

**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 United Arab Emirates
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 provisions are different from the normal SA approach. These provisions and other articles of interest in the South Africa – UAE Double Tax Agreement are as follows:

Article 4: Resident

- Paragraph 3 where a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State in which its place of effective management is situated.

Article 5: Permanent Establishment

- The term “permanent establishment” includes a farm or plantation.
- Paragraph 3 deemed PEs:
 - building site, a construction, assembly or installation project or any supervisory activity in connection therewith which continues for more than 12 months;
 - furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose which continue for a period or periods exceeding 9 months in any 12 month period;

Article 5: Permanent Establishment

- performance of professional services or other activities of an independent character by an individual which continue for a period or periods exceeding 183 days in any 12 month period.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – UAE DTA:
 - 5% for shareholding of at least 10%;
 - 10% on all others.
- Paragraph 6 includes the anti-abuse rule for dividends where the Article will not apply.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.
- South Africa – UAE DTA:
 - 10% limit on source state taxation.
- Paragraph 7 includes the anti-abuse rule for interest where the Article will not apply.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- South Africa – UAE DTA:
 - 10% limit on the source state taxation.
- Paragraph 7 includes the anti-abuse rule for royalties where the Article will not apply.

Article 24: Mutual Agreement Procedure

- This Article institutes a mutual agreement procedure for resolving difficulties arising out of the application of the Agreement.
- The competent authorities shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Agreement.
- Authorises the competent authorities of the two Contracting States to resolve by mutual agreement problems relating to the interpretation or application of the Agreement and to consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article 25: 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.
- Full exchanges are authorised – includes automatic exchanges.

Article 28: Miscellaneous Rules

- Paragraph 1 provides that notwithstanding the provisions of paragraph 2 of Article 10 and paragraph 2 of Article 11, dividends and interest paid by a resident of a Contracting State to the Government of the other Contracting State or political subdivision or local authority thereof shall be exempt from tax in the first-mentioned State.

Article 28: Miscellaneous Rules

- Paragraph 2 provides that the term “Government “ shall include: the Government of the UAE, local government of the UAE, UAE financial institutions and any other statutory body or institution or instrumentality wholly owned by the Government of the Federal or local Government of the UAE; and the South African Reserve Bank, any other statutory body or institution wholly owned by the Government of Republic of South Africa.

Protocol

- Paragraph 1 provides that in terms of current legislation in South Africa, the income of any other State is exempt from tax on income. For the purposes of this paragraph the term “State” shall include: the Government of the UAE, a local government of the UAE, an agency which is an integral part of the Federal or local government of the UAE or an integral part of one of its local governments. The Abu Dhabi Investment Authority is one of the institutions which are recognised as being an integral part of the Government of Abu Dhabi.
- Paragraph 2 provides that with respect to Article 6: the provisions of paragraph 4 of Article 6 shall not apply in respect of the mere purchase by an enterprise of a Contracting State of land and building for its own use.

**Agreement between the
Government of the Republic of South Africa
and
Government of the Republic of Zimbabwe
for the avoidance of double taxation and the
prevention of fiscal evasion
with respect to taxes in 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 – Zimbabwe Double Tax Agreement 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 determine by mutual agreement, the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to the place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in a manner as may be agreed upon by the competent authorities of the Contracting State.

Article 5: Permanent Establishment (PE)

Paragraph 3 deemed PEs:

- building site, a construction, assembly or installation project, or any supervisory activity in connection therewith which continues for a period of more than 6 months;
- furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose which continue for periods or periods exceeding 183 days in any 12 month period; and
- performance of professional services or other activities of an independent character by an individual which continue for periods or periods exceeding 183 days in any 12 month period.

Article 9: Associated Enterprises

- This Article deals with adjustments to profits that may be made for tax purposes where transactions have been entered into between associated enterprises (parent and subsidiary companies and companies under common control) on other than arm's length terms.
- The re-writing of transactions between associated enterprises may give rise to economic double taxation (taxation of the same income in the hands of different persons), insofar as an enterprise of one State whose profits are revised upwards will be liable to tax on an amount of profit which has already been taxed in the hands of its associated enterprise in the other State. Paragraph 2 provides that in these circumstances, the other State shall make an appropriate adjustment so as to relieve the double taxation.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Zimbabwe DTA:
 - 5% limit on the source State for shareholding of at least 25%,
 - 10% in all other cases.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.
- Interest rate in South Africa – Zimbabwe DTA:
 - 5% limit on the source State.
 - Exemptions added in paragraph 3 for the State, Central Bank and for debt instruments listed on recognised stock exchanges. This is in line with our domestic law.
 - Paragraph 4 notes the recognised stock exchanges as the JSE and the Zimbabwe Stock Exchange.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- Royalty rate in South Africa – Zimbabwe DTA:
 - 10% limit on the source State.

Article 13: Technical Fees

- Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in both the resident state and source state.
- The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of an administrative, technical, managerial or consultancy nature.
- South Africa – Zimbabwe DTA:
 - 5% limit on the source state.

Article 24: Mutual Agreement Procedure

- This Article institutes a mutual agreement procedure for resolving difficulties arising out of the application of the Agreement.
- The competent authorities shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Agreement.
- Authorises the competent authorities of the two Contracting States to resolve by mutual agreement problems relating to the interpretation or application of the Agreement and to consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article 25: 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.
- Full exchanges are authorised – includes automatic exchanges.

Article 26: Assistance in the Collection of Taxes

- Under this Article the two States are empowered to collect taxes on behalf of each other.
- The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed together with interest, administrative penalties and costs of collection or conservancy related to such amount.

**Agreement between the
Government of the Republic of South Africa
and
the Government of the Republic of Singapore
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 – Singapore Double Taxation Agreement 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 Agreement to such person. In the absence of such agreement such person shall be considered to be outside the scope of the Agreement except for the provisions of Article 24 (Exchange of Information).

Article 5: Permanent Establishment

Paragraph 3 deemed PEs:

- building site, a construction, assembly or installation project or any supervisory activity in connection therewith which continues for a period of more than 12 months;
- furnishing of services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose which continue for a period or periods exceeding 183 days in any 12 months;
- the performance of professional services or other activities of an independent character by an individual which continue for a period or periods exceeding 183 days in any 12 months;

Article 5: Permanent Establishment

- the carrying on of activities by an enterprise that consist of, or that are connected with, the exploration for or exploitation of natural resources, but only where such activities continue for more than 6 months.

Article 9: Associated Enterprises

- This Article deals with adjustments to profits that may be made for tax purposes where transactions have been entered into between associated enterprises (parent and subsidiary companies and companies under common control) on other than arm's length terms.
- The re-writing of transactions between associated enterprises may give rise to economic double taxation (taxation of the same income in the hands of different persons), insofar as an enterprise of one State whose profits are revised upwards will be liable to tax on an amount of profit which has already been taxed in the hands of its associated enterprise in the other State. Paragraph 2 provides that in these circumstances, the other State shall make an appropriate adjustment so as to relieve the double taxation.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Singapore DTA:
 - 5% for shareholding of at least 10%;
 - 10% in all other cases.
- Paragraph 4 exemption provides that dividends paid by a company which is resident of South Africa to the Government of Singapore shall be exempt from South African tax.
- Paragraph 8 includes the anti-abuse rule for dividends where the Article will not apply.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.
- South Africa – Singapore DTA:
 - 7.5% limit on source state.
 - Exemptions added in paragraph 3 for the State and for debt instruments listed on recognised stock exchanges. This is in line with our domestic law.
 - Paragraph 4 notes the recognised stock exchanges as the JSE and the Singapore Exchange.
- Paragraph 10 includes the anti-abuse rule for interest where the Article will not apply.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.
- South Africa – Singapore DTA:
 - 5% limit on source state taxation.
- Paragraph 7 includes the anti-abuse rule for royalties where the Article will not apply.

Article 23: Mutual Agreement Procedure

- This Article institutes a mutual agreement procedure for resolving difficulties arising out of the application of the Agreement.
- The competent authorities shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Agreement.
- Authorises the competent authorities of the two Contracting States to resolve by mutual agreement problems relating to the interpretation or application of the Agreement and to consult together for the elimination of double taxation in cases not provided for in the Agreement.

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.
- Full exchanges are authorised – includes automatic exchanges.

Protocol

- Paragraph 1 clarifies the term statutory body.
- Paragraph 8 clarifies that interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from such operation of ships or aircraft in international traffic. Funds will be regarded as connected where the investment that generates that interest is made as an integral part of the carrying on of the business of operation of ships or aircraft in international traffic. This is in the context of the Commentary on Article 8 of the OECD Model Tax Convention and merely confirms the principle.

Protocol

- Paragraph 1 includes a Most Favoured Nations (MFN) provision: If in an agreement that may subsequently be concluded between South Africa and a third State, the rates for taxation of dividends in the source State are lower than those specified in paragraph 2 of Article 10 of this Agreement, South Africa shall immediately inform Singapore 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 amending the
Double Taxation
Conventions / Agreements
Formal Ratification**

**Protocol amending the Convention
between the
Government of the Republic of South Africa
and
the Government of the
Federative Republic of Brazil
for the avoidance of double taxation
and the prevention of fiscal evasion with
respect to taxes on income,
signed at Pretoria on 8 November 2003**

Introduction

- The amendments to the Convention 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 – Brazil Protocol amending the Double Tax Convention is as follows:

Article 26: Exchange of Information

- Article 26 of the Convention is deleted and replaced by the new Article on Exchange of Information.
- This new Article is in line with the OECD and 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.

Tax Information Exchange Agreements Formal Ratification

Purpose of Agreements

- To allow for effective Exchange of Information between the Tax Authorities.
- Allows for exchange of information on request only.

**Agreement between the
Government of the Republic of South Africa
and
the Government of the
Oriental Republic of Uruguay
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 – Uruguay 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 this Agreement.
- Includes information that is foreseeably relevant to the determination, assessment, and collection of such taxes, the recovery and enforcement of tax claims with respect to persons subject to such taxes, or to the 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 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, including nominees and trustees, acting in an agency or fiduciary capacity;

(b)(i) information regarding the 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, 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 information which would disclose 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.
- 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 disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9: 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.

**Agreement between the
Government of the Republic of South Africa
and
the Government of Saint Christopher (Saint
Kitts) and Nevis
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 – Saint Christopher (Saint Kitts) and Nevis 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 the Agreement.
- Includes information that is foreseeably relevant to the determination, assessment, and collection of such taxes, the recovery and enforcement of tax claims or the investigation or prosecution of tax matters.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

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 the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, ownership information on all other persons in the ownership chain 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 9: Costs

- Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary 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.

**Agreement between the
Government of the Republic of South Africa
and
the Government of the Turks and Caicos
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 – Turks and Caicos Islands 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.
- 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 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 8: Costs

- Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Parties in accordance with a Memorandum of Understanding (MOU) on Costs.
- The MOU on Costs has been agreed and provides that ordinary costs are born by the requested party and costs which are considered to be extraordinary costs are borne by the requesting party.