



Guidelines for Granting Tax Treaty Benefits to Non-Residents

(A) Introduction

The Kingdom of Lesotho has entered into agreements for elimination of double taxation (DTAs) with the following countries;

- Republic of Botswana,
- Republic of Mauritius,
- Republic of South Africa, and
- The United Kingdom.

The DTAs are different from one country to another and provide different treatments and benefits (which are largely in the form of reduced tax rates) to the residents of Lesotho and those of other states. Income earned in Lesotho by a non-resident is taxable in Lesotho. The tax collection mechanism for most income types is through withholding tax by the payer in Lesotho, who should ultimately remit the tax so withheld to the Lesotho Revenue Authority (LRA). The Lesotho payer who fails to withhold tax is liable, under the law, for the tax that should have been withheld from the non-resident.

This guideline identifies and explains the steps that must be followed by Lesotho payers to ensure that non-residents who earn income in Lesotho are properly taxed and that the non-residents do not unduly benefit from Lesotho's DTAs with the other countries. The obligations of the Lesotho payers emanate from both the domestic law, Lesotho Income Tax Act 1993 (as amended) and the international law, the DTAs with the respective states.

(B) Steps to Follow When Granting Treaty Benefits

- (1) *Identification of the non-resident recipient*



- The non-resident recipient of the payment must be identified. The full names; legal, business and trading names of the non-resident must be ascertained or be available.

(2) Determination of the residence of the recipient of the Lesotho income

- The residence of the recipient of the payment must be determined to establish which treaty is relevant and whether the recipient is entitled to the benefits of the treaty.
- The non-resident must provide the taxpayer/personal identification number (TIN)/(PIN), (ID), or any similar unique reference that is issued to the non-resident by the residence country thereof.
- The physical and contact addresses of the non-resident must be determined, provided or be known to the Lesotho payer.
- **Where the recipient is a resident of more than one country the LRA should be consulted to make a determination, working together with the DTA treaty partner.**

(3) Determination of beneficial owner of: dividends, interest and royalties

- Where payment involves dividends, interest or royalties the **beneficial owner** of such income must be determined.
- Determining the beneficial owner involves ascertaining whether indeed the recipient is the real or true owner of the income. If the recipient is effectively receiving the money on behalf of the true owner, then such recipient is not entitled to DTA benefits.



- Where the beneficial ownership of the income cannot be determined the LRA must be consulted to make such a determination.

(4) Determination of the applicable DTA

- Once the residence of the recipient and beneficial ownership have been determined **the applicable DTA must be identified**, which will be the one between Lesotho and the country from where the non-resident and beneficial owner comes from.
- Where **none of the existing DTAs is applicable**, based on the determinations in (2) and (3) above, **the Income Tax Act is applicable**. The rate of withholding tax provided in that law is 25% (dividends, interest, royalty and management charge), unless the payment is for a service fee for which 10% is applicable.

(5) Description of Contract/Payment

- The character/nature of the payment must be determined so that the relevant article of the treaty can be applied.
- The contract amount and duration must be stated.

(6) Method of Tax Collection

- The Lesotho payer must indicate who is responsible for actual collection and payment of tax, that is;
 - Whether the non-resident is responsible for own taxes or
 - Whether the Lesotho payer is responsible for withholding the tax.



(C) Further Information and Guidance and Final Procedures

(1) Information and Assistance

Where there is need for more information, difficulties and challenges arise in undertaking the steps above, the following office must be contacted:

Manager – International Treaty Development

Designated Competent Authority – MAP & Practical Treaty Aspects

Lesotho Revenue Authority – Maseru Mall

P O Box 1085

Tel: 5221 5214

Email: eoilra@lra.org.ls

(2) Final Procedures

- Before making final processes and payments the ‘checklist’ appended to this guidelines should be completed and used as basis and aid to filling the appropriate withholding tax certificates and making final payments to the LRA. The checklist must be filled in triplicate and distributed as follows;
 - i. 1st copy – to be issued to the non-resident,
 - ii. 2nd copy – to be issued to the LRA, and
 - iii. 3rd copy – to be retained by the Lesotho payer for own records.

- The checklist must be duly signed by the Lesotho payer.



Appendix

Checklist for Granting Tax Treaty Benefits to Lesotho Non-Residents

Item	Yes	No	Comment(s)
1. I have identified the recipient			
2. I have determined the residence of the recipient			
3. I have determined beneficial ownership of the income			
4. I have determined the applicable DTA			
5. I have description of the contract			
6. I have determined method of collection			
7. I have duly filled the withholding tax certificate			
Declaration			
<p>I declare that I have duly completed the checklist as guidance for granting tax treaty benefits. I further sought assistance from the LRA where I could not make own decisions or determinations.</p>			



Signed.....Date.....