

**Double Taxation
Conventions / Agreements
Formal Ratification**

Purpose of Agreements

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

**Agreement between the
Government of the Republic of South Africa
and
the Government of the
Hong Kong Special Administrative Region of
the People's Republic of China
for the avoidance of double taxation
and
the prevention of fiscal evasion with respect
to taxes on income**

Introduction

- Closely follows the OECD and UN Model Conventions, which form the foundation for 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 – Hong Kong Double Tax Agreement are as follows:

Article 4: Resident

- Paragraph 3 provides that in cases of dual residence of a person other than an individual, it shall be deemed to be a resident of the Party in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting Parties shall by mutual agreement determine the Party in which that person's place of effective management is situated, and in doing so, shall take into account all relevant factors. In the absence of such agreement, that person is excluded from any benefits of the Agreement, except those provided by Articles 21 (Elimination of Double Taxation), 22 (Non-discrimination) and 23 (Mutual Agreement Procedure).

Article 5: Permanent Establishment

- Construction:
 - 12 months threshold in OECD Model.
 - 6 months threshold in UN Model.
 - South Africa – Hong Kong DTA
 - building site, a construction, assembly or installation project or any supervisory activity in connection therewith – more than 6 months;
- furnishing of services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose – period or periods aggregating more than 183 days in any 12 month period;

Article 5: Permanent Establishment

- for an individual, the performing of services in a Contracting Party by that individual, but only if the individual's stay in that Party is for a period or periods aggregating more than 183 days within any twelve-month period.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Hong Kong DTA:
 - 5% for shareholding of at least 10%;
 - 10% in all other cases.
- Paragraph 6 provides that no relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.
- South Africa – Hong Kong DTA:
 - 10% limit on source state.
- Paragraph 8 provides that no relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- South Africa – Hong Kong DTA:
 - 5% limit on the source state.
- Paragraph 7 provides that no relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 17: Pensions

- Pensions and other similar remuneration (including lump sum payments) arising in a Contracting Party and paid to a resident of the other Contracting Party in consideration of past employment and social security pensions shall be taxable only in the Party where they arise (source State).
- This is in line with our domestic law.

Article 19: Students

- A student who is present in a Contracting Party solely for the purpose of the student's education and who is, or immediately before being so present was, a resident of the other Contracting Party, shall be exempt from tax in the first-mentioned Party on payments received from outside that first-mentioned Party for the purposes of the student's maintenance or education.

Article 24: Exchange of Information

- Under this Article the two Parties will exchange information on request in accordance with the international standard.
- Bank secrecy or the absence of a domestic tax interest cannot be used to deny a request for exchange of information.

Article 26: Miscellaneous Rules

- The Article reinforces the normal international rule that the Agreement does not take away the right of the Parties to apply tax avoidance measures contained in their domestic law.

Protocol

- With reference to Article 17 - Pensions:
It is understood that in the case of the Hong Kong Special Administrative Region, the term “pensions and other similar remuneration (including a lump sum payment)” includes payments arising from schemes for self-employed individuals.

- With reference to Article 24 – Exchange of Information:
It is understood that:
 - (a) the Article does not require the Contracting Parties to exchange information on an automatic or a spontaneous basis; and
 - (b) information exchanged shall not be disclosed to any third jurisdiction.

**Agreement between the
Government of the Republic of South Africa
and
the Government of the States of Qatar
for the avoidance of double taxation
and
the prevention of fiscal evasion
with respect to taxes on income**

Introduction

- Closely follows the OECD/UN Model Conventions, which form 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 – Qatar Double Tax Agreement are as follows:

Article 5: Permanent Establishment

- Paragraph 2 – Permanent establishment also includes:
 - a warehouse, where storage facilities are provided to parties other than the enterprise;
 - a sales outlet;
 - a farm, plantation or orchard.

Article 5: Permanent Establishment

- Paragraph 3:
 - 12 months in OECD Model
 - 6 months in UN Model
 - South Africa – Qatar 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 an enterprise for such purpose – periods or periods exceeding 183 days in any 12 month period.

Article 5: Permanent Establishment

- Performance of professional services by individuals
- periods or periods exceeding 183 days in any 12 month period.

Article 8: Shipping and Air Transport

- Paragraph 3: Profits of an enterprise of a Contracting State from the use or rental of containers used for the transport in international traffic of goods or merchandise shall be taxable only in the residence State

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Qatar DTA:
 - 5% for shareholding of at least 10%;
 - 10% on all others.
- No source state taxation for dividends where the Company paying the dividends is a resident if the dividends are paid to the other Contracting State or a local authority, political subdivision or statutory body thereof.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.
- Paragraph 1: Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- South Africa – Qatar DTA:
 - 10% limit on source state.
- Exemptions added in paragraph 3 for interest received or paid by the State and wholly owned institutions and for debt instruments listed on a recognised stock exchange. This is in line with our domestic law.
- Paragraph 4 notes the recognised stock exchanges as the JSE and the Qatar Exchange.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- Paragraph 1: Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- South Africa – Qatar DTA: Royalties: 5%

Article 15: Directors Fees

- Salaries, wages and other similar remuneration earned by a resident of a Contracting State in that person's capacity as an official in top-level managerial position of a company which is resident of the other Contracting State may be taxed in that other State. This deals with the seconding of senior management to subsidiaries.

Article 17: Pensions and Annuities

- Provides that pensions and other similar payments, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the source State.

Article 19: Students, Apprentices and Business Trainees

- Students, apprentices or business trainees – exempt from taxation in host State if payment is received from outside the host State for the purpose of their maintenance, education or training. Payments would not be taxable under domestic law.

Article 24: Exchange of Information

- This Article is in line with the OECD and UN Model and extends to taxes of every kind and description.
- The 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.

Protocol

- Provides that the exemptions provided for in paragraph 3 of Article 10 and paragraph 3(d) of Article 11 apply to Qatar Investment Authority, Qatar Holding and their subsidiaries as long as these are wholly owned, directly or indirectly, by the State of Qatar.

**Agreement between the
Government of the Republic of South Africa
and
the Government of the Kingdom of Lesotho
for the avoidance of double taxation
and
the prevention of fiscal evasion with respect
to taxes on income**

Introduction

- Closely follows the OECD and UN Model Conventions, which form 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;

Article 5: Permanent Establishment

- 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; and
- 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 the resident state.
- Paragraph 2 provides that profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include incidental profits derived from the rental of rail or road transport vehicles.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Lesotho DTA:
 - 10% for shareholding of at least 10%; and
 - 15% on all others cases.
- 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

- In practice, withholding taxes vary widely internationally.
- South Africa – Lesotho DTA: 10%.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- South Africa – Lesotho DTA: 10%.

Article 13: Technical Fees

- Paragraph 1 provides that technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- Paragraph 2 provides that technical fees derived from one Contracting State by a resident of the other Contracting State who is the beneficial owner thereof may be taxed in the first mentioned State (source State) at a rate not exceeding 7.5% of the gross amount of such fees.

Article 17: Entertainers and Sportspeople

- 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 exercised 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 and Annuities

- 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 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.

Article 26: Exchange of Information

- This Article is in line with the OECD and UN Model and extends to taxes of every kind and description.
- The 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.

Article 27: Assistance in the Collection of Taxes

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

Protocol

- 1. Most Favoured Nations Provision. 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:
 - financial intermediation activities such as banking and insurance;
 - the licencing of intellectual property;
 - shell businesses which are not engaged in substantive business operations; or
 - passive income.

**Convention between the
Government of the Republic of South Africa
and
the Government of the Republic of Cameroon
for the avoidance of double taxation
and
the prevention of fiscal evasion with respect
to taxes on income**

Introduction

- Closely follows the OECD and UN Model Conventions, which form 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 – Cameroon Double Tax Convention are as follows:

Article 4: Resident

- Paragraph 3 provides that if a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement settle the question and determine the mode of application of the Convention to such person. In the absence of such agreement such person shall be considered to be outside the scope of the Convention except for the provisions of Article 27 (Exchange of Information).

Article 5: Permanent Establishment

- Paragraph 2 – Permanent establishment also includes:
 - a drilling rig or ship used for the exploration or development of natural resources;
 - a sales outlet;
 - a warehouse, in relation to a person providing storage facilities for others.
- Construction - Paragraph 3:
 - 12 months in OECD Model.
 - 6 months in UN Model.

Article 5: Permanent Establishment

- South Africa – Cameroon DTC:
 - building site, a construction, assembly or installation project or any supervisory activity in connection therewith – more than 6 months;
 - furnishing of services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose – period or periods exceeding 183 days in any 12 month period;
 - An enterprise shall be deemed to have a permanent establishment if it provides services, or supplies equipment and machinery on hire for use or to be used, in exploration for, extraction of, or exploitation of mineral resources – if activities continue for a period or periods exceeding 183 days in any 12 month period;

Article 5: Permanent Establishment

- Paragraph 6 – An insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

Article 7: Business profits

- Paragraph 1 includes the principle of “force of attraction” whereby goods or services which are the same or similar to those sold or provided through the branch are assimilated to the profits of the branch although sold or provided directly by the enterprise itself.
- This is not a practical provision as it relies on hindsight and is easily avoided if necessary. It also takes no account of normal business practice.

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 to this rule is a banking enterprise, by way of interest on moneys lent to the permanent establishment and in cases of reimbursement of actual expenses.
- 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 to this rule is a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices and in cases of reimbursement of actual expenses.
- Principle the same as normal Model but merely more explicit drafting.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Cameroon DTC:
 - 10% for shareholding of at least 25%;
 - 15% in all other cases.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.
- South Africa – Cameroon DTC:
 - 10% limit on source state.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- South Africa – Cameroon DTC:
 - 10% limit on the source state.

Article 14: Fees for Technical Services

- Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the resident state.
- South Africa – Cameroon DTC:
 - 10% limit on the source state.

Article 18: Entertainers and Sportspersons

- Paragraph 3 – Activities taxable only in the residence state if those activities are supported wholly or mainly by public funds of the residence state or its political subdivision or local authorities. These includes activities that take place under a cultural agreement or arrangement between the Governments of the Contracting States.

Article 19: Pensions and Annuities

- Shared right to tax pensions and other similar remuneration, and annuities.

Article 22: Professors, Teachers and Researchers

- Paragraph 1 – Professors, teachers and researchers – exempt from taxation in host State for a period of two years if remuneration is received from outside the host State.
- Paragraph 2 - provisions of paragraph 1 will not apply if research is for private benefit of a specific person or persons.

Article 27: Exchange of Information

- This Article is in line with the OECD and UN Model and extends to taxes of every kind and description.
- The 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.

Protocol

- Paragraph 1: If in any Convention between Cameroon and any other State subsequent to the entry into force of this Convention, a lower rate than that specified in Articles 11, 12 or 14 of this Convention is provided for, Cameroon agrees to inform South Africa in writing through the diplomatic channel and shall enter into negotiations with a view to providing comparable treatment as may be provided for the third State.

Protocol

- Paragraph 2: If in any Convention between South Africa and any other country subsequent to the entry into force of this Convention, a higher rate than that specified in Articles 11, 12 or 14 of this Convention is provided for, South Africa agrees to inform Cameroon in writing through the diplomatic channel and shall enter into negotiations with a view to providing comparable treatment as may be provided for the third State.

Protocol

- Paragraph 3: With regard to Article 24 (Elimination of Double Taxation), the current South African tax system provides for an exemption in respect of dividends declared by a non-resident companies where the participation by the South Africa shareholder is more than 10%. Should this exemption be amended, South Africa will inform Cameroon in writing through the diplomatic channel and shall enter into negotiations with a view to the renegotiation of the provisions of this Article to address tax sparing provisions.

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

Purpose of Agreements

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

**Protocol amending the
Agreement between the
Government of the Republic of South Africa
and
the Government of the Republic of Cyprus
for the avoidance of double taxation and the
prevention of fiscal evasion with respects to
taxes on income and on capital,
with Protocol, signed at
Nicosia on 26 November 1997**

Introduction

- Amendments to the Agreement, became necessary in view of the proposed phasing out of the secondary tax on companies and its replacement with a dividends tax.
- Articles of interest in the South Africa – Cyprus Protocol amending the Double Tax Agreement are as follows:

Article 4: Resident

- This definition has been updated to follow current practice.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Cyprus Protocol:
 - 5% for shareholding of at least 10%; and
 - 10% on all others.

Article 26: 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.
- The Annex to the Protocol deals with the Mode of Application of Article 26. The Annex details the form to be followed for requests and ensures reciprocity in relation to exchanges.

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 Grenada
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 – Grenada 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.