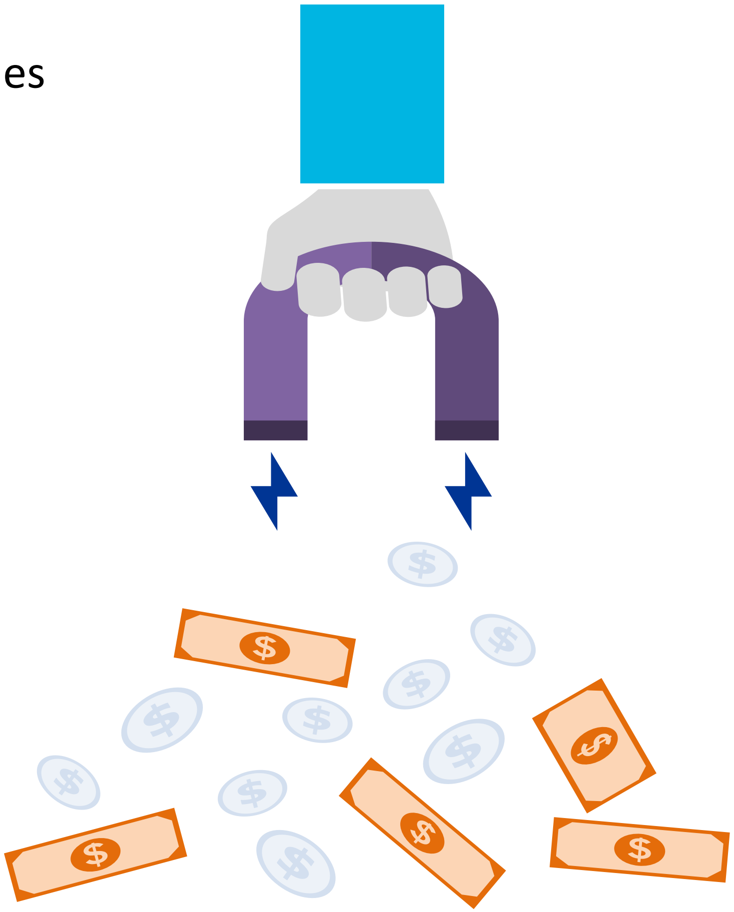
PRINCIPLES OF INTERNATIONAL TAX

18TH MARCH 2021

Focus areas

- **Taxation of non-residents in Kenya**
  - Tax residency – individuals & corporate bodies
  - Permanent Establishment
  - Withholding tax mechanism
  - Tax representation
  - Capital Gains Tax
  - Transfer Pricing considerations
- **Double Tax Treaties**
  - Key Principles of Double Tax Treaties
  - Kenya’s Treaty Network
- **Other transaction taxes**
  - Reverse VAT
  - Digital Service Tax
  - Minimum Tax
  - Customs duties



Taxation of non-residents in Kenya

Key considerations

- **Taxation of non-residents in Kenya**

    - Tax residency – individuals & corporate bodies
    - Permanent Establishment
    - Substance & place of effective management
    - Withholding tax mechanism
    - Tax representation
    - Capital Gains Tax considerations
    - Transfer Pricing considerations

AEOI

- Tax Havens thrive on client privacy/ confidentiality as well as preferential tax rates.
- AEOI enables tax authorities to get information from financial institutions in these tax havens on an annual basis.
- Revenue Authorities share this information with other tax authorities under Treaty Framework.
- Information shared includes: client name, address, tax number, dates, bank account number, name and ID of the bank, account balance at the end of the year and gross investment income.
- Data provided treated with confidentiality. Also, transactional information not provided.
- Data is encrypted for security & only used for tax compliance.

Recent international changes

- In Dec 2019, Kenya signed into the Multilateral Convention

- In July 2020, Kenya exchanged ratification instruments

- LIBOR regulator the Financial Conduct Authority (FCA) in the UK decided in 2017 that banks will no longer submit their LIBOR rates after 2021

- New OECD Paper on Financial Transactions.
  - Loans
  - Guarantees
  - Cash pooling
  - Risk-free and risk-adjusted rates of return;
  - Captive insurances

- BEPS

Double Tax Avoidance Agreements

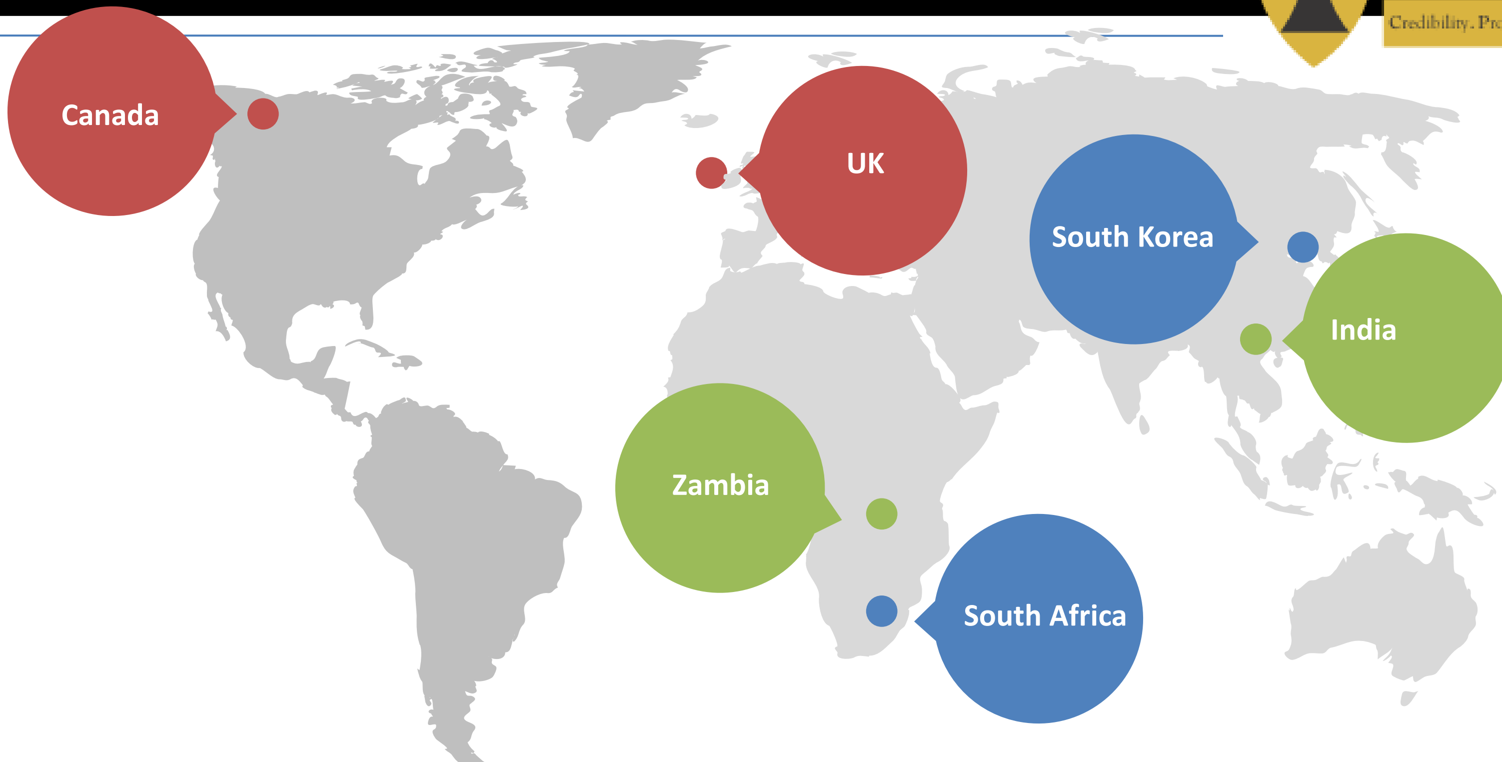
DTAs

- Importance of DTAAs
  - To eliminate or mitigate double taxation of similar income
  - Facilitate cross-border trade
  - Counter tax evasion and fiscal fraud

Interpreting DTAs

- DTA’s do not impose tax per se but exclusively offer tax relief
- Where there is a conflict between domestic legislation and DTA, the DTA prevails
- The principle instrument for interpretation of DTA is the Vienna Convention of Treaties (1969)
- Interpretation of DTA is influenced significantly by the OECD and U.N model tax conventions and their commentaries

Kenya's DTA network



ASIA	EUROPE	NORTH AMERICA	AFRICA
Iran	Germany & United Kingdom	Canada	Zambia
UAE	Sweden & Denmark		South Africa
Qatar	Norway & France		Seychelles

WHT Rates under DTAs

Country	Dividends	Interest	Management, Professional or Technical Fees	Royalties
	(%)	(%)	(%)	(%)
UK	10	15	12.5	15
France	10	12	20	10
Germany	15	15	15	15
Canada	15	15	15	15
Denmark	20	20	20	20
Norway	15	20	20	20
Sweden	15	15	20	20
Zambia	0	15	20	20
India	10	10	10	10
South Africa	10	10	20	10
Iran	5%	10	20	10
UAE	5%	10	20	10
South Korea	8 (a) or 10(b)	12	20	10
Qatar	5 (c) or 10 (d)	10	20	10
Seychelles	5	10	10	10

(a)	With at least 25% interest of the Company distributing the dividend.
(b)	In any other case
(c)	With at least 10% interest of the Company distributing the dividend.
(d)	In any other case

Pertinent Issues on DTAs

Business Profits (where do we categorize management fees?

Article 7

Other income (income not dealt with under Article 7)

Article 21

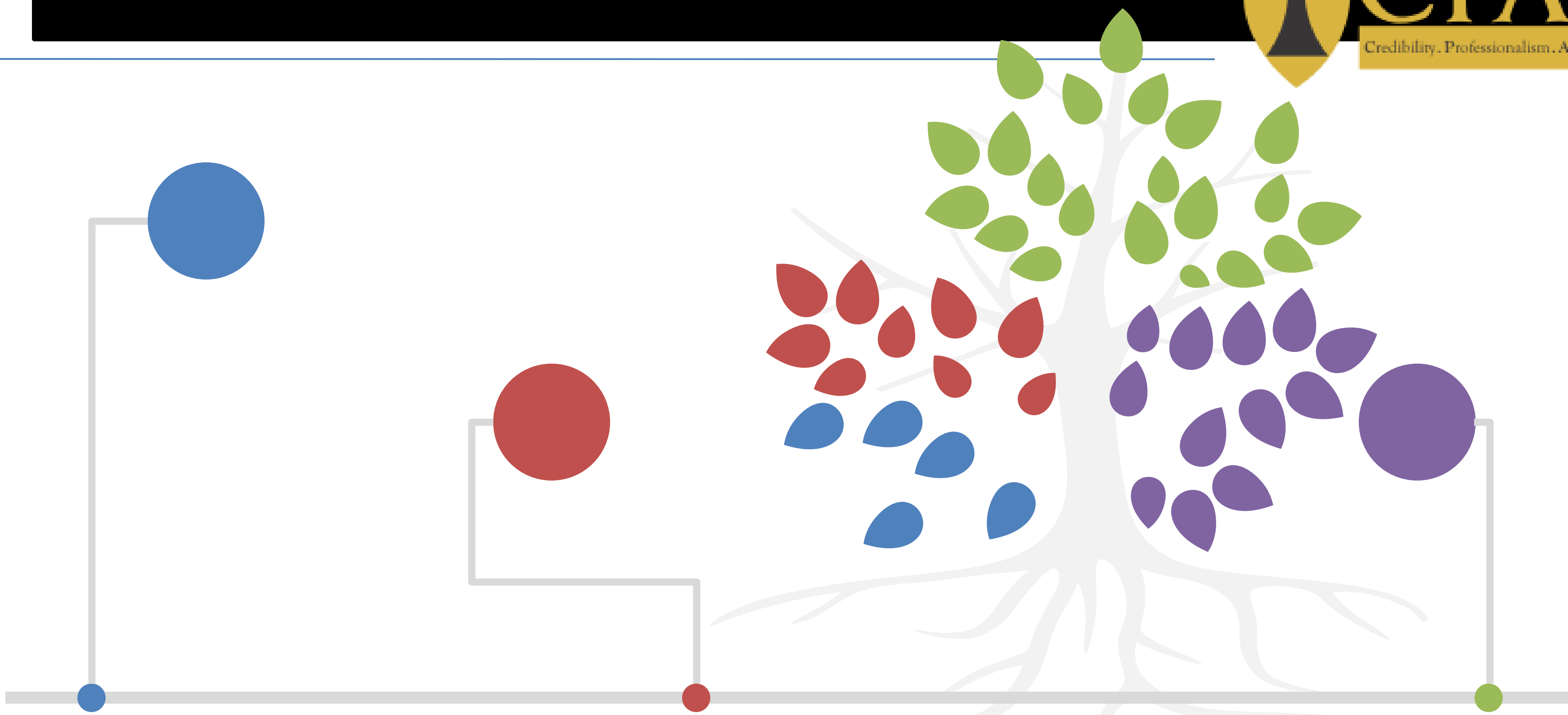
Entry into force

Article 30

Avoidance of treaty shopping

Section 41(5) of ITA

Emerging issues under DTAs



Issue 1

Article 7 Business profits Vs Article 21(3) other income

Issue 2

Treaty shopping – Anti treaty shopping efforts

Issue 3

Taxation of permanent establishments (Articles 5&7)

Other tax considerations

Other tax considerations

Reverse VAT on imported services & VAT status of exported services 01

Digital services tax 02

Minimum tax and implication on TP models 03

THANK YOU