

Double Taxation Conventions / Agreements Formal Ratification

09 March 2011



South Africa – United Kingdom of Great Britain and Northern Ireland Protocol amending the Double Taxation Convention



Introduction

- Closely follows the OECD Model Convention, which forms the foundation for the vast majority of Double Taxation Agreements (DTA's) worldwide.
- Amendments to the Convention, 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 – United Kingdom Protocol amending the Double Tax Convention are as follows:



Article 10: Dividends

- Withholding tax of 5% or 15% proposed by OECD Model.
- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – UK Protocol:
 - 5% for shareholding of at least 10%,
 - 15% for qualifying dividends paid by property investment company,
 - 10% on all others.



Article 25: Exchange of Information

- Article 25 of the Agreement was deleted and replaced by the new Article on Exchange of Information.
- This new Article is in line with the OECD Model 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.



Article 25A: Assistance in the Collection of Taxes

- A new Article on the Assistance in the Collection of Taxes was inserted immediately after Article 25 of the Convention.
- Under this new Article the two States are empowered to collect taxes on behalf of each other.



South Africa – Kenya Double Taxation Agreement



Introduction

- Closely follows the OECD Model Convention, which forms 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 – Kenya Double Tax Agreement are as follows:



Article 5: Permanent Establishment

- Construction - paragraph 3:
 - 12 months in OECD Model.
 - 6 months in UN Model.
 - South Africa – Kenya 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 the enterprise for such purpose – periods or periods exceeding 183 days in any 12 month period.



Article 5: Permanent Establishment

- Delivery is excluded from the auxiliary activities envisaged in both paragraphs 4 and 5 – permanent establishment and agent. Delivery activities may therefore still constitute a permanent establishment as they are not regarded to be auxiliary.



Article 5: Permanent Establishment

- Paragraph 6 – An insurance enterprise of a Contracting State shall, except in regard to reinsurance, 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 an employee or through a person other than an agent of an independent status to whom paragraph 7 applies.



Article 8: Shipping and Air Transport

- Source taxation of shipping is allowed in paragraph 2 - tax thereon is reduced by 50%.
- Paragraph 3 – Profits from operation of ships and aircraft in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic.



Article 10: Dividends

- Withholding tax of 5% or 15% proposed by OECD Model.
- In practice, withholding taxes vary widely internationally.
- Dividend rate in South Africa – Kenya DTA:
 - 10% on all cases



Articles 11: Interest

- Withholding tax of 10% proposed by OECD Model.
- In practice, withholding taxes vary widely internationally.
- Interest rate in South Africa – Kenya DTA:
 - 10% on all cases



Article 12: Royalties

- No withholding tax proposed by OECD Model.
- In practice, withholding taxes vary widely internationally.
- Royalty rate in South Africa – Kenya DTA:
 - 10% on all cases



Article 18: Pensions and Annuities

- Payments under a social security system are taxable only in the State which pays the pension.



Article 20: Professors, Teachers and Researchers

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



Article 27: Assistance in the Collection of Taxes

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



