

# South Africa – Lesotho 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 – Lesotho Double Tax Agreement are as follows...

# Article 4: Resident

⇒ Paragraph 3 provides that when a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to determine the mode of application of the Agreement to the person. In the absence of such agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Agreement.

# Article 5: Permanent Establishment

- ⇒ The term “permanent establishment” includes an installation or structure used for exploration of natural resources.
- ⇒ Construction
  - 12 months in OECD Model
  - 6 months in UN Model
  - South Africa – Lesotho DTA
    - Building site, a construction, assembly or installation project or any supervisory activity in connection therewith – more than 6 months.
    - Furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose – periods or periods exceeding in aggregate 90 days in any 12 month period.
    - Performance of professional services - periods or periods exceeding in aggregate 90 days in any 12 month period.

# Article 7: Business profits

⇒ Paragraph 3 provides that:

- No deduction will be allowed in respect of amounts paid by the permanent establishment to the head office of the enterprise or any of its offices, by way of royalties, fees, or other similar payments. The exception a banking enterprise, by way of interest on moneys lent to the permanent establishment.
- No account shall be taken in determining the profits of the permanent establishment for amounts charged by the permanent establishment to the head office, by way of royalties, fees, or other similar payments. The exception a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

# Article 8: International Transport

- ⇒ Paragraph 1 provides that profits of an enterprise of a Contracting State from the operation of ships aircrafts or rail or road transport vehicles in international traffic shall be taxable only in that State.
- ⇒ Paragraph 2 provides that profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include profits derived from the rental of rail or road transport vehicles.

# 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 – Lesotho DTA
  - 10% for shareholding of at least 10%
  - 15% on all others
- ⇒ This agreement will not prevent a Contracting State from imposing a branch profits tax on the repatriated income of a company which is a resident of the other Contracting State, in addition to the income tax imposed, provided that the branch profits tax imposed does not exceed 10% of the amount of the repatriated income.

# Articles 11: Interest

- ⇒ Withholding tax of 10% proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Lesotho DTA: 10%

# Article 12: Royalties

- ⇒ No withholding tax proposed by OECD Model
- ⇒ In practice, withholding taxes vary widely internationally
- ⇒ South Africa – Lesotho DTA: 10%

# Article 13: Fees for Technical Services

- ⇒ Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- ⇒ Technical fees derived from one Contracting State by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first mentioned State at a rate not exceeding 10 per cent of the gross amount of such fees.

# Article 15: Income from Employment

- Paragraph 2 (a) provides that remuneration derived by a resident of Contracting in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if, the recipient is present in the other State for period or periods not exceeding 182 days in any 12 month period.

# Article 17: Entertainers and Sportspersons

- ⇒ Paragraph 1 provides that income derived by a resident of a Contracting State as an entertainer or sportsperson from the person's personal activities exercised in the other Contracting State may be taxed in that other State.
- ⇒ Paragraph 3 provides that income derived by a resident of a Contracting State from activities exercise in the other Contracting State, if the visit to the other State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political subdivision or local authority thereof. The income shall be taxable only in the first-mentioned Contracting State.

# Article 18: Pensions

⇒ Paragraph 3 provides that pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that State.

## Article 21: Professors and Teachers

- ⇒ This Article provides an exemption from tax in the host State for two years in respect of visiting professors or teachers. However, the remuneration must be derived from outside the host State.
- ⇒ The provisions shall not apply to remuneration in respect of research if such research is undertaken not in public interest but wholly or mainly for the private benefit of a specific person or persons.

# Article 27: Assistance in Recovery

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

# Article 23: Elimination of Double Taxation

⇒ Paragraph 3 provides that “Lesotho tax payable” and “South African tax payable” shall be deemed to include the amount of tax which would have been paid in Lesotho or South Africa but for the exemption or reduction granted in accordance with the laws which establish schemes for the promotion of economic development in Lesotho and South Africa. Such schemes having been mutually agreed, by the competent authorities of the Contracting States as qualifying for the purpose of this paragraph.

# Protocol

⇒ 1. Clarifies that in any Agreement entered into between Lesotho and any other State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income subsequent to this Agreement, a lower rate than that specified in Article 11, 12, or 13 of this Agreement is provided for, Lesotho agrees that such lower rate shall apply to this Agreement.

# Protocol

- ⇒ 2. Clarifies paragraph 3 of Article 23 and provides that it is understood that the benefits thereof will not apply in respect of:
- (a) financial intermediation activities such as banking and insurance;
  - (b) the licencing of intellectual property;
  - (c) shell businesses which are not engaged in substantive business operations; or
  - (d) passive income.