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**AGREEMENTS BETWEEN SOUTH AFRICA AND OTHER STATES TO BE RATIFIED BY THE SELECT COMMITTEE ON FINANCE ON THE 14 OCTOBER 2015.**

1. **INTRODUCTION**

The Organisation for Economic Cooperation and Development (OECD) has created a Base Erosion and Profit Shifting Plan, as a solution for their member states to tighten the gaps allowing business to shift their profits with the aim to avoid taxation. In recent years, it has been realised that profits are being shifted to low or tax free environments by cooperates, this has made cooperates to avoid tax in one way or the other[[1]](#footnote-1).

Therefore, efficient operation of tax systems in emerging economies are important to disallow tax evasion and increase revenue collection, thus increase national income. This safe guide financial resourced to be utilised by nations in implementing their policies that enhance socio-economic development. In addition to efficient tax systems, bilateral agreements are also important tools to protect national taxes. However, without efficient tax systems and regulations countries are hindered to raise revenue and achieve greater economic growth.

With the above introduction, the purpose of this paper is to provide the Select Committee on Finance with a summary of the Agreements to be ratified by the Committee.

1. **THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHER COUNTRIES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

South Africa has drafted agreements with the following two countries for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

* Republic of Zimbabwe;
* Federative Republic of Brazil
1. **ZIMBABWE**

South Africa and Zimbabwe aim to enter into an agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income. The agreement covers a number of tax types and each article pronounces process of taxation for that particular income. From article 1-5 the agreement deals with definitions and also stipulating tax covered and persons covered by the agreement.

Article 6 in the draft agreement states that income derived from immovable property may be taxed in the State in which the property is situated. Income from agriculture and forestry specifically is also provided by above-mentioned article. For example if a South African citizen has a farm in Zimbabwe and produces for commercial purposes, that farms profits will be taxable in Zimbabwe.

Article 7 mentions that profits of an enterprise generated in a resident of a Contracting State are taxable on the State of resident. Moreover, if that enterprise carries on business in the other Contracting State through a permanent establishment, the other State may tax the profits that are attributable to that permanent establishment.

Article 8 stipulates that profits derived by an enterprise of a Contracting State from the operation of ships, aircraft, road and rail transport in international traffic are taxable on State of origin. This means, profits derived by South African Airways from its flights into and out of airports in Zimbabwe are taxable only in South Africa. Additionally, profits derived from activities that are incidental to international traffic operations, in particular, the rental on a bare boat basis of ships or aircraft, the use or rental of containers and the rental of road or rail transport vehicles, are also taxable in the country of origin.

Article 9 specifies how associated enterprises operating in the two contracting states are to be taxed. This article aims to avoid shifting of taxes by associated enterprises. This article states that recalculation of profits should be done by the contracting countries to avoid double taxation and tax avoidance by the enterprise with two or more permanent establishments in contracting countries.

Article 10 requires that cross border dividends be taxed in this manner; the state declaring the dividends may impose withholding tax on the non-resident shareholder. While the State of the receiving shareholder has an unlimited taxing right.

Article 11 needs that interest from South Africa being paid to a Zimbabwean resident is taxable in Zimbabwe. However, the source state (South Africa) is given the right to tax the interest to a maximum of 5 per cent of the gross amount of interest, and vice versa.

Article 12 states that royalties raised in South Africa and to be paid to a Zimbabwean resident should be taxed in the country of the residence, in this example Zimbabwe. The source state (South Africa) can only be allowed to tax these royalties to a maximum of 10 per cent of the gross amount of royalties, provided of course that it is paying a Zimbabwean resident and vice versa.

Article 13 mentions that technical fees (administrative, technical, managerial and consultancy fees) arising from the South Africa and to be paid to a Zimbabwean resident may be taxed in Zimbabwe. South Africa as a source state may tax these fees up to 5 per cent of the gross amount and vice versa.

Article 14 stipulates that capital gains are taxable, where the capital such as an immovable property is situated. Additionally any gains from a movable asset/property related to the immovable asset is taxable where the immovable property is situated. This article relates/uses that same principle as article 8 above.

Article 15 indicates that remuneration to be paid to a non-resident for a service rendered to the other country may be taxable in the country where the service is rendered. However, there are few limitation stipulated in the agreement.

Article 16 states that the director’s fees are taxable in a country that the company paying the fees resides in. If a South African company is to pay directors fees to a Zimbabwean resident, fees are taxable in South Africa. However, the country that the director resides in may also tax these fees.

Article 17 on entertainers and sportsperson, income generated by entertainers and sportsperson are to be taxed in a country where the activity takes place. If a South African sportsperson, for an example runner takes part in a marathon in Zimbabwe. His/her income will be taxable in Zimbabwe.

Article 18 states that pension and annuities are to be taxed in a country that is paying out the pension. The state residing the pension receiver may also tax the pension or annuity, however it should consider that the amount has already been taxed in a source country.

Article 19 indicates that remuneration from governance service paid to an individual for services rendered to government may be taxed by the state paying the remuneration.

Article 20 stated that students, apprentices and business trainees from the contracting country residing in the contracting state are not to be taxed for monies received from home state for education, maintenance and training.

Article 21 indicates that any other income not dealt with in the article will be taxable in the state of residence of the taxed person or cooperation.

From article 22-29 the agreement states that;

* Both countries will cooperate to eliminate double taxation by using the credit method.
* Both countries will exchange required information to each other for carrying out the provisions in the agreement. Any information shared should be treated with high secrecy and should disclosed to any relevant authorities.
* Both countries will assist each other in collection of revenue claims and each country should make it a priority to process a claim if approached by a contracting country.
* Personnel holding Diplomatic mission and consular post remunerations are not to be taxed in country deployed to. For example, a South African Diplomat in Zimbabwe remuneration is to be taxed in South Africa not in Zimbabwe.
* Both countries will notify each other when procedures and processes to enforce the agreement is completed by each country.
* This agreement will operate for a minimum of five years and may be terminated after these years of any of the contracting countries wishes to.

**Brazil**

The South Africa-Brazil agreement in front of the committee aims to amend the already existing convention that was signed in November 2003 by the two countries. The amendment aims to accommodate changes that have occurred between these two countries since 2003. Article 26 of the convention was changed and replaced by the exchange of information part. This article states that the participating countries, South Africa and Brazil are to exchange information regarding any party liable for tax in either country. The contracting countries are obliged to supply information even if it is with financial institutions or any other institutions. However, both parties should treat this information with confidentiality.

The competent authorities of both countries are to communicate directly with each other to reach mutual agreement in respect of any of these matters. Furthermore, the contracting states will need each other’s assistance in the collection of revenue claims.

1. **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHER COUNTRIES FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

South Africa has drafted an agreement with the following countries for the exchange of information relating to tax matters.

* GOVERNMENT OF SAINT CHRISTOPHER (SAINT KITTS) AND NEVIS
* GOVERNMENT OF THE TURKS AND CAICOS ISLANDS
* GOVERNMENT OF THE ORIENTAL REPUBLIC OF URUGUAY

The main aim of the Tax Information Exchange Agreements is to encourage exchange of information and clarify procedures and processes in place that will allow efficient exchange of tax related information between South Africa and the above-mentioned countries. The agreement deals with the objective, scope, jurisdiction, and tax covered. The contracting countries are expected to provide assistance to each other by exchanging information with regard to the taxes covered in the Agreement. These taxes can be identical or similar taxes charged in both countries. This should be done in a transparent, confidential, and efficient manner. Furthermore, any information given should be relevant and accessible, thus countries be able to assess, enforce, and collect tax from implicated parties. The agreement stipulates that the confidentiality of information is necessary to protect the legitimate interests of taxpayers. It is worth noting that indirect costs in providing assistance would be borne by the requested Party and direct costs by the requesting party. This Agreement will remain in force until terminated by either party.

1. **REFERENCES**

Explanatory memorandum on the convention between the government of the Republic of South Africa and the government of the Republic of Zimbabwe for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Explanatory memorandum on the agreement between the government of the Republic of South Africa and the government of the Republic of Brazil for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Explanatory memorandum on agreement between the government of the republic of South Africa and the government of Saint Christopher (saint kitts) and Nevis or the exchange of information relating to tax matters

Explanatory memorandum on agreement between the government of the republic of South Africa and the government of Turks and Caicos Islands or the exchange of information relating to tax matters

Explanatory memorandum on agreement between the government of the republic of South Africa and the government of Oriental Republic of Uruguay or the exchange of information relating to tax matters

1. New Age 2015 [↑](#footnote-ref-1)