

Dangers of Double Taxation
Agreements in Financing Development:

Case Studies of Tanzania DTAs with South Africa and India

March 2018

Prepared for: Policy Forum
Consultant: TUMAINI UNIVERSITY DAR ES SALAAM COLLEGE
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PART I: PRELIMINARIES

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DEFINITIONS OF KEY TERMS

Base erosion and profit shifting (BEPS): Tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.

Beneficial owner: A person who enjoys the real benefits of ownership, even though the title to the property is in another name. Often important in tax treaties, as a resident of a tax treaty partner may be denied the benefits of certain reduced withholding tax rates if the beneficial owner of the dividends etc is resident of a third country.

Conduit company: A company set up in connection with a tax avoidance scheme, whereby income is paid by a company to the conduit and then redistributed by that company to its shareholders as dividends, interest, royalties, etc. Sometimes referred to as shell companies or Special Purpose Vehicles.

Controlled Foreign Company (CFC): A non-resident company controlled by resident persons in a given jurisdiction. Control can be defined as legal control, economic control and accounting control.

Domestic Resource Mobilization (DRM): The generation of savings from domestic resources and their allocation to economically and socially productive investments. Such resource allocation can come from both the public and private sectors. The public sector does this through taxation and other forms of public revenue generation.

Double non-taxation: Arises where income or a taxable entity is not taxed across different taxing authorities / jurisdictions.

Double taxation, domestic and international: Domestic double taxation arises when comparable taxes are imposed within a federal state by sovereign tax jurisdictions of equal rank. International double taxation arises when comparable taxes are imposed in two or more states on the same taxpayer in respect of the same taxable income or capital, e.g. where income is taxable in the source country and in the country of residence of the recipient of such income.

Double taxation, economic and juridical: Double taxation is juridical when the same person is taxed twice on the same income by more than one state. Double taxation is economic if more than one person is taxed on the same item.

Force of attraction (FOA) principle: Any profits a multinational makes in a state through sales or other business activities are taxable in that state if there is a permanent establishment (PE) and the activities are the same or similar to those conducted by the PE.

Limitation of benefits (LOB) clause: An anti-treaty shopping provision in tax treaties intended to prevent residents of third countries from obtaining benefits under a treaty.

Most-Favoured Nation (MFN) clause: Principle of non-discrimination embodied in treaties whereby any concession or privilege granted by one contracting party to the treaty to a product of another contracting party will be unconditionally granted to the like product of all other contracting parties.

Mutual Agreement Procedure (MAP): A feature in double tax treaties that allows a taxpayer who considers that he is being taxed in a manner contrary to the terms of the treaty as a result of the actions of one (or both) of the relevant tax authorities, to present its case to the tax authority in the country in which it is resident or national.

Outgoing dividends: Dividends payable on outbound cash flow. Refer to any money a company or individual must pay out when conducting a transaction with another party. Outbound cash flows can include cash paid to suppliers, wages given to employees and taxes paid on income.

Participation dividends: Dividends from participating preferred stock. Participating preferred stock is a type of preferred stock that gives the holder the right to receive dividends equal to the normally specified rate that preferred dividends are paid to preferred shareholders as well as an additional dividend based on some predetermined condition. Participating preferred stock can also have liquidation preferences upon a liquidation event.

Passive income: Earnings derived from a rental property, limited partnership or other enterprise in which a person is not actively involved. As with non-passive income, passive income is usually taxable. Portfolio income is considered passive income by some analysts, in which case dividends and interest would be considered passive.

Source principle of taxation: Principle for the taxation of international income flows according to which a country considers as taxable income those income arising within its jurisdiction regardless of the residence of the taxpayer, i.e. residents and non-residents are taxed on income derived from the country.

Tax haven: A country which imposes low or no tax and is used by corporations to avoid tax which otherwise would be payable in a high-tax country. The key characteristics are; no or only nominal taxes; lack of effective exchange of information; lack of transparency in the operation of the legislative, legal or administrative provisions.

Tax holiday: Fiscal policy measure often found in developing countries. A tax holiday offers a period of exemption from income tax for new industries to develop or diversify domestic industries.

Tax treaty: An agreement between two (or more) countries for the avoidance of double taxation. A tax treaty may be titled a Convention, Treaty or Agreement.

Treaty shopping: An analysis of tax treaty provisions to structure an international transaction or operation so as to take advantage of a particular tax treaty. The term is normally applied to a situation where a person not resident of either the treaty countries establishes an entity in one of the treaty countries in order to obtain treaty benefits.

LIST OF ACRONYMS

AAAA	Addis Ababa Action Agenda
ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
DRM	Domestic Resource Mobilisation
DTA	Double Taxation Agreement
DTTs	Double Taxation Treaties
FDI	Foreign Direct Investment
IFFs	Illicit Financial Flows
IMF	International Monetary Fund
LDCs	Least Developed Countries
MLI	Multilateral Instrument
MNCs	Multinational Companies
MTC	Model Tax Convention
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
PE	Permanent Establishment
PF	Policy Forum
TJN-A	Tax Justice Network Africa
TTJC	Tanzania Tax Justice Coalition
TRA	Tanzania Revenue Authority
UN	United Nations
URT	United Republic of Tanzania

EXECUTIVE SUMMARY

Tanzania has nine Double Taxation Agreements (DTAs) in place with the following countries: Zambia (1968), Italy (1973), Denmark (1976), Finland (1976), Norway (1976), Sweden (1976), India (1979), Canada (1995), and South Africa (2005). Tanzania is also currently negotiating DTAs with the Netherlands, the United Kingdom, the United Arab Emirates, Mauritius, Kuwait, Iran and China without any publicly known or democratically scrutinised negotiation policy. In addition, Tanzania has bilateral investment treaties with nineteen countries and seven other investment agreements with regional economic blocs.

The latest Agreement between Tanzania and India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in Dar es Salaam on 1st January 1979. This Agreement applies to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the way they are levied.

The Agreement between Tanzania and South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was entered into on 15th June 2007.

This report presents study findings on three main items: a critical review of DTAs signed by Tanzania with India and South Africa; an analysis of the dangers that DTAs signed by Tanzania with India and South Africa pose towards financing development in Tanzania; and policy recommendations on the key considerations that Tanzania needs to incorporate during the negotiations or re-negotiation of such DTAs.

This study was carried out with the aid of desk research data derived from major DTA negotiation models commonly adopted across the globe including the OECD Model, UN Model, and the ATAF Model Agreement.

The major findings of the study are as follows:

- Relevance of the presence of trading partnerships: Both South Africa and India are major trading partners of Tanzania and therefore the DTAs in place have major tax implications for Tanzania's tax base;
- Where economically powerful and weaker states are involved in a DTA there is a financial imbalance and a lack of bargaining power on the part of the economically weaker state;
- **The dangers identified in double taxation treaties include:**
 - Tax treaty provisions may override domestic tax laws;
 - OECD Models favour capital exporting states over capital importing states;
 - Under the OECD Model some types of income and capital may only be taxed in the state of taxpayer's residence.
 - Provision of certainty to investors on the taxing rights of the contracting parties is blurred;
 - Double taxation treaties do not directly and conveniently help investors to assess their potential tax liabilities on economic activities;
 - Double taxation treaties leave no added incentive for overseas companies to do business in Tanzania or for Tanzanian companies to do business overseas;
 - Unfriendly rules around capital gains tax and anti-abuse rules can be built into tax treaties.
- **Three main dangers from a tax justice perspective:**
 - **First**, international tax treaties have, in practice, led to a world of widespread double non-taxation – where income effectively gets taxed nowhere thereby enabling tax base erosion.

- **Second**, DTAs create a dilemma over which tax jurisdiction has the right to tax. Is it the source of income (i.e. the one that hosts the inward investment), or the jurisdiction where the investor is resident: the capital-exporting country?
- **Thirdly**, DTAs create challenges regarding how sufficient information can be exchanged to allow tax authorities to get the information they need. DTAs contain protocols for information exchange, but there is another class of tax treaty too: Tax Information Exchange Agreements (TIEAs). Generally, countries ought only to sign TIEAs with tax havens unless they want to see their tax revenues leak offshore through treaty abuses.
- **Some of the challenges witnessed in the case study DTAs:**
 - Profit shifting out of developing countries can have a significant negative impact on their prospects for sustainable development.
 - Developing countries including Tanzania are often less equipped to deal with highly complex tax avoidance practices directly linked to offshore hubs. The more investment is routed through offshore hubs, the less taxable profits accrue.
 - Challenges of financing development through DRM are numerous including: low savings; capital flight; tax incentives including exemptions; poor management of natural resources; narrow tax base; weak administrative systems and organisational capacities; tax evasion and avoidance; relatively harsh business environments in many SSA countries; weak political will and lack of moral justification for tax drive; weak domestic financial institutions and instruments in most SSA countries
 - There is scant research data to conclusively establish direct links between DTAs and the respective nations' economic performance.

The recommendations of this study are as follows:

- DTA negotiations should proceed under the auspices of continental or regional Free Trade Agreements such as NAFTA, SADC, EAC, or ASEAN Protocols whose primary purpose is to strengthen the bloc's respective bargaining powers when negotiating international deals. DTA is one of such deals.
- With capital still flowing predominantly from industrialised to developing countries and capital income flowing the other way, such agreements may put capital-importing developing countries at a disadvantage. This raises the question as to why capital- importing countries should sign such DTAs.
- Although South Africa and India are signatories to an MLI which they use when negotiating tax treaties, Tanzania is not. Since new treaties are being considered and the MLI is still open for additional signatories, there is a need for Tanzania to sign in order to be at an equal footing with other jurisdictions which are MLI Signatories. Governments are rightly placing growth and inclusiveness at the heart of their tax reform efforts which makes MLI an appropriate vehicle through which implementation of tax policy reforms may lead to wider strategies to achieving sustainable development goals.
- Do things differently: With the perspective of hindsight regarding the potential dangers embedded in the DTAs signed by Tanzania with India and South Africa, negotiating capacity and vigilance were of paramount importance. To redress inconsistencies in the case study DTAs the following specific policy agenda are recommended:
 - (a) The Addis Ababa Action Agenda (AAAA) of the Third International Conference on Financing for Development (Addis Ababa, 13 – 16 July 2015) provides a new global framework for financing sustainable development by aligning all financial flows and policies with economic, social and environmental priorities. As underlined in the AAAA, countries need to strengthen tax administration, implement policies to generate additional resources, and combat corruption and illicit financial flows.
 - (b) Bilateral relief may either take the form of tax exception or a tax credit. It may involve the exemption method whereby tax jurisdiction over specified categories of income is assigned exclusively to one of the contracting parties, and the other agrees to exempt that category of income from tax, or refrain from exercising its jurisdiction to tax the particular income in question.

- (c) In order to make sure that the investors benefit and not the home country government, many developing countries insist on having a “*tax sparring*” clause in the tax treaties with developed countries. A typical tax treaty is designed to deal with three forms of double taxation:
- (i) The dual residence problem with respect to individuals is resolved by a series of rules establishing a hierarchy among the various tests of residence.
 - (ii) The source problem: To solve the source conflict double taxation problem, contracting states can provide a common source of income rule in the tax conventions.
 - (iii) The model tax treaty: Countries should develop a model tax treaty (tailor- made model) that reflects the key aspects of *the policy framework*. The model facilitates ease of negotiation and design of effective provisions. Developing countries are highly advised to base their models as far as practicable on the United Nations Model Convention.
- (d) It is recommended that any country’s model should include UN Model fundamental provision. A study of East African countries reveals reliance treaties, but some jurisdictions have been able to retain more taxing rights than others by greater reliance on approaches based on the UN model.¹ Certain features of the United Nations Model Convention are found in all modern tax treaties, such as: provision for elimination of double taxation; inclusion of non-discrimination rules; provision for mutual agreement between tax administrations; and provision for exchange of tax information between tax administrations, including information held by banks and other financial institutions.²
- Countries should create awareness and enhance public participation in the negotiation of DTAs. DTAs are binding laws and they ought to be subjected to public scrutiny. Building capacity in complex international tax matters such as offshore transfers of assets requires awareness creation among citizens and other stakeholders on DTAs. International tax issues relating to extractive industries for instance require high levels of public participation to avoid unnecessary conflicts which are commonplace in the mining sector in Tanzania.
 - Tanzanian DTAs currently in force are out of date and revenue collection favours the treaty partners. Evidence reveals that existing DTAs are largely harmful and costly to Tanzania. They are therefore overdue for review for the benefit of Tanzanians.
 - Avoid tax incentives: In June 2012 a report estimated that Tanzania, one of the poorest countries in the world, was losing around 1 billion USD in tax revenue annually mostly in the form of tax evasion, capital flight and tax incentives.³
 - Tanzania should carry out a comparative analysis of the rates of all DTAs vis-a-vis the local investor. A thorough analysis will highlight the basis for the rates as well as the impact and implications for Tanzania

This final report includes:

1. Preliminaries
2. Main report
3. References; and
4. Appendices

PART II: THE MAIN REPORT

1.1 Context of the study

Developing countries are beginning to realise the importance of domestic resource mobilisation (DRM), and specifically the need to reduce dependence on aid and sustain development financing through their own resources, taxation in particular. The role of tax systems in driving DRM for development and the importance of genuine developing country voice and participation in setting the rules for international tax cooperation are themes at the top of the global agenda for development financing.

Tanzania, like many other countries has continued to implement policies geared towards attracting foreign direct investment (FDI) inflows through improvement of investment climate through the Tanzania Investment Centre (TIC). In addition, Tanzania has bilateral investment treaties with nineteen countries and seven other investment agreements with regional economic blocs. The country is also a signatory to global investment instruments such as the International Centre for Settlement of Investment Disputes (ICSID) convention, the New York Convention, and the UN Guiding Principles on Business and Human Rights. Tanzania has also focused efforts on policy and structural reforms targeting the business and investment environment in the country. In an effort to reduce the barriers to international trade and investment⁴ Tanzania has negotiated double taxation agreements (DTAs), also known as double tax treaties (DTTs), with other countries. Today Tanzania has a network of nine double taxation agreements⁵ and is also reported to be in the process of negotiating more agreements.⁶ DTAs are meant to foster both international relations and economic development through investment.

A DTA is an agreement between two countries that reduces the tax bill for an individual who is a resident of one country but has citizenship in the other country. The agreement strives to prevent the taxpayer from paying tax to both countries (double taxation). The primary purpose of double taxation agreements is to facilitate the international flow of capital, technology, goods and services (CTGS) by eliminating double taxation of income and other taxes in international transactions through a bilateral (occasionally multi-lateral) resolution of the conflicts between overlapping tax jurisdictions. The presence of DTAs is intended to enable companies to do cross- border business while managing tax issues.

1.2 Aim and objectives of the study

This study aims to demystify the policy logic behind the signing of various tax treaties in Tanzania. Specifically, the study seeks to achieve the following three objectives:

- (i) To conduct a critical review of DTAs signed by Tanzania with South Africa and India;
- (ii) To analyse the dangers that DTAs pose towards financing development in Tanzania; and
- (iii) To make policy recommendations on the key considerations that Tanzania needs to incorporate during DTA negotiations.

⁴ [http://www.africataxjournal.com/Tanzania: DTAs and Practical Issues and Insights \(2015\)](http://www.africataxjournal.com/Tanzania: DTAs and Practical Issues and Insights (2015))

⁵ <http://www.tra.go.tz/index.php/double-taxation-agreements>

⁶ <http://www.tanzaniainvest.com/economy/business-environment-survey-2017>. Retrieved on 10th November 2017.

1.3 The rationale of the study

Generally, economic theory recommends the use of domestic savings rather than external borrowing to finance investments in developing countries. Taxation has remained the major source of domestic public finance in most African countries. Finance from taxation includes the money that governments raise through taxes on personal income, taxes on corporate income and profits, value-added and sales taxes, duties and import taxes, property and inheritance taxes, payroll taxes, and/or taxes on profits from the sale of natural resources. Adeoye (2014) reports that Africa generates over US\$520 billion annually from domestic public sources.⁷ One main advantage of public financing is that it covers areas where private, for-profit financing is intrinsically insufficient or impossible.

Practically this study aims to critically review the DTAs signed by Tanzania with South Africa and India; analyse the dangers that DTAs pose towards financing development in Tanzania; and make policy recommendations on the key considerations that Tanzania needs to incorporate during DTA negotiations.

1.4 An overview of the recent economic performance of Tanzania

According to the World Population Review 2017⁸ Tanzania's population of 57m grows at an average rate of 3% annually with urbanisation of 30%. These dynamics have resulted into increased consumer and credit demand. The growing population has also triggered a rise in demand for infrastructure and social amenities with associated financial implications.

Tanzania recorded a government budget deficit equal to 2.8% of the country's Gross Domestic Product (GDP) in 2016. The government budget in Tanzania averaged -6.37 percent of GDP from 1998 until 2016, reaching an all-time high of -1.70 percent of GDP in 1998 and a record low of -11.90 percent of GDP in 2004.⁹

1.5 Methodology and structure of the study

This is a case study desk research of largely qualitative nature. The study has applied a qualitative data analysis approach based on interpretative philosophy, with the idea of examining the meaningful and symbolic content of qualitative data. Data analysis was carried out based on the objectives of the study, the tasks and the required outputs. This was followed by a discussion of the results, observations, recommendations and thereafter this report was produced.

To approach this study the consultant embarked on intensive literature review focusing on the essence of DTAs / DTTs, the need for financing development in Tanzania, and the role played by DTAs in financing Tanzanian development. A critical review of DTAs signed by Tanzania with South Africa and India was conducted focusing on the articles contained and their impact on the taxing rights of participating countries. The "United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries" of 2013 and other world- wide DTAs were also reviewed to widen the understanding of double taxation issues in comparison to the case study DTAs. Attempts were made to no avail in getting the views of international taxation gurus in Tanzania. This limitation was adequately mitigated as their views were readily available through online resources.

⁷ Adeoye, B. 2014. Maximising the 'Beyond Aid' approach: Mobilising domestic financial resources for Africa's transformation. GREAT insights Magazine, Volume 3, Issue 8. September 2014.

⁸ <http://worldpopulationreview.com/countries/tanzania-population/> Retrieved on 28th Oct, 2017

⁹ <https://tradingeconomics.com/tanzania/government-budget> Retrieved on 16th February 2018

2.1 Financing development in Africa

The African Continent is endowed with abundant natural resources however it has remained underdeveloped compared to other continents in the world. Most African countries suffer from corruption, civil wars, political unrest, lack of democracy, underdevelopment and abject poverty. To deal with underdevelopment in Africa it is critical to finance development projects through various means.

2.1.1 The importance of DRM towards financing development

According to the Addis Ababa agenda on financing for development, the financing for development process is a massive undertaking by the entire international community —

U.N. member states and multilateral institutions backed by civil society, the private sector and philanthropy — to update global financial flows, tools and mechanisms in order to pay for new development initiatives across the globe.¹⁰

DRM refers to the generation of savings from domestic resources and their allocation to economically and socially productive investments. Such resource allocation can come from both the public and private sectors. The public sector does this through taxation and other forms of public revenue generation.

The big challenge for governments and international partners in achieving the SDGs is that while there is a general agreement on the overall framework, there is less clarity on how they will be financed.

There is need for DRM for African countries for the following reasons:

- (a) DRM is the main source of long-term financing for sustainable development, especially in the provision of public goods and services;
- (b) If it is backed by economic growth, DRM saves African countries from long-term foreign aid dependence;
- (c) DRM helps to strengthen financial institutions because stable and predictable revenue facilitates long term fiscal planning which can help ensure that resources are allocated to priority sectors and are translated into outcomes;
- (d) DRM can help to save African countries from financial and debt crises.

Developing countries that have achieved and sustained high rates of growth have done so largely through the mobilization of their own domestic resources. One of the areas identified by African States as a priority for the mobilization of domestic resources is that of agreements for the Avoidance of Double Taxation through the Africa Tax Administration Forum (ATAF)¹¹ as important tools in removing barriers to cross border trade investment. The “*ATAF Model Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*” can be used to combat tax evasion and by extension, capital flight through effective exchange of information and assistance in revenue collection. Information flows that detail tax evasion schemes enable states to take proactive steps to combat these schemes.

¹⁰ <http://citiscopes.org/habitatIII/explainer/2015/03/what-financing-development>, Retrieved on 18th February 2018

¹¹ <http://www.chronicle.co.zw/ataf-pushes-for-scrapping-of-double-taxation/>. Retrieved on October 26th 2017

2.1.2 Challenges of financing development through DRM

This study, among other findings, outlines the challenges related to financing development through DRM and the role of international development cooperation to achieving the post-2015 SDGs.

(a) Low savings

The main problem with domestic resource mobilisation in Africa is that not enough savings are generated to facilitate the required investments. According to the World Bank data¹² gross domestic saving in Tanzania in 2016 amounted to 5.6%, in South Africa 19.6% and in India 28.9%. Sub-Saharan Africa has the lowest savings rate in the developing world.

(b) Capital flight

There has been a rising trend in the volume of capital flight from African countries. In 2014 the loss in African tax revenue due to capital flight by individuals was estimated at US\$ 14 billion. In the same year, the African countries received US\$ 54 billion in terms of Official Development Assistance (ODA) (OECD 2016), and their overall tax revenue was around US\$ 350 billion. Usually capital flight occurs in developing countries that accept huge amount of foreign capital to promote domestic investment.

(c) Tax incentives and exemptions

Tax incentives act as a tool for promoting investments. In practice however, it has been observed that tax incentives distort resource allocation leading to some sub-optimal investment decisions. This is harmful to long-term growth potential because tax incentives are not the primary determinants of the decision to invest. Instead, most investors base their investment decisions on economic and commercial factors on one hand; and institutional and regulatory factors on the other. Many multinationals enjoy foreign tax credit at home and giving them tax incentives may have minimal impact on their profit which in effect allows the developed home country to be the final beneficiary of the tax break.

In a study of Kenya, Uganda and Tanzania, the IMF (2008) summarizes the main arguments found in the literature against the use of tax incentives:¹³

- Tax incentives result in a loss of current and future tax revenue;
- Tax incentives create differences in effective tax rates and thus distortions in allocation of investment between activities that are subsidised and those that are not;
- Tax incentives are hard to remove once granted, and could require large administrative resources;
- Tax incentives could result in rent-seeking and other undesirable behaviours;
- Income tax holidays could be a particularly ineffective way of promoting investment because companies that are not profitable in the early years of operation would not benefit from them;
- Tax incentives attract mainly footloose firms; and
- Tax incentives can be outside the budget and non-transparent.

According to a PER Tax Exemptions Study report in 2013, total tax incentives and exemptions amounted to over TSh 1.8 Trillion.¹⁴

¹² <https://data.worldbank.org/indicator/NY.GDS.TOTL.ZS>

¹³ IMF, "Kenya, Uganda and United Republic of Tanzania: Selected Issues", 1 December 2008, pages 10-11

¹⁴ Tanzania - PER Tax Exemptions Study - Draft Final Report (October 2013)

(d) Poor management of natural resources

Many natural resource-rich countries in Africa are often poorly governed. Coupled with this, they often have weak domestic capacity for negotiating concessions and contracts for resource extraction relative to foreign and multinational corporations. This reduces the real and potential revenues from such deals.

(e) Narrow tax base

In Tanzania there are only a few large tax payers who contribute a majority share of the tax revenue. The tax base that is potentially reachable constitutes a smaller portion of total economic activity than in developed countries. A large proportion of the African economy is characterised by informal sectors and occupations, and many small establishments with a small share of wages in total national income.

According to the Journal of Economic Perspectives 2014 Fall edition¹⁵, “The combination of an informal economic structure, reliance on income from specific commodities and natural resources, and the availability of aid pushes many low-income countries into a low tax to GDP ratio on a narrow tax base and a narrow set of individuals.”

Developing countries suffer from a high level of informality in their economies because of the high barriers to entry that exist: compliance costs are either too high (from a monetary standpoint) or procedures are too complex. As a result, many individuals and firms choose to remain outside of the formal economy. These choices further erode what are already often narrow tax bases that rely on a small number of high net worth individuals, large corporations, or less sustainable or stable types of taxes (i.e. taxes on resource extraction, excise tax, or trade taxes). The size of the informal economy in countries gives one a sense of how much potential government revenue is left on the table. In El Salvador the informal economy is estimated to be 60 percent of GDP; in the Philippines it is estimated that 45 percent of the GDP is informal; and in Kenya over 70 percent of the work force is employed in the informal sector.¹⁶

Other factors that cause narrow tax base are:

- i. Low compliance caused by extensive tax exemptions
- ii. Informal (untaxed) sectors like agriculture, small scale trade and services
- iii. Poor tax administration
- iv. Untaxed monetary incomes and fringe benefits
- v. Reduced tax rates
- vi. Widespread tax evasion

(f) Weak administrative systems and organisational capacities

There are weak administrative systems and scarce or poor-quality data as a result of widespread informal activities. Limited reporting, low levels of education in the general population and a general culture of non-compliance all contribute towards low DRM.

¹⁵ Observed by Timothy Besley and Torsten Persson in the Fall 2014 edition of the Journal of Economic Perspectives.

¹⁶ Philippine Department of Labor and Employment, “Workers in the Informal Economy,” from <http://www.dole.gov.ph/fndr/bong/files/Workers%20in%20the%20Informal%20Economy.pdf>, Accessed on 18th February 2018.

Geoffrey Irungu, “Kenya has highest informal jobs in Africa,” *Business Daily Africa*, from <http://www.businessdailyafrica.com/Kenya-has-highest-informal-jobs-in-Africa-539552-2765348-ntbrjz/index.html>, Accessed on 18th February 2018.

(g) Tax evasion and avoidance

Tax evasion is one of the main challenges facing African countries. It is encouraged by high taxes and other loopholes that undermine collection. Tax evasion benefits individuals to the detriment of society, wiping out public services. It is estimated that Tanzania loses about \$1.25 billion a year in revenue – equivalent to five percent of its GDP – through corporate tax avoidance, evasion and corruption.¹⁷

The Panama Papers¹⁸ have recently exposed multinationals for evading millions in taxes owed to African governments. The Panama Papers scandal further showed that in recent years African countries have been striving to fight illicit financial flows (IFFs) which deviate funds away from their tax bases into tax havens offshore. Tax havens have helped multinational companies hide their immense profits overseas, thus perpetuating tax avoidance. In order to fight tax evasion, during the Financing for Development Conference in July 2015, African nations lobbied for legislation against tax avoidance, though this proposal has not yet been concretised.

Many countries face a significant problem of tax avoidance or evasion as individuals or companies in the formal sector find ways not to pay their taxes. This is often attributed to a “tax morale” problem, meaning that citizens or companies do not have faith that their money will be well spent and thus avoid taxes altogether. In contrast, most high-income countries do not face a similar problem. For example, tax evasion in the United States is a relatively small problem, with only 9 percent of total legal income not properly reported.¹⁹

One area of concern in promoting tax compliance is illicit financial flows, and specifically cross-border tax arrangements that facilitate evasion by businesses and individuals. According to Global Financial Integrity, almost \$1.1 trillion is lost per year to corruption and illicit transfers, some of which may be characterized as tax evasion.²⁰ Before determining how to tackle illicit financial flows, it is important to unpack the concept and understand, first, which flows have genuine tax implications, and second, the extent to which those flows represent tax evasion or otherwise are the result of cross-border tax avoidance schemes (which are, strictly speaking, legitimate applications of tax rules). The international “grey economy” or “parallel market” – not the black market, but rather an illicit market of otherwise legal goods – is a challenge to measure, especially in least developed countries (LDCs). The grey economy is made up of those who participate outside of the formal economy in order to make a modest living as well as those who manage and oversee the transfer of huge illicit flows. The former, while troublesome, has less of an impact on tax administration than the latter.²¹

Some causes of tax avoidance and evasion are the following:

- Low morale
- Low quality of service in return of taxes
- Tax system and perception of fairness
- Low transparency and accountability of public institutions
- High level of corruption
- Lack of rule of law and weak fiscal jurisdiction

¹⁷ Tanzania parliamentary committee on public accounts, Retrieved from <http://news.trust.org/item/20131014094858-3frio>, on 7th January 2018 ¹⁸Amy Copley (2016) Africa in focus: “Panama papers expose tax evasion” extracted from <https://www.brookings.edu/blog/africa-in-focus/2016/04/08/africa-in-the-news-panama-papers-expose-tax-evasion> on Wednesday, October 25th, 2017.

¹⁹ Chris Prentice, “Shadow Economies on the Rise around the World,” from <http://www.bloomberg.com/news/articles/2010-07-29/shadow-economies-on-the-rise-around-the-world>, Accessed on 18th February 2018.

²⁰ Global Financial Integrity, “Illicit Financial Flows,” <http://www.gfintegrity.org/issue/illicit-financial-flows/> Accessed on 18th February 2018.

²¹ United Nations, “Addis Ababa Conference Opens Path for Robust Implementation of New Sustainable Development Agenda,” 2015, <http://www.un.org/esa/ffd/ffd3/press-release/addis-ababa-conference-opens-path-for-robust-implementation-of-new-sustainable-development-agenda.html>, Accessed on 18th February 2018.

(h) Other Challenges

- (a) Business environments are relatively harsh in many SSA Countries
- (b) Several SSA governments are characterized by weak political will and lack of moral justification for tax drive
- (c) Domestic financial institutions and instruments are weak in most SSA countries

2.2. Options adopted to finance development in African countries and their inherent pros and cons

This section sheds some light on the options adopted to finance developments in African countries and the inherent pros and cons of these options:

2.2.1 Domestic public financing

Taxation has remained the major source of domestic public finance in most African countries. Financing from taxation includes the money that governments raise through taxes on personal income, taxes on corporate income and profits, value-added and sales taxes, duties and import taxes, property and inheritance taxes, payroll taxes, and/or taxes on profits from the sale of natural resources.

2.2.2 International public financing

Concessional international public finance should only be mobilized in areas where domestic public resources are insufficient, and business is unable to mobilise adequate private finance. International public finance is faced with some challenges (i) Unreliability of international public finance can affect recipient countries budgets; this has affected Tanzania; (ii) Weak growth, social and capital expenditure pressures and reduced transfers in developed countries could lead to the continued tightening of international public finances; and (iii) Prolonged low commodity and oil prices can weaken fiscal performance in several donor countries.

2.2.3 Domestic private financing

Private finance is central to development. Domestic private sector growth is the lifeblood of developing countries' economies, whereby businesses deliver investment, trade, jobs, and innovation. Domestic private finance has greatly surpassed public finance in recent years, making it the single largest source of finance for all developing countries.²² The main challenge of private financing of development in developing countries, from both domestic and international sources, is that it is still not sufficient to meet the development financing needs.

2.2.4 International private financing

As is the case with private domestic financing, international private finance driven by trade and FDI far outstrips international public finance. International private capital flows can help to foster sustainable economic growth by creating decent jobs, facilitating technology transfer and generating domestic resources through taxation.

2.2.5 Public Private Partnership (PPP)

PPPs are agreements through which private financiers essentially replace governments as providers and funders of traditional public services such as schools, hospitals, water, roads and electricity.

²² "Report of the Intergovernmental Committee of Experts on Sustainable Development Financing: Final Draft", available online at: <http://sustainabledevelopment.un.org/content/documents/4588FINAL%20REPORT%20ICESDF.Pdf>. Retrieved on 22nd November 2017

3.1. What is entailed in mobilising domestic resources to finance development

3.1.1. Mobilising domestic financial resources for development

Economic development requires huge financial resources. If local savings are low, the government's objective is often to attract capital from abroad. Foreign capital can finance investment, induce economic growth, and increase standards of living. Free flows of capital across countries enable allocation of savings to its most productive use.

As many developing countries do not possess the resources for investment due to low levels of savings related to low levels of national income, macroeconomic policy often focuses on the attraction of FDI.

3.1.2. The African Tax Administration Forum (ATAF)

In acknowledging what is required to mobilise enough resources domestically to finance development and the role of DTAs, African States have taken measures to work in unison. This change in developing countries will only come when driven by people in developing countries. The African Tax Administration Forum (ATAF) was developed by a Steering Group of African Tax Commissioners from Botswana, Cameroon, Ghana, Nigeria, Rwanda, South Africa, and Uganda. It is African-led, based on African assessments of African needs.

3.2. The Nature of DTAs and their link to financing development

DTAs are international agreements which are generally governed by the Vienna Convention on the law of treaties of 23 May 1969. There are various model agreements which have been developed over time. This study considers three of them, namely:

- (a) **OECD Model** - Organization of Economic Co-operation and Development (OECD) Model Double Taxation Convention on Income and on Capital, issued in 1977, 1992 and 1995. The **OECD Model** is essentially a model treaty between two developed nations and it places emphasis on the right of state of residence to tax.
- (b) **UN Model** - UN Model Double Taxation Convention between Developed and Developing Countries, 1980. The UN Model gives more weight to the source principle as opposed to the residence principle of the OECD model. As a correlative to the principle of taxation at source the articles of the Model Convention are predicated on the premise of the recognition by the source country that:
 - ✓ Taxation of income from foreign capital takes into account expenses allocable to the earnings of the income so that such income would be taxed on a net basis;
 - ✓ Taxation would not be so high as to discourage investment; and
 - ✓ It would take into account the appropriateness of the sharing of revenue with the country providing the capital.
- (c) **The ATAF Model Agreement:** Approximately three years after its inception in 2012, the ATAF convened representatives of 22 of its member countries from November 30 to

December 4 in Pretoria, South Africa to participate in a multilateral meeting to collectively negotiate and develop the draft text of an “*ATAF Model Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*” for the African continent. The ATAF Model allows that tax paid can be offset in one of two countries against tax payable in the other, thus avoiding double taxation. Several factors necessitate the development and implementation of *ATAF Model* by African tax administrations. These include the existence of out-dated DTAs in Africa which do not provide for an equitable share of taxation to be allocated to the developing states because of two issues:

- i. No real regional programme to address these issues; and
- ii. Lack of experience in developing treaty policy by many member states, particularly among African least developed countries.

3.3. Economic policies advanced for entering DTAs

Originally DTAs were signed to avoid double taxation, i.e. the taxation of the same underlying transaction by two governments. Over time, other economic policies have motivated countries to sign DTAs, including:

- (i) DTAs can mitigate international tax avoidance and evasion and thus protect the domestic tax base.
- (ii) DTAs play a vital role in the movement of capital between treaty countries. Capital exporters and capital importers may pursue different goals when entering into tax treaties; fostering outbound investment and thus encouraging the international expansion of domestic companies may be more relevant for capital-exporting countries. For capital importers, encouraging inbound investment may be more in the focus, with policy makers wishing to attract FDI and foster the transfer of skills and technologies.²³
- (iii) For developing countries DTAs imply internationally accepted tax standards²⁴
- (iv) DTAs may provide certainty in tax matters for international investors.²⁵ They prevent tax discrimination for investments in the other partner state, and they also avoid double taxation of income arising in cross-border transactions.
- (v) There are arguments that the main benefit of DTAs lies in the harmonisation and the lowering of withholding tax rates on international capital income.
- (vi) “Distributional implications”. Reduced source taxation rates enabled by DTAs, such as the capping of dividends at 10% for shareholding and of at least 15%, 20% on all others, contribute towards making a country a more attractive investment destination.
- (vii) DTAs foster access to market and business confidence between the contracting states.

3.4. The contribution of DTAs to the Development Financing Agenda

Developing countries have determined that they must build capacity to achieve sustainable growth in their infrastructure, combat corruption, attract FDI, and develop transparent financial systems. International Taxation Agreements are fundamental and central to achieving these interrelated

²³ Lang M.& Owens J. (2014), *The Role of Tax Treaties in Facilitating Development and Protecting the Tax Base*, WU International Taxation Research Paper Series No. 2014 – 03, available at <http://ssrn.com/abstract=2398438>

²⁴ Dagan, *The Tax Treaties Myth*, N.Y.U. Journal of International Law and Politics 32, pp. 939-996

²⁵ Zagler M.& Zanzottera C. (2012), *Corporate Income Taxation Uncertainty and Foreign Direct Investment*, WU International Taxation Research Paper Series No. 2012-07. Available at <http://ssrn.com/abstract=2174928>.

objectives. Taxation provides governments across the globe with the funds needed to invest in development and, in the longer term, offers a solution to aid dependence in the poorest countries and a predictable fiscal environment to promote growth.

The basic purpose of concluding **Bilateral Investment Treaties** (BITs) and **Double Taxation Agreements** (DTAs) is to signal to investors that investments will be legally protected under international law in case of political turmoil and to mitigate the possibility of double taxation of foreign entities.

3.5. Comparative Analysis of FDI Flows Trends in Emerging Economies

To increase inward FDI, policy makers increasingly resort to the ratification of DTAs.²⁶ However, the effectiveness of DTAs in inducing higher FDI is still open to debate, as the empirical evidence of existing studies is inconclusive. In contrast to earlier approaches, we use a largely unpublished dataset on bilateral FDI stocks covering a much larger and more representative sample of host and source countries. Controlling for standard determinants of FDI and employing various econometric specifications, our results indicate that DTAs do lead to higher FDI stocks and that the effects are substantively important as well.²⁷

Often the factors influencing the influx of FDI are not easily amenable to policy. This is either because they are unalterable, like natural endowment of physical resources, and cultural and geographic proximity to major source countries, or because changing them is a very long-term process, as in the case of the efficiency of political institutions, market size, or the education and productivity of the local labour force.²⁸

However, there are still several measures which can be taken to compete in the rivalry for foreign investment: restrictions imposed on investors regarding e.g. profit repatriation can be unilaterally eased; red tape or corporate taxes can be reduced; and bilateral measures can be taken, such as concluding bilateral investment treaties (BITs) or double taxation treaties (DTTs).

The question addressed in this section is whether a DTA leads to more bilateral FDI between the two respective countries. If so, this benefit could compensate for the costs attached to DTAs.²⁹

3.6. The Benefits and Costs of DTAs

3.6.1. Benefits of DTAs

- i. DTAs were thought to be key drivers in facilitating international trade, determining investor decisions and attracting FDI.

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- ii. DTAs among nations with the same or similar level of development do not tend to cause any challenges, they can rather act as an instrument of economic cooperation among the countries of the same geographical area.
- iii. DTAs help to combat tax evasion and tax avoidance and to prevent double non-taxation by making information from one contracting state available to the other contract partner.
- iv. Regulations, tax calculation methods, and definitions are harmonised in a tax treaty, mitigating the uncertainty an investor faces when dealing with foreign fiscal systems and reducing their administrative burden.

²⁶ Fabian Barthel, Matthias Busse and Eric Neumayer, (2009) Contemporary Economic Policy (ISSN 1465-7287)doi:10.1111/j.1465-7287.2009.00185.x

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Tanzania Tax Coalition (2016), Double Taxation Agreements: Gain or Loss? Page 9-11, Retrieved on 24th February 2018, from http://www.policyforum-tz.org/sites/default/files/DTAStudy_0.pdf

- v. The tax authorities of both countries benefit from harmonisation, as the variety of different legislations they must deal with is reduced. Closely related to the anti-tax-avoidance objective of exchanging information and setting rules for transfer-price calculation is the argument that DTAs may help to reduce harmful international tax competition from tax havens.

3.6.2. Costs of DTAs

Against these benefits of DTAs, there are also costs to the contracting parties:

(a) Unequal distribution of revenues

DTAs between developed and developing countries pose a serious risk to the latter, especially when these treaties are based on the residence principle. The residence principle favours the developed countries as they tax capital gains in their countries instead of developing countries where the income is generated. The most important cost factor is the potential loss of tax revenue since DTAs regularly favour residence over source taxation.

According to Tanzania Tax Justice Coalition, when the contracting states are at different economic levels income flows substantially in one direction – from the developing country as a source to the developed country as a residency country. What is often overlooked is the significant cost that arises from DTAs because of lost taxing rights by LDCs. LDCs are normally the source countries where the investment takes place. They surrender their taxing rights to wealthier developed countries that are most often the resident countries of multinational companies.³⁰

Indeed, various studies have even suggested that the underlying purpose for developed countries to sign DTAs is to shift tax revenues from LDCs to their home countries. For example, Belgian tax treaties resulted in a loss to developing countries of approximately USD 38.8 million, with the Democratic Republic of Congo alone losing an estimated USD 8.7 million in 2012. The estimated revenue foregone by LDCs to the Netherlands in 2011, excluding royalties, was a striking USD 854.7 million. In other words, the current system of tax agreements creates the anomaly of aid in reverse from poor to rich countries.³¹

(b) Tax avoidance, capital flight, tax havens

While tax evasion consists of attempts by individuals and organisations to evade taxes by illegal means, tax avoidance entails the utilisation of ambiguities and indeterminacies of tax rules and regulations to reduce the taxable base.

DTAs are being used as conduits for tax avoidance by multinational companies across tax jurisdictions. They allow aggressive tax planning schemes like triangular structures, circumvention of treaty thresholds, ‘treaty shopping’ and ‘round tripping’, where investments, capital, income and profits are routed through low tax jurisdictions or ‘tax havens’.

Round tripping means that capital sourced from a country is re-routed back into the country as an investment from abroad so as to enjoy tax treaty protection. Treaty shopping means that a company registers a subsidiary in a country with a vast treaty network and invests through it to enjoy treaty benefits.³²

The complex network of DTAs at a global level has tended to adopt residence-based taxation systems to stimulate the investment of their nationals’ companies in other countries.

(c) Lack of technical capacity

Tanzania, like most developing countries, lacks the technical capacity in tax administration to ensure the effective implementation of the adopted principle (source or residence). This is partly caused

³¹ Ibid

³² Ibid

by the composition of national elites who can take on interests and policies which conflict with the requirements of their respective countries. In Tanzania contracts and agreements have been signed that did not benefit the country.

3.7. DTAs' role in eroding the narrow tax base and enabling illicit financial flows

Estimating the value of tax that has been eroded as a result of DTAs in the period 2010-2015 is challenging due to poor data availability. However, it is possible to analyse the extent to which Tanzania has given up taxation rights to its contracting partners.

Tax treaties restrict the right of states to tax foreign investors and foreign-owned companies. The idea is to encourage international investment between the countries concerned, but since developing countries are generally only importers of capital, the relationship is unequal.

In many cases, treaties do not provide an adequate basis for adequate tax information exchange between developing and developed countries, and in particular with secrecy jurisdictions. Some, such as Switzerland, have forced developing countries into making large tax concessions in their treaties, in exchange for (often minimal) information exchange.

It is believed that developing countries should suspend any new tax treaty negotiations until the current reforms ensure that multinationals can be taxed 'where economic activities take place and value is created' as called for by the G20 world leaders in the St Petersburg Tax Declaration of 2013.

This section presents a detailed review of the DTAs signed by Tanzania with two selected case study countries (South Africa and India).

4.1. DTAs in Case Study Countries

4.1.1. The Tanzanian DTAs

Tanzania has negotiated with other countries, within their profoundly protected fiscal jurisdiction, double taxation agreements, also known as double tax treaties, in an effort to reduce the barriers to international trade and investment³³. Tanzania has a network of 10 double taxation agreements³⁴ with the following countries³⁵:

- i. Canada - Tanzania Income and Capital Tax Treaty (1995)
- ii. Denmark - Tanzania Income and Capital Tax Treaty (1976)
- iii. Finland - Tanzania Income and Capital Tax Treaty (1976)
- iv. India - Tanzania Income Tax Treaty (1979)
- v. Italy - Tanzania Income Tax Treaty (1973)
- vi. Norway - Tanzania Income and Capital Tax Treaty (1976)
- vii. South Africa - Tanzania Income Tax Treaty (2005)
- viii. Sweden - Tanzania Income and Capital Tax Treaty (1976)
- ix. Switzerland - Tanzania Income Tax Treaty (1963)
- x. Tanzania - Zambia Income Tax Treaty (1968)

Tanzania is also currently negotiating treaties with the Netherlands, the UK, the United Arab Emirates, Mauritius, Kuwait, Iran and China without any publicly known or democratically scrutinised negotiation policy.³⁶ This study, which includes recommendations to the Government, demonstrates how comparing countries of origin of FDI inflows with Tanzania's DTA network "does not indicate that having a DTA substantially affects FDIs, as there are no DTAs in place with the biggest investor countries".

4.1.2. Indian DTAs

India now has over 90 such treaties, many of them recent³⁷. Under the Income Tax Act 1961 of India, there are two provisions, Section 90 and Section 91, which provide specific relief to taxpayers to save them from double taxation. Section 90 is for taxpayers who have paid the tax to a country with which India has signed DTA, while Section 91 provides relief to tax payers who have paid tax to a country with which India has not signed a DTA. Thus, India gives relief to both kinds of taxpayers. Most of India's treaties are based on the UN Model.³⁸ It is now well established that in India the provisions of the DTA override the provisions of the domestic statute. Moreover, with the insertion of Sec.90 (2) in the Indian Income Tax Act, taxpayers have an option of choosing to be governed either by the provisions of a particular DTA or the provisions of the Income Tax Act, whichever are more beneficial.

³³ [http://www.africataxjournal.com/Tanzania: DTAs and Practical Issues and Insights \(2015\)](http://www.africataxjournal.com/Tanzania: DTAs and Practical Issues and Insights (2015))

³⁴ Ibid

³⁵ <http://www.tra.go.tz/index.php/double-taxation-agreements>

³⁶ <https://www.globaltaxjustice.org/en/latest/study-tanzania%E2%80%99s-double-taxation-agreements>. Retrieved on 05th November 2017

³⁷ <http://www.india-briefing.com/news/indias-double-tax-agreements2015-10092.html/>. Retrieved on 2nd November 2017

³⁸ <https://taxguru.in/income-tax/double-tax-avoidance-agreements-taxation.html> Retrieved on 2nd November 2017

4.1.3. The South African DTAs

South Africa is a signatory to double tax treaties with several countries throughout the world. Although double taxation agreements (“DTAs”) have played a relatively insignificant role in the case of most taxpayers, their importance was once again emphasised with the introduction of a residence-based tax system in South Africa with effect from 1 January 2001. The reason for this is that a DTA, once properly approved and adopted, has the force of law and to that extent overrides the provisions of local South African fiscal legislation. In this context s.108 of the Income Tax Act, 1962 (“the Act”) provides that South Africa (the National Executive) may enter into DTAs with the governments of other countries whereby arrangements are made with those governments with a view to the prevention, mitigation or discontinuance of the levying of tax in respect of the same income, profits or gains under the laws of South Africa and of the other country concerned.

4.2. The contents (clauses & articles) of the two specific DTAs

4.2.1. Clauses and articles

(a) Definitions

There are definitions of “enterprise” and “business” in the OECD Model Convention, which do not exist in the UN Model Convention. They are included in the OECD Model as an attempt to ensure that, when Art. 14 (Independent Personal Services) was removed from the OECD Model Convention, all situations previously covered by it would be covered by Article 5 (Permanent Establishment) in combination with Article 7 (Business Profits). Both case study DTAs are adopting this definition of the OECD Model.

(b) Permanent Establishment

Article 5, **Permanent Establishment**, provides for a building site, a construction, installation or assembly project or any supervisory activity for more than 6 months: furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose periods or periods exceeding 183 days in any 12-month period; performance of professional services, periods exceeding 183 days in any 12-month period.

Both the OECD and UN model treaties deem a building site or construction or installation project to be a permanent establishment if the site or project continues for a set period.³⁹ If the site or project is deemed to be a permanent establishment, the source country retains full taxing rights over profits of the non-resident business resulting from work on the site or project.

(c) Crucial difference is the length of time to constitute a permanent establishment

The crucial difference between the two treaties is the length of time activities must continue for the site or project to constitute a permanent establishment. The OECD model treaty deems a site or project to be a permanent establishment where the non-resident’s work lasts for **more than 12 months**; the UN model treaty only requires **a six-month** project. As construction and assembly times have reduced with changing technology and work practices, countries adopting treaties based on the UN model are likely to retain taxing rights over income in many more circumstances.

(d) Rights to tax many types of income

The African target countries have accepted the more restrictive allocation of taxing rights under the OECD model in respect of rights to tax many types of income. But in the case of income from building sites or construction or installation projects, the majority of target country treaties have followed the UN model or even provided for more generous retention of taxing rights by the source country.⁴⁰

³⁹ Article 5(3)

⁴⁰ Robert Schuman Centre For Advanced Studies, (2012), *CHOOSING BETWEEN THE UN AND OECD TAX POLICY MODELS: AN AFRICAN CASE STUDY*, EUI Working Papers RSCAS 2012/60 Robert Schuman Centre For Advanced Studies Global Governance Programme- 31

It appears that African nations, when negotiating with partners from outside Africa, may have less bargaining powers than their counterpart countries in Asia.⁴¹

(e) Ownership of land or interests related to land such as mining or forestry rights is not included in the definition of a permanent establishment

According to this analysis and in the case of Tanzania, mere ownership of land or interests related to land such as mining or forestry rights is not included in the definition of a permanent establishment. The drafters of the OECD model conceded that source countries should be able to retain taxing rights over profits from the sale of land or interests in land. The OECD model (as well as the later UN model) provided an exception to the business income rule for these profits. Under both models, the source country can retain full taxing rights over profits from dealings with land and interests in land. However, until recently the UN treaty had a broader definition of interests in land.

(f) International Transport

Article 8 on **International Transport**, Paragraph 2 of Article 8, provides for taxation at source of profits from shipping or rail transport. The profit is limited to 5% of turnover and the tax thereon shall not exceed 50% of the amount of the profits so limited. Profit from the use or rental of containers is taxable only in the State of residence.

(g) Dividends

Article 10 provides for **dividends**. The withholding tax of 5% or 15% is proposed by OECD Model; the model proposes dividend of 10% for shareholding and of at least 15%, 20% on all others. As originally conceived, the permanent establishment concept was defined in terms of a long-term physical presence such as a factory or an office. While the question of whether there is a permanent establishment is probably the most frequently arising tax treaty issue, the tangible location elements of the definition attract relatively little controversy.

The UN model leaves the withholding tax rate for dividends open. For non-portfolio dividends many of the target countries have stuck to the 5 % rate of the OECD model or even lower rates. Half of Uganda's treaties contain a rate of up to 5%. Ethiopia, Kenya, Madagascar, Mozambique, Tanzania and Zimbabwe, on the other hand, were successful in negotiating higher withholding tax rates in most of their treaties.

(h) Withholding tax

Article 11 provides for **withholding tax** of 10%, proposed by OECD Model, 10% per cent of the gross amount of interest. Under the UN model,⁴² a non-resident enterprise that furnishes services of any kind in the source country for one or more periods aggregating more than six months within any 12-month period is deemed to have a permanent establishment in the source country. Profits from the provision of services will be attributed to the deemed permanent establishment and thus can be taxed in the source country where the services are provided. In contrast, the OECD model treaty has no criteria that allows a source country to treat the long-term provision of services as a deemed establishment and thus bypass the rule denying source countries any right to tax business income unless the income is derived through a permanent establishment.⁴³

⁴¹ Robert Schuman Centre For Advanced Studies, (2012), *CHOOSING BETWEEN THE UN AND OECD TAX POLICY MODELS: AN AFRICAN CASE STUDY*, EUI Working Papers RSCAS 2012/60 Robert Schuman Centre For Advanced Studies Global Governance Programme- 31.

⁴² Article 5(3)(b).

⁴³ Robert Schuman Centre For Advanced Studies, (2012), *CHOOSING BETWEEN THE UN AND OECD TAX POLICY MODELS: AN AFRICAN CASE STUDY*, EUI Working Papers RSCAS 2012/60 Robert Schuman Centre For Advanced Studies Global Governance Programme- 31

(i) Royalties

Article 12 provides for royalties. The provision states that there is no withholding tax, which is proposed by OECD Model. One of the harshest limitations of taxing rights of the source country in the OECD model is the one for royalty payments. Following the OECD model, the source state is not allowed to tax royalty payments at all. The residence state has an exclusive taxing right. The UN model, again, leaves the withholding tax rate for royalties open to negotiations.

A zero-withholding tax rate is provided in a limited number of treaties including Tanzania and South Africa.⁴⁴ The exact rate, however, differs from treaty to treaty and there seems to be different approaches by the target countries. Kenya, Tanzania, and Zambia have mainly negotiated withholding tax rates of 10 % or higher. In Kenya's and Tanzania's treaties the higher tax rates can be found in the ones signed with OECD countries and the 10 % rates in the ones with other African countries.

(j) Pensions

Article 17: **Pensions**, Paragraph 3 provides for payments made under the Social Security system of a State are taxable only in that State. Article 25 states for Assistance in Recovery, under this Article the two States are empowered to collect taxes on behalf of each other based on reciprocity.

4.2.2. The motives behind the clauses

Theoretically, the overriding motive behind developing countries to negotiate tax treaties is to attract foreign investment, sometimes in conjunction with investment protection and promotion agreements.⁴⁵ However, in practice many African countries have nevertheless signed tax treaties with capital exporting nations, presuming that other reciprocal strategic or economic benefits arising from the treaties will outweigh the immediate fiscal cost of sacrificed tax revenue.⁴⁶ One of the key distinguishing features of the two DTA models (i.e. the OECD and the UN model) is that, whereas the former i.e. OECD treaty shifts more taxing powers to capital exporting countries, the UN treaty reserves more powers with the capital importing countries.

4.2.3. On which models the two DTAs are built

While most of India's treaties are based on the UN Model,⁴⁷ the interesting feature of South Africa's DTAs is that they follow to a large extent the scheme of the OECD model or its predecessor, the 1963 OECD draft DTA, notwithstanding the fact that South Africa was not a member of the OECD. In addition, Tanzania's current double taxation agreements are based on the OECD Model Tax Convention.

⁴⁵ United Nations, (2016), Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, New York

⁴⁶ Robert Schuman Centre For Advanced Studies, (2012), *CHOOSING BETWEEN THE UN AND OECD TAX POLICY MODELS: AN AFRICAN CASE STUDY*, EUI Working Papers RSCAS 2012/60 Robert Schuman Centre For Advanced Studies Global Governance Programme- 31

⁴⁷ <https://taxguru.in/income-tax/double-tax-avoidance-agreements-taxation.html> retrieved on 2nd November 2017

Table 4.1 Comparison of OECD Model and UN Model Convention

Section/Issue	OECD Model	UN Model Convention
Definition	Includes definitions of “enterprise” and “business “	Does not include definitions of enterprises and business
Business Permanent Establishment	Art. 5(3)(a) has a six-month duration test for building sites	Reserves greater source country taxation rights in Art. 5 Compared to twelve months duration test for building sites
Business Profit	A limited “force of attraction rule “in Art. 7(1). The rule is limited to Art. 7 business profits – it is not extended to income from capital (dividends, interest and royalties)	The convention allows taxation of certain profits not actually attributable under normal rules to the PE, but which relate to sales of similar goods or merchandise in the source country
Shipping and Air Transport	Profits from the operations of ships and aircraft in international traffic are taxable in the contracting state of effective management of the enterprise only	In addition to the provisions in the OECD model, the UN Model provides for limited source country taxation of international shipping. It elaborates that the phrase “more than casual” means a scheduled or planned visit of a ship to a particular country to pick up freight or passengers.
Associated Enterprises	A 5% maximum for foreign direct investment dividends and 15% maximum for portfolio investment dividends in t	Provides that the “correlative adjustment” to be made by one country following adjustment by the treaty partner country, to avoid double taxation) “shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling.
Dividends, interest and Royalties	The maximum dividend withholding tax rate allowed to the source country under Art. 10 (Dividends) is not specified, it is subject to negotiation as between prospective treaty partners	Higher maximum rates than under the OECD Model The threshold to qualify for foreign direct investment (FDI), as opposed to portfolio investment is lower under the UN Model Convention than under the OECD Model Convention (10% as compared with 25%). The UN Model does not provide withholding tax rates
Capital Gains	Provision seeking to preserve taxing rights	Reserves a source country taxing rate in cases where land in a country is not itself alienated, but an entity, including an offshore entity, which owns the land, and the principal property of which is land in that country is alienated instead. It covers not only source country taxation of sales of shares in land-rich companies, but also interests in partnerships, trusts, etc.
Independent Personal Services	Art. 14 has been deleted from the OECD Model Convention, and is now covered by a combination of Arts. 5 and 7 (with Art. 3 on definitions). In other words, the “fixed base” test in Art. 14 is replaced by the PE test in Art. 5 and business profits attributable to the PE	The UN Model retained Art. 14

Directors' Fees	Extends the scope of this Article by including both directors and "high level managers". The term "top level managerial position" in this respect refers to a limited group of positions that involve primary responsibility for the general direction of the affairs of the company.	The UN Model retained Art. 16
Pensions	Grants to the source country of the pension (the country from which it is paid) the exclusive right to tax when the payments involved are made within the framework of a country	Assigns to the country of residence the exclusive right to tax pensions and other similar remuneration It provides for a sharing between the country of residence and the country of source for the pension of the right to tax pensions and other similar remuneration when the payments involved are not made within the framework of a public scheme which is part of the social security system of a country.
Other Income	Art. 21 of the OECD Model Convention retained	Provides for source country taxation of other income sourced in that country, as an exception to the general approach of allowing only residence country taxation of income not dealt with in other articles of the tax treaty
Mutual Agreement Procedure	The Commentary to the OECD Model Convention on this provision is, however, more detailed, and the text of the OECD Article introduced	In Para. 4, the Mutual Agreement Procedure (MAP) process with more detail than in the OECD Model Convention.
Exchange of Information	The OECD Model Convention's Art. 26 was altered in 2005, to be a <i>clarification rather than an extension of the Article</i> . With some minor drafting differences, the OECD changes to this Article and revised	Commentary have been adopted by the UN Tax Committee for the next version of the UN Model Convention, on the basis that it is suitable and potentially helpful for developing countries
Mutual Assistance	Article 27 of the OECD Model Convention	Art. 27 of the OECD Model Convention on Mutual Assistance has no equivalent provision in the UN Model Convention

4.3. DTAs negotiations

4.3.1. General overview of negotiation of tax treaties

Countries entering into tax treaty negotiations need a good understanding of why they are doing so, and of the benefits and costs that arise from having tax treaties. There are reasons why a country would enter into a tax treaty with another country. These may include some or all of the following most common ones:

- (i) To facilitate outbound investment by residents;
- (ii) To facilitate and encourage inbound investment and inbound transfers of skills and technology by residents of the other country;
- (iii) To reduce cross-border tax avoidance and evasion; and
- (iv) For political reasons;

4.3.2. Process of negotiation

The first step is to prepare a country model treaty. One of the important considerations will be to agree on a policy to agree on important issues in the treaty. The UN Model and the OECD Model should be analysed as part of the decision-making process. Drafting should then begin, preferably using the recognised wording in international models. One of the most important sections is the definition section, it must be in light of the policy, legal and development situation. Depending on the country, the approval process varies from country to country. Some countries prefer to submit a report establishing priorities.

- a) The initial approach requesting negotiations will usually be made either through diplomatic channels or by a request made directly by the minister in charge of the negotiation of tax treaties in one country to the relevant minister in the other.
- b) A date for the negotiations to commence is agreed. A minimum of six weeks is desirable as this enables a comprehensive study of the other country's tax system and practices to be undertaken.
- c) In principle, the country that asks for negotiations should be prepared to travel to negotiate. However, this is by no means an established policy. It is always an advantage to have one's own model as a working document.
- d) It is beneficial to consult with business, key stakeholders and relevant ministries and agencies.
- e) Some developed countries may even have prepared a specific draft for negotiations with developing countries, allowing more taxation rights for the source State. The team must have a clear understanding of all the articles therein and how they interact. The team should also have a clear understanding of why the articles have been drafted the way they are and be able to explain them.⁴⁸
- f) Parties should establish a clear understanding of the interaction between domestic legislation and treaty provisions. They should highlight to what extent the proposal deviates from the domestic legislation and what kind of benefits are offered.
- g) To facilitate the negotiations, the domestic legislation and a draft country model should be shared with the treaty partner. The treaty partner may be asked for a similar summary and draft country model.

4.3.3. How the case study DTAs were negotiated

Negotiations between two countries are obligatory because there are no clear internationally-accepted universal definitions of key issues of residential status, income and taxability thereof. An income (e.g. rent, royalties, interests, dividends, capital gains or income from the operation of ships and aircrafts) may become liable to tax in two countries. Therefore, the negotiations must revolve around the following potential dangers:

- (i) The income is taxed only in one country.
- (ii) The income is exempt in both countries.
- (iii) The income is taxed in both countries, but credit for tax paid in one country is given against tax payable in the other country.

⁴⁸ United Nations, (2014), Papers on Selected Topics in Negotiation of Tax Treaties for Developing Countries, New York

In India, the Central Government, acting under Section 90 of the Income Tax Act, has been authorized to enter into double tax avoidance agreements (hereinafter referred to as tax treaties) with other countries, Tanzania inclusive.

The case study DTAs were negotiated with a view to allocate taxing powers between signatory states in order to prevent double taxation in cross-border situations as well as acting as instruments to prevent double non-taxation of international economic activities. For instance, the DTAs include anti-abuse provisions and enable or facilitate the exchange of information and administrative assistance between tax authorities of the two signatory states (see Article 24 with South Africa and Article 26 with India). Overall the DTAs are signed in order to increase tax certainty for companies engaged in international business (for instance multinational enterprises) and to ensure efficient tax collection for signatory states.

4.4. Articles of case study DTAs and their impact on taxing rights of Tanzania

4.4.1. Tanzania – India DTA

(a) Tanzania – India Bilateral relations

India and Tanzania are closely linked through diverse geographical, historical, cultural, political, economic, commercial and other ties. The close cultural contact between India and East Africa, particularly Tanzania, is evident from the fact that Kiswahili, the official language of Tanzania, includes a considerable number of Indian words.

Trade between India and Tanzania amounted to 31 billion dollars in 2009 – 2010 and India is Tanzania’s second-largest investor. Tanzania and India are traditional trading partners for many decades in a variety of products. The Bilateral Trade Volume between India and Tanzania for the year 2010/11 has increased by about 55% compared to the previous year. The two Governments have created several institutional arrangements and protocols for facilitating Indo-Tanzania Cooperation. It is expected that both the Tanzanian and Indian public and private sectors will take full advantage of these arrangements to foster socio-economic business programmes beneficial to both countries.

Tanzania and India enjoy a vibrant business and commercial relationship. India is a leading trading partner of Tanzania comprising 15% of Tanzania’s foreign trade. India is also among the top five investment sources in Tanzania and as per Tanzania Investment Centre, Indian investments in Tanzania add up to USD 2.2 billion. About 36% of medicines and pharmaceutical products imported by Tanzania are sourced from India.

Table1: India-Tanzania Trade in Millions in US Dollars (2010-2016)

Year	2010	2011	2012	2013	2014	2015	2016
India’s exports	895.01	1564.95	880.63	2308.71	2467.14	1259	1421.46
Tanzania’s exports	226.19	207.99	480.10	752.17	1293	1149	706.20
Total	1121.2	1772.94	1360.73	3060.88	3760.14	2408	2127.66

Source: Tanzania Revenue Authority

Based on Table 1 above, in 2015 the total bilateral trade turnover between India and Tanzania amounted to US\$ 2,408 million. Tanzania’s exports to India constituted about 19% of the country’s global exports. Tanzania’s imports from India constituted about 9% of its global imports such as petroleum products, pharmaceuticals, motor vehicles, two/three-wheelers, wires and cables, sugar, electrical machinery/equipment, yarn, apparel & clothing, articles of iron & steel, etc. Tanzania’s major exports to India include gold, cashew nuts, pulses, timber, spices (mainly cloves), ores and metal scrap, gemstones.⁴⁹

⁴⁹ FabianBarthela et al, (2009), he Impact of Double Taxation Treaties on Foreign Direct Investment: Evidence from Large Dyadic Panel Data Revised Version, Contemporary Economic Policy, 28 (3), 2010, pp. 366-377

(b) The time in which the DTA was signed

The latest Agreement between Tanzania and India for the avoidance double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in Dar es Salaam of 27th May 2011. This Agreement applies to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied. The agreement also regards as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises. The existing taxes to which the Agreement applies are in particular:

- In India, the income tax, including any surcharge thereon; (hereinafter referred to as “Indian tax”);
- In Tanzania; the income tax and any other tax on income imposed under the Income Tax Act, Cap. 262, Revised Edition 2004 (hereinafter referred to as “Tanzanian Tax”)

This Agreement applies also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

(c) Articles and their impact on the taxing rights in the Tanzania-India DTA

Tanzania signed an agreement on avoidance of Double Taxation and Prevention of Fiscal Evasion (1979) with India. However, a closer scrutiny of the DTA articles reveals that there are grey areas which may in one way or another adversely impact on the taxing rights in the Tanzania-India jurisdictions. A thorough analysis will highlight the basis for the rates as well as the impact and implications for Tanzania.

(i) Lack of clarity in the definition of tax

The agreement with both India and South Africa does not define the meaning of tax or highlight the types of taxes covered by the agreements. The current agreement with India covers income from immovable property; incomes from associated enterprises; shipping and air transportation; business profits; dividends; interest on income; royalties capital gains; independent personal services and dependent personal services; director’ fees; artistes and sportsperson; pension and annuities; government service; professors, teachers, and research scholars; students and other income. While the sections have extensive coverage, some gaps still exist i.e. tax on incomes of religious institutions’ staff are not incorporated into the agreement.

(ii) Mutual Agreement Procedure (MAP)

The agreement with India does not provide for the guidelines or format for taxpayers to present a MAP. Suggestion of the *Guide to the Mutual Agreement Procedure under Tax Treaties* recommended that the process of making MAP should be transparent and free of unnecessary formalities. According to the OECD, tax incentives have complicated the tax terrain and therefore the argument is that MAPs should not necessarily be pursued. ***The tax expenditures have negative implications on the budget and tax policy. In addition, tax incentives result in loss of current and future tax revenue. Instead of pursuing a MAP, other ways of attracting foreign investors should be emphasized.***⁵⁰

The agreement does not include provisions for specific cases of conflicts related to language. The current agreement does not have provisions for conflict in terms of interpretation of concepts or definition, where there is no definition in the agreement. ***It is proposed that the meaning as provided***

⁵⁰ URT, Ministry of Finance of Tanzania, Tanzania Per Tax Exemptions Study Final Report, October 2013

in the contracting states could be used (domestic law). Where the meaning is not provided in the domestic law, the competent authorities should agree to clarify the meaning of the terms that are not clear.

(iii) Competent Authority

The DTAs have the definition of “*competent authority*”, which is the Minister of Finance for the contracting countries. However, this definition section does not include the scope and powers of the Ministers and their representatives. The sections further do not provide information regarding the statement of delegation.

(d) Tax dangers in Tanzania-India DTA

Deriving from the preceding sub-sections of this section, from Tanzania’s perspective there are potential dangers in the provisions and articles of the DTAs signed between Tanzania and India. This subsection highlights some of the key features of this double tax treaty (“*treaty*”) and potential dangers.

India’s tax treaties are subject to numerous Specific Anti-Avoidance Rules (SAARs) and there is a growing body of evidence that new/re-negotiated tax treaties will have more elaborate limitation of benefits (LOB) and specific anti-abuse insertions. It should therefore be considered whether in the context of tax treaties the domestic General Anti Avoidance Rule (GAAR) provisions should have a role. Furthermore, absence of an effectively operating discretionary resolution mechanism can only make matters worse.

4.4.2. Tanzania – South Africa DTA

(a) Bilateral relations and trade links between Tanzania and South Africa

As the second largest economy in Africa after Nigeria, South Africa is on the economic radar of Tanzania. Increased bilateral cooperation between Tanzania and South Africa in the economic field has gone hand in hand with a flurry of diplomatic activity over the past years. All post- apartheid leaders of South Africa have stepped onto Tanzanian soil.

Both Tanzania and South Africa have grown faster than the global economy average. Trade figures between the two countries last year (2016) indicated that South African exports to Tanzania were valued at R6.5bn (Tsh1.6 trillion), whereas imports from Tanzania amounted to R3.5bn (Tsh572 billion). Several factors underpin recent trade growth between South Africa and Tanzania. Falling trade barriers and the South Africa – Tanzania DTA have fostered market access and business confidence; a significant and expanding market for South African industrial goods and FDI; and advances in ICT have supported cross-border- and inter-regional trade.

SADC published its draft DTA model in 2001 but it has had limited acceptance by members, and few have ratified it. Although it has not been ratified by many of the member countries, many of the members are using the model as a basis for DTA negotiation. SADC has an existing MoU on cooperation in taxation and related matters that was signed in 2001, including by Tanzania. The MoU recognises the need to maximise the cooperation of members. It would be useful to explore the extent to which the MoU is used and respected by member countries.

To make sure that investors benefit and not the home country government, *many developing countries insist on having a “tax sparring” clause in the tax treaties with developed countries. A typical tax treaty is designed to deal with three forms of double taxation. The dual residence problem with respect to individuals is resolved by a series of rules establishing a hierarchy among the various tests of residence. To solve the source conflict double taxation problem, contracting states can*

provide common source of income rule sin tax conventions. For example, the provision in the OECD Model state that the following classes of income and capital are taxed without any limitation in the state of source- (a) Income from immovable property situated in that state (including income from agriculture or forestry) and gains from alienation of such property (see Article 6 thereof). (b) Profits of a permanent establishment situated in that state (Article 7).

(b) The time in which the DTA was signed

The Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was entered into force about 10 years ago on the 15th day of June 2007.

The existing taxes to which the Agreement applies are: (a) in South Africa: (i) the normal tax;

(ii) the secondary tax on companies; and (iii) the withholding tax on royalties; (hereinafter referred to as “South African tax”); and (b) in Tanzania: (i) the income tax; and (ii) the withholding taxes under the Income Tax Act, 2004; (hereinafter referred to as “Tanzanian tax”).

From a Tanzanian perspective some of the key features of this double tax treaty (“Treaty”) are as follows:

- (i) The Treaty has **29 Articles in total** which apply to residents of Tanzania and South Africa and **in respect of taxes on income**.
- (ii) The Treaty defines what constitutes a **permanent establishment (PE)**, what business profits are and how they will be taxed. Business profit is narrowly defined to mean income derived by an enterprise from carrying on business. It does not include income in the form of rent, royalties, interests, dividends, capital gains or income from the operation of ships and aircrafts, as these incomes are defined separately. Only business profits from a PE or attributable to a PE in Tanzania can be taxed in Tanzania.
- (iii) Under the Treaty the following **common income items** are covered: **Interest** can be taxed at a maximum rate of 10 per cent; **Dividends** can be taxed at the maximum general rate of 20 per cent but if the company receiving the dividend has a 15 per cent beneficial ownership the tax rate is capped at 10 per cent.; and **Royalties** can be taxed at a maximum rate of 10 per cent.

These set rates mean that Tanzania cannot easily revise its tax rates *without renegotiating with South Africa*. Whilst the Treaty allows either party to make amendments at any time, such amendments require a mutual consent in writing through the diplomatic channel.

- (i) The Treaty provides the rules for elimination of double taxation in Tanzania and South Africa by way of tax credits.
- (ii) It also has rules aimed at tackling transfer pricing problems for transactions between associated enterprises.
- (iii) The Treaty requires a **mutual agreement procedure for settlement of disputes**. In case a Tanzanian entity considers that actions by either country are in contravention of the Treaty, it can seek assistance from the competent authority (Minister of Finance) in Tanzania which will in turn communicate with the competent authority in South Africa.
- (iv) The Treaty requires a **non-discriminatory approach to taxation**. A South African shall not be subjected to a more burdensome taxation in Tanzania than a Tanzanian in the same circumstance. The same holds true for a Tanzanian in South Africa.

- (v) Tanzania and South Africa can **exchange information** necessary for **Treaty enforcement** and also in respect of the **domestic tax laws**. The two countries can also assist each other in **recovery of taxes**.
- (vi) The Treaty is set to remain in force until termination by either Tanzania or South Africa.
- (vii) Domestic tax laws give international agreements, including tax treaties, a superior status. Tax treaties, therefore, have significant influence on how our domestic tax laws are crafted, exercised and interpreted.

Despite the positive side of double tax treaties in general, bilateral tax treaties may provide avenues for harmful tax practices such as treaty shopping in which a resident of a third state may artificially acquire residence in one or both of the contracting states to take advantage of the favourable tax treaties.

(c) Articles and their impact on the taxing rights in the Tanzania-South Africa DTA

(i) Lack of clarity

Under the agreement between Tanzania and South Africa, taxes for South Africa include normal tax, secondary tax on companies and withholding tax on royalties. As the definition of taxes is not included in the definition in article 3, for Tanzania tax includes income tax and withholding taxes under the Income Tax of 2004. It is difficult to conclude consistently and with fairness. Further, Article 6 includes income from agriculture or forestry, and immovable property which does not have a specific meaning/definition. The agreement leaves it to the contracting states in which the property in question is situated.

(ii) Competent Authority

Like the Agreement with India, the Agreement between South Africa and Tanzania has a grey definition of the “*competent authority*”. The wording of the agreement is similar to the text of the India and Tanzania agreements. The provision states that the competent authority can resolve each case by mutual agreement with the contracting state. The agreement does not provide for an option in a situation where the mutual agreement does not work.

(iii) Transfers of intangible property (patents, know-how)

This is one of the gaps in the current agreements (both agreement South and India). It is not clear how the national tax authorities would come with allocation of cost and benefit between the related companies and whether the companies would agree on acceptable levels of profit in each country in cases of patents. As the nature of the property transferred consists of the right to use the results of research and development activities.

(iv) Person and Partnerships

Although the agreement between India and Tanzania has provisions regarding person, in the South African agreement the concept of a person has not been defined.

According to the agreements, only persons who are residents of the Contracting States are entitled to the benefits of the tax agreement entered into by these States, but what if the case where the income is earned by a partnership (from several countries), the issue of whether the partnership qualifies as person who is a resident of a Contracting State under the definitions of Article 3 of the Agreement with India and in the case of agreement with South African, where there is no definition a person.

(d) The potential dangers in the DTA in respect of losing taxing rights

Deriving from the preceding sub-sections of this section, from Tanzania's perspective there are potential dangers in the provisions and articles of the DTAs signed between Tanzania and South Africa. This subsection highlights some of the key features of this double tax treaty ("treaty") and potential dangers. The Tanzania-South Africa treaty has 29 articles in total which apply to residents of Tanzania and South Africa and in respect of taxes on income.

- (i) The Treaty defines what constitutes a permanent establishment (PE), what business profits are and how they will be taxed. Business profit is narrowly defined which paves the way for variable interpretations thereby risking tax base erosion. Only business profits from a PE or attributable to a PE in Tanzania can be taxed in Tanzania.
- (ii) Under the Treaty, interest can be taxed at a maximum rate of 10 per cent, dividend at the maximum general rate of 20 per cent but if the company receiving the dividend has a 15 per cent beneficial ownership the tax rate is capped at 10 per cent. Royalties can also be taxed at a maximum rate of 10 per cent. These set rates mean that Tanzania cannot easily revise its tax rates without renegotiating with South Africa.
- (iii) Royalties can also be taxed at a maximum rate of 10 per cent. These set rates mean that Tanzania cannot easily revise its tax rates without renegotiating with South Africa.
- (iv) Whilst the Treaty allows either party to make amendments at any time, such amendments require a mutual consent in writing through the diplomatic channel.
- (v) Domestic tax laws give international agreements, including tax treaties, a superior status. Tax treaties, therefore, have significant influence on how our domestic tax laws are crafted, exercised and interpreted.
- (vi) Despite the positive side of double tax treaties in general, bilateral tax treaties may also provide avenues for harmful tax practices such as treaty shopping in which a resident of a third state may artificially acquire residence in one or both of the contracting states just to take advantage of the favourable tax treaties.

5 DISCUSSION OF FINDINGS

The SDG No. 17 on the means of implementation and global partnership for sustainable development calls on the international community to strengthen domestic resource mobilisation and to improve domestic capacity for tax and other revenue collections.⁵¹ Against the context of financial muscle imbalance between negotiating States – especially where economically powerful and weaker states are involved in a DTA – the bargaining may be processed under the auspices of continental or regional Free Trade Agreements such as NAFTA, SADC, EAC, ASEAN Protocols whose purpose, in the first place, is to strengthen the bloc's respective bargaining powers when negotiating international deals. DTA is one of such deals. On the positive note, none of the treaties entered into by Tanzania with other territories reduce the rate of withholding tax on payments of dividends, interest or royalties to non-residents below the domestic rates. However, the evidence gathered identify a range of potential dangers inherent in the tax treaties entered into. These are summarised in the next sub-section. Note that this list is not exhaustive.

5.1. Dangers identified in double taxation treaties

5.1.1. General Dangers – an overview

Based on the evidence gathered key dangers in the case study DTAs are summarised as follows:

- (i) Tax treaty provisions override domestic law: in both case study DTAs the provisions in the tax treaties override those of domestic tax laws.
- (ii) The OECD Models on which these two DTAs are based, favour capital exporting states against capital importing states: Almost all double tax treaties are largely based on the OECD Model because of its well established and authoritative
- (iii) Types of income and capital covered by double tax treaties: As per the OECD Model some types of income and capital may only be taxed in the state of tax payer's residence. Examples include: business profits (except when a permanent establishment exists in the other state), royalty income, capital and capital gains (except when it is specified), private pensions, some foreign government salaries and pensions and income from independent personal services for a case where there is no fixed base in the source state.
- (iv) Provision of certainty to investors on the taxing rights of the contracting parties is blurred;
- (v) Do not directly and conveniently help investors to better assess their potential tax liabilities on economic activities;
- (vi) There is no added incentive for overseas companies to do business in Tanzania, and likewise, for Tanzanian companies to do business overseas;
- (vii) The treaty rules are those that set limits on withholding taxes;
- (viii) The permanent establishment definition sets out when a country is entitled to tax a foreign investor;
- (ix) Unfriendly rules around capital gains tax, and finally anti-abuse rules that can be built into tax treaties;

⁵¹ United Nations, (2016), Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, New York

5.1.2. Main dangers from a tax justice perspective

Three main dangers stand out here from a tax justice perspective.

- (i) First, underlying the system of international tax treaties has been an overriding focus on preventing ‘double taxation’ – but this has, in practice, led to a world of widespread double **non-taxation** – that is, where income effectively gets taxed nowhere thereby enabling tax base erosion by giving up taxing rights through poor tax treaty negotiation.
- (ii) Second, should it be the jurisdiction that is the **source** of that income (i.e. the one that hosts the inward investment) which taxes the income, or the jurisdiction where the investor is **resident**: the capital-exporting country?
- (iii) A third danger is how does enough information get exchanged under the agreements to allow tax authorities to get the information they need? DTAs contain protocols for information exchange, but there is another class of tax treaty too: Tax Information Exchange Agreements (TIEAs). Generally, countries ought only to sign TIEAs, not

DTAs with tax havens, unless they want to see their tax revenues leak offshore through treaty abuses.

5.1.2. Some of the challenges portrayed in the case study countries’ DTAs

- (i) Profit shifting out of developing countries can have a significant negative impact on their prospects for sustainable development.
- (ii) Developing countries (including Tanzania) are often less equipped to deal with highly complex tax avoidance practices directly linked to offshore hubs because of resource constraints or lack of technical expertise. There is a clear relationship between the share of offshore-hub investment in host countries’ inward FDI stock and the reported (taxable) rate of return on FDI. The more investment is routed through offshore hubs, the less taxable profits accrue.
- (iii) Challenges of financing development through the DRM are numerous including: low savings; capital flight; tax incentives and exemptions; poor management of natural resources; narrow tax base; weak administrative systems and organizational capacities; tax evasion and avoidance; relatively harsh business environments in many SSA countries; weak political will and lack of moral justification for tax drive; weak domestic financial institutions and instruments in most SSA countries

5.2. A need for the countries to sign DTAs even when the levels of interaction in a form of international trade are asymmetric

With rising cross-border capital flows, the interaction of international tax jurisdictions has increasingly gained relevance in the last decades. Given the lack of a unified global tax order and the so far limited scope of multilateral initiatives, the tax treatment of cross-border activities remains to a large degree regulated by bilateral double taxation agreements (DTAs).⁵² These agreements set tax rules and allocate taxing rights between the two signatory states. Literature flagships the major shortcomings of the OECD model DTA, which is primarily in relation to capital importing developing countries, and how the UN model DTA has been designed to ameliorate that deficiency.

Of the 2,976 DTAs in place as of 2010, some 500 DTAs covered relationships between OECD countries (17% of the total).⁵³ About a third of the treaties were signed between two developing economies, and more than 50% were asymmetric DTAs between a developing on the one hand and an OECD country on the other hand (Baker, 2014).

The large majority of DTAs is drafted along either the OECD or the U.N. Model Tax Conventions (MTC) (Wijnen and de Goede, 2014). Both these conventions (albeit the U.N. Convention to a lesser degree) tend to shift taxing powers from the source state, i.e. the state where income is generated, to the residence state of a company. For two countries with largely symmetrical investment patterns this imbalance is not problematic. Conversely, when two countries with an asymmetric investment position sign such a DTA, this shifting of taxing powers inherently implies a loss of tax base for the capital-importing country (see e.g. Rixen and Schwarz, 2009). With capital still flowing predominantly from industrialized to developing countries and capital income flowing the other way, such agreements may thus put capital-importing developing countries at a disadvantage. This raises the question as to why capital-importing countries sign such DTAs. Several reasons have been brought forward.

The justification for asymmetric DTA signings is that in such imbalanced trading environment cases there is an anticipated compensation from the capital exporting country to the capital importing country. It is argued that developing countries expect increased capital-inflows after the signature of DTAs (Lang and Owens, 2014). Empirical evidence as to whether DTAs indeed lead to higher investment flows is, however, far from conclusive (Baker, 2014). From a policy perspective, Pickering (2013) argues that capital exporting countries have a higher bargaining power and thus can pressure capital-importers into signing DTAs. Furthermore, Braun, Zagler and Martin (2017) argue that capital exporters use foreign aid to incite capital-importers into signing DTAs. It is claimed that capital importers that sign a DTA are compensated through official development assistance (ODA) (ibid, 2017). This is not claimed to be an alternative but rather as an additional mechanism to explain the signing of DTAs between countries with unbalanced investment patterns (asymmetric DTAs).

Empirical evidence demonstrates that such compensation is indeed paid, for instance in the form of bilateral official development assistance, which increases on average by six million US\$ in the year of the signature of a DTA.⁵⁴ In a theoretical model⁵⁵ it can be demonstrated that in a DTA one country does not triumph over the other, but that the deal must be mutually beneficial. Therefore, there is still a need for the countries to sign DTAs even when the levels of interaction in form of international trade are asymmetric.

Nonetheless, Africa needs to go a step further by setting the stage not only for safe guarding from being exploited and left out but also in taking full advantage of emerging growth links to realize its latent growth potential. Promotion of joint ventures, use of domestic labour in FDI related foreign investment companies, human capital development and the use of information and communication technology could help transfer technology to domestic firms.

5.3. The need to adopt the recently proposed Multilateral instruments (MLI) in negotiation of tax treaties

On 7 June 2017, over 70 Ministers and other high-level representatives participated in the signing ceremony of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“Multilateral Instrument” or “MLI”). Signatories include jurisdictions from all continents and all levels of development. Several jurisdictions have also expressed their intention to sign the MLI as soon as possible and other jurisdictions are also actively working towards signature. The MLI offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS

⁵² A Multilateral Instrument (MLI) for the streamlining of DTAs has recently been proposed by the OECD in the framework of the Base Erosion and Profit Shifting (BEPS) project.

⁵³ Braun, Julia; Zagler, Martin (2017) : The true art of the tax deal: Evidence on aid flows and bilateral double tax agreements, ZEW Discussion Papers, No. 17-011

⁵⁴ Ibid

⁵⁵ Ibid

Project into bilateral tax treaties worldwide. The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. It also implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies.

Although South Africa and India are signatories to this MLI which they use when negotiating tax treaties, but Tanzania is not. All Tanzanian DTAs (except South Africa & India) are very exploitative, there is a need to re-negotiate them. Since more new treaties are being considered and the MLI is still open for additional Signatories, there is a need for Tanzania to sign as well in order to be at an equal footing in the new negotiations with other jurisdictions which are MLI Signatories. Because of globalisation effect, countries are using tax policy to drive growth, reduce inequalities and promote behavioural change. Governments are rightly placing growth and inclusiveness at the heart of their tax reform efforts which makes MLI an appropriate vehicle through which implementation of tax policy reforms may lead to wider strategies to achieving sustainable development goals.

5.4. Should DTAs be forbidden?

International law allows the taxation of foreign income if there is a personal or objective connection between the taxpayer and the taxing state. Nevertheless, tax treaties are obviously intended to benefit taxpayers of the contracting states. Whether treaties do so or not depends on the domestic law of each state. Further, developing countries are increasingly entering into tax treaties with industrialised and other developing countries in order to facilitate and promote cross-border trade and investment.

5.5. What ought to be done differently

By and large, in hindsight of the potential dangers that may be embedded in the articles and provisions of the DTAs signed by Tanzania and India and South Africa, negotiating capacity and vigilance were of paramount importance. **In particular to redress inconsistencies in the case study DTAs the following specific policy briefs are recommended:**

- (a) The Addis Ababa Action Agenda (AAAA) of the Third International Conference on Financing for Development (Addis Ababa, 13 – 16 July 2015) provides a new global framework for financing sustainable development by aligning all financial flows and policies with economic, social and environmental priorities.⁵⁶ As underlined in the AAAA, countries need to **strengthen tax administration, implement policies** to generate additional resources, and **combat corruption** and illicit financial flows.
- (b) Bilateral relief may either take the form of **tax exception or a tax credit**. It may involve the exemption method whereby tax jurisdiction over specified categories of income is assigned exclusively to one of the contracting parties, and the other agrees to exempt that category of income from tax, or refrain from exercising its jurisdiction to tax the particular income in question.
- (c) In order to make sure that the investors benefit and not the home country government, many developing countries insist on having a “**tax sparring**” clause in the tax treaties with developed countries. A typical tax treaty is designed to deal with three forms of double taxation.
 - i. **The dual residence problem** with respect to individuals is resolved by a series of rules establishing a hierarchy among the various tests of residence.

⁵⁶ Ibid

⁵⁷ Robert Schuman Centre For Advanced Studies, (2012), *CHOOSING BETWEEN THE UN AND OECD TAX POLICY MODELS: AN AFRICAN CASE STUDY*, EUI Working Papers RSCAS 2012/60 Robert Schuman Centre For Advanced Studies Global Governance Programme- 31

- ii. **The source problem:** To solve the source conflict double taxation problem, contracting states can provide a common source of income rule in the tax conventions. For example, the provision in the OECD Model state that the following classes of income and capital are taxed without any limitation in the state of source - (a) Income from immovable property situated in that state (including income from agriculture or forestry) and gains from alienation of such property (see Article 6 thereof). (b) Profits of a permanent establishment situated in that state (Article 7).
- iii. **The model tax treaty:** Countries should **develop a model tax treaty** (tailor -made model) that reflects the key aspects of *the policy framework*. The model facilitates ease of negotiation, maximize designing effective provisions and developing countries are highly advised to base their models as far as practicable on the United Nations Model Convention.
- (d) It is highly recommended that any country's model should include UN Model fundamental provision. A study of East African countries reveals reliance on both treaties, but some jurisdictions have been able to retain more taxing rights than others by greater reliance on approaches based on the UN model.⁵⁷ Certain features of the United Nations Model Convention are found in all modern tax treaties, such as: Provision for elimination of double taxation; Inclusion of non-discrimination rules; Provision for mutual agreement between tax administrations; and Provision for exchange of tax information between tax administrations, including information held by banks and other financial institutions.⁵⁸

⁵⁸ United Nations, (2016), Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, New York

6 RECOMMENDATIONS

Africa is striving to meet its development goals which are financed through various sources of finance. The main domestic source of public finance in most African countries has been taxation. This section presents policy recommendations in relation to both domestic and international sources of financing development, double taxation agreements inclusive. The following recommendations are made to the Government of Tanzania:

6.1. On Capacity Building of the relevant negotiators of double taxation agreements

Lack of capacity has been identified by developing countries as the central issue in dealing with aggressive tax planning and international tax matters. Capacity needs in dealing with aggressive tax planning and international tax matters is high on the development financing agenda.

Given the complexity of international business and taxation systems, negotiating capacity needs cannot be viewed in isolation. Negotiations require preparation and are linked to implementation that take place in the broader national context of an institutional knowledge base. The outcomes of DTAs for Tanzania depend on the ability of those who negotiated these agreements.

It is therefore recommended that all institutions responsible for DTAs negotiations on behalf of Tanzania such as TRA, the Attorney General's Office, Ministry of Foreign Affairs, Ministry of Finance and members of parliament, should have negotiation skills capacity building training in order to enable them to effectively develop and carry out their negotiation strategy.

It is also recommended that there should be a national pool of experienced and knowledgeable experts from the government, academia, diplomats and private sector for the preparedness and the capacity of Tanzania to engage in international trade negotiations, DTAs inclusive.

6.2. Tanzania should avoid signing DTAs with Developed Countries

DTAs between developed countries and developing countries, favour the former as they tax capital gains in their countries and ignore developing countries where the income is generated. It is recommended that Tanzania should avoid signing DTAs with developed countries. However, since DTAs among nations with the same or similar level of development, does not cause loss of revenue, and can act as an instrument of economic cooperation among the countries of the same geographical area, Tanzania should encourage DTAs with countries of the same level of economic development.

6.3. Creation of awareness and enhancement of public participation in to the negotiation of DTAs

The fact that DTAs are binding laws they ought to be subjected to further scrutiny. Building capacity in international complex tax matters such as offshore transfers of assets requires creation of awareness to the citizens and other stakeholders on the DTA. Offshore transfers of assets occur when shares of a foreign company owning a domestic asset are sold in the foreign country. The domestic law of both countries, in addition to the provisions of tax treaties, if any, determines which country has the right to tax the capital gains from that sale, and whether that gain is taxed once, twice, or not at all. International tax issues relating to extractive industries for instance requires high levels of public participation to avoid unnecessary conflicts which are in common place in the mining sector in Tanzania.

6.4. Tanzania should review the current double taxation treaties

Tanzanian tax treaties are long overdue for review, renegotiation and/or termination for the benefit of the country. The current DTAs are out-modelled and contain ring-fenced taxation rules that undermine Tanzania's taxing powers. A report⁵⁹ by Policy Forum Organisation, a non-governmental body, reveals that the DTAs which are in force now, are antiquated, revenue collection is in favour of the developed countries which are treaty partners. Although in this report the DTAs are not said to be totally irrelevant, but evidence reveals that treaties are largely harmful and costly to Tanzania and that's why they are overdue for reviews for the benefit of Tanzanians. It is also recommended that the government should table the treaties in Parliament for approval before signing them.

6.5. Preventing the improper use of tax treaties

The tax advantages in a tax treaty should be enjoyed only by those persons who the two countries intended could do so, and the treaty should not be used improperly to obtain an unintended benefit.

The following are some common examples of transactions involving potential abuse of tax treaties:

- (a) Treaty shopping and the use of conduit companies⁶⁰
- (b) Income shifting⁶¹
- (c) The international hiring-out of labour⁶²
- (d) Circumventing treaty threshold requirements⁶³
- (e) Changing the character of income⁶⁴
- (f) Tax sparing abuses. Some tax treaties with developing countries provide for a tax sparing credit. This is a credit given in the country of residence of the investor, not just for tax paid to the developing country, but a "shadow-credit" for tax that would have been charged in the host country except for tax-incentive legislation which offered a reduced rate or an exemption from tax for activities seen as encouraging economic development.⁶⁵

Tax treaties offer a range of tax advantages which countries agree to grant to each other in order to prevent double taxation and eliminate the barrier that double taxation would create to cross-border trade, investment, movement of persons, etc. Examples of these tax advantages are: exemption from tax in one or other of the countries;⁶⁶ reduced withholding taxes on dividends, interest and royalties;⁶⁷ and a foreign tax credit or exemption to eliminate double taxation.⁶⁸ These tax advantages are liable to attract the attention of tax planners.

Tax authorities in Tanzania should ensure that the tax treaty is not improperly used and that the tax advantage does not operate to the benefit of persons for whom it is not intended.

⁵⁹ <http://www.thecitizen.co.tz/News/1840340-3150966-view-printVersion-6sm4g7/index.html>

⁶⁰ Paragraphs 47-57 of the Commentary on Article 1 of the United Nations Model Convention. See also chapter II, section 5, Persons qualifying for treaty benefits, by Joanna Wheeler.

⁶¹ Various examples of income shifting are discussed in paragraphs 62-80 of the Commentary on Article 1 of the United Nations Model Convention. See also chapter II, section 5.3, Persons qualifying for treaty benefits, by Joanna Wheeler.

⁶² Paragraph 81 of the Commentary to Article 1 of the United Nations Model Convention. It was also the topic of an OECD Report in 1985, which is included in "Trends in International Taxation" (OECD, Paris 1985).

⁶³ Paragraphs 94-99 of the Commentary on Article 1 of the United Nations Model Convention.

⁶⁴ Paragraphs 86-93 of the Commentary on Article 1 of the United Nations Model Convention.

⁶⁵ See also chapter I, section 6.2.3, Overview of major issues in the application of tax treaties, by Brian Arnold.

⁶⁶ For example, under Article 13 (6) of the United Nations Model Double Taxation Convention between Developed and Developing Countries (New York: United Nations, 2011) (United Nations Model Convention)

⁶⁷ Under Articles 10, 11 and 12 of the United Nations Model Convention.

⁶⁸ Under Article 23 A or B of the United Nations Model Convention.

6.6. Detecting and combating aggressive tax avoidance schemes involving tax treaties

Most countries (if not all), including Tanzania are likely to have provisions in their domestic law for combating aggressive tax avoidance schemes. These may be specific anti-avoidance rules that counter particular types of schemes, or they may be general anti-avoidance rules. The effectiveness of domestic anti-avoidance rules may be undermined because a taxpayer's assets are located offshore, and it is impossible to enforce a tax debt in the other country.

Tanzania should apply the primary provision for mutual administrative assistance which is the exchange of information provision based upon the equivalent of Article 26 of the United Nations Model Convention.

6.7. Avoidance of tax incentives

Five years ago, in June 2012, a report estimated that Tanzania, one of the poorest countries in the world, was losing around 1 billion dollars in tax revenue annually mostly in the form of tax evasion, capital flight and tax incentives.⁶⁹ The report provoked public debate and became an eye-opener for decision makers. Since then, the current government has opened a window of opportunity through its commitment to combat corruption as well as boosting tax collection strategies.

The government remains committed to the tax incentives in the EPZs and SEZs, arguing that they stimulate foreign investments. Yet a host of independent reports suggest that Tanzania is unnecessarily losing revenues and that tax incentives are not needed.⁷⁰ Tanzania may also be losing revenues from double taxation agreements (DTAs) it has signed with other countries, although no estimates are available. The DTAs have capped withholding tax rates that can be levied on interest, dividends and royalties.

6.8. DTAs among African countries

With increased championing of Continental Free Trade Area (CFTA), there is no need for African countries signing DTAs among themselves because they dilute the resolve of local jurisdictions to deal with the so-called "Base Erosion and Profit Shifting (BEPS)" syndrome, i.e. tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.⁷¹ African governments do not have to enter into DTA *amongst themselves* because the current domestic/regional tax laws are sufficient enough to deal with cases of double taxation.

If government must enter into such treaties, it must be cautious not to give away its taxing rights. For example, an influential IMF paper in 2014 warned that developing countries, among them Uganda would be well advised to sign treaties only with considerable caution.

6.9. Carry out a comparative analysis of the rates of all TDAs

Carry out a comparative analysis of the rates of all TDAs vis-a-vis the local investor. A thorough analysis will highlight the basis for the rates as well as the impact and implications for Tanzania.

⁶⁹ The Interfaith Standing Committee published a report called "The One Billion Dollar Question: How can Tanzania Stop Losing So Much Tax Revenue".

⁷⁰ A report conducted in 2013 for Tanzania's Ministry of Finance by the consultancy, CRC Sogema, and which is housed on the Ministry's website, concluded that: 'In countries with poor investment climates – that includes Tanzania and other developing countries

⁷¹ www.oecd.org/tax/beps/

DTAs serve different purposes from the domestic tax laws in existence. Countries should be cautious in entering into tax treaties because they may create opportunities for tax avoidance. The dangers of the improper use or abuse of tax treaties are imminent and certainly do exist, and countries need to be aware of this, as well as of the ways in which they can prevent them from happening or counter this rampant abuse. At the same time, through provisions for administrative assistance by exchange of information or assistance in cross-border collection of taxes, tax treaties can give countries a powerful weapon to detect and counter tax avoidance or tax fraud.

There is a clear need for capacity-building initiatives, which would strengthen the skills of the relevant officials in developing countries in the tax treaty negotiation area, as a contribution to further enhancing their role in support of the global efforts aimed at improving the investment climate and effectively curbing international tax evasion.

We hope that this report on the Dangers of Double Taxation Agreements signed between Tanzania and the two countries, India and South Africa will contribute to fulfilling that need on one hand, but also stimulate debate on the international taxation front, on the other. In writing this report an effort was made to keep the material basic and practical. We hope that it will serve a useful purpose in providing practical guidance to tax treaty negotiators from developing countries to advance their countries' double tax treaty practices.

The Report which is purely based on desk research is written by experienced consultants in liaison with numerous experts from the national tax authorities. Perhaps a final word of warning is necessary. Treaties relieve governments from double taxation by either reducing taxes or exempting from taxes or granting credits against taxes. If tax avoidance is too readily alleged, and treaty benefits denied, then the advantages of treaties in removing barriers to trade and investment may be nullified. As in cases of domestic tax avoidance, care must be taken to distinguish between abusive arrangements and those that are consistent with the purposes for which the tax treaty was concluded.

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& APPENDICES**

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APPENDIX A: TANZANIA – INDIA DOUBLE TAXATION AGREEMENT

TANZANIA

Section 90 of the Income-tax Act, 1961 - Double taxation agreement - Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries - Tanzania

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Tanzania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Tanzania on the 27th day of May, 2011 shall come into force on the 12th day of December, 2011, being the date of the later of the notifications after completion of the procedures as required by the respective laws for the entry into force of this Agreement, in accordance with Article 31 of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Agreement annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2012.

Notification No. 8/2012-FT&TR-II[F.No.503/02/2005-FTD-II]/S.O. No.303(E), dated 16- 2-2012*

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the United Republic of Tanzania, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows:

* See also old Agreement *vide* Notification No. GSR 559(E), dated 16-10-1981.

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:

(a)	in India, the income tax, including any surcharge thereon; (hereinafter referred to as “Indian tax”);
(b)	in Tanzania; the income tax and any other tax on income imposed under the Income Tax Act, Cap. 262, Revised Edition 2004 (hereinafter referred to as “Tanzanian Tax”)

This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a)	the term “India” means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the United Nations Convention on the Law of the Sea, 1982;
(b)	the term “Tanzania” means the United Republic of Tanzania 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 Tanzania and in accordance with international law, including the United Nations Convention on the Law of the Sea, 1982 as an area within which Tanzania may exercise sovereign rights or jurisdiction;
(c)	the terms “Contracting State” and “the other Contracting State” mean the Republic of India or the United Republic of Tanzania as the context requires;
(d)	the term “person” includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
(e)	the term “company” means anybody corporate or any entity that is treated as a body corporate for tax purposes;
(f)	the term “enterprise” applies to the carrying on of any business;
(g)	the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h)	the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
(i)	the term “tax” means Indian or Tanzanian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
(j)	the term “competent authority” means:
(i)	in India: the Finance Minister, Government of India, or his authorised representative;
(ii)	in Tanzania: the Minister for Finance and Economic Affairs, Government of the United Republic of Tanzania or his authorised representative;
(k)	the term “national” means:
(i)	any individual possessing the nationality of a Contracting State;
(ii)	any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
(l)	The term “year of income” means:
(i)	in the case of India: the financial year beginning on the 1st day of April;
(ii)	in the case of Tanzania: ‘the year of income’ as defined under Section 20 of the Income Tax Act, Cap. 262, Revised Edition 2004.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, and any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a)	he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
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(b)	if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
(c)	if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
(d)	if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. Where both the Contracting States claim the effective management of such a person, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:

(a)	a place of management;
(b)	a branch;
(c)	an office;
(d)	a factory;
(e)	a workshop;
(f)	a sales outlet;
(g)	a warehouse in relation to a person providing storage facilities for others;
(h)	a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
(i)	a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” likewise includes:

(a)	A building site or construction, installation or assembly project or supervisory activities in connection therewith but only if such site, project or activities last more than 270 days.
(b)	The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than 183 days within any 12 month period.

4. Notwithstanding the preceding provisions of this Article the term “permanent establishment” shall be deemed not to include:

(a)	the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
(b)	the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
(c)	the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d)	the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
(e)	the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
(f)	the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

(a)	has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
(b)	has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
(c)	habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State, if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments

in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude a Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable in that State.
2. Notwithstanding the provisions of paragraph 1, income of an enterprise of one of the Contracting State derived from the other Contracting State, from the operation of ships in international traffic may be taxed in that other Contracting State, but the tax chargeable in that other Contracting State on such income shall be reduced by an amount equal to 50 per cent of such tax.
3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is supplementary or incidental to its international operations of ships or aircraft shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.
4. For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.
5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

(a)	an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
(b)	the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of the State -and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed:

(a)	5 per cent of the gross amount of the dividends if the beneficial owner is a company that owns at least 25 per cent of the shares of the company paying the dividends; or
(b)	10 per cent of the gross amount of the dividends in all other cases-

This paragraph shall not affect taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a , resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:
 - (a) the Government, a political sub-division or a local authority of the other Contracting State; or
 - (b) (i) in the case of India, the Reserve Bank of India, the Export-Import Bank of India, the National Housing Bank; and
 - (ii) in the case of Tanzania, the Bank of Tanzania, or
 - (c) any other institution as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters.
4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in

respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films, tapes or discs used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. (a) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State: Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

- (b) Where under sub-paragraph (a) royalties do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, in one of the Contracting States, the royalties shall be deemed to arise in that Contracting State.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

(a)	if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
(b)	if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12 months period commencing or ending in the year of income concerned in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a)	the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 months period commencing or ending in the year of income concerned, and
(b)	the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
(c)	the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16

DIRECTORS' FEES

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors in a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18

PENSIONS AND ANNUITIES

Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i)	is a national of that State; or
(ii)	did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. Notwithstanding the provisions of Article 14, a professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution as approved by the competent authority for that purpose in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State for that purpose.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons provided that such research activities will be conducted upon request by beneficiary Institution.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the year of income in which he visits the other Contracting State or in the immediately preceding year of income.

4. For the purposes of paragraph 1, approved institution means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

ARTICLE 21

STUDENTS

1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training.
2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

ARTICLE 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.
2. When income is subject to tax in both Contracting States, relief from double taxation shall be given as follows:

(a)	In India:
(i)	Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Tanzania, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Tanzania.
	Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Tanzania.
(ii)	Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
(b)	In Tanzania:
(i)	Where a resident of Tanzania derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Tanzania shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.
	Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.
(ii)	Where in accordance with any provision of the Agreement, income derived by a resident of Tanzania is exempt from tax in Tanzania, Tanzania may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State

any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall apply to taxes covered by this Agreement.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes covered by this Agreement. The exchange of information is not restricted by Article 1.
2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or to the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraph 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a)	to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
(b)	to supply information (including documents or certified copies of the documents) which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
	to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other state may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or a person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub- divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

(a)	in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person, who, at that time, cannot, under the laws of that State, prevent its collection, or
(b)	in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

(a)	to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
(b)	to carry out measures which would be contrary to public policy (ordre public);
(c)	to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
(d)	to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 28

LIMITATION OF BENEFITS

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person has the qualifications as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any of such benefits.
2. A person of a contracting state is a qualified person for a year of income only if such a person is either:

(a)	Governmental entity; or
(b)	A company incorporated in either of the Contracting States, if -
(i)	the principal class of its shares is listed on a recognized stock exchange as defined in paragraph 5 of this Article and is regularly traded on one or more recognised stock exchanges, or
(ii)	at least 50 per cent of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individual residents of either of the Contracting States and/or by other persons incorporated in either of the Contracting States, at least 50 per cent of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States, or
(c)	A partnership or association of persons, at least 50 per cent or more of whose beneficial interests is owned by one or more individual residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50 per cent of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States, or
(d)	A charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States.

provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50 per cent of the person's gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for the purpose of computation of tax covered by this Agreement in the person's state of residence (but not including arm's length payment in

the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the permanent establishment of the bank situated in either of the Contracting States).

3. The provisions of Paragraph 1 and 2 shall not apply and a resident of a Contracting State will be entitled to benefits of the Agreement with respect to an item of income derived from the other State, if the person actively carries on business in the State of residence (other than the business of making or managing investments for the resident's own account unless these activities are banking, insurance or security activities) and the income derived from the other Contracting States is derived in connection with or is incidental to that business and that resident satisfies the other conditions of this Agreement for the obtaining of such benefits.
4. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the Competent Authority of the other Contracting State determines that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.
5. For the purposes of this Article the term 'recognised stock exchange' means:

(a)	in India, a stock exchange which is for the time being recognised by the Central Government under Section 4 of the Securities Contracts (Regulation) Act, 1956;
(b)	in Tanzania, the "Dar es Salaam Stock Exchange" or any other exchange recognised by the Capital Markets and Securities Authority under the Capital Markets and Securities Authority Act, Cap. 79; and
(c)	any other stock exchange which the Competent Authorities agree to recognise for the purposes of this Article.

Notwithstanding anything contained in paragraphs 2 to 5 above, any person shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

ARTICLE 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30

AMENDMENTS

1. The Contracting States may, at any time, amend this Agreement by mutual consent in writing through the diplomatic channel.
2. The Contracting States shall notify each other in writing, through the diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of the amendments.
3. The amendments shall enter into force on the date of receipt of the later of these notifications.

ARTICLE 31

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.
3. The provisions of this Agreement shall have effect:

(a)	In India, in respect of income derived in any year of income beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
(b)	In Tanzania, in respect of income derived in any year of income on or after the 1st day of January next following the calendar year in which the Agreement enters into force.

4. The Agreement between the Government of the Republic of India and the Government of the United Republic of Tanzania for the Avoidance of Double Taxation and prevention of Fiscal evasion with respect to taxes on income signed at Dar es Salaam on the 5th day of September, 1979 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3.

ARTICLE 32

TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(a)	In India, in respect of income derived in any year of income on or after the first day of April next following the calendar year in which the notice is given;
(b)	In Tanzania, in respect of income derived in any year of income on or after the 1st day of January next following the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Dar es Salaam this 27th day of May, 2011, each, in the Hindi and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

APPENDIX B: TANZANIA – SOUTH AFRICA DOUBLE TAXATION AGREEMENT

No 556 4 July 2007

SOUTH AFRICAN REVENUE SERVICE

INCOME TAX ACT, 1962

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

In terms of section 108 (2) of the Income Tax Act, 1962 (Act No 58 of 1962), 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 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Government of the United Republic of Tanzania 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 28 of the Agreement, that the date of entry into force is 15 June 2007.

In terms of the provisions of subparagraphs (a) and (b) of paragraph 2 of Article 28 of the said Agreement, the provisions of the Agreement shall apply as follows:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 August 2007; and
- (b) with regard to other taxes, in respect of years of assessment beginning on or after 1 August 2007.

The Agreement has been published in Government Gazette No 30039 dated 4 July 2007.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Preamble

The Government of the Republic of South Africa and the Government of the United Republic of Tanzania desiring to promote and strengthen the economic relations between the two countries,

HAVE AGREED as follows:

ARTICLE 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are:
 - (a) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies; and
 - (iii) the withholding tax on royalties; (hereinafter referred to as “South African tax”); and
 - (b) in Tanzania:
 - (i) the income tax; and
 - (ii) the withholding taxes under the Income Tax Act, 2004; (hereinafter referred to as “Tanzanian tax”).
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term “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; and
 - (b) the term “Tanzania” means the United Republic of Tanzania 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 Tanzania and in accordance with international law, as an area within which Tanzania may exercise sovereign rights or jurisdiction;

- (c) the terms “a Contracting State” and “the other Contracting State” mean South Africa or Tanzania, as the context requires;
 - (d) the term “business” includes the performance of professional services and of other activities of an independent character;
 - (e) the term “company” means anybody corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term “competent authority” means:
 - (i) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner; and
 - (ii) in Tanzania, the Minister for Finance or an authorised representative of the Minister;
 - (g) the term “enterprise” applies to the carrying on of any business;
 - (h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (i) the term “international traffic” means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
 - (j) the term “national” means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State; and
 - (k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.
2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;

- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
 - (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.
3. The term “permanent establishment” likewise encompasses:
 - (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
 - (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and

- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
 6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
 7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
 8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Transport

1. Profits of an enterprise of a Contracting State from the operation of aircraft or road transport vehicles in international traffic shall be taxable only in that State.
2. Profits derived by an enterprise of a Contracting State from the operation of ships or rail transport vehicles in international traffic may be taxed in both Contracting States according to the law of each Contracting State. Provided that where such an enterprise derives profits from such operation in the other Contracting State, for the purposes of taxation in that other State:
 - (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
 - (b) the tax chargeable in that other State shall not exceed 50 per cent of the profits as calculated under the provisions of subparagraph (a).
3. Profits of an enterprise of a Contracting State from the use or rental of containers used for the transport in international traffic of goods or merchandise shall be taxable only in that State.
4. For the purposes of this Article, profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include:
 - (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
 - (b) profits derived from the rental of rail or road transport vehicles, if such profits are incidental to the profits to which the provisions of paragraphs 1 and 2 apply.
5. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 15 per cent of the capital of the company paying the dividends; or
 - (b) 20 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall settle the mode of application of this limitation by mutual agreement.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

- (a) the payer of the interest is that Contracting State or a political subdivision or a local authority thereof;
 - (b) the interest is paid to the other Contracting State or a political subdivision or a local authority or the central bank thereof.
4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
 5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
 6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
 7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The competent authorities of the Contracting States shall settle the mode of application of this limitation by mutual agreement.
4. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or sportsperson from that person's personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is wholly or mainly supported by the other Contracting State, a political subdivision or a local authority thereof.

ARTICLE 17

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

Students and Business Apprentices

A student or business apprentice who is present in a Contracting State solely for the purpose of the student or business apprentice's education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of the student or business apprentice's maintenance, education or training.

ARTICLE 20

Other Income

Items of income arising in a Contracting State which are not dealt with in the foregoing Articles of this Agreement may be taxed in that State.

ARTICLE 21

Elimination of Double Taxation

Double taxation shall be eliminated as follows:

- (a) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Tanzanian tax paid by residents of South Africa in respect of income taxable in Tanzania, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income;

- (b) in Tanzania, subject to the provisions of the law of Tanzania regarding the allowance of a credit to a Tanzanian resident against Tanzanian tax of tax payable in a territory outside Tanzania (which shall not affect the general principle hereof), South African tax paid by residents of Tanzania in respect of income taxable in South Africa, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to Tanzanian fiscal law. Such credit shall not exceed the amount of the tax chargeable upon the income in respect of which the credit is to be allowed or upon each part of such income, as the case may be, computed in accordance with Tanzanian fiscal law.

ARTICLE 22

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Nothing contained in this Article shall prevent a Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State:
 - (a) in South Africa, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points; and
 - (b) in Tanzania, a tax at a rate not exceeding ten per cent on the amount of the profits of the permanent establishment, after deduction of the corporation tax relating to such profits.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 22, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 24

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the methods in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 25

Assistance in Recovery

1. The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.
2. Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph 1 of Article 24 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.
3. It is understood that unless otherwise agreed by the competent authorities of both Contracting States,
 - (a) ordinary costs incurred by a Contracting State in providing assistance shall be borne by that State,
 - (b) extraordinary costs incurred by a Contracting State in providing assistance shall be borne by the other State and shall be payable regardless of the amount collected on its behalf by the first-mentioned State.

As soon as a Contracting State anticipates that extraordinary costs may be incurred, it shall so advise the other Contracting State and indicate the estimated amount of such costs.

4. The competent authorities of the Contracting States shall settle the mode of application of the provisions of this Article by mutual agreement.

ARTICLE 26

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 27

Amendments

1. The Contracting States may, at any time, amend this Agreement by mutual consent in writing through the diplomatic channel.
2. The amendments to the Agreement shall be ratified according to the procedures required by the domestic law of each Contracting State. The Contracting States shall notify each other of the completion of these procedures through the diplomatic channel.
3. The amendments shall enter into force on the date of receipt of the later of these notifications.

ARTICLE 28

Entry into Force

1. Each of the Contracting States shall notify to the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of the Agreement shall apply:
 - (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following the date upon which the Agreement enters into force; and
 - (b) with regard to other taxes, in respect of years of assessment beginning on or after the first day of the second month next following the date upon which the Agreement enters into force.

ARTICLE 29

Termination

1. This Agreement shall remain in force until termination by one of the Contracting States. Either Contracting States may terminate the Agreement, through the diplomatic channel, by giving notice of termination on or before June 30 in any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement.
2. In such event the Agreement shall cease to apply:
 - (a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
 - (b) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement.

DONE at Pretoria in two originals, both copies being equally authentic, this 22nd day of September 2005

Mandisi B.M.	Mpahlwa (Signed)
FOR THE GOVERNMENT OF REPUBLIC OF SOUTH AFRICA	FOR THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

APPENDIX C: METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.
2. When income is subject to tax in both Contracting States, relief from double taxation shall be given as follows:

IN	INDIAN Article 23	SOUTH AFRICAN Article 21
INDIA	(i) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Tanzania, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Tanzania.	
	(ii) Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Tanzania.	
	(iii) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.	
TANZANIA	(i) Where a resident of Tanzania derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Tanzania shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.	(i) subject to the provisions of the law of Tanzania regarding the allowance of a credit to a Tanzanian resident against Tanzanian tax of tax payable in a territory outside Tanzania (which shall not affect the general principle hereof), South African tax paid by residents of Tanzania in respect of income taxable in South Africa, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to Tanzanian fiscal law.

	(ii) Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.	(ii) Such credit shall not exceed the amount of the tax chargeable upon the income in respect of which the credit is to be allowed or upon each part of such income, as the case may be, computed in accordance with Tanzanian fiscal law.
	(iii) Where in accordance with any provision of the Agreement, income derived by a resident of Tanzania is exempt from tax in Tanzania, Tanzania may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.	
SOUTH AFRICA		(i) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Tanzanian tax paid by residents of South Africa in respect of income taxable in Tanzania, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law.
		(ii) Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income;