Double Taxation Conventions / Agreements Preliminary Hearing

2011

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Purpose of Agreements

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

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South Africa – Senegal 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 – Senegal 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 – Senegal DTA:
  - Building site, a construction, assembly or installation project or any supervisory activity in connection therewith – more than 9 months.
  - Furnishing of 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.

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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.

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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 – Senegal DTA:
  - 5% for shareholding of at least 20%;
  - 10% in all other cases

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Articles 11: Interest

- Withholding tax of 10% proposed by OECD Model.
- In practice, withholding taxes vary widely internationally.
- South Africa – Senegal DTA: 10% limit on source state.

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Article 12: Royalties

- No withholding tax proposed by OECD Model.
- In practice, withholding taxes vary widely internationally.
- South Africa – Senegal DTA:10% limit on the source state.

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Article 17: Entertainers and Sportspersons

- Paragraph 3 – Activities taxable only in the residence state if those activities are supported 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.

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Article 18: Pensions and Annuities

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

Article 21: Teachers and Researchers

- Paragraph 1 - remuneration from outside the host State and taxable in the Resident State – exempt from taxation in host State.

- Paragraph 2- Research must be in the public interest for the exemption to apply.

Article 26: Exchange of Information

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

Article 26: Assistance in the Collection of Taxes

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

Protocol

- In a subsequent Agreement for the avoidance of Double Taxation with a third State, should a Contracting State agree to a lower rate than that specified in the Articles dealing with interest and royalties in this Agreement, this Contracting State shall inform the Government of the other Contracting State and shall enter into negotiations with that other Contracting State with the view to providing comparable treatment.
- In reality this will only work one way as South Africa would prefer lower rates as compared to the Senegalese approach.

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South Africa – Norway Protocol amending the Double Taxation Convention

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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 – Norway 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.

South Africa – Turkey 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 – Turkey Protocol amending the Double Tax Agreement is as follows:

Article 24: Exchange of Information

- Article 24 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.

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