



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

NEW SOUTH AFRICA AND MAURITIUS TAX TREATY ENTERS INTO FORCE

Government on Wednesday, 17 June 2015, gazetted (GG 38862) the South Africa-Mauritius tax treaty, which entered into force on 28 May 2015, and replaces the 1996 South Africa-Mauritius tax treaty.

This new treaty reflects changes in the tax policies of the two countries and is in line with international best practices to deal with tax abuse as outlined in the OECD Model Tax Convention. The new treaty deals *inter alia* with the treatment of dual residence for persons other than individuals and withholding taxes on interest and royalties.

1. Background

In November 2009, South Africa and Mauritius started renegotiations for the new tax treaty. The renegotiations were finalised in January 2011. The main driver for the renegotiation of the old tax treaty was to curb abuse of the old treaty. The new treaty was signed by the two countries on 17 May 2013. The South African Parliament ratified the new treaty on 14 September 2013. Mauritius notified South Africa of its ratification of the new treaty on 28 May 2015.

The main changes to the old tax treaty include a revised test for dual residence for persons other than individuals; withholding taxes on interest and royalties; capital gains tax; removal of tax sparing provision and assistance in tax collection.

A. Dual residence for persons other than individuals

The tie-breaker clause in the new tax treaty, in Article 4(3), follows the alternative test under paragraph 24.1 of the Commentary to the OECD Model Tax Convention. It provides that the Competent Authorities of the Contracting States shall, in any case where a person other than an individual is a resident of both States, endeavour to settle the question by mutual agreement and determine the

mode of application of the Agreement to such person. This test has been proposed to become the accepted or main test of the OECD Model under the OECD/G20 Base Erosion and Profit Shifting initiative which is currently taking place under the guidance of the G20.

In order to provide greater certainty to the small number of companies that may be affected by the change, South Africa and Mauritius have signed a Memorandum of Understanding which sets out the factors that the two competent authorities will take into account in deciding the country of residence.

The Memorandum of Understanding draws on the guidance provided in commentaries to the OECD and UN Model Tax Conventions, as well as the ongoing BEPS initiative work, so its approach will be familiar to multinational enterprises.

B. Withholding taxes

The old tax treaty provided for a zero rate on interest and royalties (taxable only in the state of residence).

(i) Interest

The new tax treaty provides for a 10 per cent tax rate in the source country on the gross amount of the interest.

(ii) Royalties

The new tax treaty provides for a 5 per cent tax rate in the source country on the gross amount of royalties.

C. Capital gains

The old tax treaty was silent on the treatment of property rich companies. The capital gains provision now specifically provides that a Contracting State may tax capital gains derived from the disposal of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in that Contracting State. This is in line with paragraph (4) of Article 13 of the current OECD Model Tax Convention.

D. Tax Sparing

The old tax treaty contained a tax sparing provision. In the new tax treaty, the tax sparing provision has been removed due to concerns that it allowed for double non-taxation. Under the tax sparing method, the foreign investor country allows credit for notional taxes foregone by the investment country because of a tax incentive or holiday in the investment country.

E. Assistance in tax collection

The new tax treaty includes a new article improving bilateral co-operation in the collection of taxes.

The new tax treaty generally applies from 1 January 2016.

Issued on behalf of National Treasury

Date: 17 June 2015