Tax Alert

25 March 2009

New tax treaty between Mozambique and South Africa

The first ever income tax treaty between South Africa and Mozambique has been ratified by both countries and comes into effect with respect to taxes withheld at source on or after 20 February 2009 and with respect to other taxes from years of assessment commencing on or after 1 January 2010. The treaty is in English and Portuguese, both languages having equal authenticity and the treaty generally follows the OECD Model Convention.

Withholding tax rates

The maximum rates of withholding tax per the treaty are:

- 15% on dividends in general and 8% where the beneficial owner is a company holding at least 25% of the capital of the paying company;
- 8% on interest, subject to exceptions in respect of:
  - (i) interest derived by the governments or government authorities of the contracting states and
  - (ii) a bank resident in a contracting state; and
- 5% on royalties.

Previously any dividend, interest and royalty payments made from Mozambique to South Africa incurred withholding tax of 20%.

Dividend and interest payments from South Africa to Mozambique are currently not subject to any withholding tax in South Africa. Royalty payments incurred a 12% withholding tax which would be reduced to 5% by the new treaty.

In future, once STC has been abolished and replaced by a dividend (withholding) tax, the dividend tax of 10% will be reduced by the treaty to 8%.

In the case of management fees charged to a Mozambican resident, in principle, the management fees should be regarded as business profits (and be subject to tax only in SA) and thus no withholding tax should be applicable in Mozambique. However, in practice, it is likely that the management fees may be interpreted as being a royalty and be subject to the 5% withholding tax in Mozambique.

It is interesting to note that the withholding tax rates in terms of the South Africa-Mozambique treaty are similar to the Mauritius-Mozambique treaty except for the dividend (withholding) tax whereby in terms of the Mauritius-Mozambique treaty the dividend tax is 10% where the beneficial owner is a company which holds less than 25% of the capital of the paying company (8% if the holding is at least 25%).

Capital Gains

With regard to the disposal of shares in so-called 'land-rich' companies, the treaty allocates the right to tax the disposal of the shares, equally to both states.

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