

South African Tax Treaty Policy and Co-operation in tax matters in BRICS countries

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Deriving the tax treaty policy

- No public documents clearly indicating tax treaty policy
- Tax Treaty Policy to be derived from South African model (as basis for negotiation)
 - Last publically available version was 2005
 - Model now has to be derived from minutes of Parliamentary Committee meetings
 - Lack of transparency for South African tax treaty policy

Deriving the tax treaty policy

- BRICS difficulty:
 - Capital importer from the rest of the world
 - Capital exporter in the region
- Anticipate:
 - UN Model with rest of the world as starting position for greater source taxation in SA
 - OECD Model for rest of Africa for greater residence tax in SA
- Reality: OECD Model is the basis for all treaties with variation from OECD Model noted

Influence of SA treaty policy

- SA treaty policy influenced development of Southern African Development Community (SADC) model
 - Not fully supported in other States
 - Regional outward facing model
 - Conflict with SA tax policy as regards technical services
- Partly influencing development of African Tax Administrators Forum (ATAF) model

Some clear positions

- Certain positions made clear in OECD Model (non-member positions)
 - Permanent establishment issues
 - Construction project time frames and related activities
 - Service permanent establishments
 - Natural resources
 - Attribution of profits
 - Use earlier (2008) OECD Commentary
 - Protection of source rights for royalties and other income
 - Minor issues for other articles of the Model

Co-operation in tax matters

- Revenue Service Strategic Plan aims to strengthen South-South relations in the area of Tax and Customs administration (to advance common positions as per foreign policy)
- Existing IBSA Customs and Tax Administration agreement (IBSA – India, Brazil and South Africa)

IBSA Cooperation

- Revenue Administrations Working Group (RAWG) objections:
 - Formalising the bilateral Mutual Administrative Assistance Agreements
 - Developing the Exchange of Information approach on Tax modernisation
 - Developing the pilot project on electronic connectivity (electronic data interchange)
 - Developing the mechanisms for the conducting of simultaneous audits
 - Developing the knowledge and capacity in the related aspects of Tax and Customs
 - Developing common positions at multilateral fora

SA Foreign Policy

- Revenue Service aims driven by SA foreign policy
- Strategic Plan (Department of International Relations and Cooperation) *2013 - 2018*
 - Vague objective:
“Engage identified organisations and formations of the South to contribute to and advance common positions of the South, also reflecting South Africa’s foreign policy priorities”

Support for BRICS

- 19 November 2015 – Communique of BRICS Heads of Revenue Meeting:

“We will work towards developing a framework of cooperation between our Administrations to contribute to the economic growth of the BRICS countries”

BUT, will this happen and will any tax co-ordination happen – difficult to say!