

GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 365

11 MAY 2015

VALUE-ADDED TAX, 1991

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF LESOTHO ON MUTUAL ASSISTANCE AND CO-OPERATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO VALUE-ADDED TAX

In terms of section 75(2) of the Value-Added Tax, 1991 (Act No 89 of 1991), 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 on mutual assistance and co-operation and the prevention of fiscal evasion with respect to value-added tax set out in the Schedule to this Notice has been entered into with the Government of the Kingdom of Lesotho and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 1 of Article 8 of the Agreement that the date of entry into force is 29 October 2014.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF LESOTHO ON MUTUAL ASSISTANCE AND CO-OPERATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO VALUE-ADDED TAX

PREAMBLE

The Government of the Republic of South Africa and the Government of the Kingdom of Lesotho (hereinafter jointly referred to as the “Contracting States” and in the singular as the “Contracting State”) –

HAVING regard to their tax legislation;

WISHING to enter into an agreement to make provision for and regulate various matters relating to tax;

CONSCIOUS that practices of tax evasion and tax avoidance extending across the frontiers of the Contracting States lead to budget losses and are liable to bring about distortion of business practices and conditions of competition;

CONSCIOUS that the international nature of the problem renders national measures insufficient because their effect does not extend beyond national frontiers;

DESIROUS to exchange any information which appears relevant for the correct assessment or refund of tax or where such tax has been or may be evaded or avoided so as to obtain an undue tax benefit;

RECOGNISING that collaboration between the tax authorities is necessary for the continuous study of co-operation procedures and the pooling of experience in the field of tax with the aim of improving those procedures and of preparing appropriate rules;

DESIROUS that the Agreement should provide for mutual assistance and co-operation between the Contracting States and should be construed as complementary to, and not curtailing, mutual assistance between the Contracting States under any other agreements or arrangements;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

In this Agreement, any word or expression to which a meaning has been assigned in the tax legislation shall have the meaning so assigned, unless the context otherwise indicates and –

- (a) “assessment” means any assessment made by a tax authority in respect of tax;
- (b) “Claims and Refund Manager” means the person that may be appointed from time to time, being responsible for managing, administering or rendering any advice, service or assistance regarding the operation of a refund system in accordance with the tax legislation of Lesotho and South Africa, as the case may be;
- (c) “export State” means the Contracting State from which goods or services are exported to the other Contracting State;
- (d) “from outside the Contracting States” means from any country other than Lesotho or South Africa;
- (e) “import State” means the Contracting State to which goods or services are imported from the other Contracting State;
- (f) “Lesotho” means the sovereign Kingdom of Lesotho comprising all the areas that immediately before 4 October 1966 were comprised in the former colony of Basutoland together with such other areas that may, in accordance with international law, be declared by an Act of the Lesotho Parliament to form part of Lesotho;
- (g) “person” includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund which is treated as an entity for tax purposes;
- (h) “requested authority” means the tax authority of the Contracting State from which assistance is requested;
- (i) “requesting authority” means the tax authority of the Contracting State which requests assistance;
- (j) “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (k) “tax” means value-added tax in Lesotho and South Africa, as the case may be;
- (l) “tax authority” means -
 - (i) in Lesotho, the Commissioner General of the Lesotho Revenue Authority or an authorised representative of the Commissioner General; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;

- (m) "tax legislation" means the legislation which provides for the levy and payment of value-added tax in Lesotho and South Africa, as the case may be.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply in respect of tax levied in terms of the applicable tax legislation of each of the Contracting States.

2. The tax authorities of the Contracting States shall notify each other of any significant changes in their respective tax legislation.

ARTICLE 3

REFUND SYSTEM

1. Under the powers vested in the Governments of the Contracting States by the relevant provisions of the tax legislation, a refund system to administer the refund and assessment of tax as provided for in this Agreement shall be established.

2. Each Contracting State may appoint a Claims and Refund Manager and shall inform the other Contracting State of any such appointment.

3. Refunds in respect of tax shall be administered by each Contracting State or by the Claims and Refund Manager subject to tax legislation and in accordance with the provisions of this Agreement.

4. The tax authorities of the Contracting States shall, subject to tax legislation and in accordance with the provisions of the Agreement, develop a Memorandum of Understanding setting out operational procedures regarding -

- (a) any matter relating to the refund of tax in respect of exports from an export State to an import State;
- (b) the determining and monitoring of the amounts refundable in terms of the Agreement;
- (c) the intervals at which refunds are to be made in terms of the Agreement;
- (d) the responsibilities of a Claims and Refund Manager; and
- (e) any matter that will facilitate or improve the operation of the refund system provided for in the Agreement.

5. Where tax has been charged and collected by a vendor in the export State on a sale or supply of goods which have been exported, any refund due in respect of such amount of tax shall, after deduction of any commission due to the Claims and Refund Manager, be transferred to the tax authority in the import State or refunded to the importer. The terms and conditions for the transfer or refund must be determined by the tax authorities of the Contracting States in the Memorandum of Understanding.

6. Where an importer has paid a lesser amount of tax in the export State in respect of a sale or a supply of goods that have been exported than the tax liability in the import State, the deficit shall be recovered from the importer by the tax authority in the import State.

ARTICLE 4

EXCHANGE OF INFORMATION

1. The tax authorities of the Contracting States shall exchange any information which is foreseeably relevant for the correct assessment or refund of tax or to combat the evasion or avoidance of tax. Exchanges will be done in accordance with the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion for the time being in effect between the Contracting States and shall be subject to the same limitations on use and confidentiality.

2. The tax authorities of the Contracting States may communicate with each other directly in the implementation of this Agreement.

ARTICLE 5

NOTIFICATION OF ASSESSMENT, CLAIM OR DECISION

1. The requested authority shall, upon the request of the requesting authority, notify a person of all assessments, claims or decisions addressed to that person, including those of a legal nature, which relate to tax and which emanate from the territory of the Contracting State in which the requesting authority is situated. The notification by the requested authority shall be done in accordance with the rules in force for the notification of similar assessments, claims or decisions in the territory of the Contracting State in which the requested authority is situated.

2. The request for notification referred to in sub-article 1, shall include the name and physical and postal addresses of the person concerned, the nature and subject of the assessment, claim or decision to be notified and any other relevant information.

3. The requested authority shall promptly inform the requesting authority of the action taken on its request and of the date on which the assessment, claim or decision was forwarded to the person concerned.

ARTICLE 6

AMENDMENTS

The Contracting States may, at any time, revise or amend this Agreement by mutual consent through an Exchange of Notes through the diplomatic channel.

ARTICLE 7

RESOLUTION OF DIFFICULTIES

The tax authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place directly between representatives of the tax authorities of the Contracting States.

ARTICLE 8

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on the date on which each Contracting State has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation of the Agreement. The date of entry into force shall be the date of the last notification.

2. The Agreement shall remain in force indefinitely unless terminated by either Contracting State by giving three months notice in writing through the diplomatic channel of its intention to terminate the agreement. The Contracting States shall remain bound by the provisions of the Agreement for as long as either Contracting State at the time of termination has any outstanding duties to be performed in terms of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement, in two originals in the English language, both being equally authentic.

DONE at Maseru on this 6th day of March 2014.

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

**FOR THE GOVERNMENT OF THE
KINGDOM OF LESOTHO**