

FORMAL RATIFICATION: TAX TREATIES WITH SINGAPORE, UNITED ARAB EMIRATES AND ZIMBABWE

Standing Committee on Finance

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national treasury

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Purpose of tax treaties

Three main purposes from a policy point of view

- ❑ Prevent double taxation of the same income
 - ❖ limit the right of a source country to tax passive income by reducing tax to a lower rate and residence country must provide credit or exemption or
 - ❖ giving the residence country exclusive right to tax the passive income

- ❑ Create Fiscal Stability
 - ❖ termination made by giving 6 months notice to the other treaty partner
 - ❖ provides for dispute resolution mechanism (MAP)

- ❑ Prevent tax avoidance and evasion
 - ❖ exchange of information and
 - ❖ assistance in tax collection

Interaction between tax treaties and domestic law

The Constitution

- ❑ S 231(1)-Signing and negotiation of all international agreements
responsibility of the National Executive

- ❑ S 231 (2)- Binds the Republic once approved by Parliament (NA
and NCOP)

- ❑ S 231 (4)-Becomes law in the Republic when it is enacted into law
by national legislation

Interaction between tax treaties domestic law

Income Tax Act

- Section 108 (2):
 - Agreement approved by Parliament
 - Published in the government gazette
 - Have effect as if enacted in the Income Tax Act

CONSIDERATIONS FOR TAX TREATY

- **Treaty country identification (New Treaties):**
 - Investment flows (inbound and outbound);
 - Main corporate players making cross border investments in either country;
 - Political relations, in some cases;
 - Trade flows (mere indication of economic activity)
 - Potential economic and political advantages against risk of compromising the domestic tax base;

TAX TREATY BENCHMARK

- **Country tax profile:**

- Tax system [basis of tax, domestic tax rates, domestic and treaty withholding tax rates]
- Special tax vehicles and instruments [effective tax rates, tax on interest, dividends, royalties, capital gains etc.]
- Treaty network and variations [common trends + common treaty partners]
- Interrelationship between the tax systems of two countries [whether distort economic activity].
- Potential tax avoidance [e.g. transfer pricing] and treaty shopping

South Africa-Singapore Tax Treaty

Double Tax Agreement: SA-Singapore

- Renegotiation of the old tax treaty;
- The tax treaty between South Africa and Singapore came into force on 5 December 1997.
- During that time, South Africa was still on source based system of taxation and did not have capital gains tax system;
- Hence, the current tax treaty between South Africa and Singapore does not cover certain important aspects such as an article dealing with taxation of capital gains;
- Modernisation of the tax treaty in line with latest international model;

SOUTH AFRICA-SINGAPORE

- The negotiation also addressed areas that were identified to be weakness in the old tax treaty such as potential for dual residence structures, zero rate on interest, absence of capital gains articles, exchange of information etc
- Preliminary briefing on 19 May 2015;
- Agreement signed by South Africa signed on 23 November 2015 and by Singapore on 30 November 2015;

South Africa-United Arab Emirates Tax Treaty

The South Africa – United Arab Emirates

- This is a new tax treaty;
- Initiated by South Africa;
- Aim is to enhance economic relations between South Africa and UAE;
- Expand South Africa's tax treaty network in Middle East;
- Growing presence of the South African companies in UAE;
- There are currently approximately 206 SA companies doing business in the UAE ranging from well known restaurant groups, companies in the construction, engineering, banking, energy, travel, hospitality, trading and HR consultancy sectors.

The South Africa – United Arab Emirates

- UAE has become a significant source of investment and home to a sizeable SA expatriate community;
- Growing SA community in UAE evidenced by various SA formations present in the UAE that include, *inter alia*, South Africa Business Council (SABCO) and SA Women Association;
- SA is the 19th largest investor in the UAE;
- UAE is currently the 24th largest investor in South Africa;
- Preliminary briefing on 14 September 2014;
- Agreement signed on 24 November 2015

South Africa-Zimbabwe Tax Treaty

Double Tax Agreement: SA-Zimbabwe

- Renegotiation of the old tax treaty;
- First tax treaty between South Africa and Zimbabwe came into force on 3 September 1965;
- During that time, South Africa was still on source based system of taxation and did not have capital gains tax system;
- The renegotiation of the old treaty became necessary due to changes in South African domestic law (e.g. change from source system to residence system, introduction of capital gains tax etc) and in international trends

Double Tax Agreement: SA-Zimbabwe

- Increased presence of South African companies in Zimbabwe in all sectors;
- Zimbabwe is also important from a Regional perspective because it is a member of SADC;
- Preliminary briefing on 19 May 2015;
- Agreement signed on 4 August 2015.

THANK YOU