

**Double Taxation
Conventions / Agreements
Formal Ratification**

2011



**South Africa – Seychelles
Protocol amending the
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.
- 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 – Seychelles Protocol amending the Double Tax Agreement are as follows:



Article 4: Resident

- This definition has been updated to follow current practice.



Article 5: Permanent Establishment

- South Africa – Seychelles Protocol now includes:
 - Performance of professional services - periods 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 – Seychelles Protocol:
 - 5% for shareholding of at least 10%; and
 - 10% on all others.



Article 13: Capital Gains

- Article 13 was amended by deleting paragraph 2 and substituted with a new paragraph 2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in the other State.
- Article 13 is also amended by adding after paragraph 3 a new paragraph 4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.



Article 14: Independent Personal Services

- Article 14 of the Agreement is deleted and the term “fixed base” is no longer used due to this deletion.
- Therefore, there are consequential changes to various other related Articles in the Agreement e.g. the changes in Articles I, III, IV and VI.



Article 26: Exchange of Information

- Article 26 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. This 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.

South Africa – Malaysia Protocol amending the Double Taxation Agreement

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 – Malaysia Protocol amending the Double Tax Agreement is as follows:



Article 26: Exchange of Information

- Article 26 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.



South Africa – Austria Protocol amending the Double Taxation Convention



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 – Austria Protocol amending the Double Tax Convention is as follows:



Article 26: Exchange of Information

- Article 26 of the Convention 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.



Additional Protocol

- Forms an integral part of the Protocol.
- Paragraph 1 relating to Article 26 sets out the form for requests for information.
- Paragraph 2 relating to Article 26 provides that Exchange of Information does not include measures which constitute “fishing expeditions”.
- Paragraph 4 relating to Article 26 provides that in the interpretation of the Article the principles established in the OECD commentaries including the technical note prepared by the OECD shall be considered.

