Double Tax Agreements and Tax Information Exchange Agreements

What is a Double Tax Agreement?

A Double Tax Agreements ("DTA") is an agreement negotiated between countries or territories to outline the rights of a country with respect to taxation of specific types of incomes. The main aim of a DTA is to eliminate double taxation of income and capital. A DTA typically provides which country has the right to taxation of a specific income between the source and the resident state; or the process of alleviating the double taxation of the same income.

If your country has a DTA with Kenya, there will be preferential tax treatment of income both for companies & individuals e.g. the withholding tax rate applied. However, the conditions differ depending on the DTA. For countries which do not have DTAs with Kenya, you may be liable for various taxes in both jurisdictions depending on the taxation laws of your country.

Recent Developments in Kenya

Kenya has recently signed several DTAs as one of the ways to boost trade and investments with its trade partner countries. Among the most recent DTA developments are the May 2014 ratifications of the DTAs Kenya has with Iran and Mauritius. More recently, in July 2014, Kenya signed a DTA with South Korea. However, this treaty cannot be implemented until it is ratified.

In March 2014, Kenya's foreign affairs Cabinet Secretary and her Seychelles counterpart signed a DTA which is expected to work in tandem with the Visa exemption that exists between the two countries. This DTA is expected to improve trade partnership particularly in exports, fishing and tourism between the two countries.

In April 2014, President Kenyatta signed a DTA between Kenya and Qatar. This is expected to boost Kenya's export market especially for agricultural goods and also draw Qatari investments into the Kenyan economy.

DTAs between Kenya and other countries

Eleven DTAs have been signed and ratified:

1. Zambia –1968, Legal Notice No. 10/1970
2. Norway –1972, Legal Notice No. 6/1973
3. Denmark –1972, Legal Notice No. 5/1973
4. Sweden – 1973, Legal Notice No. 14/1973
5. U.K – 1973, Legal Notice No. 253/1977
6. Germany – 1977, Legal Notice No. 20/1980
7. Canada – 1983, Legal Notice No. 111/1987
8. India – 1985, Legal Notice No. 61/1989
9. France- 2007, Legal Notice No. 140/2009
10. Mauritius- 2012, Legal Notice No. 59/2014
11. Iran- 2012, Legal Notice No. 60/2014

Kindly find copies of the above DTAs in our website:
http://www.taxwise-consulting.com/double-taxation-networks

DTAs signed but not yet ratified:

1. South Korea - 2014;
2. Qatar- 2014;
3. Seychelles- 2014;
4. South Africa- 2010;
5. United Arab Emirates- 2011;
6. Nigeria- 2013;
7. Kuwait- 2013;
8. East African Community "EAC" multilateral DTA (Kenya-Tanzania-Uganda-Rwanda-Burundi - 2010); and
9. Italy - 1979.

Draft Agreements under Negotiation:

1. Thailand - 1st round negotiations, Bangkok, 7th July 2006
2. India - review 1st round, New Delhi, 14th July 2006

Draft Agreements Proposed for Negotiation:

1. Ethiopia
2. Sri Lanka
3. Turkey
4. Finland
5. Russia

What is a Tax Information Exchange Agreement ("TIEA")?

A TIEA is an agreement designed to enable exchange of information with states or jurisdictions for purposes of enhancing tax compliance.

Most countries are keen on obtaining TIEAs in order to control vices such as capital flight, money laundering, transfer mispricing and corruption. TIEAs assist in acquiring the required information on offshore financial structures such as trusts, companies and foundations which are used to facilitate tax fraud.

In Kenya, these arrangements were launched in 2012. No TIEA has been signed yet but Kenya has initiated this process with **Guernsey, Seychelles, Singapore** and **Bermuda**. Negotiations are being made with **Jersey, Cayman Islands, Isle of Man, Malta, Liechtenstein, Liberia** and others. Kenya has also targeted **Monaco** for negotiations.

Conclusion

The main aim of countries pursuing these agreements is to facilitate trade with other jurisdictions by eliminating double taxation and ensuring tax compliance. It is therefore pertinent for companies, and individual investors to find out if there is a DTA or TIEA before trading with another state, and also keep abreast with the developments in this area.

We at Taxwise Consulting Limited endeavor to keep our clients informed of tax developments both locally and internationally and assist in coming up with a business plan that will ensure tax optimization.

For more information and, or assistance on this matter or any other tax issues, kindly get in touch with the below named persons or your regular Taxwise Consulting Limited contact.

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