

Tax treaty with South Africa provides new alternatives for structuring investment into Democratic Republic of Congo

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In brief

Until recently, the Democratic Republic of Congo (DRC) had entered into only one tax treaty (with Belgium). On July 18, 2012, the DRC doubled this number when its tax treaty with South Africa came into force.

This development should be of interest to US multinationals with planned and existing investments in the DRC because it will provide alternative investment structuring opportunities. When a US company holds its DRC investment through South Africa, the treaty and South Africa's attractive holding company regime may reduce the tax cost of doing business in the DRC.

In detail

Dividends

The DRC's domestic laws provide that dividends paid by resident companies to non-residents are subject to a 20% withholding tax (10% for mining companies). However, the treaty with South Africa will reduce the rate to 5% if the South African resident company holds at least 25% of the DRC company. In all other cases, the rate is reduced to 15%.

Interest

Interest arising in the DRC is subject to a 20% withholding tax rate (0% in the mining sector under certain conditions).

If the beneficial owner of the interest is a South African resident, the treaty reduces this rate to 10%.

Royalties

Royalties arising in the DRC are subject to withholding tax at an effective rate of 14%. However, if the beneficial owner of the royalties is a South African resident, the treaty reduces this rate to 10%.

The takeaway

Because taxpayers could qualify for reduced withholding tax rates without being subject to an additional layer of tax in South Africa (if the South African holding company qualifies as a

'headquarter company', there should be no additional layer of tax on dividends, interest and in future royalties), US multinationals with existing and planned investments in the DRC may wish to consider the potential benefits of holding their investments through South Africa.

The treaty applies to amounts paid on or after January 1, 2013 and with respect to tax years beginning on or after January 1, 2013.

Let's talk

For a deeper discussion, please contact:

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