

Mauritius-Kenya Double Taxation Avoidance Agreement

Background

A Double Taxation Avoidance Agreement (DTAA) between Mauritius and Kenya was signed on 10 April 2019. A Protocol amending some of the terms in the DTAA was signed on 16 October 2019. On 10 December 2019, both the DTAA and the Protocol were published in the Mauritius Government Gazette. To have legal force, the DTAA and the Protocol will have to be published in the Kenyan local gazette.

Some of the key features pertaining to the DTAA and the Protocol are set out below:

Summary of Key Features			
Articles	Rates as per DTAA and Protocol (%)	Non-Resident Tax Rates in Republic of Kenya (%)	Non-Resident Tax Rates in Republic of Mauritius (%)
Dividends	■ 8	■ Exempt /10	■ Exempt
Interest	■ 10	■ 15	■ Exempt / 15
Royalties	■ 12	■ 20	■ 15
Technical fees	■ 10	■ 20	■ 10
Capital gains on sale of shares	■ 0 / 5	■ 5	■ Exempt

Non-resident withholding tax rates as per local legislation will apply where they are more favourable than treaty rates.

Our comments

Currently, Kenya is the 5th largest recipient of investments in Africa from Mauritius. The value of investments into Kenya from Mauritius as at 30 June 2018 amounted to MUR 80bn and this despite there was no DTAA in place. This DTAA is expected to further boost investments from Mauritius into Kenya.

However, it is important to note that the capital gains article states that Mauritius will have sole taxing right on gain on sale of shares of a Kenyan resident entity except where:

- Mauritius residents hold directly or indirectly, at least 50% of the capital of the Kenyan entity; or
- the shares derive more than 50% of their value directly or indirectly from immovable property situated in Kenya.

It is also worth mentioning that the DTAA / Protocol includes a Principal Purpose Test (PPT), which originates from OECD BEPS Action Plan 6 – Prevent Treaty Abuse. Under the PPT, where it can be reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining treaty benefit was one of the principal purposes of any arrangement or transaction, treaty benefits could be denied.

Feel free to reach out to us to discuss further.

Contact us

Wasoudeo Balloo
Partner, Head of Tax

T: (+230) 406 9891
E: wballoo@kpmg.mu

Pechal Chundydyal
Manager, Tax

T: (+230) 406 9845
E: pchundydyal@kpmg.mu

Kevin Mees
Manager, Tax

T: (+230) 406 9768
E: kmees1@kpmg.mu

Joshita Lutchoomun
Manager, Tax

T: (+230) 406 9850
E: jlutchoomun@kpmg.mu

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This document is based on our interpretation of the current income tax law and international tax principles. These principles are subject to change occasioned by future legislative amendments and court decisions. You are therefore cautioned to keep abreast of such developments and are most welcome to consult us for this purpose.

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