



Seychelles Revenue Commission

PUBLIC RULING – 2019 - 1

Subject Heading: Income and Non-Monetary Benefits Tax Act 2010 as from the 1st June 2018 onwards.

Publication Status: Final

Contents	Paragraph
Preamble	1
What this Ruling is about	2 - 3
Legislative framework	4 - 12
Ruling	13 - 18
Explanation	19 - 35
Effective date	36

Any enquiry in relation to this Public Ruling can be addressed to the Seychelles Revenue Commission, PO Box 50, Maison Collet, Palm Street, Victoria, Republic of Seychelles.

Preamble

1. This document is a ruling for the purposes of Section 58 of the *Revenue Administration Act 2009* (hereafter RAA).

What this Ruling is about

2. The purpose of this public ruling is to consider provisions of the Income and Non-Monetary Benefits Tax Act 2010, (Act 10 of 2010).
3. This ruling considers the rate of income tax payable in respect of emoluments received from each source of employment in a month by an employed person, who is not a citizen of Seychelles but whose country has a Double Taxation Avoidance Agreement (hereafter DTAA) with the Republic of Seychelles.

Legislative Framework

4. Item 3(a) of the Income and Non-Monetary Benefits Tax (Amendment) Act 2017;

“Paragraph 1 also applies to the emoluments of an employed person who is not a citizen of Seychelles-

(a) where a person is entitled to the same emoluments as a citizen of Seychelles under an international agreement referred to in section 79 of the Business Tax Act (Cap 20)”

5. Section 2 of the Business Tax Act 2009 states;

“Resident person” means —

(a) an individual —

(i) who resides in Seychelles;

(ii) whose domicile is in Seychelles unless the person has a permanent place of abode outside Seychelles; or

(iii) who is present in Seychelles for a period of, or periods amounting in aggregate to, one hundred eighty-three days or more in any twelve-month period that commences or ends during a tax year;

(b) an entity —

(i) incorporated, formed, organised, or otherwise established in Seychelles; or

(ii) managed and controlled in Seychelles;

(c) a trust —

(i) settled or established in Seychelles; or

(ii) in respect of which a trustee of the trust is a resident person;

(d) a body within paragraph (a) or (b) of the definition of Government body; or

(e) a partnership in which one of the partners is a resident person;

6. Section 79 of the Business Tax Act reads as follows;

(1) The Minister may, for and on behalf of Seychelles, enter into an agreement with the Government of a foreign country in relation to taxation matters imposed by the laws of that country and for tax compliance purposes of the agreement shall have effect, subject to subsection (4), in relation to tax imposed under this Act.

(2) The Minister may delegate the functions conferred under subsection (1) to any Government official.

(3) For the avoidance of doubts it is stated that the terms of any taxation agreement entered into pursuant to subsection (1), take precedence over the provisions of this Act.

(4) Where a taxation agreement has been entered into under subsection (1) the Minister shall, by regulation, declare that the agreement specified in the regulation has been entered into and the agreement shall have effect in relation to the tax imposed under this Act.

(5) Taxation agreements are listed in the Sixth Schedule to this Act.

7. Section 98(A) of the Revenue Administration Act reads as follow;

- (1) The Minister may, for and on behalf of the Government of Seychelles, enter into a tax agreement or treaty relating to international tax compliance and avoidance and prevention of fiscal evasion with respect to taxes or exchange of information on tax matters.
- (2) The Minister may authorise in writing a public officer to perform his or her functions under subsection (1).
- (3) Where a tax agreement or treaty has been entered into under subsection (1), the Minister shall, by regulation, declare that the tax agreement or treaty specified in the regulations has been entered into and the tax agreement or treaty shall have effect in relation to matters under any revenue law.
- (4) The Minister may make regulations for, or in connection with, the giving effect to the tax agreement or treaty entered into under subsection (1).

8. Article 1 of Seychelles Model Double Taxation Avoidance Agreements as follow;

“This convention shall apply to persons who are resident of one or both Contracting States.”

9. Article 3 of Seychelles Model Double Taxation Avoidance Agreements;

*“The term “person” includes an **individual**, a company, a trust and any other body of persons which is treated as an entity for tax purposes.”*

10. Article 2 of Seychelles Model Double Taxation Avoidance Agreements;

Paragraph 1

*“This agreement shall apply to **taxes on income**, imposed on behalf of each Contracting State or its political subdivisions, irrespective of the manner in which they are levied.”*

Paragraph 2

*“There shall be regarded as taxes on income **all taxes imposed on total income or on elements of income.**”*

Paragraph 3

“The existing taxes to which this Agreement shall apply are in particular—

(b) in Seychelles—

(i) the Business Tax

(ii) the Petroleum Income tax

(hereinafter referred to as “Seychelles tax”).

Paragraph 4

“This agreement shall also apply to any identical or substantially similar taxes, which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.”

11. Article 15 of the Seychelles Model Double Taxation Avoidance Agreements;

Paragraph 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.”

Paragraph 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 the calendar 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 or a fixed base which the employer has in the other State.”

12. Article 24 of the Seychelles Model Double Taxation Avoidance Agreements;

Paragraph 1

“The 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.”

Ruling

13. For the purpose of the Income and Non-Monetary Benefits Tax Act (hereafter INMBTA), non-citizens of Seychelles who are in the same circumstance as citizen of Seychelles in particular with respect to residence as per the definition of resident person, under section 2 of the Business Tax Act, shall not be subjected to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements of citizens of Seychelles.
14. A non-citizen of Seychelles who is a national of a country that has a DTAA with Seychelles shall pay the same rate of income tax as a citizen of Seychelles under item 1 of the First Schedule (Rates of Income Tax) of the INMBT (Amendment Act) 2017 pursuant to item 3(a) of the First Schedule of the same Amendment Act and the Non-Discrimination Article in Seychelles DTAAAs.

15. However, item 3(a) of the First Schedule of the INMBT (Amendment) Act 2017 states “where the person is entitled to the same emoluments as a citizen of Seychelles”. This wording may create some ambiguity in regards to whether item 3(a) will apply only if the person that is not a citizen of Seychelles is entitled to the same emoluments as a citizen of Seychelles.
16. DTAAAs take precedence over domestic taxation legislations on taxes on Income (Article 2) of Seychelles Model DTAAAs and Section 79 of the BTA. In the event of any ambiguity, the provisions of the Article on Non-Discrimination precedes item 3(a) of the First Schedule of the INMBT (Amendment) Act 2017 and provides clarity on the matter. The overriding application of the Article is not on emoluments but on taxation and connected requirements.
17. This ruling is applicable only to nationals of the following countries who has a DTAA with Seychelles:

1.	Bahrain	15.	Malaysia
2.	Barbados	16.	Mauritius
3.	Belgium	17.	Monaco
4.	Bermuda	18.	Oman
5.	Botswana	19.	Qatar
6.	China	20.	San Marino
7.	Cyprus	21.	Singapore
8.	Ethiopia	22.	South Africa
9.	Guernsey	23.	Sri Lanka
10.	Indonesia	24.	Swaziland
11.	Isle of Man	25.	Thailand
12.	Jersey	26.	United Arab Emirates
13.	Kenya	27.	Vietnam
14.	Luxembourg	28.	Zambia

Explanation

18. The first Article of Seychelles Model DTAAAs state that “*This agreement (DTAA) shall apply to persons who are residents of one or both of the Contracting States.*” The term “person” in DTAAAs includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes.
19. DTAAAs shall apply to taxes on income, imposed on behalf of each Contracting State or its political subdivisions, irrespective of the manner in which they are levied. Taxes on income shall be regarded as all taxes imposed on total income or on elements of income. E.g. Business Tax and Income and Non-Monetary Benefits Tax.
20. DTAAAs shall also apply to any identical or substantially similar taxes, which are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes.

21. The Non-Discrimination Article in DTAA states “The nationals of a Contracting State (E.g. Mauritians) shall not be subjected in the other Contracting State (E.g. Seychelles) to any taxation (E.g. INMBTA) or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State (Seychellois) 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.”
22. Seychelles taxation laws defines an individual as being a “Resident person” where the individual:
“(i) resides in Seychelles;
(ii) whose domicile is in Seychelles unless the person has a permanent place of abode outside Seychelles; or
(iii) who is present in Seychelles for a period of, or periods amounting in aggregate to, one hundred eighty-three days or more in any twelve-month period that commences or ends during a tax year.”
23. -The individual resides in Seychelles; to reside in Seychelles an individual shall reside or has resided in Seychelles for at least 183 days in a tax year or be domiciled in Seychelles. To be domiciled in Seychelles a person shall be a long term resident or a citizen of Seychelles,
-The individual has its domicile in Seychelles unless the person has a permanent place abode outside Seychelles; or
-The individual is present in Seychelles for a period of or period amounting in aggregate to, 183 days or more in any 12 months period that commences or ends during a tax year.
24. The Article on Income from Employment, usually Article 15 in DTAA provides that if the employment is exercised in Seychelles, such remuneration as is derived therefrom may be taxed in Seychelles (Source State).
25. However, Paragraph 2 of the Article states that, where remuneration is derived by a resident of a Contracting State (e.g. Mauritian) in respect of an employment exercised in the other Contracting State (Seychelles) remuneration shall be taxable only in the first-mentioned State (Mauritius) if—
(a) the recipient is present in the other State for a period or periods not exceeding (**less than**) in the aggregate 183 days in the calendar year concerned; and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State (**e.g. Employer is based in any country other than Seychelles**); and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State (**not paid by a branch in or a permanent establishment in Seychelles**).”

Description of the above circumstances, i.e.

- (i) employment is less than 6 months in Seychelles,
- (ii) remuneration is paid by a Parent Company or International Organisation outside Seychelles to a resident person working in Seychelles,
- (iii) the remuneration is not paid by a permanent establishment or fixed base in Seychelles, the remuneration will be taxed by the state of residence (Mauritius). If the above exceptions are not met, the remuneration will be taxed in the source state (Seychelles).

26. In applying paragraph 1 of the Non-discrimination Article, the OECD Model Tax Convention on Income and Capital provides that the underlying question is whether two persons who are residents (Section 2 of Business Tax Act) of the same State (Seychelles) are being treated differently solely by reason of having a different nationality.
27. The words “... shall not be subjected ... to any taxation or any requirement connected therewith which is other or more burdensome ...” of Paragraph 1 of Article on non-discrimination means that when a tax is imposed on nationals and foreigners, who are in the same circumstances, in particular with respect to residence; it must be in the same form with regards to both the basis of charge and the method of assessment. Its rate must be the same and finally, the formalities connected with the taxation (returns, payment, prescribed times, etc...) must not be more onerous for foreigners than for nationals.
28. For the above principles and provisions to be applicable, the Seychelles Revenue Commission (hereafter SRC) will have to satisfy itself that the individual claiming that he or she shall not be subjected in Seychelles to any taxation (E.g. INMBTA) or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which Seychellois in the same circumstances in particular with respect to residence, are or may be subjected is indeed a national of the contracting state with which Seychelles has a DTAA.
29. SRC shall require the person to produce a valid passport and/or a citizenship certificate to ascertain that the individual is a national of a Seychelles’ Treaty Partner.

Example 1:

30. A non-citizen of Seychelles whose country has a DTAA with Seychelles is deriving an income of SCR 15,000/.

Brackets:	Gross Monthly Income		Rates	EXAMPLE 1	
	From:	To:		Salary: SCR 15,000.00	Tax:
Bracket 1	0	8,555.50	0%	8555.5	
Bracket 2	8,555.51	10,000.00	15%: SCR 8,555.50 - SCR 10,000.00	8,555.50-10,000.00	216.68
Bracket 3	10,000.01	83,333.00	20%: SCR 10,000.01 - SCR 83,333.00	10,000.01-15,000.00	1,000.00
Bracket 4	above 83,333.01		30%: SCR 83,333.01 and above	Σ	1216.68

Net Income: 15000-1216.68 = **SCR 13,783.32**

Example 2:

31. The example below illustrates the principles of Non-Discrimination set out in Seychelles DTAAAs.
32. Under the domestic income tax law of State A (Seychelles), companies incorporated in that State or having their place of effective management in that State are residents thereof. The domestic tax law of State A (Seychelles) provides that dividends paid to a company incorporated in that country (Seychelles) by another company incorporated in that country (Seychelles) are exempt from tax.

33. A company (XY Ltd) incorporated in State B (Mauritius) has its place of effective management in State A (Seychelles) and is considered as a resident of State A (Seychelles) for the purpose of the “State A (Seychelles) - State B (Mauritius) Convention”. The DTAA shall precede the domestic tax law.
34. The fact that dividends paid to XY Ltd (Company Incorporated in Mauritius) by a company incorporated in State A (Seychelles) would not be eligible for this tax exemption on dividends, even though the recipient company is in the same circumstances as a company incorporated in State A (Seychelles) with respect to its residence, would constitute a breach of paragraph 1 of Article 24.... absent other relevant different circumstances.
35. i.e. XY Ltd, incorporated in Mauritius but resident in Seychelles, shall be accorded the same treatment to its dividends in terms of tax, to two companies incorporated in Seychelles that are receiving tax exemption on payment of dividends.

Date of Effect

36. This ruling applies as from 1st June 2018 and after its date of issue.

Commissioner General

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