

# **Value-Added Tax Agreements Formal Ratification**

# Purpose of the Agreement

- To provide for mutual assistance and co-operation and the prevention of fiscal evasion with respect to value-added tax.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of the Kingdom of Swaziland  
on mutual assistance and co-operation  
and  
the prevention of fiscal evasion with respect  
to value-added tax**

# Introduction

- The Agreement is entered into to make provision for and regulate various matters relating to value-added tax.
- Articles of interest in the South Africa – Swaziland Value-Added Tax Agreement are as follows:

# Article 3: Refund System

- Paragraph 1: Both Governments will establish a refund system to administer the refund and assessment of tax as provided for by the Agreement.
- RSA VAT is destination based, i.e. imports and domestic consumption is taxed while exports are free of tax;
- a direct export is free of tax whereas an indirect export is taxed with a refund mechanism to the person who paid the tax;
- harmonised tax laws, i.e. same tax rate, currency valuation, tax design and administration, facilitate implementation of a tax refund system between governments

# Article 3: Refund System

- Benefits:
  - harmonises a common customs procedure;
  - removes incentive to under-declare imports and round trip goods;
  - reduces the administrative burden on both tax authorities -
    - no requirement for the VAT Refund Administrator (VRA);
    - single less frequent payments to the tax authority.
- Paragraph 2: Each Contracting State may appoint a Claims and Refunds Manager and shall inform the other Contracting State of any such appointments.

# Article 3: Refund System

- Paragraph 3: Refunds in respect of tax shall be administered by each Contracting State or by the Claims and Refunds Manager, subject to tax legislation and in accordance with the provisions of this Agreement.
  
- Paragraph 4: A Memorandum of Understanding (MOU) between the tax authorities will be developed setting out operational procedures regarding:
  - (a) any matter relating to the refund of tax in respect of export from an export State to an import State;
  - (b) the determining and monitoring of the amount refundable in terms of the Agreement;
  - (c) the interval at which refunds are to be made in terms of the Agreement;

# Article 3: Refund System

- (d) the responsibilities of a Claims and Refunds Manager; and
  - (e) any matter that will facilitate or improve the operation of the refund system provided for in the Agreement.
- Paragraph 5: Where tax has been charged and collected by a vendor in the export State on a sale or supply of goods which have been exported, any refund due in respect of such amount of tax shall be transferred to the tax authority in the import State or refunded to the importer. The terms and conditions for the transfer or refund must be determined by the authorities of the Contracting States in the MOU.



# Article 3: Refund System

- Paragraph 6: Where an importer has paid a lesser amount of tax in the export State in respect of a sale or a supply of goods that have been exported than the tax liability in the import State, the deficit shall be recovered from the importer by the tax authority in the import State.

# Article 4: Exchange of Information

- Paragraph 1: The tax authorities shall exchange any information which is foreseeable relevant for the correct assessment or refund of tax or to combat the evasion or avoidance of tax. Exchanges will be done in accordance with the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income entered into between South Africa and Swaziland, signed in Pretoria on 23 January 2004 and shall be subject to the same limitations on use and confidentiality.

# Article 5: Notification of Assessment, claim or decision

- Paragraph 1: The requested authority shall, upon the request of the requesting authority notify a person of all assessments, claims, or decisions addressed to that person, including those of a legal nature, which relate to tax and which emanate from territory of the Contracting State in which the requesting authority is situated. The notification by the requested authority shall be done in accordance with the rules in force for the notification of similar assessments, claims or decisions in the territory of the Contracting State in which the requested authority is situated.

# Article 7: Resolution of Difficulties

- Paragraph 1: The Competent Authority shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In order to reach agreement an oral exchange of opinions can take place directly between representatives of the tax authorities of the Contracting States.

# Memorandum of Understanding

- The Memorandum of Understanding on Processing and Administering the value-added tax refund system between the South African Revenue Service (SARS) and the Swaziland Revenue Authority (SRA) includes the following Articles:
  - Article 4: Exclusions -
    - VAT paid on services rendered in RSA;
    - VAT paid on goods to be imported into country of residence through postal services;
    - VAT paid on goods if the goods were a direct export from RSA – zero rate is applicable;
    - VAT paid on goods imported via an airport, if those goods have been processed under a RSA export regulation.

# Memorandum of Understanding

- Article 5: Refunds Procedures -
  - administered by each tax authority or by a Manager (Claims and Refund Manager);
  - paid directly to the tax authority;
  - no refund to the qualifying purchaser -
    - instead will facilitate the refund directly to the tax authority;
  - claim must be in the form agreed upon between the tax authorities (Adherence to Policies and Procedures).
- Article 6: Designated Border Posts.
- Article 7: Non Designated Border Post.

# Memorandum of Understanding

- Article 8: Tax Invoices -
  - Original;
  - valid under RSA legislation.
- Article 9: New Registrable Goods -
  - Proof of authorised release and proof of registration.
- Article 10: Determining and Monitoring of amounts refundable -
  - export within 90 days of date of tax invoice, and refund claim with 90 days from date of export.

# Memorandum of Understanding

- Article 11: Obligations for SRA -
  - communicate appointment of the Manager;
  - exchange information where non-compliance is suspected or detected;
  - ensure Manager performs the necessary functions, namely:
    - tax invoice and claim verification, refund form/ envelopes.



# Memorandum of Understanding

- Article 12: Obligations for SARS -
  - exchange information where non-compliance is suspected or detected;
  - pay 100% of the RSA VAT directly to the tax authority;
  - remittance of VAT refunds to be made on a weekly basis;
  - offset rejected claims - against future refund claims.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of the Kingdom of Lesotho  
on mutual assistance and co-operation  
and  
the prevention of fiscal evasion with respect  
to value-added tax**

# Introduction

- The Agreement is entered into to make provision for and regulate various matters relating to value-added tax.
- Articles of interest in the South Africa – Lesotho Value-Added Tax Agreement are as follows:

# Article 3: Refund System

- Paragraph 1: Both Governments will establish a refund system to administer the refund and assessment of tax as provided for by the Agreement.
- RSA VAT is destination based, i.e. imports and domestic consumption is taxed while exports are free of tax;
- a direct export is free of tax whereas an indirect export is taxed with a refund mechanism to the person who paid the tax;
- harmonised tax laws, i.e. same tax rate, currency valuation, tax design and administration, facilitate implementation of a tax refund system between governments.

# Article 3: Refund System

- Benefits -
  - harmonises a common customs procedure;
  - removes incentive to under-declare imports and round trip goods;
  - reduces the administrative burden on both tax authorities -
    - no requirement for the VAT Refund Administrator (VRA);
    - single less frequent payments to tax authority.
- Paragraph 2: Each Contracting State may appoint a Claims and Refunds Manager and shall inform the other Contracting State of any such appointments.

# Article 3: Refund System

- Paragraph 3: Refunds in respect of tax shall be administered by each Contracting State or by the Claims and Refunds Manager, subject to tax legislation and in accordance with the provisions of this Agreement.
  
- Paragraph 4: A Memorandum of Understanding (MOU) between the tax authorities will be developed setting out operational procedures regarding:
  - (a) any matter relating to the refund of tax in respect of export from an export State to an import State;
  - (b) the determining and monitoring of the amount refundable in terms of the Agreement;
  - (c) the interval at which refunds are to be made in terms of the Agreement;

# Article 3: Refund System

- (d) the responsibilities of a Claims and Refunds Manager; and
  - (e) any matter that will facilitate or improve the operation of the refund system provided for in the Agreement.
- Paragraph 5: Where tax has been charged and collected by a vendor in the export State on a sale or supply of goods which have been exported, any refund due in respect of such amount of tax shall be transferred to the tax authority in the import State or refunded to the importer. The terms and conditions for the transfer or refund must be determined by the authorities of the Contracting States in the MOU.

# Article 3: Refund System

- Paragraph 6: Where an importer has paid a lesser amount of tax in the export State in respect of a sale or a supply of goods that have been exported than the tax liability in the import State, the deficit shall be recovered from the importer by the tax authority in the import State.



# Article 4: Exchange of Information

- Paragraph 1: The tax authorities shall exchange any information which is foreseeable relevant for the correct assessment or refund of tax or to combat the evasion or avoidance of tax. Exchanges will be done in accordance with the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income entered into between South Africa and Lesotho, signed in Pretoria on 24 October 1995 and shall be subject to the same limitations on use and confidentiality.

# Article 5: Notification of Assessment, claim or decision

- Paragraph 1: The requested authority shall, upon the request of the requesting authority notify a person of all assessments, claims, or decisions addressed to that person, including those of a legal nature, which relate to tax and which emanate from territory of the Contracting State in which the requesting authority is situated. The notification by the requested authority shall be done in accordance with the rules in force for the notification of similar assessments, claims or decisions in the territory of the Contracting State in which the requested authority is situated.

# Article 7: Resolution of Difficulties

- Paragraph 1: The Competent Authority shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In order to reach agreement an oral exchange of opinions can take place directly between representatives of the tax authorities of the Contracting States.

# Memorandum of Understanding

- The Memorandum of Understanding on Processing and Administering the value-added tax refund system between the South African Revenue Service (SARS) and the Lesotho Revenue Authority (LRA) includes the following Articles:
- Article 4: Exclusions -
  - VAT paid on services rendered in RSA;
  - VAT paid on goods to be imported into country of residence through postal services;
  - VAT paid on goods if the goods were a direct export from RSA – zero rate is applicable;
  - VAT paid on goods imported via an airport, if those goods have been processed under a RSA export regulation.

# Memorandum of Understanding

- Article 5: Refunds Procedures -
  - administered by each tax authority or by a Manager (Claims and Refund Manager);
  - paid directly to the tax authority;
  - no refund to the qualifying purchaser -
    - instead will facilitate the refund directly to the tax authority;
  - claim must be in the form agreed upon between the tax authorities (Adherence to Policies and Procedures).
- Article 6: Designated Border Posts.
- Article 7: Non Designated Border Post.

# Memorandum of Understanding

- Article 8: Tax Invoices -
  - Original;
  - valid under RSA legislation.
- Article 9: Registrable Goods (second hand and new) -
  - Proof of authorised release and proof of registration.
- Article 10: Determining and Monitoring of amounts refundable -
  - export within 90 days of date of tax invoice, and refund claim with 90 days from date of export.

# Memorandum of Understanding

- Article 11: Obligations for LRA -
  - communicate appointment of the Manager;
  - exchange information where non-compliance is suspected or detected;
  - ensure Manager performs the necessary functions, namely:
    - tax invoice and claim verification, refund form/envelopes.

# Memorandum of Understanding

- Article 12: Obligations for SARS:
  - exchange information where non-compliance is suspected or detected;
  - pay 100% of the RSA VAT directly to the tax authority;
  - remittance of VAT refunds to be made on a weekly basis;
  - offset rejected claims - against future refund claims.



**Protocol amending the  
Double Taxation  
Conventions / Agreements  
Formal Ratification**

**Protocol amending the  
Agreement between the  
Government of the Republic of South Africa  
and  
the Government of the Republic of India  
for the avoidance of double taxation and the  
prevention fiscal evasion with respect to  
taxes on income, signed at New Delhi on  
4 December 1996**

# Introduction

- The amendments to the Agreement became necessary in view of the global initiative to incorporate a comprehensive exchange of information Article in existing Double Taxation Agreements.
- The Article in the South Africa – India Protocol amending the Double Tax Agreement is as follows:

# Article 25: Exchange of Information

- Article 25 of the Agreement is deleted and replaced by the new Article on Exchange of Information.
- This new Article is in line with the OECD/UN Models and extends to taxes of every kind and description.
- Paragraph 2 includes a further alternate OECD provision which allows information received by a Contracting State to be used for other purposes when the competent authority of the supplying State authorises such use and such use is allowed under the laws of both States.

# Article 25: Exchange of Information

- The new Article ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Full exchanges are authorised – includes automatic exchanges.

**Protocol amending the  
Agreement between the  
Republic of South Africa  
and  
the Republic of Turkey  
for the avoidance of double taxation and the  
prevention fiscal evasion with respect to  
taxes on income, signed at Pretoria on  
3 March 2005**

# Introduction

- The amendments to the Agreement became necessary in view of the global initiative to incorporate a comprehensive exchange of information Article in existing Double Taxation Agreements.
- The Article in the South Africa – Turkey Protocol amending the Double Tax Agreement is as follows:

# Article 24: Exchange of Information

- Article 24 of the Agreement was deleted and replaced by the new Article on Exchange of Information.
- This new Article is in line with the OECD/UN Models and extends to taxes of every kind and description.
- The new Article ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Full exchanges are authorised – includes automatic exchanges.



# **African Tax Administration Forum Multilateral Agreement Formal Ratification**

# **African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters**

# African Tax Administration Forum (ATAF)

- The African Tax Administration Forum (ATAF) Agreement establishes ATAF and entered into force on 8 October 2012 establishing ATAF as an International Organisation.
- The Parties to the ATAF Multilateral Agreement on Mutual Assistance in Tax Matters are 36 Member States of ATAF.

# African Tax Administration Forum (ATAF)

- The Member States of ATAF include: Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Comoros, Côte d'Ivoire, Egypt, Eritrea, Gabon, Gambia, Ghana, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

# Purpose of the Multilateral ATAF Agreement on Mutual Assistance in Tax Matters

- To allow for effective exchange of information and assistance between the Tax Authorities of the Member States which are Parties to the Agreement; and to increase co-operation among tax authorities to combat tax avoidance and evasion.
- The cooperation includes, amongst other matters, exchange of information, simultaneous tax examinations, tax examinations abroad, recovery of tax claims, mutual agreement procedure and facilitation of joint audits.

# Introduction

- Closely follows the Articles on Exchange of Information and Assistance in Collection in the OECD and UN Model Tax Conventions.
- Articles of interest in the Multilateral ATAF Agreement on Mutual Assistance in Tax Matters are as follows:

## Article 2: Objective

- The objective of the Agreement is to enable the Contracting Parties to assist one another in tax matters.
- Allows for assistance which comprises of:
  - (a). exchange of information in tax matters;
  - (b). carrying out of tax examinations abroad;
  - (c). carrying out of simultaneous tax examinations; and
  - (d). assisting in the collection of taxes.

## Article 3: Taxes Covered

- This Agreement shall apply to all taxes on income, on capital, and to taxes on goods and services imposed by or on behalf of the Contracting Parties.



# Article 4: Exchange of Information

- The Contracting Parties shall through their Competent Authorities, provide one another, spontaneously, automatically or upon request with such information as may be relevant for carrying out the provisions of this Agreement or for the administration or enforcement of the domestic laws of the Requesting Party concerning the taxes covered by this Agreement insofar as the taxation under those laws is not contrary to any other instrument entered into between the Requesting and Requested Party.

# Article 4: Exchange of Information

- Does not impose on a Contracting Party the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
  - (c) to supply information which disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which be contrary to public policy.

# Article 4: Exchange of Information

- The Agreement ensures that the absence of a domestic tax interest or bank secrecy can not be used to deny a request for exchange of information.

# Article 5: Tax Examinations Abroad

- A Requested Party may allow representatives of the Requesting Party to enter the territory of the Requested Party to interview individuals and examine records with the written consent of the taxpayer concerned.
- At the request of the Competent Authority of a Requesting Party, the Competent Authority of the Requested Party may allow representatives of the Competent Authority of the Requesting Party to participate in any appropriate part of a tax examination in the territory of the Requested Party.

# Article 5: Tax Examinations Abroad

- All decisions with respect to the conduct of the tax examination shall be made by the Requested Party conducting the examination.

# Article 6: Simultaneous Examination

- At the request of the Competent Authority of one of the Contracting Parties, two or more Competent Authorities of the Contracting Parties may consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Competent Authority involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

# Article 7: Assistance in Collection

- The Requested Party shall, upon request, lend assistance to the Requesting Party in the collection of revenue claims.
- When a revenue claim of a Contracting Party is a claim in respect of which that Party may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of that Party, be accepted for purposes of taking measures of conservancy by the Competent Authority of the Requested Party.

# Article 8: Confidentiality

- Any information obtained by a Party shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by the Agreement.
- The information can be disclosed in a public court proceeding or in judicial decisions.



# Article 9: Costs

- Subject to paragraph 2, the Contracting Parties shall waive all claims for reimbursement of ordinary costs incurred in the execution of this Agreement.
- As soon as the Requested Party anticipates that expenses of a substantial or extraordinary nature may be incurred in the provision of assistance pursuant to this Agreement, it will, before incurring such costs, notify the Competent Authority of the Requesting Authorities and both Competent Authorities shall decide the manner in which the costs shall be borne.

# Article 11: Other International Agreements or Arrangements

- The possibilities of assistance provided by this Agreement does not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Parties which relate to co-operation in tax matters.

# Article 12: Mutual Agreement Procedure

- Where difficulties or doubts arise between two or more Contracting Parties regarding the implementation or interpretation of this Agreement, the Competent Authorities shall endeavour to resolve the matter by mutual agreement.

# Article 15: Ratification and Entry into Force

- This Agreement shall be ratified by Member States in accordance with their constitutional procedures.
- This Agreement shall enter into force thirty calendar days after five of the Member States have submitted their instrument of ratification to the Executive Secretary of ATAF.

# South Africa's Formal Ratification of the Notification

- The Instrument of Ratification or Accession, which will be sent to the Depository, advises that the South African Parliament, in accordance with the requirements of South African law, has approved the ratification or accession of the Agreement. The following notification will also be sent:

## Notification

- Article 14 – Competent Authority:

The Commissioner for the South African Revenue Service or an authorised representative of the Commissioner.

**Southern African  
Development Community  
Multilateral Agreement  
Formal Ratification**

# **Southern African Development Community Agreement on Assistance in Tax Matters**

# Southern African Development Community (SADC)

- The Southern African Development Coordinating Conference (SADCC), established on 1 April 1980 was the precursor of the Southern African Development Community (SADC). The SADCC was transformed into SADC on 17 August 1992 where the SADC Treaty was adopted, redefining the basis of cooperation among Member States into a legally binding arrangement.
- The Parties to the SADC Agreement on Assistance in Tax Matters are 15 Member States of the Southern African Development Community.



# South African Development Community (SADC)

- The Member States of SADC include: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
- The Agreement was approved by the SADC Councils of Ministers of Finance and Ministers of Justice.
- The Agreement was developed in line with Annex 3 of the SADC Protocol on Finance and Investment that require the State Parties to draw effective guidelines for amongst others, effective exchange of information in tax matters, assistance in the collection of taxes and the implementation of Mutual Agreement Procedures.

# Purpose of the SADC Agreement on Assistance in Tax Matters

- To allow for effective exchange of information and assistance between the Tax Authorities of the Member States which are Parties to the Agreement; and to increase co-operation among tax authorities to combat tax avoidance and evasion.
- The cooperation includes, amongst other matters, exchange of information, simultaneous tax examinations, tax examinations abroad, recovery of tax claims, mutual agreement procedure and facilitation of joint audits.

# Introduction

- Closely follows the Articles on Exchange of Information and Assistance in Collection in the OECD and UN Model Tax Conventions.
- Articles of interest in the SADC Agreement on Assistance in Tax Matters are as follows:

## Article 2: Objective

- The objective of the Agreement is to enable the State Parties to assist one another in tax matters.
- Allows for assistance which comprises of:
  - (a). exchange of information in tax matters;
  - (b). carrying out of tax examinations abroad;
  - (c). carrying out of simultaneous tax examinations; and
  - (d). assisting in the collection of taxes.

# Article 3: Taxes Covered

- This Agreement shall apply to all taxes on income, capital, and goods and services imposed by or on behalf of the State Parties with the exception of custom duties.

# Article 4: Exchange of Information

- The State Parties shall through their Competent Authorities, provide one another, spontaneously, automatically or upon request with such information as may be relevant for carrying out the provisions of this Agreement or for the administration or enforcement of the domestic laws of the Requesting Party concerning the taxes covered by this Agreement insofar as the taxation under those laws is not contrary to any other instrument entered into between the Requesting and Requested Party.

# Article 4: Exchange of Information

- Does not impose on a State Party the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State Party;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State Party;
  - (c) to supply information which disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which be contrary to public policy.

# Article 4: Exchange of Information

- The Agreement ensures that the absence of a domestic tax interest or bank secrecy can not be used to deny a request for exchange of information.



# Article 5: Tax Examinations Abroad

- A Requested Party may allow representatives of the Requesting Party to enter the territory of the Requested Party to interview individuals with the written consent of the taxpayer concerned.
- At the request of the Competent Authority of a Requesting Party, the Competent Authority of the Requested Party may allow representatives of the Competent Authority of the Requesting Party to be present at any appropriate part of a tax examination in the territory of the Requested Party.
- All decisions with respect to the conduct of the tax examination shall be made by the Requested Party conducting the examination.

# Article 6: Simultaneous Examinations

- At the request of the Competent Authority of one of the State Parties, two or more Competent Authorities of the State Parties may consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Competent Authority involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

# Article 7: Assistance in Collection

- The Requested Party shall, upon request lend assistance to the Requesting Party in the collection of revenue claims.
- When a revenue claim of a State Party is a claim in respect of which that Party may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of that Party, be accepted for purposes of taking measures of conservancy by the Competent Authority of the Requested Party.

# Article 8: Confidentiality

- Any information obtained by a Party shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by the Agreement.
- The information can be disclosed in a public court proceeding or in judicial decisions.

# Article 9: Costs

- Subject to paragraph 2, the State Parties shall waive all claims for reimbursement of costs incurred in the execution of this Agreement.
- As soon as the Requested Party anticipates that expenses of a substantial or extraordinary nature may be incurred in the provision of assistance pursuant to this Agreement, it will, before incurring such costs, notify the Competent Authority of the Requesting Party and both Competent Authorities shall decide the manner in which the costs shall be borne.

# Article 11: Other International Agreements or Arrangements

- The possibilities of assistance provided by this Agreement does not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Parties which relate to co-operation in tax matters.

# Article 12: Mutual Agreement Procedure

- Where difficulties or doubts arise between two or more Contracting Parties regarding the implementation or interpretation of this Agreement, the Competent Authorities shall endeavour to resolve the matter by mutual agreement.

# Article 15: Ratification and Entry into Force

- This Agreement shall be ratified by Member States in accordance with their constitutional procedures.
- This Agreement shall enter into force thirty calendar days after two thirds of the Member States have submitted their instrument of ratification to the Executive Secretary of SADC.



# South Africa's Formal Ratification of the Notification

- The Instrument of Ratification or Accession, which will be sent to the Depository, advises that the South African Parliament, in accordance with the requirements of South African law, has approved the ratification or accession of the Agreement. The following notification will also be sent:

## Notification

- Article 14 – Competent Authority:

The Commissioner for the South African Revenue Service or an authorised representative of the Commissioner.

# Tax Information Exchange Agreements Formal Ratification

# Purpose of Agreements

- To allow for effective Exchange of Information between the Tax Authorities.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of the Cook Islands  
for the exchange of information  
relating to tax matters**

# Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Cook Islands Tax Information Exchange Agreement are as follows:

# Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
- Includes information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

# Article 2: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

# Article 4: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
  - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
  - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.



# Article 4: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b)(i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
  - (b)(ii) in the case of trusts, information on settlors, trustees and beneficiaries.

# Article 4: Exchange of Information upon Request

- Does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

# Article 5: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.

# Article 6: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.
- Information need not be provided if it is related to law which discriminates against a national of the requested Party.

# Article 7: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

# Article 8: Costs

- Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs (include costs of engaging external advisors in connection with litigation or otherwise) incurred in providing assistance shall be borne by the requesting Party.
- Requesting Party should be notified if the costs are expected to be significant.

# Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of Barbados  
for the exchange of information  
relating to tax matters**



# Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Barbados Tax Information Exchange Agreement are as follows:

# Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
- Includes information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

# Article 2: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

# Article 4: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
  - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
  - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.

# Article 4: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b)(i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
  - (b)(ii) in the case of trusts, information on settlors, trustees and beneficiaries.

# Article 4: Exchange of Information upon Request

- Does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

# Article 5: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.

# Article 6: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.
- Information need not be provided if it is related to law which discriminates against a national of the requested Party.



# Article 7: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

# Article 8: Costs

- Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs (include costs of engaging external advisors in connection with litigation or otherwise) incurred in providing assistance shall be borne by the requesting Party.
- Requesting Party should be notified if the costs are expected to be significant.

# Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of the Principality of Monaco  
for the exchange of information  
relating to tax matters**

# Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Monaco Tax Information Exchange Agreement are as follows:

# Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
- Including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

# Article 2: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

# Article 4: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
  - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
  - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.



# Article 4: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
  - (c) in the case of trusts, information on settlors, trustees and beneficiaries.

# Article 4: Exchange of Information upon Request

- Does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

# Article 5: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.

# Article 6: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.
- Information need not be provided if it is related to law which discriminates against a national of the requested Party.

# Article 7: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

# Article 8: Costs

- Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs (include costs of engaging external advisors in connection with litigation or otherwise) incurred in providing assistance shall be borne by the requesting Party.
- Requesting Party should be notified if the costs are expected to be significant.

# Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

**Agreement between  
the Republic of South Africa  
and  
the Argentine Republic  
for the exchange of Information  
relating to tax matters**



# Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Argentina Tax Information Exchange Agreement are as follows:

# Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the enforcement of the domestic laws of the Parties concerning taxes covered by the Agreement.
- Including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

# Article 2: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

# Article 4: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
  - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
  - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.

# Article 4: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
  - (c) in the case of trusts, information on settlors, trustees and beneficiaries.

# Article 4: Exchange of Information upon Request

- Does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

# Article 5: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.

# Article 6: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.
- Information need not be provided if it is related to law which discriminates against a national of the requested Party.



# Article 7: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

# Article 8: Costs

- Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance shall be borne by the requesting Party.
- Requesting Party should be notified if the costs are expected to be significant.

# Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of the  
Principality of Liechtenstein  
for the exchange of information  
relating to tax matters**

# Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Liechtenstein Tax Information Exchange Agreement are as follows:

# Article 1: Object and Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement.
- Includes information that is foreseeably relevant to the determination, assessment, and collection of tax with respect to persons subject to such taxes, the recovery and enforcement of tax claims, or the investigation or the prosecution of tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

## Article 3: Taxes Covered

- This Agreement shall apply 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 if the Parties so agree.

# Article 5: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
  - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
  - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.



# Article 5: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
  - (a) information held by banks, other financial institutions, and any person, acting in an agency or fiduciary capacity including nominees and trustees;
  - (b) information regarding ownership of companies, partnerships, and other persons, including:
    - (b)(i) in the case of collective investment funds or schemes information on the units, shares and other interests in the fund or scheme;
    - (b)(ii) in the case of trusts, information on settlors, trustees and beneficiaries and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

# Article 5: Exchange of Information upon Request

- Does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

# Article 6: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.

# Article 7: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.
- Information need not be provided if it is related to law which discriminates against a national of the requested Party.

# Article 8: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

# Article 9: Costs

- The requesting Party shall reimburse the requested Party for all direct costs incurred in providing information pursuant to this Agreement.
- Requesting Party should be notified if the costs are expected to be significant.

# Article 10: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

# Protocol

- Article 9 on Costs is clarified. Direct costs include but are not limited to, the following:
  - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the applicant Party;
  - (ii) reasonable fees imposed by a financial institution or other record keeper for copying records and research related to a specific request for information;
  - (iii) reasonable costs for stenographic reports and interviews, depositions or testimony;



# Protocol

- (vi) reasonable fees and expenses, determined in accordance with the amounts allowed under applicable law, on the person who voluntarily appears in the territory of one of the Contracting Parties for interview, deposition or testimony relating to a particular information request;
- (v) reasonable legal fees for non-government counsel appointed or retained with the approval of the competent authority of the applicant Party, for litigation.
- Direct costs do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the applicant Party.

**Agreement between the  
Government of the Republic of South Africa  
and  
the Government of Belize  
for the exchange of information  
relating to tax matters**

# Introduction

- Closely follows the OECD Model Tax Information Exchange Agreement (TIEA), which forms the foundation for the vast majority of Tax Information Exchange Agreements (TIEAs) worldwide.
- The TIEA ensures that bank secrecy or the absence of a domestic tax interest can no longer be used to deny a request for exchange of information.
- Articles of interest in the South Africa – Belize Tax Information Exchange Agreement are as follows:

# Article 1: Scope of the Agreement

- Exchange of Information that is foreseeably relevant to the enforcement of the domestic laws of the Parties concerning taxes and tax matters covered by the Agreement.
- Includes information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

## Article 2: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

# Article 4: Exchange of Information upon Request

- **Information shall be exchanged without regard to:**
  - a) whether the requested Party needs such information for its own tax purposes – domestic tax interest.
  - b) whether conduct being investigated would constitute a crime under the laws of the requested Party – dual criminality.

# Article 4: Exchange of Information upon Request

- **Domestic law should allow for exchange of:**
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b)(i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
  - (b)(ii) in the case of trusts, information on settlors, trustees and beneficiaries.

# Article 4: Exchange of Information upon Request

- Does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.



# Article 5: Tax Examinations Abroad

- Allows for representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws.
- Allows for presence at interviews conducted by the requested Party.
- All subject to approval of the requested Party.

# Article 6: Possibility of Declining a Request

- The Competent Authority may decline to assist where the disclosure of the information requested would be contrary to public policy of the requested Party.
- The Agreement does not impose any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.
- Information need not be provided if it is related to law which discriminates against a national of the requested Party.

# Article 7: Confidentiality

- All information provided and received by the competent authorities of the Parties shall be kept confidential.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies concerned with the purposes specified in Article 1.
- Information received may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

# Article 8: Costs

- Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance shall be borne by the requesting Party.
- Requesting Party should be notified if the costs are expected to be significant.

# Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

**Agreement with the United States to  
Improve International Tax Compliance  
and  
to Implement FATCA  
(Foreign Account Tax Compliance Act)**

# What is FATCA?

- The United States of America (US) enacted the Foreign Account Tax Compliance Act (FATCA) in 2010 to combat offshore tax evasion by encouraging transparency and obtaining information on accounts held by US taxpayers in other countries
- FATCA calls for foreign financial institutions (FFIs) to provide the Internal Revenue Service (IRS) with information on US account holders annually or else a 30% withholding tax (WHT) will be imposed on certain US source payments to the FFIs, such as interest

# Release of IGAs

- Three types of model inter-governmental agreement (IGA) released by the US in 2012
  - Model I – Reciprocal / non-reciprocal exchange of information
  - Model II – Non-reciprocal, direct reporting to IRS
- Intended to relieve burden on FFIs and address potential legal impediments to providing information to the IRS under domestic law
- Model I IGA characteristics
  - No direct reporting to the IRS by FFIs
  - FFIs report to domestic tax authority and exchange of information takes place under existing tax treaties
  - Result → No WHT tax imposed on FFIs by the US



# SA – US IGA: Introduction

- Cabinet approval to negotiate and sign received on 4 September 2013
- Closely follows the Model I reciprocal IGA which forms the foundation for the majority of IGAs worldwide
- Affected FFIs in South Africa will report the required information to SARS, which will exchange information with the US automatically in accordance with the double taxation convention (DTC) that already exists between South Africa and the US
- The US will obtain information from its institutions for automatic exchange to South Africa
- Articles of interest in the South Africa – US IGA are as follows:

# Article 1

## DEFINITIONS

- Defines the terms used in the IGA, in particular the various financial institutions which must report and the types of accounts which must be reported
- Terms not otherwise defined or agreed upon by the competent authorities should be interpreted in accordance with the domestic law of the party applying the IGA

# Article 2

## OBLIGATIONS TO OBTAIN AND EXCHANGE INFORMATION WITH RESPECT TO REPORTABLE ACCOUNTS

- Specifies the information financial institutions will need to report to their competent authorities in each State
- From a South African perspective, this is essentially the same as the information required under FATCA
- Competent authorities will exchange information under Article 26 of the DTC
- Relieves the obligation on South African FFIs to report directly to the IRS and enhances the exchange of information between the States

# Article 3

## TIME AND MANNER OF EXCHANGE OF INFORMATION

- Time and manner of exchange of information between South African and US competent authorities
- First automatic exchange of information (AEOI) to take place by 30 September 2015
- Competent authorities must enter into an MOU for AEOI and implementation of the IGA
- It is stipulated that confidentiality, as provided for under the DTC, be maintained
- Infrastructure to be in place by 30 September 2015 in both jurisdictions or the IGA terminates

# Article 4

## APPLICATION OF FATCA TO SOUTH AFRICAN FINANCIAL INSTITUTIONS

- If reporting obligations are met, FFIs will not be subjected to WHT
- South African retirement plans to be treated as either an exempt beneficial owner or a deemed compliant financial institution as appropriate
- The commencement of AEOI is coordinated, in accordance with the principle of reciprocity

# Article 5

## COLLABORATION ON COMPLIANCE AND ENFORCEMENT

- Minor non-compliance → domestic law (and penalties) applied
- Significant non-compliance, not resolved within 18 months → FFI will be treated as a non-participating FFI and subject to WHT
- Both States to ensure that they have appropriate anti-avoidance measures in place

# Article 6

## MUTUAL COMMITMENT TO CONTINUE TO ENHANCE THE EFFECTIVENESS OF INFORMATION EXCHANGE AND TRANSPARENCY

- US Government committed to provide equivalent levels of reciprocity to South Africa – A pre-requisite for SA concluding IGA
- Commitment to develop an international model for AEOI
- Legislation must be in place in both jurisdictions to ensure that tax identification numbers of the foreign resident can be exchanged by 2017

# Article 7

## CONSISTENCY IN THE APPLICATION OF FATCA TO PARTNER JURISDICTIONS

- Most-favoured nation provision
- If more advantageous terms are negotiated in newer IGAs, South Africa will be notified of the terms and they will be automatically incorporated in the South Africa – US IGA, unless South Africa declines



# Annexes and MOU

- Annex I and Annex II form an integral part of the Agreement
  - Annex I sets out due diligence requirements for identifying and reporting on US reportable accounts and on payments to certain non-participating financial institutions
  - Annex II sets out entities and accounts that are not the subject of reporting – normally entities and accounts that are either unavailable or only incidentally available to non-residents, e.g. Government entities, central bank, pension funds
- MOU ensures that third party reporting is allowed in accordance with paragraph 3 of Article 5, the ultimate responsibility for compliance remains with the FFI