

GOVERNMENT NOTICE**SOUTH AFRICAN REVENUE SERVICE****No. 1009****12 December 2014****DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT, 2001****MINUTE**

In accordance with the powers vested in me by section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), I hereby recognize the African Tax Administration Forum for the purposes of granting the immunities and privileges as provided for in the Agreement between the Government of the Republic of South Africa and the African Tax Administration Forum for the Hosting of the Secretariat of ATAF as set out in the Notice.

Ms Maite Nkoana-Mashabane
Minister of International Relations and Co-operation
Date: 19 August 2014

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE AFRICAN TAX ADMINISTRATION FORUM (“ATAF”) FOR THE HOSTING OF THE SECRETARIAT OF ATAF IN THE REPUBLIC OF SOUTH AFRICA

In terms of section 7(1) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Agreement for the hosting of the Secretariat of the African Tax Administration Forum in the Republic of South Africa as set out in the Schedule to this Notice has been entered into with the African Tax Administration Forum and has been tabled in Parliament in terms of section 231(3) of the Constitution.

It is further notified in terms of paragraph 1 of Article 12 of the Agreement, that the date of entry into force is 2 December 2013.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE AFRICAN TAX ADMINISTRATION FORUM (“ATAF”) FOR THE HOSTING OF THE SECRETARIAT OF ATAF IN THE REPUBLIC OF SOUTH AFRICA

PREAMBLE

The Government of the Republic of South Africa and the African Tax Administration Forum (hereinafter jointly referred to as the “Parties” and separately as a “Party”);

PURSUANT to the decision by the ATAF Council in Kampala, Uganda during November 2009 to establish a Secretariat for ATAF which would be hosted in the Republic of South Africa;

NOTING that ATAF wishes to establish the Office of the Secretariat of ATAF in the Republic of South Africa, and that the Government of the Republic of South Africa agrees thereto, as well as to recognise the legal status of ATAF, to provide for the effective operation of the Secretariat in the Republic of South Africa and to grant the Secretariat and certain of its officials certain privileges and immunities in accordance with the Agreement on the Establishment of the African Tax Administration Forum;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

In this Agreement, unless the context indicates otherwise:

- (a) “archives” includes all the records, correspondence, documents, manuscripts and computer records belonging to or held by the Secretariat for the purpose of its official activities, performing its functions or in the furtherance of the objectives of ATAF;
- (b) “ATAF” means the African Tax Administration Forum established as an international organisation in terms of the Agreement on the Establishment of the African Tax Administration Forum;
- (c) “Council” means the ATAF Council as established under the Agreement on the establishment of the African tax Administration Forum;
- (d) “Country” means the Republic of South Africa;
- (e) “Executive Secretary” means the head of the Secretariat of ATAF, appointed in accordance with the provisions of the Agreement on the Establishment of the African Tax Administration Forum;
- (f) “Government” means the Government of the Republic of South Africa;

- (g) “locally recruited personnel” means persons appointed by ATAF in terms of Article 9;
- (h) “members of the family” means:
 - (i) the spouse, being the legal spouse recognised as such under the domestic law in force in the territory of the Country;
 - (ii) any dependant child under the age of eighteen (18) years;
 - (iii) any other dependant person officially recognised as a member of a family by ATAF and accepted as such by the Department of International Relations and Cooperation of the Republic of South Africa;
 - (iv) the life partner officially recognised as a member of a family by ATAF and accepted as such by the Department of International Relations and Cooperation of the Republic of South Africa;
- (i) “Office” means the office premises used by the Secretariat;
- (j) “official functions” means all activities carried out at the direction of the Executive Secretary in pursuit of the objectives and functions of ATAF;
- (k) “officials of ATAF” means the Executive Secretary and all persons appointed in, or seconded to the Secretariat in order to carry out the functions and implement the programmes of ATAF, with the exception of locally recruited personnel;
- (l) “property of ATAF” means all property, whether movable or immovable and includes funds, intellectual property, income and other assets, belonging to ATAF and its institutions or held or administered by the Secretariat for or on behalf of ATAF or in furtherance of its purposes and functions;
- (m) “resident” means a resident as defined in the Country’s Income Tax Act, No.58 of 1962; and
- (n) “Secretariat” means the Secretariat of ATAF as established under Article 10 of the Agreement on the establishment of the African Tax Administration Forum.

ARTICLE 2

ESTABLISHMENT

1. ATAF is hereby authorised to establish its Office in the Country.
2. ATAF shall enjoy, in the furtherance of its official functions, treatment no less favourable than that accorded to other international organisations in the Country.
3. The Government shall provide ATAF with the necessary uninterrupted public services on the same basis as it does to other international organisations.
4. The Government shall provide an initial contribution for the establishment of the ATAF Secretariat in the Country. The initial contribution by the Government shall be governed by a separate agreement to be entered into between the Parties.

ARTICLE 3

LEGAL PERSONALITY

1. ATAF shall have international legal personality, as well as the domestic legal capacity to, among others, contract, acquire and dispose of property, enter into contracts with service providers, institute legal proceedings in the Country, and perform all actions necessary for the furtherance of the objectives of ATAF.
2. The Government recognises the legal personality of ATAF and in particular its international legal personality with the capacity to enter into international agreements.

ARTICLE 4

INVIOABILITY OF OFFICE

1. The Office and its archives shall be inviolable.
2. ATAF's property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar and in any particular case immunity has been expressly waived.
3. Waiver of immunity from legal process shall not be held to imply waiver of immunity in respect of any measure of execution, for which a separate waiver shall be necessary.
4. No officer or official of the Government or person exercising any public authority within the Country shall enter the Office to perform any duties therein except with the consent of and under the conditions approved by the Executive Secretary.
5. The Executive Secretary's consent contemplated in sub-Article 4 shall be presumed in the event of fire or other analogous emergency requiring urgent action.
6. The Office shall not be used in a manner incompatible with the functions of the Secretariat.

ARTICLE 5

EXEMPTION FROM TAXATION

1. Within the scope of its official functions, the assets, income and property of ATAF shall be exempt from all forms of direct taxation; however ATAF shall not claim exemption from taxes which are no more than charges for public utility services.
2. ATAF shall be exempted from custom duties, all prohibitions and restrictions on the importation and exportation of articles (including equipment, materials and vehicles), imported or exported by the Secretariat for its official use and for implementation or completion of its projects or necessary for the furtherance of the objectives of ATAF.
3. Goods imported free of duties and taxes shall not be sold, transferred or disposed of in the Country without prior approval of and under conditions agreed to with the Government.

4. ATAF will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid; however, when the Secretariat makes purchases for official use on which such duties and taxes have been charged or are chargeable, the Government shall, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax charged.

ARTICLE 6

FINANCIAL TRANSACTIONS

ATAF may, subject to the requirements of the South African Reserve Bank:

- (a) hold funds and currency of any kind and operate accounts in any currency;
- (b) freely transfer its funds and currency to and from the Country; and
- (c) convert any currency held by it into any other currency, provided that such funds originate from non-resident sources.

ARTICLE 7

COMMUNICATION

1. ATAF shall, for its official communication, enjoy treatment no less favourable than that accorded by the Government to any other international organisation in the Republic of South Africa, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communication and press rates for information to the press and radio.

2. The Government shall ensure that official correspondence and other official communications of ATAF shall be free of censorship.

3. Nothing in this Article shall be constructed as to preclude the adoption of appropriate security precautions to be determined by agreement between the Government and ATAF.

4. ATAF shall have the right to use codes and to dispatch and receive its official correspondence either by courier or in sealed bags which shall have the same immunities and privileges as diplomatic bags and couriers.

ARTICLE 8

PRIVILEGES AND IMMUNITIES

1. The Government shall accord to:
 - (a) the Executive Secretary who is not a national or permanent resident of the Country, and the members of their family, the same privileges and immunities, exemptions and facilities as are accorded to officials of comparable ranks forming part of diplomatic representatives at diplomatic missions accredited to the Government;
 - (b) the officials of ATAF, who are not nationals or permanent residents of the Country:
 - (i) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, unless such word or acts are as a result of gross negligence on the part of the ATAF official in question;
 - (ii) exemption from taxation on the salaries and emoluments paid to them by the Secretariat;
 - (iii) Immunity, together with members of their family, from immigration restrictions and alien registration;
 - (iv) free movement within the Country;
 - (v) where necessary, the timeous issuance of visas, work, travel and residence permits in the Country;
 - (vi) the right to import free of duty their furniture and effects, at the time of taking up their post in the Country;
 - (vii) the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks in diplomatic missions accredited to the Government; and
 - (viii) the same repatriation facilities in time of international crises as granted to diplomatic envoys.
 - (c) The officials of ATAF, who are nationals or permanent residents of the Country, the immunities referred to in sub-Articles 1(b)(i).
 - (d) In view of the exclusion of nationals or permanent residents in sub-Article 1(b)(ii), the Government shall use its best endeavours to put in place, within a reasonable period of time, an administrative process to ensure tax neutrality or compensation for ATAF and such nationals or permanent residents.
2. Privileges and immunities granted under this Agreement to the Executive Secretary and officials of ATAF are granted in the interest of ATAF and not for the personal benefit of the individuals themselves.

3. Officials of ATAF shall be provided by the Government with a special identity card which shall serve to identify the holder to the authorities of the Republic of South Africa and to certify that the holder enjoys the privileges and immunities specified in this Agreement. Officials of ATAF shall, upon the termination of their employment or reassignment from South Africa, return promptly to the Government the special identity card for cancellation.

4. The Executive Secretary shall have the right and the duty to waive the immunity of officials of ATAF or of members of their family in any case where, in the opinion of the Executive Secretary, the immunity would impede the course of justice and can be waived without prejudice to the interest of the Secretariat.

5. The Secretariat shall co-operate at all times with the appropriate authorities of the Government to facilitate the proper administration of justice and avoid the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to officials of ATAF.

6. The Executive Secretary shall timeously notify the Government of names and ranks of the officials of ATAF in order to facilitate the granting of immunities and privileges.

ARTICLE 9

LOCALLY RECRUITED PERSONNEL

1. The Secretariat shall have the authority to recruit personnel locally for carrying out functions and implementing programmes of ATAF.

2. Such personnel may be recruited from among nationals of the Country or nationals of other countries with residence and work permits in the Country.

3. The conditions of employment of locally recruited personnel shall be expected to approximate prevailing norms in the Country, with such modifications as may be required to assure availability of well qualified personnel.

4. Locally recruited personnel shall be recruited under the applicable rules of ATAF, with the proviso that the applicable rules of ATAF shall not apply if and when they conflict with the domestic law in force in the territory of the Country.

ARTICLE 10

SETTLEMENT OF DISPUTES

1. Any dispute between the Parties arising out of, or relating to the interpretation or implementation of this Agreement that cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party.

2. For the purposes of the implementation of this Article:
 - (a) each Party shall appoint one arbitrator and advise the other Party of the name of this arbitrator. Should the two arbitrators fail to agree upon an award they shall immediately appoint an umpire in order to secure an award. In the event that within thirty (30) calendar days of requesting arbitration a Party has not appointed an arbitrator, or in the event that the appointed arbitrators fail to agree on an award and/or the appointment of an umpire, either Party may request the President of the International Court of Justice to appoint an arbitrator or an umpire, as the case may be, for the purpose of securing an award;
 - (b) decisions on an award, including decisions on procedural matters and the costs of arbitration, shall be reached through a majority decision and shall be final and binding and be implemented by the Parties; and
 - (c) the costs of arbitration shall be borne by the Parties as laid down in the arbitration award.

ARTICLE 11

AMENDMENT

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties.

ARTICLE 12

ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the date of signature thereof by the Parties.
2. This Agreement shall remain in force until terminated in accordance with sub-Article 3.
3. In the event of termination of this Agreement by either Party; such Party shall give six (6) calendar months written notice to the other Party in advance of its intention to terminate the Agreement.
4. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfillment or termination of all obligations entered into by virtue of this Agreement.
5. Should ATAF decide to close the Office in the Country, the closing date will be communicated by the Executive Secretary to the Government in writing six (6) calendar months in advance of such closure. During such period and until the final closure of the Office the provisions of this Agreement shall continue to apply.
6. In the event of the termination of this Agreement or the closure of the Office in the Country the Government shall permit ATAF and the Secretariat to perform all acts necessary for the orderly termination of its operations, to secure its property, the interests of ATAF, its officials and locally recruited personnel.

ARTICLE 13

DEPOSITORY

1. The original documents and ancillary texts of the Agreement shall be deposited with the Executive Secretary, who shall submit copies thereof to all member States.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed and sealed this Agreement in duplicate in the English language, both texts being equally authentic.

DONE at Pretoria on this 2nd day of December in the year 2013.

**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR THE AFRICAN TAX
ADMINISTRATION FORUM**