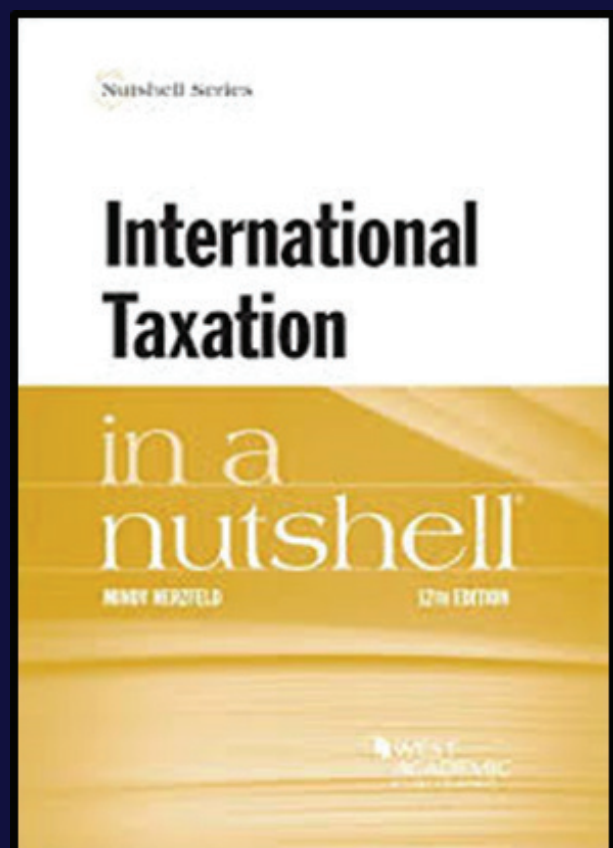




## **LESOTHO REVENUE AUTHORITY**

# **GUIDELINES FOR GRANTING TAX TREATY BENEFITS TO NON-RESIDENTS**



# 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 benefits (which are largely in the form or reduced tax rates) to the residents of Lesotho and the residents of those other states. Income earned in Lesotho by a non-resident is taxable in Lesotho. The tax collection mechanism for most income types is through withholding tax by the payer in Lesotho, who should ultimately remit the tax withheld to the Lesotho Revenue Authority (LRA). The Income Tax Act 1993 (as amended) obliges the payer, also referred to as 'withholding agent' to deduct tax from the payment and remit the same to the Lesotho Revenue Authority (LRA). 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 that the non-residents do not unduly benefit from the DTAs which Lesotho has concluded with the other countries. The obligations of the Lesotho payers emanate from both the domestic law, Lesotho Income Tax Act 1993 (as amended) and the international law, the DTAs with the respective states.

# 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 LRA should be consulted to make a determination, working together with the DTA treaty partner.

# STEPS TO FOLLOW WHEN GRANTING TAX TREATY BENEFITS...

## 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 LRA 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.

# STEPS TO FOLLOW WHEN GRANTING TAX TREATY BENEFITS...

## 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.

## 6. METHOD OF TAX COLLECTION

- The Lesotho payer is responsible for deducting or withholding the tax due before paying the non-resident. The tax so withheld is remitted to the LRA by the Lesotho payer.
- The Lesotho payer issues withholding certificate to the non-resident and also returns a copy of the certificate to the LRA.

## 7. ADJUSTMENTS

- The LRA could make adjustments (including denial of deductions) where payments to non-residents are deemed excessive or are paid as part of tax avoidance and evasion schemes.

# FURTHER INFORMATION AND GUIDANCE AND FINAL PROCEDURES

## **1. INFORMATION AND ASSISTANCE**

Where there is need for more information, difficulties and challenges arise in undertaking the steps above, the following office must be contacted:

### **Manager – International Treaty Development**

Designated Competent Authority – MAP & Practical Treaty Aspects

Lesotho Revenue Authority – Maseru Mall

P O Box 1085

Tel: 5221 5214

Email: [eoilra@lra.org.ls](mailto:eoilra@lra.org.ls)

## **2. FINAL PROCEDURES**

- Before making final processes and payments the 'checklist' appended to the guidelines should be completed and used as basis and aid to filling the appropriate withholding tax certificates and making final payments to the LRA.

**The checklist must be filled in triplicate and distributed as follows;**

- i. 1st copy – to be issued to the non-resident,
  - ii. 2nd copy – to be issued to the LRA, and
  - iii. 3rd copy – to be retained by the withholding agent for own records.
- The checklist must be duly signed by the withholding agent.

# 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		
7. I have duly filled the withholding tax certificate		

### DECLARATION

I  declare that I have duly completed the checklist as guidance for granting tax treaty benefits. I further sought assistance from the LRA where I could not make own decisions or determinations.

Signed

Date

**THE END**