

BINDING GENERAL RULING (INCOME TAX) 9 (Issue 3)

DATE: 3 February 2017

SUBJECT : TAXES ON INCOME AND SUBSTANTIALLY SIMILAR TAXES FOR PURPOSES OF SOUTH AFRICA'S TAX TREATIES

Preamble

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**OECD Model**” means the OECD Model Tax Convention on Income and on Capital;¹
- “**section**” means a section of the Act;
- “**STC**” means secondary tax on companies;
- “**tax treaty**” means an agreement for the avoidance of double taxation;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- “**treaty relief**” means relief from double taxation.

All lists of tax treaty rates referred to in this BGR are available on the SARS website at **www.sars.gov.za**.

1. Purpose

This BGR identifies the taxes administered by SARS which in its opinion constitute taxes on income or substantially similar taxes for purposes of South Africa's tax treaties.²

2. Background

A tax treaty generally provides for relief for –

- specified taxes, usually listed under Article 2 of a tax treaty, in existence at the time the tax treaty is entered into; and

¹ OECD *Model Tax Convention on Income and on Capital*: Condensed Version (2014) OECD Publishing.

² See Issue 2 of BGR 9 for SARS's view on the recognition of STC and dividends tax as covered taxes under South Africa's tax treaties. Since STC is not a tax on dividends, the rate at which it is levied is not affected by any limitation imposed on the source state under the dividends article of South Africa's tax treaties. South Africa had reached agreement with all its treaty partners that STC was to be viewed as a creditable corporate tax, since it is a tax on income. Article 23B of the OECD Model deals with the credit method under Chapter V (Methods for elimination of double taxation).

- any identical or substantially similar taxes on income that are imposed after the date of signature of the tax treaty in addition to, or in place of, existing specified taxes.

3. Ruling

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

3.1 Taxes on income

The following taxes as at publication date of this BGR are taxes on income and therefore qualify for treaty relief under South Africa's tax treaties:

- Normal tax on taxable income, which includes a taxable capital gain (section 5)
- Tax on foreign entertainers and sportspersons, a final tax [section 47B(1)]
- Turnover tax on micro businesses (section 48A)
- Withholding tax on royalties, a final tax [section 49B(1)]³
- Withholding tax on interest, a final tax [section 50B(1)]⁴
- STC (dividends declared before 1 April 2012) [section 64B(2)]⁵
- Dividends tax (dividends declared and paid on or after 1 April 2012) [section 64E(1)]⁶

For purposes of the above list, the following are not taxes on income but represent advance payments of normal tax:

- Amounts withheld from payments to non-resident sellers of immovable property in South Africa (section 35A)
- Employees' tax (Fourth Schedule to the Act)
- Provisional tax (Fourth Schedule to the Act)

3.2 Taxes that are not taxes on income or similar taxes

South African taxes as at the date of publication of this BGR that are not taxes on income or similar taxes, and which do not qualify for treaty relief, include the following:

- Customs and excise duties
- Diamond export levy

³ See OECD Model in Article 12 "Royalties". For a list of tax treaty rates see "Withholding Tax on Royalties: Summary of withholding tax rates per South African Double Taxation Agreements currently in force" (version 1).

⁴ See OECD Model in Article 11 "Interest". For a list of tax treaty rates see "Withholding Tax on Interest: Summary of withholding tax rates per South African Double Taxation Agreements currently in force" (version 1). The withholding tax on interest came into effect on 1 March 2015 and applies to interest paid or that becomes due and payable on or after that date.

⁵ Sections 64B and 64C, dealing with STC, are to be repealed with effect from 1 April 2017.

⁶ See OECD Model in Article 10 "Dividends". For a list of tax treaty rates see "Dividends Tax: Summary of withholding tax rates per South African Double Taxation Agreements currently in force" (version 6) dated 30 November 2015.

- Donations tax
- Estate duty
- International oil pollution compensation fund contributions levy⁷
- Royalty levied on the transfer of a mineral resource extracted from within South Africa
- Securities transfer tax
- Skills development levy
- Transfer duty
- Unemployment insurance contributions
- Value-added tax

The above list is not exhaustive.

4. Period for which this ruling is valid

This BGR applies for an indefinite period with effect from the date of publication.

Executive: Legal Advisory

Legal Counsel

SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 19 September 2011

Date of 2nd issue : 19 February 2013

⁷ The Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act 36 of 2013 came into operation on 1 May 2014. The rate of the levy for a particular tax period is determined by the Minister by notice in the *Gazette*. See Government Notice 222 in *Government Gazette* 39922 of 15 April 2016.