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<b>DOCUMENT CONTROL</b>		
Document Title	<b>Practice Note on the Taxability of Diplomats, Consular Officers and others associated with International Organizations</b>	
Date	<b>9<sup>th</sup> January 2013</b>	
Document Number	<b>1</b>	
Revision Number	<b>0</b>	
Distribution List	<b>OPCOM</b>	
Process Owner		
▪ Job Title	<b>Commissioner Domestic Taxes</b>	
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Signature	 <b>23/03/2013</b>	

## **LEGAL NOTICE NO.....OF 2012**

### **PRACTICE NOTE NO DT- IT/008-12**

#### **TAXABILITY OF DIPLOMATS, CONSULAR OFFICERS AND OTHERS ASSOCIATED WITH INTERNATIONAL ORGANISATIONS**

In exercise of the powers conferred by section 68*bis* of the Income Tax Order 1975, as amended, the Commissioner General hereby issues the following notice –

#### **CITATION**

This notice may be cited as Practice Note No DT-IT/008-12 on the taxability of diplomats, consular officers, and others associated with international organisations.

#### **SECTION**

Income Tax Order 1975  
Section 12(1) (m)  
Section 12(1) (b)

#### **DOMESTIC LEGISLATION AND INTERNATIONAL CONVENTIONS**

Diplomatic Privileges Act No. 18/1968  
Vienna Convention on Diplomatic Relations and on Consular Relations  
Convention on the Privileges and Immunities of the United Nations  
Standard Basic Agreement between the Government of Swaziland and the United Nations Development Programme  
SADC Protocol on Immunities and Privileges

#### **DEFINITION**

Any word or term used in this Practice Note shall, unless specified otherwise have the same meaning as defined in the Act.

For the purposes of this Practice Note, unless the context otherwise indicates –

“Consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions.

“Consular mission” means any consulate general, consulate, or consular agency.

“Diplomat” means a diplomatic agent, who may either be the head of the mission or a member of the diplomatic staff of the mission. In order to qualify, such person should also be affiliated with the Ministry of Foreign affairs.

“Diplomatic mission” means the function of representing the interest of a foreign state in another state within the limits permitted by international law.

"Diplomatic staff" means members of the staff of a diplomatic mission having diplomatic rank.

"Expatriate" means a citizen of another country working in Swaziland.

"Foreign national" means a person from a foreign country residing in Swaziland.

"International organisation or agency" means an organisation with an international membership, which may be global (e.g. UN) or regional (e.g. SADC), non-governmental (e.g. Red Cross) or intergovernmental (e.g. AU)

## PART B

### THE LAW

#### 1. Diplomats and Consular officers

1.1 In terms of the Diplomatic Privileges Act No. 18/1968, the head of a diplomatic mission or a member of the diplomatic staff of the mission is exempt from normal tax leviable in terms of the Income Tax Order 1975 as amended. This exemption only applies if the applicants are nationals of the sending state and have diplomatic ranking.

1.2 In terms of both the **Vienna Convention on Diplomatic Relations and on Consular Relations**, salaries and emoluments of diplomatic agents and consular officers are liable to tax only in their home countries. Therefore, the salaries and emoluments for this class of individuals, who are normally resident in Swaziland and who are otherwise liable to Swaziland tax, are not taxable in Swaziland. This principle is also enshrined in section 12(1) (b) of the Order, which exempts from normal tax the income of any person entitled to privileges under the Diplomatic Privileges Act to the extent provided in such Act. Swazi diplomats serving abroad are, under the same principle, exempted from tax by their host countries but are taxable in Swaziland in respect of the salaries and emoluments they may earn in Swaziland.

1.3 However, if the diplomatic personnel, mentioned in paragraph 1.2, derive income from sources other than the official emoluments, (for instance, have other private income derived in Swaziland), then such is liable to taxation in accordance with our source rules. In other words, any income other than the official emoluments, which a foreign diplomat may earn from Swaziland, will be liable to tax in Swaziland. Liability for tax is dependant on the type of income earned and not on type of the person earning income. Tax, if payable, should thus be levied and demanded from such individuals notwithstanding the fact that he or she enjoys diplomatic immunity.

1.4 The same rule applies to the spouses and children of diplomatic personnel who are earning income in Swaziland, other than what could be termed "official diplomatic emoluments".

## **2. Locals Recruited in Diplomatic and Consular Missions**

- 2.1 The privileges and immunities described above, do not as a rule extend to granting exemption to Swazi nationals and locally recruited staff employed in foreign missions from paying normal tax. Both these are a class of workers not covered by the Vienna Convention. They are therefore liable to tax in Swaziland and under a statutory obligation to pay tax on their salaries and emoluments to the Commissioner General.

## **3. United Nations Officials**

- 3.1 Officials of the United Nations are exempt from tax on the salaries and emoluments paid to them by the United Nations and all its specialised agencies.

## **4. Locals recruited in the UN and its agencies**

- 4.1 With regards to the income tax liability of locally recruited employees of the United Nations, and UN specialised agencies, the position is as follows:
- 4.2 Under Article 5 section 18 of the Convention on the Privileges and Immunities of the United Nations, UN staff members (other than those being paid at hourly rates) are exempt from taxation on the remuneration paid to them by the United Nations.
- 4.3 Article 9 of the Standard Basic Agreement signed between the Government of Swaziland and the United Nations Development Programme of 28 October 1977 establishes the application of the relevant provisions of the Convention.
- 4.4 Such recognition comes within the purview of section 12(1) (m) of the Order, which states that 'there shall be exempt from normal tax any amount received by or accrued to any person in respect of services rendered in Swaziland which the Government has undertaken shall be exempt from normal tax by terms of a written agreement with the Government of another state or with an international or world organisation or body.

## **5. Others Associated with International Agencies**

- 5.1.1 There are other international organisations or bodies, besides the United Nations, for example, the USAID, EU, COMESA, AU, SACU, etc. The heads of such agencies and members of the permanent staff enjoy the same privileges and immunities as the UN representatives.

### **5.1.2 Locally Recruited Employees working in International Agencies**

Local employees working in these organisations are presumed to be liable to normal tax till such time as they could produce the relevant documentation or proof that they are exempt from normal tax. Such documentation should be forwarded to the Commissioner General for scrutiny and verification before the incomes of such persons are made liable to normal tax.

## **6. SADC**

### **6.1.1 SADC Officials**

Article 5(1) of the SADC Protocol on Immunities and Privileges provides that officials of SADC shall be exempt from taxation on the salaries and emoluments paid to them by SADC.

### **6.1.2 SADC Locally Recruited staff**

Locally and regionally recruited employees, excluding their spouses and members of their families are also exempt from taxation on the salaries and emoluments paid to them by SADC.

## **7. Expatriates and Residents Working in Embassies and International Organisations**

- 7.1 Expatriates and others resident in Swaziland (excluding indigenous Swazis) locally recruited to work in embassies and other international organisations not mentioned above, who claim that their emoluments are free of tax, should produce documentation from their respective places of employment proving that they are exempt from tax.

### **NOTE**

In terms of Article 8 of the Vienna Convention on Diplomatic Relations, members of diplomatic staff should in principle be of the nationality of the sending state. Locals may not be appointed into diplomatic posts without the consent of the host (Receiving) state. In this instance, the Sending State is obliged to notify the Receiving State (in Swaziland the Ministry of Foreign Affairs) of such employment and the privileges and immunities to which they are entitled. Therefore in as much as foreign missions are inviolable, information on any locals employed in foreign missions can be sourced from the Ministry of Foreign Affairs.

It should further be noted that for the purposes of enjoying diplomatic status, a diplomat or consular enjoys such benefits limited to the country in which he renders diplomatic services and does not extend to any other neighbouring country or third state. Article 39 of the Vienna Convention on Diplomatic Relations provides that diplomats shall enjoy the privileges and immunities granted to them from the moment they enter the territory of the receiving state.

**The Taxability of Diplomats and others associated with Diplomats Legal Notice No.38 of 2006 is hereby revoked.**

**DUMISANI E. MASILELA  
COMMISSIONER GENERAL  
MBABANE  
JANUARY 2013**

