

Multilateral Convention as amended by the Protocol Formal Ratification

2012

**Multilateral Convention on Mutual
Administrative Assistance in Tax Matters
as amended by the Protocol which
entered into force on 1 June 2011**

Purpose of the Convention as amended by the Protocol

- To allow for effective exchange of information and administrative assistance between the Tax Authorities of the States which are Party to the Convention; and to increase co-operation among tax authorities to combat tax avoidance and evasion.

Introduction

- Closely follows the Articles on Exchange of Information and Assistance in Collection in the OECD Model Tax Convention.
- Articles of interest in the Multilateral Convention as amended by the Protocol are as follows:

Chapter 1 – Scope of the Convention

Article 1 - Object of the Convention and Persons Covered

- Allows for administrative assistance which comprises of:
 - a. exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
 - b. assistance in the recovery of taxes;
 - c. service of documents.

- Assistance to be provided whether the person affected is a resident or national of a Party or of any other State.

Chapter 1 – Scope of the Convention

Article 2: Taxes Covered

- The Convention applies to the widest possible range of taxes imposed by the Parties.
- This Convention shall apply to any identical taxes or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed.

Chapter III – Forms of Assistance

Section I – Article 4 – Exchange of Information

- General provision allowing for exchange of information that is foreseeably relevant to the enforcement of the domestic laws of the Parties concerning taxes covered by the Convention.

Chapter III Section I – Exchange of Information

Article 5 – Exchange of Information on request

- At the request of the applicant State, the requested State shall provide the applicant State with any information as contemplated in Article 4 which concerns particular persons or transactions.
- If information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Chapter III Section I – Exchange of Information

Article 6 – Automatic Exchange of Information

- With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Chapter III Section I – Exchange of Information

Article 7 – Spontaneous Exchange of Information

- A Party shall, without prior request, forward to another Party information of which it has knowledge.

Chapter III Section I – Exchange of Information

Article 8 – Simultaneous Tax Examination

- At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

Chapter III Section I – Exchange of Information

Article 9 – Tax Examinations Aboard

- At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- A Party may inform the Depositories of its intention not to accept, as a general rule such requests.

Chapter III Section II – Assistance in Recovery

Article 11 – Recovery of Tax Claims

- At the request of the applicant State the requested State shall, subject to the provisions of Article 14 (Time Limits) and 15 (Priority), take the necessary steps to recover tax claims of the first mentioned State as if they were its own claims.
- It may be agreed between the Parties that the requests apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and which are not contested.

Chapter III Section II – Assistance in recovery

Article 12 – Measures of Conservancy

- At the request of the applicant State the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Chapter III Section III – Service of Document

Article 17 – Service of Documents

- At the request of the applicant State the requested State shall serve upon the addressee documents, including those related to judicial decisions, which emanate from the applicant State and relate to a tax covered by the Convention.
- The requested State shall effect the service of documents:
 - a. by a method prescribed by its domestic laws for the service of documents of substantially similar nature;
 - b. to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.

Chapter IV Provisions relating to all Forms of Assistance

Article 21 – Protection of Persons and Limits to the Obligation to provide Assistance

- The Convention does not impose an obligation on the requested state to provide assistance in the following circumstances:
 - a. to carry out measures at variance with its own laws or administrative practices;
 - b. to carry out measures which would be contrary to public policy;
 - c. to supply information which is not obtainable under its own law or its administrative practice or under the laws of the applicant State or its administrative practice;
 - d. to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy;

Chapter IV Provisions relating to all Forms of Assistance

Article 21 – Protection of Persons and Limits to the Obligation to provide Assistance

- e. to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a Convention for the avoidance of double taxation, or of any other Convention which the requested State concluded with the applicant State;
- f. to provide administrative assistance for the purposes of administering or enforcing a provision of tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstance;

Chapter IV Provisions relating to all Forms of Assistance

Article 21 – Protection of persons and limits to the obligation to provide Assistance

- g. to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice unless this give rises to disproportionate difficulties;
 - h. to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
- Bank secrecy or the absence of a domestic tax interest can not be used to deny a request for exchange of information.

Chapter IV Provisions relating to all Forms of Assistance

Article 22 – Secrecy

- Any information obtained by a Party shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party.
- Information received shall be disclosed only to persons or authorities including courts and administrative bodies or supervisory bodies. The information can be disclosed in a public court proceeding or in judicial decisions relating to such taxes.

Chapter V Special Provisions

Article 26 – Costs

- Unless otherwise agreed bilaterally by the Parties concerned:
 - a. ordinary costs incurred in providing assistance shall be borne by the requested State;
 - b. extraordinary costs incurred in providing assistance shall be borne by the applicant State.

Chapter VI Final Provisions

Article 27 – Other International Agreements or Arrangements

- The assistance provided by this Convention does not limit, nor is it limited by, assistance contained in existing or future international agreements or other arrangements between the Parties or other instruments which relate to co-operation in tax matters.

Chapter VI Final Provisions

Article 30 – Reservations

- In accordance with paragraph 1 (a) to (f) of Article 30 a State may enter into Reservations relating to taxes covered, tax claims, service of documents and the entry into force date for intentional conduct liable to prosecution under criminal laws.
- After the Convention enters into force and in accordance with paragraph 3 and 4 of Article 30 a State may withdraw or amend any reservations deposited with the Depository the OECD.

Chapter I and Chapter II Declarations

- States must enter into declarations in terms of:
 - Annex A: paragraph 3 of Article 2 with respect to Taxes Covered;
 - Annex B: paragraph 1(d) of Article 3 with respect to the meaning of the term “competent authority”; and
 - Annex C: paragraph 1(e) of Article 3 with respect to the meaning of the term “national”.

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

- The Instrument of Ratification, which will be sent to the Depository, advises that the South African Parliament, in accordance with the requirements of South African law, has approved the ratification of the Convention, subject to the following notifications, declarations and reservations:

Notifications

- **ANNEX A - Taxes to which the Convention would apply:**

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

- **Article 2, paragraph 1.a.i:**
 - income tax;
 - withholding tax on royalties;
 - tax on foreign entertainers and sportspersons;
 - turnover tax on micro businesses;
 - secondary tax on companies, terminated as from 31 March 2012;
 - dividend tax, effective date 1 April 2012;
 - withholding tax on interest, effective date 1 January 2013;

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

- **Article 2, paragraph 1.a.ii:**
 - capital gains;

- **Article 2, paragraph 1.b.iii.A:**
 - estate duty;
 - donations tax;

- **Article 2, paragraph 1.b.iii.B:**
 - transfer duty;

- **Article 2, paragraph 1.b.iii.C:**
 - value-added tax;

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

- **Article 2, paragraph 1.b.iii.D:**
 - excise tax; and
- **Article 2, paragraph 1.b.iii.G:**
 - securities transfer tax.

Notification

- **ANNEX B – Competent Authority:**

The Commissioner for the South African Revenue Service or an authorised representative of the Commissioner.

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

Declaration

- **ANNEX C** – Definition of the term “national” for the purposes of the Convention:

Any individual possessing the nationality or citizenship of South Africa and any legal person, partnership, association, or other entity deriving its status as such from the laws in force in South Africa.

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

Reservation

- Pursuant to Article 30, paragraph 1.a of the Convention, the Republic of South Africa enters a reservation and will not provide any form of assistance in relation to the taxes of the other Parties included in the following categories of Article 2, paragraph 1:
 - Article 2, paragraph 1.b.i
 - taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivision or local authorities of a Party;

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

- Article 2, paragraph 1.b.ii:
 - compulsory social security contributions payable to general government or to social security institutions established under public law;

- Article 2; paragraph 1.b.iii.E:
 - taxes on the use or ownership of motor vehicles;

- Article 2, paragraph 1.b.iii.F:
 - taxes on the use or ownership of movable property other than motor vehicles ; and

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

- Article 2, paragraph 1.b.iv:
 - taxes in categories referred to in sub-paragraph iii. (taxes in other categories, except customs duties, imposed on behalf of a Party) above which are imposed on behalf of political subdivisions or local authorities of a Party.

South Africa's Formal Ratification of the Reservations, Declarations and Notifications

Reservation

- Pursuant to Article 30, paragraph 1.d of the Convention, South Africa enters a reservation and will not provide assistance with regard to the service of documents as described in Article 17 of the Convention. This reservation does not apply to the service of documents as described in Article 17, paragraph 3 of the Convention.

Tax Information Exchange Agreements Formal Ratification

2012

Purpose of Agreements

- To allow for effective Exchange of Information between the Tax Authorities.

SOUTH AFRICA / DOMINICA TAX INFORMATION EXCHANGE AGREEMENT

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 – Dominica 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 and tax matters covered by the Agreement.
- Including 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 3: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

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 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, protectors 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 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 items subject to legal privilege, or 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 by the taxpayer under examination or investigation.

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 used for any purpose other than for the purposes stated in Article 1 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.

Article 10: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

SOUTH AFRICA / GIBRALTAR TAX INFORMATION EXCHANGE AGREEMENT

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 – Gibraltar 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.
- Including information that is foreseeably relevant to the determination, assessment, collection, recovery and enforcement of tax claims, or to investigation or the prosecution of tax matters.
- The requested Party shall ensure that effective exchange of information is not unduly prevented or delayed.

Article 2: Taxes Covered

- This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree.

Article 4: 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 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) 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;
 - (c) in the case of trusts, information on settlors, trustees and beneficiaries.

Article 4: 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 schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

Article 5: 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 6: 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 items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- No obligation to supply information which the requesting Party would not itself be able to supply.

Article 7: 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 used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

Article 8: 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.

Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

SOUTH AFRICA / LIBERIA TAX INFORMATION EXCHANGE AGREEMENT

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 – Liberia 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.
- Including 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 2: Taxes Covered

- This Article is in line with the OECD Model and extends exchanges to taxes of every kind and description.

Article 4: 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 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) 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;
 - (c) in the case of trusts, information on settlors, trustees and beneficiaries.

Article 4: 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 schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

Article 5: 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 6: 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 items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process.
- No obligation to supply information which the requesting Party would not itself be able to supply.

Article 7: 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 used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

Article 8: 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.

Article 9: Mutual Agreement Procedure

- Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.