France; Rwanda

Tax Treaty Between France and Rwanda – Details

21 July 2023

Report from our correspondent Pierre Burg

Details of the France - Rwanda Income Tax Treaty (2023), signed on 22 June 2023, have become available. The treaty was concluded in the French language only. The treaty follows both the OECD Model (2017) and the UN Model (2021).

The maximum rates of withholding tax are:

- 15% on dividends, reduced to 7.5% if the beneficial owner is a company holding directly at least 25% of the capital of the distributing company for a 365-day period including the payment day. Specific rules apply to dividends distributed by a real estate collective investment vehicle (*see* further, under main deviations);
- 10% on interest, except for interest paid or received by certain governmental entities, which are taxable only in the residence state;
- 10% on royalties; and
- 10% on service fees (managerial and technical).

Deviations from the OECD Model (2017) are as follows:

- article 1 (persons covered) contains specific rules regarding tax transparent entities (e.g. partnerships) established in France or in a third state;
- article 2 (taxes covered) does not include taxes on capital and taxes on wages or salaries paid by enterprises among taxes covered by the treaty;
- article 3 (general definitions) does not provide a definition of a "recognized pension fund" (however, collective investment vehicles may benefit from the treaty provisions regarding dividends and interest pursuant to paragraph 2 of the protocol);
- article 4 (resident): the residence tie-breaker rule for legal persons is the place of effective management. French partnerships are considered resident if they fulfil the three following conditions:
  - their place of effective management is located in France;
  - the partnership is liable to tax in France; and
  - all partners are personally subject to tax with respect to their share of the partnership's profits. Residents must be entitled to the income and not just the apparent recipient of it;
- article 5 (permanent establishment): the term "permanent establishment" encompasses a building site, a construction, assembly or installation project that lasts more than 9 months in any 12-month period, as well as substantial equipment or machinery used (or available for operation) for 183 days or more in any 12-month period;
- article 7 (business profits) partly follows the UN Model (2021);
- article 8 (international transport) provides for specific rules regarding shipping enterprises having their place of effective management aboard a ship, as well as regarding profits derived from bareboat lease or from the use or rental of containers;
- article 9 (associated enterprises) does not apply to enterprises liable to penalties for tax fraud, in line with article 9(3) of the UN Model (2021);
- article 10 (dividends): specific rules apply to dividends distributed from income or gains derived by a real estate collective investment vehicle the profits of which are exempt from taxation. Such dividends may be subject to a withholding tax in the source state with no limit if their beneficial owner holds directly or indirectly 10% or more of the capital of the investment vehicle, or at a maximum rate of 15% if the beneficial owner holds less than 10% of the capital of the investment vehicle;
- article 12 (royalties) generally follows the UN Model (2021). Paragraph 4 of the protocol clarifies the definition of royalties;
- article 13 (fees for technical services) implements article 12A of the UN Model (2021) and allows the source state to tax fees for technical services, up to 10% of the gross amount of the fees;
- article 14(4) on real estate capital gains emphasizes that immovable property pertaining to a company's business is not taken into account to determine the company shares' value that is derived from immovable property;
- article 17 (entertainers, sportspersons and models): income derived by entertainers, sportspersons, or models, including income paid to another person (e.g. a "rent-a-star" company) and income from performances that are not independent from their professional fame, is taxable in the source state. However, such income is taxable in the residence state only when the performance in the source state is funded by a governmental entity of the residence state;
- article 24 (mutual agreement procedure) does not provide for arbitration; and
- article 28 (entitlement to benefits) incorporates only the principal purpose test (PPT) as a general anti-abuse rule.

Rwanda generally applies the tax credit method to eliminate double taxation.

France eliminates the double taxation of Rwandan-source income through a tax credit:

- equal to the Rwandan tax ("real" tax credit) with respect to business profits, dividends, interest, royalties, fees for technical services, certain capital gains, income from employment in a ship or aircraft operated in international traffic, directors´ fees, and income derived by entertainers, sportspersons and models; or
- equal to the French tax (i.e. equivalent of an exemption method) for other income, provided that the income was subject to tax in Rwanda.

The treaty provisions generally apply from 1 January of the year following the entry into force (article 30).

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