Revenue Services Lesotho

GUIDE ON TAX TREATY BENEFITS

"Re Tjena Ka Uena"

Tax Treaty Benefits: Reduced Withholding Rates

(A) Introduction

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

- The Kingdom of Eswatini,
- 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 tax treatments and many benefits. This guideline focuses on the main benefit deriving from tax treaties, which is reduced withholding tax rates compared to domestic law withholding rates. Income earned in Lesotho by a non-resident is taxable in Lesotho. Also, income earned by Lesotho residents from foreign sources/countries is taxable in Lesotho. The tax collection mechanism for most income types is through withholding tax by the payer in Lesotho (referred to as the “withholding agent”), who should ultimately remit the tax withheld to the Revenue Services Lesotho (RSL). The withholding agent 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 withholding agents to ensure that non-residents who earn income in Lesotho are properly taxed and benefit from reduced withholding rates. Similar reverse process will be applied to ensure that Lesotho residents who earn foreign income benefit from reduced treaty rates.

(B) Steps to Follow When Granting Tax 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) Requirement for proof of residence of the non-resident

- The residence of the recipient of the payment must be proven to establish which treaty is relevant and whether the recipient is entitled to the benefits of the treaty.

- Generally, formal identification and registration documents from a foreign country where the non-resident comes from, are acceptable as proof of residence for purposes of granting treaty benefits and so the non-resident must provide the taxpayer/personal identification number (TIN)/(PIN), (ID), or any other 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 provided or be known to the withholding agent.

- It is the responsibility of the payer to ensure that all the proof of residence documents and contact details are authentic.

- Where the recipient is a resident of more than one country the RSL should be consulted to decide, 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. Beneficial owner is the natural person who ultimately owns or controls a legal vehicle such as a company, a trust, a foundation, or some other entity. This can be determined by the number of shares held, control of a significant percentage of voting rights, or the ability to name or remove the members of an entity’s board of directors. 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 RSL 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 domestic Income Tax Act is applicable. The rate of withholding tax provided in the law is 25% (dividends, interest, royalty, and management charge), unless the payment is for a service fee for which 10% is applicable.

(5) Review of Contract/Payment and characterisation of income items

- The character/nature of the payment must be determined so that the relevant article of the treaty can be applied. This implies that the Lesotho payer will closely look at the contract or agreement that serves as the basis for payment and make a determination of whether the payment is for goods purchased, services, rental, royalty, interest, dividends, management fee, or any other item of expenditure. That is, the payer must clearly be able to characterise the payment to be able to apply the correct treaty article(s).

- The contract amount and duration must be stated.

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 confirmed the residence of the recipient			
3. I have determined beneficial ownership of the income			
4. I have determined the applicable DTA			
5. I have properly characterised income items			
6. I have applied the correct articles on income items			

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