



Seychelles Revenue Commission

Guidance Notes

Subject Heading: Income sourced in and from Seychelles

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Activities Conducted, Goods situated and Rights used in Seychelles

1. Section 5(1) of the Business Tax Act 2009 as Amended (hereafter BTA) defines income sourced in Seychelles as;

“An amount derived by a resident person in carrying on business is derived from sources in Seychelles if derived from activities conducted, goods situated or rights used in Seychelles, regardless of the residence of the parties participating in the transactions and regardless of the place where the agreements are executed.”

2. Seychelles general taxation system is based on the source principle (which Seychelles describes as a territorial system of taxation). Accordingly, income is taxable when activities are performed, goods and assets are situated, located or rights are exploited for economic purposes in Seychelles, irrespective of the nationality, domicile or residence of those involved or the place where contracts are concluded.

3. Section 2 of the Revenue Administration Act 2009 defines person as;

“Person” means an individual, entity, partnership, trust, estate, government, political subdivision of a government, or public international organisation.

4. Section 5(2) of the BTA also defines income sourced in Seychelles as;

“An amount derived by a non-resident person in carrying on a business is derived from sources in Seychelles to the extent that it is attributable to a business carried on through a permanent establishment of the person in Seychelles.”

5. The net income derived from business activities conducted in Seychelles, obtained by resident persons in Seychelles and non-residents operating through a permanent establishment (hereafter PE) in Seychelles, is taxed in Seychelles at a business tax rate as specified in either the First, Seventh, Eight or Tenth Schedule of the BTA.

6. Section 2 of the BTA defines PE as;

“Permanent establishment”, in relation to a person, means a fixed place of business through which the business of the person is wholly or partly carried on and, without limiting the generality of the foregoing, includes —

(a) a place of management, branch, office (other than a liaison officer), factory, warehouse, or workshop of the person;

(b) a mine, oil or gas well, quarry, or other place of extraction of natural resources of the person;

(c) a building site, or a construction, assembly or installation project of the person, or supervisory activities conducted by the person in connection with such site or project, but only if the site, project or activities continue for more than ninety days;

(d) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than ninety days within any twelve-month period;

(e) an agent of the person (other than an agent of independent status), if the agent —
(i) has and habitually exercises an authority to conclude contracts on behalf of the person; or
(ii) habitually maintains a stock of goods or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the person; or
(f) any substantial equipment used by the person, but does not include a place of business maintained by the person solely for the purposes of purchasing goods or merchandise;
“resides” means normally resides in Seychelles or who has resided in Seychelles for at least 183 days in a tax year or is domiciled in Seychelles.”

7. The application of the PE provision however, may differ in the case where Seychelles has a Double Taxation Avoidance Agreement (hereafter DTAA) with another state and the application of the PE provision may also differ from DTAA to DTAA.
8. A person deriving Seychelles sourced income (aka taxable business income) and foreign sourced income (non-taxable business income) is required to declare in their business tax return their foreign sourced income.
9. Where a person derives both Seychelles sourced income and foreign sourced income. Out of the total income of the person, the portion not sourced in Seychelles is not subject to business tax.
10. In order to determine the net taxable income, all accrued expenses that are necessary for the generation of Seychelles sourced income and that are duly documented are allowed as deductions. Expenses related to foreign sourced income are non-deductible for the Seychelles taxpayer.
11. In the case where expenses generate both Seychelles sourced income as well as foreign sourced income. The expense for the Seychelles sourced income is deductible. Expense for the foreign sourced income is non-deductible.
12. Withholding tax (hereafter WHT) is imposed on Seychelles sourced income obtained by non-residents persons, except in cases where the income is obtained through the operations of a Permanent Establishment of the non-resident person in Seychelles. Such income is liable to business tax under Section 5(2) of the BTA.
13. WHT on an item of income of a resident person is a final tax and that item of income shall not be included in the assessable income thereafter.
14. WHT shall not be applicable where remittance of an amount of income is made to a resident or non-resident person out of foreign sourced income.
15. The right to tax income and the rate of tax applicable may also depend on the existence of a DTAA between Seychelles (State of Source) and another State (State of Residence) or vice versa.
16. **Example 1:** The rate of WHT payable by a non-resident person in the case of royalty under Section 8(1) of the BTA is 15%. However, Paragraph 1 and 2 of Article 12 of the Belgium and Seychelles DTAA states;

1. *“Royalties arising in a Contracting State (Seychelles) and paid to a resident of the other Contracting State (Belgium) may be taxed in that other State (Belgium).”*
2. *“However, such royalties may also be taxed in the Contracting State (Seychelles) in which they arise and according to the laws in force in that State (Seychelles), but if the beneficial owner of the royalties is a resident of the other Contracting State (Belgium), the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.”*

17. Section 2 of the BTA defines residency as “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;”

18. The remittance of an amount to a person, out of income not sourced in Seychelles under the BTA, shall not be subject to tax.

19. Where a business makes a payment out of Seychelles sourced income and foreign sourced income, Section 5(4)(b) of the BTA provides for the apportionment of the remittance.

Section 5(4)(b) of the BTA states;

“Where a business derives income that is both taxable business income and non-taxable business income and makes a remittance, the fraction of the remittance that is subject to tax under this Act shall be computed as follows –

$$\frac{A}{B} \times C = D$$

Where –

A= Assessable Income

B= Total Income

C= Sum remitted; and

D= Remittance subject to business tax.”

Section 8(4) of the BTA supplements section 5(4) by stating;

“For the purpose of clarity, subsection (1) shall not apply if dividends, interest, royalties or other payments are made by a resident person from income that is not sourced in Seychelles.”

Activities Conducted in Seychelles

20. Where goods are manufactured in Seychelles, the income arising from the sale of such goods will be fully taxable in Seychelles. This is because the profit making activities are considered to be the manufacturing operations carried out in Seychelles, which should include the procurement of raw materials, the employment of labour, the design of products and the use of machinery and plant, etc.
21. ***Example 1:*** *Company A manufactures goods in Seychelles and sells them to local and overseas customers. The fact that Company A sells goods overseas does not give a part of the income an overseas source. The income generating activity was performed in Seychelles. This is not a case for apportionment. The whole of the income is liable to business tax.*
22. ***Example 2:*** *Company A manufactures goods in Seychelles and sells them to local and overseas customers. Company A concludes a contract in Mauritius for Company B in Mauritius to sell Company As goods in Mauritius. The income generating activity was performed in Seychelles. This is not a case for apportionment. The whole of the income is liable to business tax.*

Service Activities Performed in Seychelles

23. Income from Services rendered (i.e. when the service activity is performed in or from Seychelles) irrespective of the nationality, domicile or residence of those involved or the place where contracts are concluded is subject to business tax or WHT in Seychelles, which ever may apply.
24. If a service activity is performed outside of Seychelles by a Seychelles resident person, this service income is generally considered foreign sourced and therefore not taxable in Seychelles.
25. However, there is an exception to this principle. When a Seychelles resident person paying business tax (Business A) obtains income as a consequence of rendering technical services outside the limits of Seychelles territory to another Seychelles resident person paying business tax (Business B) and such technical services are used by the recipient (Business B) to obtain its income subject to Seychelles sources, the income obtained by Business A rendering the services will be considered as Seychelles sourced income, subject to business tax. Technical services are those rendered in the fields of management, technical, or consultancy.
26. Paragraph 27 below is a general anti-abuse provision in Section 55 of the BTA, which gives the Commissioner General authority to re-characterize transactions and set-up, if the actual

circumstances of the transaction that was entered into as part of a tax avoidance scheme. (substance over form).

27. *“(1) For the purposes of determining the business tax, liability of a business under this Act, the Revenue Commissioner may —*
- (a) determine the character of a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;*
 - (b) disregard a transaction that does not have substantial economic effect;*
 - (c) determine the character of a transaction if the form of the transaction does not reflect the substance; or*
 - (d) treat separate businesses carried on by the same person as a single business if business activity has been fragmented under a tax avoidance scheme.*
- (2) In this section, “tax avoidance scheme” means any transaction or arrangement if one of the main purposes of a person in entering into the transaction or arrangement is the avoidance or reduction of the tax liability of a business under this Act.”*

Goods situated in Seychelles

28. Earnings generated from goods and assets situated in Seychelles, is fully taxable. The income derived is considered as sourced in Seychelles.
29. **Example 1:** Company A derives rental income from letting real property in Seychelles. The Income is taxable as the property is located in Seychelles.
30. **Example 2:** Sole Trader (Person A) concludes a contract in India with Company B for the letting of real property located in Seychelles. The income of Person A is taxable as the property is located in Seychelles.
31. **Example 3:** An amount obtained as consideration for the right to take minerals or living or non-living resources from land and sea in Seychelles in lieu of section (5)(3)(e) is derived from sources in Seychelles.

Rights used in Seychelles

32. Income from rights used or exploited in Seychelles by a resident person, PE of a non-resident person in Seychelles or non-resident person is taxable under the BTA.
33. Income derived by a resident person or PE of a non-resident person in Seychelles from the license of rights or intellectual property exploited outside of Seychelles is considered foreign sourced and therefore not taxable in Seychelles.
34. **Example 1:** Company A derives income from the granting of a right to use under a franchise agreement (Royalties). The right is utilised by resident entity B in Seychelles to derive income in and from Seychelles. The income of A is sourced in Seychelles and shall be taxable under the BTA.

35. **Example 2:** Entity C resident in Kenya obtains a Franchise Agreement for the license of rights to use from Company D resident in Seychelles. The right is utilised by Company C to generate income in Kenya. The income of Company D from the Franchise Agreement is not Seychelles sourced and not Taxable under the BTA.

Dividends

36. A resident entity or a PE of a non-resident person in Seychelles, paying a dividend, out of Seychelles sourced income is considered sourced in Seychelles and taxable under the BTA.
37. Dividends received by Seychelles resident persons, not sourced in Seychelles is considered as foreign sourced, and consequently not subject to tax in Seychelles.
38. Dividends paid by a resident entity to a resident person out of Seychelles sourced income is subject to 0% withholding tax under section 62 of the BTA.
39. Dividends received by a resident entity that is paid by a resident corporation out of Seychelles sourced income is exempted from business tax.
40. Dividends paid by a resident entity to a non-resident person out of Seychelles sourced income is Subject to 15% WHT.
41. The rate of WHT on dividends may also depend on the existence of a DTAA between Seychelles (State of Source) and another State (State of Residence) or vice versa.
42. Dividends paid by a resident entity or a P.E of a non-resident person in Seychelles out of income not sourced in Seychelles will not be subject to WHT pursuant to Section 8(4) of the BTA.
43. Where an entity makes a payment of dividends out of both Seychelles sourced income (taxable business income) and foreign sourced income (non-taxable business income). The payment shall be apportioned subject to Section 5(4)(b) of the BTA.

Royalties

44. Royalty income, derived by a person from rights exploited in Seychelles pursuant to the definition of royalty under the BTA, is derived from sources in Seychelles taxable under the BTA.
45. Seychelles sourced royalty income pursuant to Section 5(1) of the BTA, obtained by a resident person or PE of a non-resident person in Seychelles is subject to business tax.
46. Seychelles sourced royalty income, obtained by a non-resident person is subject to 15% WHT under Section 66 of the BTA.
47. Royalty income obtained by a resident person from the license of right(s), intellectual property, etc., exploited/used outside of Seychelles by a non-resident person or a P.E of a resident person outside Seychelles, is considered foreign sourced and therefore not taxable in Seychelles.

48. Payment of royalty by a resident person or a P.E of a non-resident person in Seychelles will not be subject to business tax if the right was not utilised in Seychelles and payment is made out of foreign sourced income.
49. Thus, receipts of royalty and payment of royalty will only be subject to business tax in Seychelles if the right is utilised in Seychelles.
50. Where an entity makes a payment of royalty out of both Seychelles sourced income (taxable business income) and foreign sourced income (non-taxable business income). The payment shall be apportioned subject to Section 5(4)(b) of the BTA.

Interest

51. Interest income derived by a resident person being a non-financial institution from a loan to another resident person being a non-financial institution in the Seychelles, is considered as Seychelles sourced and subject to WHT under the First Schedule of the BTA if the loan is utilised in Seychelles.
52. Seychelles sourced interest income, derived by a non-resident person, paid by a resident person in Seychelles or a PE of a non-resident person in Seychelles is subject to WHT under the First Schedule of the BTA.
53. Interest income received by a resident person from a non-resident borrower of a loan or a P.E of a resident borrower outside Seychelles is considered foreign sourced if the loan is utilised outside of Seychelles and therefore not taxable in Seychelles.
54. A payment of interest by a resident person will not be subject to WHT to the extent that the loan is not utilised in Seychelles and payment of interest is not made from income sourced in Seychelles in accordance with Section 5(4).
55. Thus, receipts of interest and payment of interest will only be subject to business tax in Seychelles if loan is utilised in Seychelles and interest is paid out of Seychelles sourced income as the
56. Where a business derives income that is both taxable business income and non-taxable business income and makes a payment of Interest. The payment shall be apportioned subject to Section 5(4)(b) of the BTA.

Carrying on Business in Seychelles and Carrying on Business from Seychelles

57. For income to be sourced in Seychelles as per Section 5(1) of the BTA, businesses are taxable when activities are performed, goods are situated or rights are exploited for economic purposes in Seychelles irrespective of the nationality, domicile or residence of those involved or the place where contracts are concluded.
58. A manufacturer in Seychelles sells his goods to a merchant in City X, in State X, the payment which he receives is no doubt sourced in City X but his income on the transaction arises in and is derived from his manufacturing operations in Seychelles.

59. The activities that generated the income in paragraph 58 above was performed for economic purposes in Seychelles although payment was derived from State X.
60. A person rendering services from Seychelles to a non-resident person located in State Y, E.g. Management Services, if the Management activity is performed in Seychelles, the fee paid for the services performed in Seychelles shall be subject to the business tax.
61. Therefore, a person may carry on business from Seychelles, to clients that are not residents of Seychelles or have a PE in Seychelles. The income derived from the performance of the services is sourced in Seychelles. This is because, irrespective of the domiciliation of the party receiving the service, the activities are conducted in Seychelles.
62. If the activity is not performed in Seychelles, E.g. Employee of Company A resident in Seychelles travels to the State B where Company B is resident, and performs Management or Consultancy Services for Company B. The income derived by Company A is foreign sourced and not subject to business tax in Seychelles.

Explanation

63. There are three (3) conditions that must be satisfied before a business tax liability arises:
- (a) The person must carry on a trade, profession or business in Seychelles;
 - (b) The income to be charged must be from such trade, profession or business carried on by the person in Seychelles; and
 - (c) The income must be income arising in or derived from Seychelles.
64. Assuming the first two conditions stated in paragraph 63 above are satisfied, liability to business tax will only arise if a person's income arise in or are derived from Seychelles.
65. The question of income arising in or derived from Seychelles is a practical matter of fact, depending on the nature of the income and the transactions giving rise to them.
66. The transactions must be looked at separately and the income of each transaction considered on their own.
67. The broad guiding principle is that one looks to see what the taxpayer has done to earn the income in question and where he has done it. In other words, the proper approach is to ascertain what were the operations which produced the relevant income and where those operations took place.
68. The relevant activity, does not have to comprise the whole of the taxpayer's activities carried out in the course of his business but may comprise only the activity which produce the income in question. It is necessary to appreciate the reality of each case, focusing on effective causes for earning the income without being distracted by antecedent or incidental matters.
69. If a person has rendered a service or engaged in an activity such as the manufacture of goods, the profit will have arisen or derived from the place where the service was rendered or the profit making activity carried on.

70. If the profit was earned by the exploitation of property assets as by letting property, lending money or trades in commodities or securities by buying and selling at a profit, the income will have arisen in or derived from the place where the property was let, the money was lent or commodities located.
71. The question of source of income is a practical and matter of fact. The broad guiding principle formulated in this guidance will simply enable the proper and consistent application of the source concept to various factual situations. The broad guiding principle as explained in paragraph 63 is the starting point for assessing and reassessing, inclining towards a particular decision but not necessarily compelling it.
72. The principle set out in this guidance is not limited by any factual circumstances. It improves certainty even if a taxpayer finds that some of the details of his specific case are different. A taxpayer would know how to apply business tax charging provisions as he would understand the underlying principle. Taxpayers should be ready to prove in their returns, with supporting documentary evidence, that a profit from a transaction was derived outside Seychelles
73. A revenue officer has a statutory obligation to raise assessment and to make enquiries. In this process, the revenue officer has been given power under Section 34 of the Revenue Administration Act 2009 to seek for full information in regard to any matter which may affect any liability, responsibility or obligation of any person. A request for detailed information about the “operations” of a transaction in an enquiry would constitute a reasonable demand to ascertain a person’s correct tax liability.

Trading Stock

74. Where the goods or commodities are located in Seychelles, the profits are fully taxable in Seychelles.
75. Where the sale is made to a Seychelles customer, the sale contract will usually be taken as having been effected in Seychelles.
76. Where the commodities or goods are purchased from either a Seychelles supplier or manufacturer, the purchase contract will usually be taken as having been effected in Seychelles.
77. Where activities to give effect to a contract of purchase or contract of sale are conducted in Seychelles, the presumption will be that the profits from such activities are fully taxable. One looks to see what the taxpayer has done to earn the profits and where he has done it.
78. Obviously the question where the goods were bought and sold is important. But there are other questions: For example: How were the goods procured and stored? How were the sales solicited? How were the price determined? How were the invoices issued? How were the orders processed? How were the goods shipped? How was the financing arranged? How was payment effected? These questions will be examined to determine the issue.

Other income

79. Subject to specific provisions, SRC regards the Source of the following types of income to be as follows:

Income	Source
a) Rental income from real property	Taxable if the property is located in Seychelles
b) Profits derived by a person from the one-off sale of property (tangible and intangible)	Not taxable as there is no tax on capital gains in Seychelles.
c) Profits derived by a person from the sale of property (tangible and intangible) as Trading stock	Taxable if the property is situated or located in Seychelles and if profits are generated in Seychelles from operations giving effect to the contract of purchase and contract of sale in Seychelles. <i>"Effected"</i> does not only mean that the contracts are legally executed. It also covers the negotiation, conclusion and execution of the terms of the contracts.
d) Service fee income	Taxable if the services which give rise to the payment of fees are performed in Seychelles.
e) Interest earned by persons other than financial institutions.	Taxable if the lender provides the funds to a borrower in Seychelles. If lender provides funds to borrower outside of Seychelles, it is not taxable.