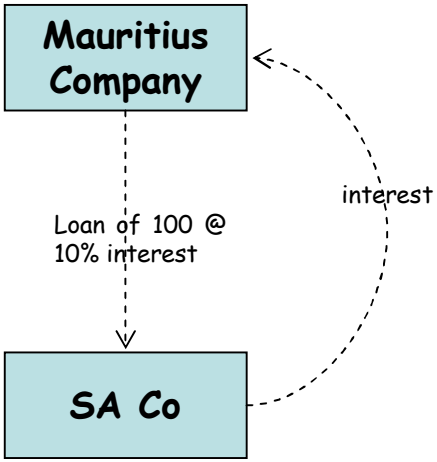
- **AFTER**



•Same as before except for the participation threshold.
•Reduced threshold in line with international standards on definition of foreign direct investment
•The same situation applies if SA invest in Mauritius

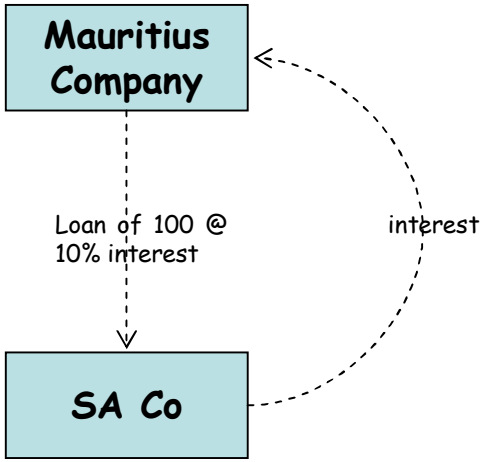
Inbound investment interest withdrawal

- **BEFORE**



•SA Subsidiary earns income of R100;
•SA Subsidiary pays reduced corporate tax of R25 because of deductible interest;
•Withholding tax on interest will be 15% but the treaty reduces it to 0%
•Tax treaty encourages base erosion

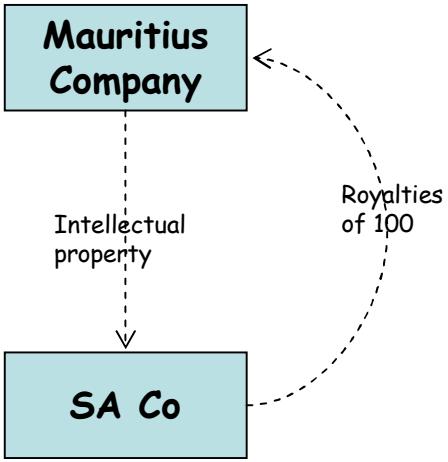
- **AFTER**



•SA Co earns income of R100.
•SA Subsidiary pays reduced corporate tax of R25 because of deductible interest;
•SA imposing gross withholding tax on interest on Mauritius Company of 10% (or R1)
•Base erosion risk minimised

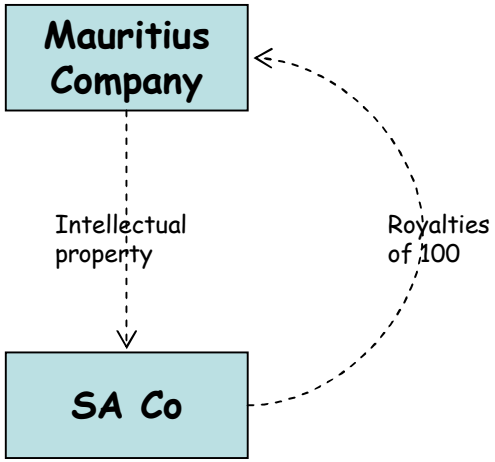
Inbound investment royalty withdrawal

- **BEFORE**



•Royalties deductible in SA, thus reduces the corporate tax payable by SA Subsidiary
•Withholding tax on royalties will be 15%; treaty reduces it to 0%
•Tax benefit encourages base erosion

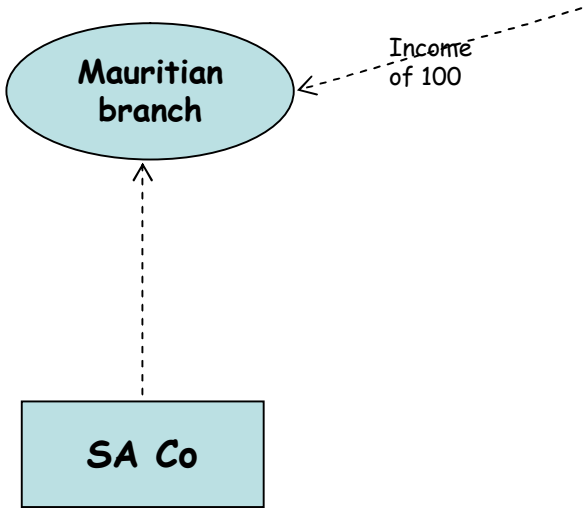
- **AFTER**



•Royalties deductible in SA, thus reduces the corporate tax payable by SA Subsidiary
•Domestic withholding tax on royalties will be 15%; treaty reduces it to 5%
•Base erosion risk minimised

Tax sparring

- **BEFORE**



•The Mauritian branch of SA Co earns income of 100
•Mauritius decides per domestic law that she wont tax the income
•In terms of the tax sparring provision, SA Co will be deemed to have paid full tax in Mauritius (e.g. 15%)
•As a result, the tax charged by SA will be reduced by that 15%

- **AFTER**

  - The tax sparring provision was removed
  - SA will only give credit for actual Mauritian tax paid

Capital gains tax

- Previously, the capital gains article did not provide for taxing property shares (i.e. shares in a company that substantially holds immovable property)
- This arguably created opportunities for SA residents to emigrate from SA tax free
- The revised DTA makes it clear that property shares are taxable in SA the same way as immovable property held directly

DTA in the media

"When the news emerged…that South Africa has renegotiated and signed a new tax treaty with Mauritius, one financial daily carried the front-page headline: "Uncertainty arises over new double tax treaty". Its report and others, based on views of big accounting firm, placed a great deal of emphasis on the supposed uncertainty and potential for double taxation created by one development in the new treaty with Mauritius. This is alarmist and simply incorrect"

Mr Oupa Magashula

Commissioner of SARS

Conclusion

Major benefits of revised treaty:

- Minimizes the risk of base erosion
- Provides significant policy space for SA to adjust withholding tax rates
- SARS would highlight some of the benefits from tax administration perspective (i.e. mutual agreement procedure, exchange of information and assistance in collection of taxes)

DTA BETWEEN SA AND CHILE

The South Africa – Chile Tax Treaty

- Å The SAï Chile tax treaty was initiated by South Africa;
- Å Enhance economic relations between South Africa and Chile;
- Å Chile is very rich in mineral wealth and is one of the South Americaôs most stable emerging economies;
- Å Presence of South African companies in Chile in Mining, Leisure, fishing and consumer goods sectors;
- Å Expand South Africaôs tax treaty network in South America;
- Å Currently South Africa has one tax treaty in the South American Region;
- Å To promote South Africa as a gateway to Africa;
- Å This tax treaty was signed on 11 July 2012 in Pretoria.

DTA BETWEEN SA AND MALTA

The South Africa – Malta Tax Treaty Protocol

- The SAï Malta tax treaty is one of the nine tax treaties that had a zero rate withholding tax on dividends;
- The tax treaty came into force on 27 November 1997;
- It had to be renegotiated in light of the introduction of the dividends tax;
- The renegotiation also addressed certain aspects that are not present in the current treaty such as the updated exchange of information provision;
- This protocol was signed on 24 August 2012

WAY FORWARD

Å Formal ratification

Å Put the administrative machinery in motion

ï Sending notification to Chile and Malta through diplomatic channels;

PRELIMINARY HEARINGS: CAMEROON AND QATAR

Standing Committee On Finance

Presenter: Lutando Mvovo and Charles Makola | Directors, Tax Policy, National Treasury | **08 May 2013**

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The South Africa – Cameroon Tax Treaty

- This is a new tax treaty;
- Aim is to enhance economic relations between South Africa and Cameroon;
- Growing presence of the South African companies in Cameroon especially in the mining, aviation, telecommunications and financial sectors;
- Expand South Africaâs tax treaty network in Africa;
- To promote South Africa as a gateway to Africa;

The South Africa – Qatar Tax Treaty

- This is a new tax treaty;
- The SAï Qatar tax treaty was initiated by South Africa;
- To strengthen economic relations between South Africa and Qatar;
- Expand South Africaôs tax treaty network in the Middle East;
- Growing South African community in Qatar, evidenced by the establishment of South Africa Social Committee (SASCOM) which assists new comers to Qatar;
- Qatar is important to South Africa as it has oil reserves of 15,21 billion barrels and natural gas reserves measured at approximately 25.4 trillion cubic metres;
- Presence of South African companies in the Aviaition,construction and oil industries.

THANK YOU