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A DTAA is superior to local tax legislation

Botswana has entered into double taxation agreements with some countries as a way of avoiding double taxation of income earned from other countries. This agreement, commonly known as Double Taxation Avoidance Agreement (DTAA) is an international treaty entered into between two countries to avoid taxing the same income twice and to promote cross-border trade and investment. In Botswana, DTAAs are very important in deciding how income earned in more than one country is taxed. Most importantly, they override Botswana tax laws if there is any conflict between the domestic legislation and the DTAA. In this article, words importing the masculine should be deemed to include the feminine.

Enter the ITA

Section 53 of the Income Tax Act (ITA) gives the Minister of Finance the power to make tax agreements with other countries. The goal of these agreements is to avoid or reduce double taxation and to promote cooperation between international tax authorities. Through such arrangements, countries can share tax information, help each other collect taxes, and enforce tax laws more effectively. This section basically provides the legal backing for Botswana to take part in international tax treaties. Once a DTAA is signed and published in the Government Gazette, it officially becomes part of Botswana's law and has full legal effect, upon ratification.

Superiority of a DTAA

A DTAA has more weight than Botswana's local tax laws. This means that if there is ever a conflict between what the ITA says and what a DTAA provides, the latter takes priority. This helps avoid situations where the same income is taxed twice or treated differently just because of differences between countries' tax systems. DTAAs also help create consistency in how taxes are handled across borders.

Importance of DTAAs

By treating DTAAs as binding law, Botswana shows its commitment to international standards and gives both local taxpayers and foreign investors confidence that the country's tax system is fair and predictable. However, it is important to remember that a DTAA does not replace the Income Tax Act, it only overrides it where the two disagree. If a DTAA does not address a particular issue, then Botswana's domestic tax laws still apply. DTAAs also reduce withholding tax rates in a number of instances. They further allow for the granting of tax credits in instances where the same income suffers income tax in both the impacted treaty countries. By providing certainty on tax matters, they encourage cross-border business and facilitate fair tax treatment of international transactions.

Conclusion

In summary, a DTAA, once incorporated under Section 53 of the ITA, becomes superior to Botswana's domestic tax legislation in cases of conflict. This supremacy ensures that Botswana upholds its international obligations and provides a consistent and equitable tax environment for both residents and foreign investors. When a country signs and ratifies a DTAA, it becomes part of that country's law.

Tax hint: If you have never had a tax audit/review conducted by a tax consultancy firm to check whether you are tax compliant, or should it be apparent that you are not certain that your tax affairs are in good order, then don't wait for the taxman to pounce on you, as that can be very costly. Contact us today so we can help you fix your tax affairs whilst you still have time.

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