Double Taxation Conventions / Agreements Formal Ratification

SeCOF: 07 September 2016

SARS
At Your Service

Purpose of Agreements

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

Agreement between the Government of the Republic of South Africa and the Government of the United Arab Emirates for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

SARS
At Your Service

Introduction

- Closely follows the OECD and UN Model Conventions, which form the foundation for the vast majority of Double Taxation Agreements (DTA's) worldwide.

- A number of provisions are different from the normal SA approach. These provisions and other articles of interest in the South Africa – UAE Double Tax Agreement are as follows:

Article 4: Resident

- Paragraph 3 where a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State in which its place of effective management is situated.

Article 5: Permanent Establishment

- The term “permanent establishment” includes a farm or plantation.
- Paragraph 3 deemed PEs:
  - building site, a construction, assembly or installation project or any supervisory activity in connection therewith which continues for more than 12 months;
  - furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose which continue for a period or periods exceeding 9 months in any 12 month period;

Article 5: Permanent Establishment

- performance of professional services or other activities of an independent character by an individual which continue for a period 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 – UAE DTA:
  - 5% for shareholding of at least 10%;
  - 10% on all others.

- Paragraph 6 includes the anti-abuse rule for dividends where the Article will not apply.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.

- South Africa – UAE DTA:
  - 10% limit on source state taxation.

- Paragraph 7 includes the anti-abuse rule for interest where the Article will not apply.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.

- South Africa – UAE DTA:
  - 10% limit on the source state taxation.

- Paragraph 7 includes the anti-abuse rule for royalties where the Article will not apply.

Article 24: Mutual Agreement Procedure

- This Article institutes a mutual agreement procedure for resolving difficulties arising out of the application of the Agreement.

- The competent authorities shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Agreement.

- Authorises the competent authorities of the two Contracting States to resolve by mutual agreement problems relating to the interpretation or application of the Agreement and to consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article 25: Exchange of Information

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

- The 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.

- Full exchanges are authorised – includes automatic exchanges.

Article 28: Miscellaneous Rules

- Paragraph 1 provides that notwithstanding the provisions of paragraph 2 of Article 10 and paragraph 2 of Article 11, dividends and interest paid by a resident of a Contracting State to the Government of the other Contracting State or political subdivision or local authority thereof shall be exempt from tax in the first-mentioned State.

Article 28: Miscellaneous Rules

- Paragraph 2 provides that the term “Government “ shall include: the Government of the UAE, local government of the UAE, UAE financial institutions and any other statutory body or institution or instrumentality wholly owned by the Government of the Federal or local Government of the UAE; and the South African Reserve Bank, any other statutory body or institution wholly owned by the Government of Republic of South Africa.

Protocol

- Paragraph 1 provides that in terms of current legislation in South Africa, the income of any other State is exempt from tax on income. For the purposes of this paragraph the term "State" shall include: the Government of the UAE, a local government of the UAE, an agency which is an integral part of the Federal or local government of the UAE or an integral part of one of its local governments. The Abu Dhabi Investment Authority is one of the institutions which are recognised as being as integral part of the Government of Abu Dhabi.
- Paragraph 2 provides that with respect to Article 6: the provisions of paragraph 4 of Article 6 shall not apply in respect of the mere purchase by an enterprise of a Contracting State of land and building for its own use.

Agreement between the Government of the Republic of South Africa and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Introduction

- Closely follows the OECD and UN Model Conventions, which form 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 – Singapore Double Taxation Agreement are as follows:

Article 4: Resident

- Paragraph 3 provides that if a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement settle the question and determine the mode of application of the Agreement to such person. In the absence of such agreement such person shall be considered to be outside the scope of the Agreement except for the provisions of Article 24 (Exchange of Information).

Article 5: Permanent Establishment

Paragraph 3 deemed PEs:

- building site, a construction, assembly or installation project or any supervisory activity in connection therewith which continues for a period of more than 12 months;
- furnishing of services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose which continue for a period or periods exceeding 183 days in any 12 months;
- the performance of professional services or other activities of an independent character by an individual which continue for a period or periods exceeding 183 days in any 12 months;

SARS At Your Service

Article 5: Permanent Establishment

- the carrying on of activities by an enterprise that consist of, or that are connected with, the exploration for or exploitation of natural resources, but only where such activities continue for more than 6 months.

Article 9: Associated Enterprises

- This Article deals with adjustments to profits that may be made for tax purposes where transactions have been entered into between associated enterprises (parent and subsidiary companies and companies under common control) on other than arm's length terms.
- The re-writing of transactions between associated enterprises may give rise to economic double taxation (taxation of the same income in the hands of different persons), insofar as an enterprise of one State whose profits are revised upwards will be liable to tax on an amount of profit which has already been taxed in the hands of its associated enterprise in the other State. Paragraph 2 provides that in these circumstances, the other State shall make an appropriate adjustment so as to relieve the double taxation.

Article 10: Dividends

- In practice, withholding taxes vary widely internationally.

- Dividend rate in South Africa – Singapore DTA:
  - 5% for shareholding of at least 10%;
  - 10% in all other cases.

- Paragraph 4 exemption provides that dividends paid by a company which is resident of South Africa to the Government of Singapore shall be exempt from South African tax.

- Paragraph 8 includes the anti-abuse rule for dividends where the Article will not apply.

Articles 11: Interest

- In practice, withholding taxes vary widely internationally.

- South Africa – Singapore DTA:
  - 7.5% limit on source state.
  - Exemptions added in paragraph 3 for the State and for debt instruments listed on recognised stock exchanges. This is in line with our domestic law.
  - Paragraph 4 notes the recognised stock exchanges as the JSE and the Singapore Exchange.

- Paragraph 10 includes the anti-abuse rule for interest where the Article will not apply.

Article 12: Royalties

- In practice, withholding taxes vary widely internationally.

- South Africa – Singapore DTA:
  - 5% limit on source state taxation.

- Paragraph 7 includes the anti-abuse rule for royalties where the Article will not apply.

Article 23: Mutual Agreement Procedure

- This Article institutes a mutual agreement procedure for resolving difficulties arising out of the application of the Agreement.

- The competent authorities shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Agreement.

- Authorises the competent authorities of the two Contracting States to resolve by mutual agreement problems relating to the interpretation or application of the Agreement and to consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article 24: Exchange of Information

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

- The 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.

- Full exchanges are authorised – includes automatic exchanges.

Protocol

- Paragraph 1 clarifies the term statutory body.

- Paragraph 8 clarifies that interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from such operation of ships or aircraft in international traffic. Funds will be regarded as connected where the investment that generates that interest is made as an integral part of the carrying on of the business of operation of ships or aircraft in international traffic. This is in the context of the Commentary on Article 8 of the OECD Model Tax Convention and merely confirms the principle.

Protocol

- Paragraph 1 includes a Most Favoured Nations (MFN) provision: If in an agreement that may subsequently be concluded between South Africa and a third State, the rates for taxation of dividends in the source State are lower than those specified in paragraph 2 of Article 10 of this Agreement, South Africa shall immediately inform Singapore in writing through the diplomatic channel and shall enter into negotiations with a view to providing comparable treatment as may be provided for the third State.