New double-taxation treaties coming in across Africa

Author: Katrina Mabika is Tax Director: Advisory Services for BDO Zambia.

Africas enormous potential as an economic growth hub can be realised by consolidating the regions economic integration and facilitating trade and labour mobility across the continent.

Double taxation treaties are one of the ways to do this, enhancing our continents attractiveness as a trade destination and protecting the interests of African professionals, who often travel across the region for work.

The goal of double taxation treaties is to avoid the imposition of similar taxes in two or more countries for the same subject matter and for similar periods. This might apply, for instance, to income accruing to South African taxpayers from foreign sources, and to foreign taxpayers from South African sources.

Where it happens, double taxation has a negative effect on international trade and the cross-border movement of people and goods and services. It can affect relations between countries, as well as have a serious impact on the lives and careers of taxpayers working away from their home countries.

For this reason, the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital 2014 sets out recommended means to settle issues arising around double taxation in the international context. At present on the African continent, double-taxation agreements can be broadly divided into those based on the OECD model treaty and those that are not.

The new-dispensation treaties introduce the concept of beneficial ownership in the articles relating to dividends and interest. The beneficial ownership concept is designed to prevent treaty shopping, where an individual from one country and working in another, tries to benefit from a treaty with a third country.

Under treaties based on the OECD model treaty, the reduced rates of withholding tax on loan interest and dividends are only available if the beneficial owner of the interest or dividends is a resident of the state that is a party to the treaty.

Countries that have concluded treaties along these lines include Zambia and Mauritius. Zambia has also concluded a similar agreement with the Seychelles, based on the OECD Model Treaty. As a small country with significant expat and migrant workers, it is interesting to look at the Zambian case and how it addresses the double taxation issue.

In Zambia, when it comes to withholding-tax relief, that relief is subject to confirmation that no permanent establishment exists. Where there is a permanent establishment in other words and for example, a fixed place of business then the business profits article of the relevant treaty is applied.

Permission to access the treaty benefits must be applied for at the Zambia Revenue Authority (ZRA). If approved, the ZRA will issue a Limited Deduction Direction (LDD). LDDs are issued for a tax year and must be applied for annually.

Regarding interest payments, the updated Zambian policy in the Mauritius and Seychelles treaties is that interest arising in a contracting state and paid to a resident of the other contracting state may be taxed in that other state. However, such interest may also be taxed in the contracting state in which it arises, and according to the laws of that state, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

Similar provisions apply to royalty payments, except that the withholding tax there shall not exceed five per cent of the gross amount of royalties. In the case of dividend payments, withholding tax varies with the contracting country and according to whether the beneficial owner is a company holding at least 25 per cent of the capital of the company paying the dividends.

South Africas double taxation treaty with Zambia dates back to the 1950s and is of the old-order type. This and dozens of other treaties between African countries will need updating as Africa moves to embrace the recommended means of the OECD Model Tax Convention.

Multinational companies would do well to become conversant with the relevant double-taxation situation in the countries they operate in, and to engage tax specialists who can advise in the best interests of their companies and their employees.

The implications may be complex for individual cases, but the ultimate benefits for regional integration promise to be great.

ENDS

Lee Moteetee

Senior Account Manager

Ogilvy Public Relations
The Brand Building | 15 Sloane Street Bryanston | Johannesburg
Private Bag X33 | Bryanston 2021
T +27 11 700 5408 |

2017 SABRE Awards Africa Platinum Award (Grand Prix) | 2017 SABRE Awards Africa Corporate Social Responsibility (Gold) | 2017 SABRE Awards Africa Social Media (Gold) | 2017 SABRE Awards Africa Digital Campaign (Gold) | 2017 SABRE Awards Africa Southern Africa (Cert of Excellence) | 2017 SABRE Awards Africa Corporate Social Responsibility (Cert of Excellence) | 2017 African Excellence Awards Storytelling (Gold) | PRISM 2017 Large Agency of the Year (Bronze) | PRISM 2017 Corporate Communication (Bronze) | PRISM 2017 Social Media (Bronze) | PRISM 2017 Data & Analytics (Bronze) | ADFOCUS 2016 PR Agency of the year | PRISM 2016 PR Campaign of the Year (Silver)