

CHAPTER 52:01 - INCOME TAX: SUBSIDIARY LEGISLATION
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MANUFACTURING DEVELOPMENT APPROVAL ORDER

(section 52(1))

(1st July, 1995)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Interpretation
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4. Additional tax relief

Schedule - Application for a Development Approval Order in respect of an Approved Business Activity

S.I. 66, 1996,
S.I. 48, 1999,
S.I. 44, 2006.

1. Citation

This Order may be cited as the Manufacturing Development Approval Order.

2. Interpretation (1) In this Order:

"manufacture" means the subjection of raw materials to a process, or processes, that will result in the product having new and distinctive characteristics from the raw material from which it is made, and it includes processes for the-

- (a) cutting, polishing and refining of minerals;
- (b) tanning of leather.

"Commissioner General" has the same meaning assigned to it in the Botswana Unified Revenue Service Act.

(2) The following processes shall not on their own qualify as manufacturing-

- (a) packaging and bottling;
- (b) diluting, mixing or blending of ingredients which does not result in the formation of a different product;
- (c) printing, marking and labelling;
- (d) washing, painting, dyeing, bleaching, texturising of textile goods and impregnating or mercerising operations;
- (e) etching, decorating, calibration, polishing, cutting up, re-inforcing of an otherwise finished article;
- (f) simple assembly operations;
- (g) baking; and
- (h) simple operations consisting of removal of dust, sifting or screening, sorting, grading, classifying and matching including the making up of sets of goods.

3. Tax rate

(1) Any company which has been approved by the Minister or anyone delegated by the Minister as carrying on the business of manufacturing in Botswana, shall be taxable at a special rate of 15 per cent (the basic rate of 5 per cent and an additional company tax rate of 10 per cent) as set out in the Eighth Schedule of the Act.

(2) Any company which supplements its domestic production by importing finished products shall not qualify for the benefits of this Order in respect of such imports.

4. Additional tax relief

(1) A company that carries on the business of manufacturing and wishes to be granted additional tax relief in respect of a development project shall apply on the form prescribed in the Schedule.

(2) The form referred to in subparagraph (1) shall be accompanied by documentation including-

- (a) for a new company, approved registration for tax; or
- (b) for an existing company, a tax compliance record certified by the Commissioner General.

SCHEDULE

(Regulation 4)

APPLICATION FOR A DEVELOPMENT APPROVAL ORDER IN RESPECT OF AN APPROVED BUSINESS ACTIVITY MANUFACTURING FIRM

(Section 52 of the Income Tax Act (Cap. 52:01))

To: The Permanent Secretary
Ministry of Finance and Development Planning
Private Bag 008
GABORONE

Application for approval is hereby made in terms of section 52 of the Income Tax Act (Cap. 52:01), for the issue of a development approval order in respect of a business carrying on a manufacturing activity:

1. Name of applicant:
2. Postal address:
3. Physical address:
4. Tax reference number (if available):

5. Date of commencement of business:
existing business
new business: proposed date of commencement 20
6. Description of process of manufacture:
(a) articles manufactured:
.....
(b) description of process of manufacturing:
.....
(c) raw materials used and their source:
.....
7. Capital investment in plant and machinery excluding vehicles:
.....
.....
8. Do your manufacturing operations come under any of the exceptions in paragraph 2(2) of the Manufacturing Development Approval Order, 1996? If yes, please specify which.
.....
.....
.....
9. Numbers of employees engaged or to be engaged in the manufacturing activity:

<i>Citizens</i>	<i>Non-Citizens</i>	<i>Total</i>
.....
.....
10. Particulars of facilities, if any, for training and imparting skills to Botswana citizens:
.....
.....
11. Any other relevant information relating to your business of manufacturing:
.....
.....
12. The effect the manufacturing activity is likely to have on the development of the economy of Botswana or the economic advancement of its citizens:
(a) in what way will your business stimulate other economic, industrial or commercial activity whether business or otherwise?
(b) to what extent will the local raw materials be used in the manufacturing process?
.....
(c) is there an export potential of the business?
.....
(d) is there an import substitution of the local raw materials?
.....
(e) will your business activity result in the reduction of the price of consumer goods?
.....
.....

DECLARATION:

As Public Officer of

.....

(name of company)

I, of

(full name of Declarant)

..... declare that to the best

(Postal Address)

of my knowledge and belief, the information given in this application is true and correct.
Date..... Signature.....
Declarant/Authorised Agent^{i*}

INTERNATIONAL FINANCIAL SERVICES CENTRE CERTIFICATION COMMITTEE ORDER

(section 138(1))
(9th April, 2009)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Interpretation
3. Establishment of IFSC Certification Committee
4. Alternate members of Committee
5. Functions of Committee
6. Meetings of Committee
7. Application for tax certificate

S.I. 62, 2005,
S.I. 28, 2009.

1. Citation

This Order may be cited as the International Financial Services Centre Certification Committee Order.

2. Interpretation

In this Order, unless the context otherwise requires-
"Committee" means the International Financial Services Centre Certification Committee; and

"International Financial Services Centre" or **"IFSC"** means the entirety of international financial services companies and their respective approved financial operations, and those institutions which have been appointed to regulate and supervise such companies.

3. Establishment of IFSC Certification Committee

(1) There is hereby established an IFSC Certification Committee which shall consist of the following 11 members to be appointed by the Minister-

- (a) the Director of Insurance and Pensions, Ministry of Finance and Development Planning, who shall be the Chairperson of the Committee;
- (b) the Commissioner General, Botswana Unified Revenue Service;
- (c) the Director of the Department of Banking Supervision, Bank of Botswana;
- (d) the General Manager of Business Development, Botswana Development Corporation;
- (e) an officer appointed by the Commissioner General, Botswana Unified Revenue Service;
- (f) the Director of Telecommunications and Postal Services, Ministry of Communications, Science and Technology;
- (g) the Director of Tax Policy, Ministry of Finance and Development Planning;
- (h) the Principal Bank Examiner, Bank of Botswana;
- (i) the Chief Executive Officer, IFSC;
- (j) the Chief Executive Officer, Botswana Export Development Investment Authority; and
- (k) the Chief Executive Officer, Non-Bank Financial Institutions Regulatory Authority.

(2) The Committee shall elect, from among its members, a Vice Chairperson.

4. Alternate members of Committee

(1) The following shall be alternate members of the Committee-

- (a) the Chief Finance Administrator (Banking), Ministry of Finance and Development Planning, who shall be the alternate of the Director of Tax Policy;
- (b) a Manager in the Business Development Division, Botswana Development Corporation, who shall be the alternate of the General Manager of Business Development, Botswana Development Corporation;
- (c) the Deputy Director of the Department of Banking Supervision, Bank of Botswana, who shall be the alternate for the Director of the Department of Banking Supervision, Bank of Botswana;
- (d) the Deputy Commissioner, Botswana Unified Revenue Service, who shall be the alternate of the Commissioner General, Botswana Unified Revenue Service;
- (e) the Deputy Director of Telecommunications and Postal Services, Ministry of Communications, Science and Technology, who shall be the alternate of the Director of Telecommunications and Postal Services, Ministry of Communications, Science and Technology; and
- (f) an executive in the IFSC, who shall be the alternate of the Chief Executive Officer of the IFSC.

(2) The alternate member of the substantive member of the Committee shall, in the event of the absence of the substantive member from a meeting of the Committee, attend the meeting, and shall, when so attending, be regarded as a member of the Committee.

5. Functions of Committee

The Committee shall-

- (a) determine the procedures to be followed in the assessment of applications for tax certificates;
- (b) review all applications for a tax certificate referred to it by the IFSC; and
- (c) make recommendations to the Minister on matters relating to the grant and revocation of tax certificates, including any conditions to be attached thereto.

6. Meetings of Committee

(1) Subject to the provisions of this Order, the Committee shall regulate its own procedure.

(2) The Committee shall meet as often as is necessary or expedient for the discharge of its functions, and such meetings shall be held at such times and places as the Chairperson may determine after consultation with the Committee.

(3) Six members of the Committee, at least four of whom shall be from the Ministry of Finance and Development Planning, the Botswana Unified Revenue Service, the IFSC and the Bank of Botswana respectively, shall form a quorum.

(4) The decisions of the Committee shall be by a majority of votes and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(5) the Committee shall cause proper minutes of all its meetings to be taken and recorded.

7. Application for tax certificate

(1) A company applying for a tax certificate shall prepare the application for such certificate in conjunction with the IFSC, and the application shall be supported by a business plan for a three to five year period which shall include the following-

- (a) general information on the promoting company, outlining its activities, size, history, performance and principal shareholders, as well as its profit and loss accounts and balance sheets for the past three years;
- (b) detailed particulars of the activity in respect of which the tax certificate is sought; and
- (c) a summary of the plans to market and promote the proposed service together with an assessment of the potential for employment creation in Botswana.

(2) The IFSC will, once satisfied that an application for a tax certificate contains the

necessary information, including the information referred to in subparagraph (1), refer the application to the Committee with an assessment of the application.

INCOME TAX (TRAINING) REGULATIONS

(sections 44 and 145)

(19th January, 2007)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Application
3. Eligibility for claim of deduction
4. Training which may qualify
5. Claims in respect of course of training
6. On-the-job training
7. Allowable expenditure

S.I. 55, 1989,
Act 14, 2006,
S.I. 2, 2007,
S.I. 67, 2007.

1. Citation

These Regulations may be cited as the Income Tax (Training) Regulations.

2. Application

These Regulations shall apply to all education or training approved by the Botswana Training Authority or the Tertiary Education Council after consultation with the Commissioner General in accordance with section 44 of the Act, irrespective of whether the education or training is academic, vocational or professional.

3. Eligibility for claim of deduction

An employer may claim a deduction under section 44 of the Act for purposes of education or training in respect to an employee who is-

- (a) a citizen of Botswana;
- (b) either in full-time or part-time employment with such employer, and
- (c) undertaking or has undertaken education or training relevant to the employment of such employee but which does not include secondary or primary education.

4. Training which may qualify

Education or training which may qualify for approval of the deduction under section 44 of the Act may be conducted at-

- (a) an established university, polytechnic or other public institution for education or training in or outside Botswana, which is approved by the Botswana Training Authority or the Tertiary Education Council;
- (b) a training establishment approved by the Botswana Training Authority or the Tertiary Education Council-
 - (i) which is situated at the employer's own place of business; and
 - (ii) at which a training officer who holds academic or professional qualifications or has experience considered adequate by the Botswana Training Authority or the Tertiary Education Council is employed wholly or substantially for the purpose of training;
- (c) a place of business in or outside Botswana, other than the employer's own place of business, at which the Botswana Training Authority or the Tertiary Education Council is satisfied that relevant training is provided by a training officer as provided under

paragraph (b).

5. Claims in respect of course of training

(1) Where an employer claims a deduction in respect of a course of education or training under paragraphs (a), (b) or (c) of regulation 4, the employer shall satisfy the Commissioner General that-

- (a) in the case of a claim under regulation 4 (a), the university, polytechnic or other public institution is one which is approved by the Botswana Training Authority or the Tertiary Education Council;
- (b) in the case of professional or vocational training provided by an establishment in accordance with regulation 4 (b) and (c)
 - (i) the establishment is an approved training establishment for the purposes of such training;
 - (ii) the training officer has the necessary academic or professional qualifications or experience for the instruction of trainees;
 - (iii) the course of instruction is specified by reference to a syllabus which defines the content and duration of the course and the type and purpose of the qualifications so gained; and
- (c) in every case, that the trainee is a citizen of Botswana.

(2) The Botswana Training Authority or the Tertiary Education Council shall, after consultation with the Commissioner General-

- (a) certify all work based learning programmes;
- (b) monitor training or apprenticeship for which a deduction under section 44 of the Act is to be claimed; and
- (c) provide an employer who qualifies for a deduction under section 44 of the Act with a certificate to accompany the claim for such deduction.

6. On-the-job training

(1) An employer may claim a deduction in respect of the cost incurred by him or her for purposes of on-the-job training of an employee, which is approved by the Botswana Training Authority or the Tertiary Education Council under regulation 4 (b) and is conducted at the employer's own place of business, if-

- (a) the course of training is clearly specified and is of a limited duration;
- (b) the training officer has academic or professional qualifications or experience which the Botswana Training Authority or the Tertiary Education Council considers adequate, except that while such training officer need not be wholly or substantially engaged in instructing trainees on-the-job, the instruction or demonstrations imparted by him or her to the said trainees are clearly identifiable as a structured course for purposes of on-the-job training, distinct from supervision of trainees and other employees in the normal course of management.

(2) Subject to subregulation (3) training imparted in the employer's own place of business shall be deemed to be on-the-job training for the purposes of this regulation where-

- (a) the employee is not a skilled worker in the line of work for which such employee was engaged or promoted and the period of such training does not exceed eight weeks;
- (b) the employee is engaged for subordinate duties of a clerical or administrative nature and the period of such training does not exceed eight weeks;
- (c) the employee is a professional, scientific or managerial trainee and the period of such training does not exceed 12 weeks.

(3) The Commissioner General may require evidence to establish that the whole or part of the period of training referred to under subregulation (2) and the whole or part of the cost incurred was actually spent on on-the-job training.

(4) For the purpose of this regulation "skilled worker" means an employee belonging to the industrial class who has already been fully trained in the line of work for which such

employee was engaged or promoted.

7. Allowable expenditure

The expenditures referred to in section 44 of the Act, in respect of which the deduction from assessable income specified therein may be made, are the following-

- (a) course fees;
- (b) boarding fees, hotel charges or other costs of accommodation incurred by reason of the employee being away from his normal place of employment;
- (c) costs of travel to and from the place of education or training where it is away from the workplace (within Botswana) or place of residence (where the course is abroad);
- (d) subsistence allowance and, where education or training abroad requires it, a clothing allowance;
- (e) costs of text books and other material required for education or training, including correspondence course fees if such course is an integral part of a structured course;
- (f) examination fees;
- (g) the following costs of a training establishment set up by the employer-
 - (i) office rental, electricity, telephone and costs of maintenance;
 - (ii) stationery and course materials;
 - (iii) one half of the cost of capital equipment used in the courses provided by the establishment;
 - (iv) remuneration of the training officer and, where the training officer has been brought to Botswana for the specific purpose of the training establishment, the costs of travel to the place of his permanent residence on the termination of his employment;
 - (v) remuneration of external instructors engaged for the courses provided by the establishment, including travel and hotel costs in the case of instructors not residing in Botswana;
 - (vi) remuneration of clerical and other staff engaged wholly for the purposes of the training established;
- (h) wages paid to an employee employed on a part time basis or serving an apprenticeship course approved by the Botswana Training Authority on the Tertiary Education Council at an approved training establishment.

INCOME TAX (SUPERANNUATION FUNDS) REGULATIONS

(under section 145)

(1st January, 1992)

ARRANGEMENT OF REGULATIONS

REGULATION

- 1. Citation
- 2. Definition of approved superannuation fund
- 3. Cessation of approval of superannuation fund

S.I. 66, 1995,
S.I. 53, 2001,
Act 14, 2006.

1. Citation

These Regulations may be cited as the Income Tax (Superannuation Funds) Regulations.

2. Definition of approved superannuation fund

(1) An "**approved superannuation fund or scheme**" means a fund or scheme, as the case may be, that meets with the following criteria and has been approved by the Commissioner

General-

- (a) the Fund shall be registered as a pension or retirement annuity fund under the Pensions and Provident Funds Act and shall be a legal person whose assets are separate from the assets of any employer or any member of the Fund;
- (b) the Scheme shall be established as a retirement annuity or deferred annuity scheme, established and administered by an insurer in terms of the Insurance Industry Act;
- (c) any annuities purchased by a retirement annuity fund shall, unless it is purchased from itself or from a pension fund registered under the Pension and Provident Funds Act, be purchased from an insurer under the Insurance Industry Act;
- (d) subject to paragraph (f), the rules of a fund or scheme shall not except in cases of proven ill health, permit the retirement of a member before he or she has reached the age of 55;
- (e) the rules for a fund or scheme may-
 - (i) allow a member to commute up to 33 $\frac{1}{3}$ per cent of his pension on retirement;
 - (ii) provide for the payment of a death benefit (inclusive of any funeral benefit) to the dependants or estate of a member, so however that where the deceased member is a member of an occupational pension fund or scheme the benefit does not exceed four times the annual eligible emoluments of the member at the date of his death or four times his annual pension in the case of a pensioner or, where the death benefit is provided by the fund or scheme other than an occupational pension fund or scheme, by purchase of life insurance, the premium paid by the fund does not exceed 7,5 per cent of the total annual contributions made to the said fund or scheme;
 - (iii) permit the payment to the dependants or the estate of a deceased member, other than to the dependants or the estate of a deceased pensioner, of all the contributions made by him or on his behalf together with any return on the investment of such contributions,
 - (iv) provide for the payment of a widow's or widower's pension of up to 50 per cent, an orphan's pension of up to 25 per cent per child and a dependant's pension of up to 10 per cent per dependant of the pension which the deceased member would have been entitled to had he or she retired at the date of his or her death or was receiving at the time of his or her death, so however, that the total benefits paid shall not exceed 100 per cent of such deceased member's pension;
 - (v) allow a member on withdrawal from a fund, for reasons other than retrenchment, to commute the equivalent of 25 per cent of his or her pension entitlement or P5,000, whichever is the greater, so however, that the total benefits paid shall not exceed 100 per cent of such member's entitlement. If the residual amount of the member's pension entitlement after the commutation is less than P5,000 such residual may be encashed in full;
 - (vi) allow a member on withdrawal from a fund for reasons of retrenchment to commute the equivalent of 33 $\frac{1}{3}$ per cent of his pension entitlement or P5,000 whichever is the greater, so however, the total benefits paid shall not exceed 100 per cent of such member's entitlement. If the residual amount of the member's pension entitlement after the commutation is less than P5,000 such residual may be encashed in full:

Provided that the withdrawal benefits payable in terms of subparagraphs (v) and (vi) are applied only to benefits accrued whilst the employee was a member of the fund from which he or she is withdrawing and shall exclude any benefits transferred from other approved funds. This proviso shall apply *mutatis mutandis* to an employee rejoining a fund of which he or she was previously a member;

- (vii) where the pension payable to a pensioner, a widow, widower, orphan or dependant is less than P5,000 per annum, provide for the commutation, with the approval of the Commissioner General, of the entirety of such pension to a single lump sum payment;
- (f) where the fund or scheme is a fund or scheme created for the provision of pension benefits for the employees of a particular employer, employment under whom is the sole criteria for membership, and the employer contributes a minimum of 51 per cent of the total contributions made to the said fund or scheme (in these Regulations referred to as a "occupational fund or scheme"), the employee may with the consent of the employer, retire at any time after he reaches the age of 50:
 Provided that the retirement ages for any specific class of employees not included under this provision shall be regulated in terms of the applicable Acts.

3. Cessation of approval of superannuation fund

An approved superannuation fund or scheme shall cease to be an approved fund or scheme, as the case may be, if its rules are amended and such amendment is not approved by the Commissioner General.

INCOME TAX (PRESCRIPTION OF DEDUCTIBLE AMOUNT BY A BANK FOR BAD OR DOUBTFUL DEBTS) ORDER

*(sections 145 and 41(1)(j))
(1st July, 2003)*

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

- 1. Citation and commencement
- 2. Deductible amount for bad or doubtful debts

S.I. 34, 2004.

1. Citation and commencement

This Order may be cited as the Income Tax (Prescription of Deductible Amount by a Bank for Bad or Doubtful Debts) Order.

2. Deductible amount for bad or doubtful debts

The provision for bad or doubtful debts which may be deducted in a tax year by a bank in accordance with the provisions of paragraph (j) of section 41(1) of the Income Tax Act, shall not exceed 1.5 per cent of the amount of loans and advances as at the end of the tax year.

INCOME TAX (SPECIFIED CORPORATIONS) REGULATIONS

*(Section 145)
(12th September, 1975)*

ARRANGEMENT OF REGULATIONS

REGULATIONS

- 1. Citation
- 2. Specified corporations

Schedule

S.I. 108, 1975,
S.I. 109, 1975,
S.I. 110, 1975,
S.I. 130, 1976,
S.I. 48, 1977,
S.I. 49, 1977,

1. Citation

These Regulations may be cited as the Income Tax (Specified Corporations) Regulations.

2. Specified corporations

The corporations specified in the Schedule hereto are hereby declared to be specified corporations for the purposes of the Act.

SCHEDULE

1. Any company of which the whole of every class of equity share issued is, through the whole of the tax year, held by the Botswana Development Corporation (with effect from the tax year 1974/75).

2. Botswana Agricultural Marketing Board (with effect from the tax year 1974/75).

3. Bank of Botswana (with effect from 1st July, 1975).

4. Botswana Meat Commission.

5. University of Botswana and Swaziland (with effect from 20th August, 1976).

6. University of Botswana (with effect from 20th August, 1976).

7. Botswana Livestock Development Corporation (Proprietary) Limited (with effect from the tax year 1976/77) so long as the whole of every class of equity share therein is held-

(a) by the Botswana Meat Commission;

(b) by the Botswana Meat Commission and the Government; or

(c) by the Government,

throughout the whole of the tax year.

INCOME TAX (OATH OF SECRECY) REGULATIONS

(Section 145)

(10th January, 1975)

ARRANGEMENT OF REGULATIONS

REGULATIONS

- 1. Citation
- 2. Form of oath

Schedule - Oath/Declaration of Secrecy

1. Citation

These Regulations may be cited as the Income Tax (Oath of Secrecy) Regulations.

2. Form of oath

Every person appointed under or employed in carrying out the provisions of the Act, and every person to whom confidential information is disclosed under section 5 of the Act shall make the oath or declaration of secrecy set out in the Schedule hereto before a commissioner of oaths.

SCHEDULE

OATH/DECLARATION OF SECRECY

Iof

swear/solemnly declare that I will not either directly or indirectly divulge or disclose to anyone or be a party to the divulging or disclosing to or obtaining by anyone any particular matter or thing relating to the income of or income tax payable by any person, or any other information or document which has been in any way received by me in connection with the exercise of any powers or the performance of any duties conferred or imposed upon me under the written laws relating to income tax, or received by me by virtue of any office, place or position which I may at any time hold or occupy under the said written laws or with the approval of the Minister responsible for finance, except to the extent that I may be permitted or required to do so in

accordance with the said written laws.
(So help me God)

Sworn to/declared at this day of
20 by the above-named before me.
Signature of Declarant
Commissioner of Oaths

INCOME TAX (FARMING BUSINESS RECORDS) REGULATIONS

(Section 145)

(1st July, 1978)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Prescription of farming business records

S.I. 88, 1979.

1. Citation

These Regulations may be cited as the Income Tax (Farming Business Records) Regulations.

2. Prescription of farming business records

The records required to be prescribed under section 26(2)(a) of the Act in relation to any business of farming carried on by a person other than a company shall be a record of-

- (a) all moneys received and disbursed and the particulars to which such receipts and disbursements relate;
- (b) all acquisitions of livestock, produce, plant and machinery, land or services not recorded under paragraph (a) and the manner in which any such property or services were acquired;
- (c) all disposals of livestock, produce, plant and machinery, land or services not recorded under paragraph (a) and the manner in which any such property or services were disposed of;
- (d) livestock, in its various classes, which was held and not disposed of at the beginning and end of each accounting period;
- (e) produce, in its various kinds, which was held and not disposed of at the beginning and end of each accounting period; and
- (f) such other information as is sufficient to support the certificate required under section 71 of the Act.

INCOME TAX (EMPLOYMENT INCOME) REGULATIONS

(under section 145)

(1st July, 1990)

S.I. 43, 1990,
Act 14, 2006.

1. Citation and application

These Regulations may be cited as the Income Tax (Employment Income) Regulations, 1990, and shall apply to the assessment of employment income for the tax year commencing on the 1st July, 1990, and for all subsequent tax years.

2. Current capital valuation

The current capital valuation referred to in section 32(3)(c) of the Income Tax Act shall

be calculated by multiplying P250 by the gross floor area in square metres of the quarters or residence concerned (that is to say the total floor area measured over all external and internal walls), as at the commencement of the tax year, or as at the date of completion of the construction of the property in question if such completion occurred during the tax year:

Provided that, where the Commissioner General is satisfied that, by reason of the standard of building, an excessive current capital valuation results, he shall, in place of the factor of P250, apply such smaller factor, but being not less than P170, as he considers fair and reasonable.

3. Relevant percentage of employment income

The relevant percentage of employment income, excluding the value of the provided quarters or residence, of an employee for the purposes of paragraph (ii) of the proviso to section 32(3)(d) of the Income Tax Act shall be 1 per cent of the amount in respect of which the rate of tax in Table I of the Eighth Schedule of the Act is zero, plus 0,25 per cent of every additional amount of P100, subject to a maximum of 25 per cent of such employment income.

INCOME TAX (APPROVED PROVIDENT FUND) REGULATIONS

(under section 145)

(21st September, 1990)

S.I. 85, 1990,
Act 14, 2006.

1. Citation

These Regulations may be cited as the Income Tax (Approved Provident Fund) Regulations.

2. Definition

For the purposes of these Regulations, unless the context otherwise requires-
"approved provident fund" means a provident fund approved by the Registrar of Pensions and Provident Funds for registration or provisional registration as a provident fund in accordance with the provisions of the Pensions and Provident Funds Act.

3. Application of Item 4 of Tenth Schedule

For the purposes of Item 4 of Table III of the Eighth Schedule to the Income Tax Act, the Commissioner General shall not approve a provident fund unless it complies with the following conditions-

- (a) that it qualifies as an approved provident fund;
- (b) that it is a fund or scheme, not being a fund qualifying as an approved superannuation fund as defined in the Act, which is *bona fide* established for the purpose of providing terminal and other benefits to members or deceased members of such fund or scheme;
- (c) that the receipt of benefits on retirement shall be at an age of not less than 55 years, except in the case of proven ill-health, incapacity or death;
- (d) that the fund will invest in Botswana such part of its assets as may, from time to time, be prescribed by the Minister; and
- (e) that the rules of the fund shall not be amended without the prior written approval of the Commissioner General.

BOTSWANA-BARBADOS DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(under section 53(2))

(1st April, 2005)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

WHEREAS by section 53(1) of the Income Tax Act (Cap. 52:01) the Minister of Finance and Development Planning is authorized to enter into an agreement on behalf of Government with the government of any other country with a view to, among other things, the prevention, mitigation or discontinuance of double taxation;

AND WHEREAS in pursuance of the provisions of the said section 53(1) of the Income Tax Act, the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of Barbados for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

AND WHEREAS it is provided by section 53(2) of the Income Tax Act that an agreement entered into in accordance with section 53(1) of the Income Tax Act shall by order be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE in pursuance of the provisions of the said section 53 (2) the following Order is hereby made—

1. Citation

This Order may be cited as the Botswana-Barbados Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of Barbados is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of Barbados desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

ARTICLE 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

- (a) in Botswana:
 - (i) the income tax including any withholding tax, prepayment or advance tax payment with respect to aforesaid tax; and
 - (ii) the capital gains tax;
(hereinafter referred to as "Botswana tax");
- (b) in Barbados:
 - (i) the income tax (including premium income tax);
 - (ii) the corporation tax (including the tax on branch profits); and
 - (iii) the petroleum winning operations tax;
(hereinafter referred to as "Barbados tax").

2. Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

3. Notwithstanding any other provisions of this Convention, where Botswana tax is paid or payable in accordance with a Tax Agreement entered into in terms of the provisions of the Botswana Income Tax

Act, this Convention shall not apply except to such an extent as may be provided in such Tax Agreement.

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Botswana" means the Republic of Botswana;
 - (b) the term "Barbados" means the island of Barbados and the territorial waters thereof, including any area outside such territorial waters which in accordance with international law and the laws of Barbados is an area within which the rights of Barbados with respect to the seabed and subsoil and their natural resources may be exercised;
 - (c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (d) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of the Botswana Unified Revenue Service;
 - (ii) in Barbados, the Minister responsible for Finance or his authorized representative;
 - (e) the terms "a Contracting State" and "the other Contracting State" mean Botswana or Barbados as the context requires;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) term "competent authority" means:
 - (i) in the case of Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of Taxes;
 - (ii) in the case of France, the Minister in charge of the budget or his authorised representative.
 - (i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (center of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of neither State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, construction, assembly, installation project or supervisory activity in connection with such site or activity but only where such site, project or activity continues for a period of more than six months;
- (b) an installation, structure or ship used for the exploration of natural resources, only if it lasts for a period of more than six months;
- (c) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than 183 days in any twelve month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person -

- (a) has, and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;
- (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly makes orders or makes deliveries on behalf of the enterprise;

unless the activities of such persons are limited to those mentioned in paragraph 4 which, if exercised

through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. Notwithstanding the provisions of paragraph 1, where an enterprise of a Contracting State which has a permanent establishment in the other Contracting State carries on business activities in that other State otherwise than through the permanent establishment, of the same or similar kind as the business activities carried on by the permanent establishment, then the profits of such activities may be attributable to the permanent establishment unless the enterprise shows that such activities could not have been reasonably undertaken by the permanent establishment.

3. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

4. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for

specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards the reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

6. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

8. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 12 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Where a company, which is a resident of a Contracting State having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provisions of the Convention, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittance shall not exceed 5 per cent.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in the Contracting State and paid to the Government of the other Contracting State or an agency or instrumentality thereof, shall be exempt from tax in the first-mentioned Contracting State. For the purposes of this paragraph the term "Government" shall include the Central Bank of Botswana, the Central Bank of Barbados and any other similar institution as may be agreed upon by the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between

both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films, discs or tapes for radio or television broadcasting, any patent trade mark, design or model, plan, secret formula or process, or for the use of, or right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or a movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

5. Notwithstanding the provisions of paragraph 4, gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a

resident of the other Contracting State, may be taxed in the first- mentioned State if the alienation of the shares or other corporate rights occur at any time during the six years next following the date on which the individual has ceased to be resident of that first-mentioned State.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following circumstances:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activity exercised in the other Contracting State during the aforesaid period or periods be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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.

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 any 12 month period; 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.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that State.

ARTICLE 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is wholly or mainly supported by public funds of the other Contracting State or a political subdivision or a local authority thereof. In such a case the income shall be taxable only in the State of which the entertainer or sportsperson is a resident.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar payments made under the social security legislation of a Contracting State shall be taxable only in that State.

3. The term "annuity" means a stated sum payable periodically at stated times during the life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration of money's worth.

ARTICLE 19

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:-

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of the funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority:

- (a) shall be taxable only in that State; and
- (b) shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

Students

1. Payments which a student, apprentice or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants or scholarships not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

ARTICLE 21

Technical Fees

1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of such fees.

3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the technical fees, being resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Articles 7 or 14, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether he is resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

7. Notwithstanding the provisions in paragraph 2, where in any future Convention for the avoidance of double taxation and the prevention of fiscal evasion entered into by the first-mentioned Contracting State with any other State (not being the other Contracting State in the present Convention) the rate of tax specified in the Article relating to technical fees is a rate less than 10 per cent, such lower rate shall apply as if it had been the rate specified in this Article.

ARTICLE 22

Professors and Teachers

1. An individual who has been resident in a Contracting State immediately before travelling to the other Contracting State, and who, at the invitation of a school, university, or other similar non-profit educational institution, remains in that other State for a period not exceeding two years from the date of his first arrival in that State, for the purpose of teaching or carrying out research, or both, in such educational institutions, shall be exempt from tax in that other State with respect to the remuneration received for such teaching or research.

2. The provisions of paragraph 1 of this Article shall not be applicable to the remuneration received for teaching or research work if such is not carried out for the public good.

ARTICLE 23

Other Income

1. Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

Elimination of Double Taxation

1. In the case of Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, double taxation shall be eliminated as follows:

- (a) tax payable under the laws of Barbados and in accordance with this Convention, whether directly or by deduction, on profits or income shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Barbados tax is computed;
- (b) the amount of such credit referred to in paragraph 1(a) shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.

2. In the case of Barbados, subject to the provisions of the laws of Barbados regarding the allowance as a credit against Barbados tax of tax payable in a territory outside Barbados double taxation shall be

eliminated as follows:

- (a) tax payable under the laws of Botswana and in accordance with this Convention, whether directly or by deduction, on profits or income from sources within Botswana (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Barbados tax computed by reference to the same profits or income in respect of which the Botswana tax is computed;
- (b) in the case of a dividend paid by a company that is a resident of a Contracting State to a company that is a resident of the other Contracting State which holds directly at least 25 per cent of the capital of the company paying the dividend, the credit referred to in paragraph 2(a) shall take into account, tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid; and
- (c) the credit referred to in paragraph 2(b) shall in no case exceed the part of the tax as computed before the credit is given, which is appropriate to the income which may be taxed in Botswana.

ARTICLE 25

Non-discrimination

1. 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 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.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 6 of Article 21 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. The provisions of this Article shall not be construed to prevent Barbados from applying its tax on branch profits at the rate specified under the Income Tax Act.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. This Article shall apply to taxes which are the subject of this Convention.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They

may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for the purposes herein mentioned. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

3. The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

ARTICLE 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into Force

1. Each Contracting State shall notify the other of the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of the two notifications.

2. The provisions of the Convention shall apply:

- (a) in Botswana, in respect of income tax and capital gains tax, on taxable income or gains derived on or after the first day of July of the year following that of the entry into force of this Convention;
- (b) in Barbados, in respect of income tax, on taxable income derived on or after the first day of January of the year following that of the entry into force of this Convention.

ARTICLE 30

Termination

1. This Convention shall remain in force indefinitely, but either of the Contracting States may terminate the Convention through diplomatic channels, by giving the other Contracting State written notice of the termination not later than the thirtieth day of June of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event the Convention shall cease to have effect:

- (a) in Botswana, in respect of income tax and capital gains tax, on taxable income or gains derived on or after the first day of July of the year following that in which the notice of termination is given;
- (b) in Barbados, in respect of taxes on income derived during any calendar year, or fiscal period, as the case may be, beginning on or after the first day of January immediately following the date

on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Bridgetown this 23rd day of February, 2005 in duplicate in the English language.

Hon. Phandu T.C. Skelemani
For the Government of
The Republic of Botswana

Hon. Dale D. Marshall
For the Government of
Barbados

DEVELOPMENT APPROVAL (SAPPHIRE TEXTILES (PTY) LTD) ORDER

(under section 52)

(11th November, 2005)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Prescription
3. Additional tax relief

S.I. 67, 2005.

1. Citation

This Order may be cited as the Development Approval (Sapphire Textiles (Pty) Ltd) Order, and shall, subject to the provisions of section 52 of the Act, be deemed to have come into operation on 1st July, 2005, for a period of five consecutive tax years.

2. Prescription

Sapphire Textiles (Pty) Ltd is prescribed as a business which may be granted additional tax relief for the purpose of its production of garments including jeans, jackets and pants for the export market, being a business project for the development of the economy of Botswana.

3. Additional tax relief

The business prescribed in paragraph 2 may be granted additional tax relief in the form of total exemption from payment of income tax on its profits for any of the five consecutive tax years commencing on 1st July, 2005, on the conditions that-

- (a) the company shall fill in and submit annual tax returns along with audited financial statements to the Botswana Unified Revenue Service (as required under section 65 of the Act) during the tax holiday period; and
- (b) the company shall, for each year, compute the taxable income which would be exempted from taxation under the Development Approval Order, to be submitted together with the tax returns under subparagraph (a).

DEVELOPMENT APPROVAL (RISING SUN (PTY) LTD) ORDER

(section 52)

(11th November, 2005)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Prescription
3. Additional tax relief

S.I. 68, 2005.

1. Citation

This Order may be cited as the Development Approval (Rising Sun (Pty) Ltd) Order, and

shall, subject to the provisions of section 52 of the Act, be deemed to have come into operation on 1st July, 2005, for a period of five consecutive tax years.

2. Prescription

Rising Sun (Pty) Ltd is prescribed as a business which may be granted additional tax relief for the purpose of its production of denim garments including denim jeans, jackets and pants for the export market, being a business project for the development of the economy of Botswana.

3. Additional tax relief

The business prescribed in paragraph 2 may be granted additional tax relief in the form of total exemption from payment of income tax on its profits for any of the five consecutive tax years commencing on 1st July, 2005, on the conditions that-

- (a) the company shall fill in and submit annual tax returns along with audited financial statements to the Botswana Unified Revenue Service (as required under section 65 of the Act) during the tax holiday period; and
- (b) the company shall, for each year, compute the taxable income which would be exempted from taxation under the Development Approval Order, to be submitted together with the tax returns under subparagraph (a).

BOTSWANA-UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(section 53(1))

(16th December, 2005)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

S.I. 84, 2005.

WHEREAS in exercise of the powers conferred on him by section 53 (1) of the Income Tax Act, the Minister of Finance and Development Planning has, on behalf of the Government, entered into an agreement with the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

AND WHEREAS in accordance with the provision of section 53 (2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana United Kingdom of Great Britain and Northern Ireland Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the first schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of United Kingdom of Great Britain and Northern Ireland is together with the Exchange of Notes, set out in the Second Schedule hereto, presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

FIRST SCHEDULE

The Government of the Republic of Botswana and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

Have agreed as follows:

ARTICLE 1
Persons covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2
Taxes covered

(1) This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

(3) The existing taxes to which this Convention shall apply are in particular:

- (a) in the case of the Republic of Botswana:
 - (i) the income tax; and
 - (ii) the capital gains tax;
(hereinafter referred to as "Botswana tax");
- (b) in the case of the United Kingdom:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;
(hereinafter referred to as "United Kingdom tax").

(4) Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term 'a mineral enterprise' means an enterprise carrying on the business of mining.

(5) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3
General definitions

(1) For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Botswana" means the Republic of Botswana;
- (b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Botswana or the United Kingdom, as the context requires;
- (d) the term "person" includes an individual, a company, a trust, an estate and any other body of persons, and does not include a partnership;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
 - (i) in the case of Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of the Botswana Unified Revenue Service;
 - (ii) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative; and
- (i) the term "national" means:

- (i) in relation to Botswana, any individual possessing the nationality of Botswana and any legal person, partnership or association deriving its status as such from the laws in force in Botswana;
- (ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom.

(2) As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 ***Resident***

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5 ***Permanent establishment***

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) an installation or structure for the exploration of natural resources;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of or exploration for natural resources.

(3) The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the

fiscal year concerned.

(4) Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person - other than an agent of an independent status to whom paragraph (6) of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State

carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) Where profits include items of income or capital gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and air transport

(1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

Associated enterprises

(1) Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included by a Contracting State in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State - and taxes

accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 25 per cent of the voting power in the company paying the dividends;
- (b) 12 per cent of the gross amount of the dividends in all other cases.

(3) The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtors profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term interest shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in

which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

(8) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is paid to and beneficially owned by the Government of the other Contracting State, a local authority thereof, any agency or instrumentality wholly owned by that Government or local authority, or the Commonwealth Development Corporation or the Botswana Development Corporation.

(9) Notwithstanding the provisions of Article 7 of this Convention and paragraph (2) of this Article interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such a resident is the beneficial owner of the interest and the interest is paid in respect of a loan made, guaranteed or insured by the United Kingdom Exports Credit Guarantee Department or the Botswana Development Corporation or the Botswana Export Credit Insurance.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information (know-how) concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between

both of them and some other person, the amount of the royalties paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13 ***Technical fees***

(1) Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the beneficial owner of the technical fees is a resident of, and is subject to tax in respect of the technical fees in, the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the technical fees.

(3) The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the technical fees are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 14 ***Capital gains***

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 of this Convention and situated in the other Contracting State may be taxed in that other State.

(2) Gains derived by a resident of a Contracting State from the alienation of:

- (a) shares, other than shares in which there is substantial and regular trading on a Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or
- (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in subparagraph (a) of this paragraph,

may be taxed in that other State.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable

property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(4) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of that Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(6) The provisions of this Article shall not affect the right of a Contracting State to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of that State at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding that year.

ARTICLE 15

Independent personal services

(1) Subject to the provisions of Article 13 of this Convention, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Convention, where an individual who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

Dependent personal services

(1) Subject to the provisions of Articles 17, 19, 20 and 21 of this Convention, 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.

(2) Notwithstanding the provisions of paragraph (1) of this Article, 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 any 12 month period commencing or ending in the fiscal 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.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 17

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

Entertainers and sportspersons

(1) Notwithstanding the provisions of Articles 15 and 16 of this Convention, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television

artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income derived from activities performed in a Contracting State by entertainers or sportsmen if the visit to that State is wholly or substantially supported by public funds. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

ARTICLE 19

Pensions

(1) Subject to the provisions of paragraph (2) of Article 20 of this Convention:

- (a) pensions and other similar remuneration paid in consideration of past employment, and
- (b) any annuity paid,

to an individual who is a resident of a Contracting State, and is subject to tax in respect thereof in that State, shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable to an individual periodically at stated times during his life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 20

Government service

(1) (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 16, 17, 18 and 19 of this Convention shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments arise from sources outside that State.

ARTICLE 22

Other income

(1) Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Convention, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the

provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention and arising in the other Contracting State may also be taxed in that other State.

(4) Where, by reason of a special relationship between the person referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

(5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 23

Elimination of double taxation

(1) In the case of Botswana, double taxation shall be avoided as follows:

Subject to the provisions of the law of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains liable to tax in the United Kingdom shall be allowed as a credit against any Botswana tax payable in respect of the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that profits, income or chargeable gains in accordance with the laws of Botswana.

(2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Botswana tax payable under the laws of Botswana and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Botswana (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Botswana tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Botswana to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Botswana tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Botswana tax payable by the company in respect of the profit out of which such dividend is paid.

(3) For the purposes of paragraph (2) of this Article, where a development approval order is made under Section 52 or a tax agreement is entered into under Section 54 of the provisions of the Income Tax Act of Botswana, the term "Botswana tax payable" shall, subject to the mutual agreement of the competent authorities in each such case, be deemed to include the whole or part of any amount which would have been payable as Botswana tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under the order or tax agreement in question.

(4) Relief from United Kingdom tax by virtue of paragraph (3) of this Article shall not be given where the profits, income or chargeable gains in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that paragraph arise or accrue more than 12 years after the date on which this Convention enters into force.

(5) The period referred to in paragraph (4) of this Article may be „extended by agreement between the Contracting States.

(6) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

ARTICLE 24

Limitation of relief

Where under any provision of this Convention any income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income or those gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income or gains as is taxed in the other Contracting State.

ARTICLE 25

Non-discrimination

(1) 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.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Except where the provisions of paragraph (1) of Article 9, paragraph (6) of Article 10, paragraph (6) or (7) of Article 11, paragraph (6) or (7) of Article 12, paragraph (6) or (7) of Article 13 or paragraph (4) or (5) of Article 22 of this Convention apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

(6) The provisions of this Article shall apply to the taxes which are the subject of this Convention.

ARTICLE 26

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25 of this Convention, to that of the Contracting State of which he is a national.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Convention.

(2) Any information received under paragraph (1) of this Article by a Contracting State shall be treated

as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by this Convention, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(3) In no case shall the provisions of paragraphs (1) and (2) of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

(6) The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information shall be made.

ARTICLE 28

Members of diplomatic or permanent missions and consular posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into force

(1) Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in Botswana:
in respect of income tax and capital gains tax, on taxable income and gains derived on or after 1st July of the year next following that of the entry into force of this Convention;
- (b) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Convention enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Convention enters into force.

(2) The Convention between the United Kingdom and Botswana signed at London on 5th October, 1977 shall terminate and cease to be effective from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (1) of this Article.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Convention, through diplomatic channels, by giving notice of

termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of this Convention. In such event, this Convention shall cease to have effect:

- (a) in Botswana:
in respect of income tax and capital gains tax, on taxable income and gains derived on or after 1st July of the year next following that in which the notice of termination is given;
- (b) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April, in the calendar year next following that in which the notice is given.

In witness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Gaborone this 9th day of September, 2005.

Hon. Baledzi Gaolathe
For the Government of
The Republic of Botswana

H.E. Mr David Merry
For the Government of the United Kingdom
of Great Britain and Northern Ireland

SECOND SCHEDULE EXCHANGE OF NOTES

Your Excellency

Gaborone
09 September, 2005

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Botswana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposals:

(1) With reference to Article 21 of the Convention, in respect of grants or scholarships not covered by that Article, a student or business apprentice referred to therein shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

(2) In the event that the Botswana Income Tax Act 1995 is amended to provide that projects qualifying for tax incentives under the Botswana International Financial Services Centre become liable to Botswana tax at a rate lower than that currently provided for by the Income Tax (Amendment) Act, 1999 or become exempt from Botswana tax, the two delegations will give early consideration to further negotiations on the provisions of the Convention to include an additional Article in the form of that enclosed with this Exchange of Notes.

ARTICLE 24A *Excluded persons*

The provisions of this Convention shall not apply to persons entitled to any special tax benefit under:

- (a) the Botswana Income Tax (Amendment) Act, 1999; or
- (b) any identical or substantially similar law enacted after the date of signature of this Convention.

If the foregoing proposals are acceptable to the Government of the Republic of Botswana, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

H. E. Mr. David Merry,
For the Government of the United Kingdom
of Great Britain and Northern Ireland

Your Excellency

Gaborone
09 September, 2005

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

"I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Botswana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposals:

(1) With reference to Article 21 of the Convention, in respect of grants or scholarships not covered by that Article, a student or business apprentice referred to therein shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

(2) In the event that the Botswana Income Tax Act 1995 is amended to provide that projects qualifying for tax incentives under the Botswana International Financial Services Centre become liable to Botswana tax at a rate lower than that currently provided for by the Income Tax (Amendment) Act, 1999 or become exempt from Botswana tax, the two delegations will give early consideration to further negotiations on the provisions of the Convention to include an additional Article in the form of that enclosed with this Exchange of Notes.

ARTICLE 24A

Excluded persons

The provisions of this Convention shall not apply to persons entitled to any special tax benefit under:

- (a) the Botswana Income Tax (Amendment) Act, 1999; or
- (b) any identical or substantially similar law enacted after the date of signature of this Convention.

If the foregoing proposals are acceptable to the Government of the Republic of Botswana, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

The foregoing proposals being acceptable to the Government of the Republic of Botswana, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

Hon. Baledzi Gaolathe
for the Government of the
Republic of Botswana

INCOME TAX (BOTSWANA INNOVATION HUB COMPANIES DEVELOPMENT APPROVAL) ORDER

(section 52(1))

(17th July, 2009)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

- 1. Citation
- 2. Interpretation
- 3. Tax rate
- 4. Application for additional tax relief

Schedule

S.I. 56, 2009.

1. Citation

This Order may be cited as the Income Tax (Botswana Innovation Hub Companies Development Approval) Order.

2. Interpretation

In this Order-

"Botswana Innovation Hub" means an administrative arrangement under the Ministry of Communications, Science and Technology established for the implementation of Government policy, the objective of which is to provide special incentives for investors in technology-driven and knowledge intensive businesses.

"Commissioner General" has the same meaning assigned to it in the Act.

3. Tax rate

Any company that has been approved by the Minister or any person delegated by the Minister as carrying on a business activity that falls under the Botswana Innovation Hub, shall be taxable at a special rate of 15 per cent (the basic rate of 5 per cent and an additional company tax rate of 10 per cent) as set out in the Eighth Schedule to the Act.

4. Application for additional tax relief

(1) A company that is registered with, and carrying on a business that falls under the Botswana Innovation Hub desiring to be approved and granted additional tax relief as provided in paragraph 3 shall apply on the form set out in the Schedule.

(2) The form referred to in subparagraph (1) shall be accompanied by documentation that may be required, including-

- (a) for a new company, approved registration for tax; or
- (b) for an existing company, a tax compliance record certified by the Commissioner General.

SCHEDULE
APPLICATION FOR A DEVELOPMENT APPROVAL ORDER IN RESPECT OF AN APPROVED ACTIVITY

(para 3)

BOTSWANA INNOVATION HUB REGISTERED ENTITY

(s 52)

To: The Permanent Secretary
Ministry of Finance and Development Planning
Private Bag 008
GABORONE

Application for approval is hereby made in terms of section 52 of the Income Tax Act (Cap. 52:01), for the issue of a Development Approval Order in respect of a Botswana Innovation Hub approved business, research or training activities:

1. Name of applicant:
2. Postal address:
.....
3. Physical address:
.....
Telephone No.: Fax No.:
Email address:
4. Tax reference number (if available):
5. State date of commencement of business/research/training:
existing business:
new business: proposed date of commencement
6. Description of process of business/research/training:
(a) products (goods and services) or outputs (research/training) to be delivered:
.....
.....
(b) description of processes undertaken by business/research/training:
.....
.....
7. Capital investment inland, infrastructure, buildings, equipment and other materials:
.....

8. Numbers of employees engaged or to be engaged in the proposed activities:

	Citizens	Non-Citizens	Total
<u>Fulltime/Contract</u>			
Existing:			
New:			
<u>Short-term expert</u>			
Existing:			
New:			

9. Particulars of facilities, if any, for training and imparting skills to Botswana citizens:

.....
.....

10. Any other relevant information relating to proposed activities:

.....
.....

11. The effect the business/research/training activities are likely to have on the development of the economy of Botswana or the economic advancement of its citizens:

- (a) In what way will your activities stimulate other economic activities whether business or otherwise?
.....
- (b) To what extent will the local raw materials be used in the manufacturing process?
.....
- (c) Is there an export potential of the business/research/training activities?
.....
- (d) will your business be a regional center serving a number of countries e.g. a regional African headquarters?
.....

DECLARATION:

As Public Officer of

.....
(name of company)

I, of
(full name of Declarant)

..... declare that to the best
(Postal Address)

of my knowledge and belief, the information given in this application is true and correct.

Date Signature

Declarant/Authorised Agent *

Agent's Full Name:

* Delete as necessary

INCOME TAX (DECLARATION OF APPROVED FINANCIAL OPERATIONS FOR IFSC CERTIFICATION) ORDER

(section 138)

(30th June, 2006)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

- 1. Citation and commencement
- 2. Approved financial operations

S.I. 45, 2006.

1. Citation and commencement

This Order may be cited as the Income Tax (Declaration of Approved Financial Operations for IFSC Certification) Order and shall come into operation on 1st July, 2006.

2. Approved financial operations

The following operations are declared to be approved financial operations for the purpose of subsection 7(j) of section 138 of the Act-

- (a) holding and administration of group companies;
- (b) shared financial services;
- (c) business process outsourcing (BPOs) and call centres; and (d) mutual funds.

BOTSWANA-FRANCE DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(under section 53(1))

(5th July, 2002)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

Schedule

S.I. 51, 2002,
Act 14, 2006.

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act the Minister of Finance and Development Planning has, on behalf of Government, entered in to an Agreement with the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana-France Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the French Republic is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the French Republic desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1

Personal scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of

income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by employers as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

- (a) In the case of Botswana:
 - (i) income tax;
 - (ii) capital gains tax;
including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes (hereinafter referred to as "Botswana tax");
- (b) In the case of France:
 - (i) the income tax ("l'impôt sur le revenu");
 - (ii) the corporation tax ("l'impôt sur les sociétés");
 - (iii) the tax on salaries ("la taxe sur les salaires");
including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes (hereinafter referred to as "French Tax").

4. Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

5. Notwithstanding other provisions of this Convention, where Botswana tax is paid or payable in accordance with a Tax Agreement entered into by the Government of Botswana, this Convention shall not apply.

6. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws.

ARTICLE 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Botswana" means the Republic of Botswana;
- (b) the term "France" means the European and overseas departments of the French Republic (Guyana, Martinique, Guadeloupe, Reunion) including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, The French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
- (c) the terms "the Contracting State" and "the other Contracting State" mean Botswana or France as the context requires;
- (d) the term "person" includes an individual, a company, a trustee and any other body of persons which is treated as an entity for tax purposes;
- (e) the term "company" means any body corporate, or any entity, which is treated, for tax purposes, as a body corporate;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) term "competent authority" means:
 - (i) in the case of Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of Taxes;
 - (ii) in the case of France, the Minister in charge of the budget or his authorised representative.
- (i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Resident

1. (a) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and shall also apply to that state and its local authorities. This term however, does not include any person who is liable to tax in that State in respect only of income situated therein from sources in that State. France shall consider a Botswana citizen to be a resident of Botswana only if such individual has a substantial presence in Botswana and would be a resident of Botswana and not of a third state under the principles of sub-paragraphs (a) and (b) of paragraph 2.

(b) In the case of a partnership or estate subject under Botswana domestic law this term applies only to the extent that the income derived by such partnership or estate is subject to tax in Botswana as the income of a resident, either in its hands or in the hands of its partners.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

4. The term "resident of a Contracting State" shall include where that State is France, any partnership or group of persons subject under French domestic law, to a tax regime being substantially similar to that of partnerships, the place of effective management of which is situated in France and which is not liable to corporation tax therein.

ARTICLE 5

Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction or assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months.
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than six months within any twelve month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall

be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display - or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. In respect of paragraph 4(a) and (b) "delivery" made out of the stock of goods or merchandises situated in a Contracting State will constitute a permanent establishment therein if operations other than storage, display, transport or other preparatory or auxiliary operations are carried on in that State out of this stock or facilities.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. Where shares or other rights in a company, trust or comparable institution entitles to the enjoyment of immovable property situated in a Contracting State and held by that company, trust or comparable institution, income derived from the direct use, letting or use in any other form of that right of enjoyment may be taxed in that State notwithstanding the provisions of Articles 7 and 14.

ARTICLE 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deductions shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties as defined in Article 12, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest as defined in Article 11 on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties as defined in Article 12, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest as defined in Article 11 on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that

other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other state considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 ***Dividends***

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

- (i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the share capital of the company paying dividends;
- (ii) 12 percent of the gross amount of dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Botswana who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (precompte) to the extent that it was effectively paid by the company in respect of such dividends. The gross amount of the prepayment (precompte) refunded shall be deemed to be a dividend for the purposes of the Convention. The provisions of paragraph 2 shall apply to such gross amount.

4. The term "dividend" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident. It is understood that the term "dividend" does not include income mentioned in Article 16.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. Notwithstanding the provisions of paragraph 6 of Article 24, where a company which is a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall, after having borne the corporation tax, be liable, according to the laws of that other State to a tax the rate of which shall not exceed 5 per cent.

ARTICLE 11 ***Interest***

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 interest, mentioned in paragraph 1 shall be taxable

only in the Contracting State where the recipient of the interest is resident if:

- (a) the recipient thereof is the government of a Contracting State, the Central Bank of a Contracting State or a local authority thereof; or
- (b) the interest is paid in respect of a loan granted or guaranteed by a financial institution of a public character with the objective of promoting exports and development, if the credit granted or guaranteed contains an element of subsidy; or
- (c) such interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or with the sale on credit of any merchandise or the furnishing of any services by one enterprise to another enterprise.

4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item of income, which is considered as a dividend under the provisions of Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment involving a transfer of know-how or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, or a local authority thereof or a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties

are borne by such permanent establishment or fixed base, then, such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 ***Capital gains***

1. (a) Gains derived from the alienation of immovable property may be taxed in the Contracting State where such immovable property is situated.

(b) Gains from the alienation of shares or other rights in a company, a trust or a comparable institution, the assets or property of which consist for more than 50 per cent of their value, or derive more than 50 per cent of their value, directly or indirectly, from immovable property situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or to the performance of its independent personal services shall not be taken into account.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 ***Independent personal services***

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may also be taxed in the other Contracting State if:

- (a) the resident has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities, but only so much thereof as is attributable to that fixed base, or
- (b) the individual is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days within any period of 12 months, but only so much thereof as is attributable to services performed in that State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 ***Dependent personal services***

1. Subject to the provisions of Articles 16, 18, 19, 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.

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 Contracting State for a period or periods not exceeding in

- (b) the aggregate 183 days within any period of 12 months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State in which the place of effective management of the enterprise is situated.

ARTICLE 16 ***Directors' fees***

1. Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Other remuneration which a person to whom the provisions of paragraph 1 apply derives from the company in respect of the discharge of functions as an employee shall be taxable in accordance with the provision of Article 15.

ARTICLE 17 ***Entertainers and sportsmen***

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman, in his capacity as such accrues not to the entertainer or sportsman himself but to another person, whether a resident of a Contracting State or not, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or a sportsman from his personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised within the framework of a visit which is mainly supported by public funds of the first-mentioned State, a local authority or a public institution thereof.

ARTICLE 18 ***Pensions***

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State shall be taxable only in that State.

2. However, such pensions and remuneration shall be taxable in the other Contracting State and under the domestic law of that State if they are not submitted to tax in the first-mentioned State.

3. Notwithstanding the provisions of paragraph 1, pensions and other payments under the social security legislation of a Contracting State may be taxed in that State.

ARTICLE 19 ***Public service***

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof or one of the public institutions of either to an individual in respect of services rendered to that State or local authority or public institution shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who is a national of that State without also being a national of the first-mentioned State.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof or by one of the public institutions of either to an individual in respect of services rendered to that State, authority or public institution shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without also being a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof, or by one of their public institutions.

ARTICLE 20

Students

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants or scholarships not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

ARTICLE 21

Management, consultancy and technical fees

1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 7.5 per cent of the gross amount of such fees.

3. The term "technical fees" as used in this Article means payments of any kind from a person who is resident in one of the Contracting States to any person, other than to an employee of the person making the payments, in consideration of any services of an administrative, technical, managerial or consultancy nature performed outside that State.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority thereof or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 22

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a

Contracting State not dealt with in the foregoing Articles of this Convention and a rising in the other Contracting State may be taxed in that other State.

4. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this convention

ARTICLE 23

Elimination of double taxation

1. In the case of Botswana, double taxation shall be avoided in the following manner:

Tax payable under the laws of France and in accordance with this Convention, whether directly or by deduction, on profits or income liable to tax in France shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the tax is computed. However, the amount of such credit shall not exceed the amount of Botswana tax payable on that income in accordance with the laws of Botswana.

2. In the case of France, double taxation shall be avoided in the following manner:

(a) Notwithstanding any other provision of this Convention, income which may be taxed or shall be taxable only in Botswana in accordance with the provisions of the Convention shall be taken into account for the computation of the French tax where such income is not exempted from corporation tax according to French domestic law. In that case, the Botswana tax shall not be deductible from such income, but the resident of France shall, subject to the conditions and limits provided for in subparagraphs (i) and (ii), be entitled to a tax credit against French tax.

Such tax credit shall be equal:

- (i) in the case of income other than that mentioned in sub-paragraph (ii) to the amount of French tax attributable to such income provided that the resident of France is subject to Botswana tax in respect of such income;
 - (ii) in the case of income subject to the corporation tax referred to in Article 7 and paragraph 2 of Article 13 and income referred to in Articles 10, 11, 12, paragraph 1 of Article 13, paragraph 3 of Article 15, Article 16 and paragraphs 1 and 2 of Article 17 and Article 21, to the amount of tax paid in Botswana in accordance with the provisions of those Articles; however, such tax credit shall not exceed the amount of French tax attributable to such income.
- (b) (i) It is understood that the term "amount of French tax attributable to such income" as used in sub-paragraph (a) means:
- where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;
 - where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.
- (ii) It is understood that the term "amount of tax paid in Botswana" as used in subparagraphs (a) and (b) means the amount of Botswana tax effectively and definitively borne in respect of the items of income concerned, in accordance with the provisions of the Convention, by a resident of France who is taxed on those items of income according to the French law.

ARTICLE 24

Non-discrimination

1. (a) 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.

(b) It is understood that an individual, legal person, partnership or association who or which is a resident of a Contracting State is not placed in the same circumstances as an individual, legal person, partnership or association who or which is not a resident of that State; this shall apply whatever the definition of nationality, even if legal persons, partnerships or associations are deemed to be nationals of the Contracting State of which they are residents.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or of a fixed base that a resident of one Contracting State has available in the other Contracting State for the purpose of performing independent personal services, shall not be less favourably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purpose of determining the taxable profits of that enterprise, under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. (a) Contributions borne by an individual who renders dependent personal services in a Contracting State to a pension scheme established and recognised for tax purposes in the other Contracting State shall be deducted, in the first-mentioned State, in determining the individual's taxable income, and treated in that State, in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that first-mentioned State, provided that the pension scheme is accepted by the competent authority of that State as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

(b) For the purposes of sub-paragraph (a):

- (i) the term "a pension scheme" means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the dependent personal services referred to in subparagraph (a); and
- (ii) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

6. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes, which are granted to individuals so resident.

7. The exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that State or local authorities or of the public institution which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or local authorities or to their public institutions which carry on the same or similar activity. Notwithstanding the provisions of paragraph 8, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered.

8. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

9. If any treaty, agreement or Convention between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is understood that such clauses shall not apply in tax matters.

ARTICLE 25

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or the application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

5. (a) The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Convention.

(b) In order to obtain, in a Contracting State, the benefits provided for by the Convention, the residents of the other Contracting State shall, if the competent authorities so agree by mutual agreement, present a form of certification of residence providing in particular the nature and the amount or value of the income, and including the certification of the tax administration of that other State.

ARTICLE 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in particular for the prevention of fraud or evasion of such taxes, in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

3. The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

ARTICLE 27

Diplomatic agents and consular officers

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers, and of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in one of the Contracting States to the same

obligations in relation to tax on their total income and capital as are residents of that State.

ARTICLE 28

Miscellaneous rules

Where a resident of a Contracting State derives income from a source situated outside both Contracting States and such income is exempt from tax in the State of which he is a resident, the other Contracting State may tax such income under its own laws notwithstanding this Convention.

ARTICLE 29

Entry into force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the first day of the third month following the date of reception of the later of these notifications.

2. The provisions of the Convention shall have effect:

(a) In Botswana:

(i) In respect of income tax, on taxable income derived on or after the first day of July of the year next following that of the entry into force of this Convention.

(b) In France:

(i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the Convention enters into force;

(ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the Convention enters into force;

(iii) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the convention enters into force.

ARTICLE 30

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, the Convention shall cease to have effect:

(a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that in which the notice of termination is given.

(b) In France:

(i) in respect of taxes on income withheld at source, for amounts taxable under after the calendar year in which the notice is given;

(ii) in respect of taxes on income which are not withheld at source for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given;

(iii) in respect of other taxes, for taxation the taxable event of which will occur after the calendar year in which the notice of termination is given.

In witness whereof, the undersigned being duly authorised thereto, have signed this Convention.

DONE at Gaborone, this 15th day of April, 1999, in duplicate in the French and English languages, both texts being equally authentic.

P.H.K. KEDIKILWE,
*For the Government of
the Republic of Botswana.*

E. BERG,
*For the Government of
the French Republic.*

BOTSWANA-INDIA DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(section 53(1))

(1st June, 2007)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPHS

1. Citation
2. Approval and effective date of commencement

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act, the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana-India Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of India is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of India, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, and with a view to promoting economic cooperation between the two countries, have agreed as follows -

ARTICLE 1

Persons covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from alienation of movable or immovable property.

3. The existing taxes to which the Agreement shall apply are in particular:

(a) In Botswana, the income tax (hereinafter referred to as "Botswana tax");

(b) In India, the income tax, including any surcharge thereon (hereinafter referred to as "Indian tax").

4. Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise, at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

5. The Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Botswana" means the Republic of Botswana;

(b) the term "India" means the territory of India and includes the territorial sea and air space above

it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

- (c) the terms "Contracting State" and "the other Contracting State" mean the Republic of Botswana or the Republic of India, as the context requires;
- (d) the term "person" includes an individual, a company, a trust, an estate of a deceased person, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term "enterprise" applies to carrying on of any business;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of the Botswana Unified Revenue Service; and
 - (ii) in India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative.
- (j) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (k) the term "tax" means Botswana or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine relating to those taxes;
- (l) The term "fiscal year" means:
 - (i) In the case of Botswana, a period of 12 months relating to the tax year beginning on the 1st day of July;
 - (ii) In the case of India, the financial year beginning on the 1st day of April.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State shall prevail over a meaning given to the term under other laws of that State.

ARTICLE 4 ***Resident***

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the place in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

ARTICLE 5

Permanent establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse in relation to a person providing storage facilities for others;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and
- (i) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months.

3. (a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last for more than six months.

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than 183 days in any twelve month period commencing on or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 7 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;

- or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged

(otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and air transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.

3. For the purposes of this Article interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated enterprises

1. Where -

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of the State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial recipient of the dividends is the resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the share capital of the company paying dividends;

(b) 10 per cent of the gross amount of dividends in all other cases.

This paragraph shall not affect taxation of the company in respect of the profits out of which the dividends were distributed.

3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2, shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial recipient of the interest is the resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

- (i) the Government, a political sub-division or local authority of the other Contracting State;
- (ii) the Central Bank of the other Contracting State; or any other bank or governmental financial institutions or agencies that may be mutually agreed upon between the two contracting states.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, know how, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2, shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then, such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Technical fees

1. Technical fees arising in a Contracting State and paid to a resident of the other contracting state may be taxed in that State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but if the beneficial owner of the technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

3. The term "technical fees" as used in this Article means payments of any kind other than those referred to in other Articles of this Agreement to any person, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 of this Article, shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State in which the company issuing shares is resident.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

Independent personal services

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any period of 12 months; in that case, only so much the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, 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.

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 Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other

- Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors having supervisory functions in a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

Artistes and sportspersons

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 19

Pensions and annuities

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 20

Government service

1. (a) Salaries, Wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, political subdivision or local authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State;

(b) However, such pension shall be taxable only in the other Contracting State if the individual is resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision or a local authority thereof.

ARTICLE 21

Professors, teachers and research scholars

1. A Professor, a teacher or research scholar who is or was a resident of one of the Contracting States

immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, or other similar institution in that other Contracting State, shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years, from the date of his arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken in the public interest and not primarily for the benefit of some private person or persons.

3. For the purpose of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 22

Students and business apprentices

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

ARTICLE 23

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

Methods for elimination of double taxation

Double Taxation shall be eliminated as follows:

1. In Botswana,

- (a) Where a resident of Botswana derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Botswana shall allow as a deduction from the tax on the income of that resident, an amount equal to the Indian tax paid in respect of such income. Such deduction shall not however exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.
- (b) Where in accordance with any provision of the Agreement income derived by a resident of Botswana is exempt from tax in Botswana, Botswana may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In India:

- (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Botswana, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the Botswana tax paid in respect of such income.

Such deduction shall not however exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Botswana.

- (b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 25

Non-discrimination

1. 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.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall also not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the capital gains of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation, not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the

Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 27

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 28

Collection assistance

1. The Contracting States undertake to lend assistance to each other in the collection of the taxes to which the Agreement relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a "revenue claim".

2. Request for assistance by the Competent Authority of a Contracting State in the collection of a revenue claim shall include:

- (i) a certification by such authority that, under the laws of that State, the revenue claim has been finally determined and concerns a tax covered by the Agreement;
- (ii) an official copy of the notice issued by the authority collecting the tax.

3. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection. The requesting State shall certify that it has exhausted all means of recovery of the revenue claim.

4. Amount collected by the Competent Authority of a Contracting State pursuant to this Article shall be forwarded to the Competent Authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the Competent Authorities of the two States.

5. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 29

Members of diplomatic missions and consular posts

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the rules of general international law or under the provisions of special agreements.

ARTICLE 30

Entry into force

1. The Contracting States shall notify each other, in writing, through diplomatic channels, of the completion of the procedure required by the respective laws for the entry into force of this Agreement.

2. The Agreement shall enter into force on the date of the later of these notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect:

- (a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that of the entry into force of this Agreement; and
- (b) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.

ARTICLE 31

Termination

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of entry into force. In such event, the Agreement shall cease to have effect:

- (a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that in which the notice of termination is given;
- (b) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention. Done in duplicate at DELHI, INDIA this 8th day of December, 2006, each in the Hindi and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

HON. MBIGANYI CHARLES TIBONE,
For the Government of
The Republic of Botswana.

MR. PRANAB MUKHERJEE,
For the Government of India.

BOTSWANA-MOZAMBIQUE DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(section 53(2))

(19th June, 2009)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPHS

- 1. Citation
- 2. Approval and effective date of commencement

Schedule

S.I. 50, 2009.

WHEREAS in the exercise of the powers conferred on him by section 53 (1) of the Income Tax Act Cap. 52:01, the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of Mozambique for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53 (2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana-Mozambique Double Taxation Avoidance

Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the effective Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of Mozambique is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of Mozambique desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

ARTICLE 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

(1) The existing taxes to which this Agreement shall apply are:

(a) in Botswana:

(i) the income tax including any withholding tax, prepayment or advance tax payment with respect to aforesaid tax; and

(ii) the capital gains tax (hereinafter referred to as "Botswana tax"); and

(b) in Mozambique:

(i) Personal Income Tax (Imposto sobre o Rendimento das Pessoas Singulares - IRPS); and

(ii) Corporate Income Tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRPC) (hereinafter referred to as "Mozambican tax")

(2) Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

(3) This Agreement shall apply also 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. The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Botswana" means the Republic of Botswana;

(b) the term "Mozambique" means the territory of the Republic of Mozambique and the respective territorial sea, including the islands where in accordance with the Mozambican legislation and international law, the Republic of Mozambique has sovereign right relating to research and exploration of natural resources, the sea-bed, its subsoil and superjacent waters;

(c) the terms "Contracting State" and "the other Contracting State" mean Botswana or Mozambique as the context requires;

(d) the term "company" means any body corporate or any entity, which is treated as a body corporate for tax purposes;

(e) the term "competent authority" means:

(i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of the Botswana Unified Revenue Service; and

(ii) in Mozambique, the Minister of Finance or an authorised representative;

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "international traffic" means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely within the territory of the other Contracting State;

(h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

- (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "person" includes an individual, a company, a trust, an estate and any other body of persons which is treated as an entity for tax purposes; and
- (j) the term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

(2) As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State, for the purposes of the taxes to which the Agreement applies, or any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 ***Resident***

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any individual who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any local authority thereof. This term, however does not include any person who is liable to tax in that State in respect only of income from sources in that State.

(2) Where by reasons of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has a habitual abode;
- (c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5 ***Permanent Establishment***

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and
- (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of more than 183 days.

(3) The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activity in connection with such site or activity, but only where such site, project or activity continues for a period of more than 183 days;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that

nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned; and

- (c) the performance of professional services or other activities of an independent character by an individual, but only where these services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2), where a person - other than an agent of an independent status to whom paragraph (6) applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

- (a) has, and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;
- (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of the enterprise;

unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph (6) applies.

(8) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute for either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

(1) Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

(2) The term "immovable property" shall have the meaning, which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral

deposits, sources and other natural resources.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) No profits shall be attributed to a permanent establishment by reason of a mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) Where profits include items of income, which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Transport

(1) Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include:

- (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic; and
- (b) profits derived from the rental of rail or road transport vehicles used in international traffic; if such profits are incidental to the profits to which the provisions of paragraph (1) apply.

(3) Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.

(4) The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

(1) Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying dividends; or
- (b) 12 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect taxation of the company in respect of the profits out of which the dividends were distributed.

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights (not being debt-claims) participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a local authority thereof, or any agency wholly owned and controlled by that Government or authority.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

(7) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematography films and films, tapes or disks for radio or television broadcasting) any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the right or property in respect of which the royalties are paid is effectively connected and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

(6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.

(2) Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft, or rail or road transport vehicles, shall be taxable only in that State.

(4) Gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3), shall be taxable only in the Contracting State of which the alienator is a resident.

(5) Notwithstanding the provisions of paragraph (4), gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occur at any time during the 10 years next following the date on which the individual has ceased to be a resident of that first-mentioned State.

ARTICLE 14

Dependent Personal Services

(1) Subject to the provisions of Articles 15, 17 and 18, 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.

(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 Contracting State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned;
- (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, which the employer has in the other Contracting State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 15

Director's Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company, which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

(1) Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Article 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

(3) Income derived by a resident of a Contracting State from the activities exercised in the other

Contracting State as envisaged in paragraph (1) shall be exempt from tax in that other State if the visit to that State is supported wholly or mainly by public funds of the first mentioned State or a local authority thereof and such income is for the public benefit.

ARTICLE 17

Pensions and Annuities

(1) Subject to the provisions of paragraph (2) of Article 18, pensions and other similar remuneration, and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.

(2) Notwithstanding the provisions of paragraph (1), pensions and other similar payments made under the social security legislation of a Contracting State shall be taxable only in that State.

(3) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 18

Government Service

(1) (a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) (a) Any pension or other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

(b) However, such pension or other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 14, 15 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

ARTICLE 19

Professors, Teachers and Research Scholars

(1) Notwithstanding the provisions of Article 14 a professor, a teacher or research scholar who makes a temporary visit to one of the Contracting State for a period not exceeding two years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in that first-mentioned State, provided that such remuneration is derived by the professor, teacher or research scholar from outside that State.

(2) For the purpose of this Article, an individual shall be deemed to be a resident of a Contracting State if he is a resident of that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 20

Students

(1) A student, apprentice or business trainee who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purpose of his maintenance, education and training.

(2) In respect of grants or scholarships not covered by paragraph (1), a student or business apprentice referred to in paragraph (1) shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

ARTICLE 21

Technical Fees

(1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of such fees.

(3) The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, and the technical fees are effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.

(6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 22

Other Income

(1) Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph (1) shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23

Elimination of Double Taxation

(1) Double taxation shall be eliminated as follows:

- (a) In Botswana, subject to the provisions of the law of Botswana regarding the allowance of a credit against Botswana tax of tax paid under the laws of a country outside Botswana, Mozambican tax paid under the laws of Mozambique and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in Mozambique shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Mozambican tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
- (b) In Mozambique, where a resident of Mozambique derives income which, in accordance with the provisions of this Agreement may be taxed in Botswana, Mozambique shall allow as a deduction from the tax on income of that resident an amount equal to the Botswana tax paid. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Botswana.

(2) For the purposes of paragraph (1) of this Article, the terms "Botswana tax paid" and "Mozambique tax paid" shall be deemed to include the amount of tax which would have been paid in Botswana or in Mozambique as the case may be, but for any exemption or reduction granted in accordance with laws

designed to promote economic development in that Contracting State.

ARTICLE 24

Non-discrimination

(1) 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.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(4) Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, paragraph (6) of Article 12 or paragraph (6) of Article 21 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

ARTICLE 25

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, in particular for the prevention of fraud or evasion of such taxes, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in

judicial decisions.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; and
- (c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

(3) The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made.

ARTICLE 27

Assistance in Collection

(1) The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.

(2) Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph (1) of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

(3) The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

ARTICLE 28

Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into Force

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

(2) The provisions of the Agreement shall apply:

- (a) With regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day next following the date upon which the Agreement enters into force; and
- (b) With regard to other taxes:
 - (i) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that of the entry into force of this Agreement; and
 - (ii) In Mozambique, in respect to taxable years beginning on or after the first day of January next following the date upon which the Agreement enters into force.

ARTICLE 30

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, the Agreement shall cease to have effect:

- (a) With regard to taxes withheld at source, in respect to amounts paid or credited after the end of the calendar year in which such notice is given; and
- (b) With regard to other taxes, in respect of tax years beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned being duly authorised thereto have signed this Agreement.

Done in duplicate at CAPE TOWN this 27th day of February, 2009, each in the English and Portuguese languages, both texts being equally authentic.

Hon. Baledzi Gaolathe,

Hon. Oldemiro Julio Marques Baloi,

For the Government

BOTSWANA-NAMIBIA DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(under section 53(1))

(23rd July, 2004)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

Schedule

S.I. 62, 2004,
Act 14, 2006.

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of Namibia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana-Namibia Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of Namibia is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of Namibia desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

ARTICLE 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:
 - (a) in Botswana:
 - (i) the income tax including any withholding tax, prepayment or advance tax payment with respect to the aforesaid tax; and
 - (ii) the capital gains tax (hereinafter referred to as "Botswana tax"); and
 - (b) in Namibia:
 - (i) the income tax;
 - (ii) the non-resident shareholders' tax; and
 - (iii) the petroleum income tax.

(hereinafter referred to as "Namibian tax")

2. Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.
3. This Convention shall apply also to any identical or substantially similar taxes, which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes referred to in paragraph (1). The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Convention without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an exchange of diplomatic notes.

ARTICLE 3 ***General Definitions***

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Botswana" means the Republic of Botswana;
 - (b) the term "Namibia" means the Republic of Namibia and when used in a geographical sense, includes the territorial sea as well as the exclusive economic zone and continental shelf, over which Namibia exercises sovereign rights in accordance with its internal law and subject to international law, concerning the exploration and exploitation of natural resources of the sea-bed and its subsoil and adjacent waters;
 - (c) the terms "Contracting State" and "the other Contracting State" mean Botswana or Namibia as the context requires;
 - (d) the term "company" means any body corporate or any entity, which is treated as a body corporate for tax purposes;
 - (e) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of Taxes; and
 - (ii) in Namibia, the Minister of Finance or the authorized representative;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term "international traffic" means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
 - (h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
 - (i) the term "person" includes an individual, a company incorporated or unincorporated, a trust, an estate, a partnership and any other juridical person which is treated as an entity for tax purposes.
2. As regards the application of the provisions of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that State, concerning the taxes to which this Convention applies.

ARTICLE 4 ***Resident***

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature, but this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reasons of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident only of the state in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be

- deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;
 - (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of more than six months.
3. The term "permanent establishment" likewise encompasses:
 - (a) a building site, a construction, assembly or installation project or supervisory activity in connection with such site or activity, but only where such site, project or activity continues for a period of more than six months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than six months in any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs (1), (2) and (3), where a person - other than an agent of an independent status to whom paragraph (6) applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person-
 - (a) has, and habitually exercises in that State an authority to conclude contracts in the name of the enterprise; and

(b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of the enterprise;

unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such a person is acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he or she will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning, which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats, aircraft or rail or road transport vehicles shall not be regarded as immovable property.
3. The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by the company or legal person, income derived by the owner from the direct use, letting or use in any other form of his or her right of enjoyment may be taxed in that State. The provisions of this paragraph shall apply notwithstanding the provisions of Articles 7 and 14.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.
2. Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of

royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income, which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Traffic

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits from the operation of ships, aircraft, rail or road transport vehicles in international traffic shall include:
 - (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic; and
 - (b) profits derived from the rental of rail or road transport vehicles if such profits are incidental to the profits to which the provisions of paragraph (1) apply.
3. Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.
4. The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

Associated Enterprises

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent. This paragraph shall not affect taxation of the company in respect of the profits out of which the dividends were distributed.
3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights (not being debt-claims) participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 ***Interest***

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph (2), interest mentioned in paragraph (1) shall not be taxable in the Contracting State where the interest arises if:
 - (a) the recipient thereof is the Government of the other Contracting State or a local authority thereof or any agency wholly owned and controlled by that Government or authority;
 - (b) the interest is paid in respect of a loan granted or guaranteed by a financial institution of a public character with the objective of promoting exports and development, if the credit granted or guaranteed contains an element of subsidy.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds and debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematography films and films, tapes or disks for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment involving a transfer of know-how or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property in respect of which the royalties are paid is effectively connected and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.
2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft, rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles shall be taxable only in that state.
4. Gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3),

shall be taxable only in the Contracting State of which the alienator is a resident.

5. Notwithstanding the provisions of paragraph (4), gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occurs at any time during the ten years next following the date on which the individual has ceased to be a resident of that first-mentioned State.

ARTICLE 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may also be taxed in the other Contracting State if:
 - (a) the individual has a fixed base regularly available to him in the other contracting state for the purposes of performing his activities but only so much thereof as is attributable to that fixed base; or
 - (b) the individual is present in that other State for a period or periods exceeding in the aggregate 183 days within any 12 months, but only so much thereof as is attributable to services performed in that State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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.
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 Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelvemonth period commencing or ending in the fiscal 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 Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16

Director's Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company, which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Article 7, 14 and 15, be taxed in the Contracting State

in which the activities of the entertainer or sportsman are exercised.

3. Income derived by a resident of a Contracting State from the activities exercised in the other Contracting State as envisaged in paragraphs (1) and (2) shall be exempt from tax in that other State if the visit to that State is supported wholly or mainly by public funds of the first mentioned State or a local authority thereof.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration for past employment and annuities arising in a Contracting State and paid to a resident of the other Contracting State shall be taxed in the first-mentioned Contracting State.
2. Notwithstanding the provisions of paragraph (1), pensions and other similar payments made under the social security legislation of a Contracting State shall be taxable only in that State.
3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Government Service

1. (a) Remuneration, other than a pension paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority, shall be taxable only in that State.
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. Any pension paid by, or out of funds created by, a Contracting State, or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

ARTICLE 20

Students and Trainees

1. A student, business apprentice or trainee who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received outside that first-mentioned State for the purpose of his maintenance, education and training.
2. In respect of grants or scholarships not covered by paragraph (1), a student, business apprentice or trainee referred to in paragraph (1) shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

ARTICLE 21

Technical Fees

1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 15 per cent of the gross amount of such fees.
3. The term "technical fees" as used in this article means payments of any kind from a person who is resident in one of the Contracting States to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature performed outside that State.
4. The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the

technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 22

Other Income

1. Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph (1) shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23

Elimination of Double Taxation

1. Double taxation shall be eliminated as follows:
 - (a) In Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax paid under the laws of a country outside Botswana, Namibia tax paid under the laws of Namibia and in accordance with this Convention, whether directly or by deduction, on profits or income liable to tax in Namibia shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Namibia tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
 - (b) In Namibia, where a resident of Namibia derives income or capital gains from Botswana the amount of the tax on that income or gains paid in Botswana in accordance with the provisions of this Convention may be credited against Namibian tax imposed on that resident. The amount of credit, however, shall not exceed the amount of Namibian tax on that income or gains computed in accordance with the taxation laws and regulations of Namibia.

ARTICLE 24

Non-discrimination

1. 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 are or may be subject. 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.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the

first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, paragraph (6) of Article 12, or paragraph (6) of Article 21 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

ARTICLE 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention, in particular for the prevention of fraud or evasion of such taxes, insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; and
 - (c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).
3. The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

ARTICLE 27

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Assistance in Recovery

1. The Contracting States shall, to the extent permitted by the respective domestic laws, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.
2. Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph (1) of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of the Contracting State.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

ARTICLE 29

Entry into Force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its laws for the bringing into force of this Convention. This Convention shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of this Convention shall apply:
 - (a) In Botswana, in respect of income tax and capital gains tax, on taxable income and gains derived on or after the first day of July of the year next following that of the entry into force of this Convention.
 - (b) In Namibia,
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year following that in which the notice is given; and
 - (ii) in respect of other taxes, for any tax year of assessment beginning on or after the first day of March in the calendar year next following that in which the Convention enters into force.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, this Convention shall cease to have effect:

- (a) In Botswana, in respect of income tax and capital gains tax, on taxable income and gains derived on or after the first day of July of the year next following that in which the notice of termination is given.
- (b) In Namibia,
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year following that in which the notice is given; and
 - (ii) in respect of other taxes, for any tax year of assessment beginning on or after the first day of March in the calendar year next following that in which the Convention enters into force.

IN WITNESS WHEREOF the undersigned being duly authorised thereto have signed this Convention.

DONE at Gaborone, this 16th day of June, 2004, in duplicate in the English language.

Hon. Baledzi Gaolathe,

Hon. B. R. Kukuri,

FOR THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA

FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

BOTSWANA-RUSSIAN FEDERATION DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

*(under section 53(1))
(18th July, 2003)*

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

Schedule

S.I. 34, 2003,
Act 14, 2006.

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act, the Minister of Finance and Development Planning has, on behalf of the Government, entered into a Tax Agreement with the Government of the Russian Federation for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE, pursuant to the provisions of the said section 53(2), this Order is presented to the National Assembly for approval by resolution.

1. Citation

This Order may be cited as the Botswana-Russian Federation (Double Taxation Avoidance Agreement) Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Russian Federation is approved and shall take effect from the date specified in the Agreement.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Botswana and the Government of the Russian Federation, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and with the view to promote economic cooperation between the two countries have agreed as follows:

ARTICLE 1

Personal scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes covered

(1) The taxes to which this Convention shall apply are:

- (a) In Botswana:
income tax including taxation of capital gains (hereinafter referred to as "Botswana tax");
- (b) In the Russian Federation:
 - (i) tax on income (profits) of enterprises and organisations; and
 - (ii) income tax on individuals (hereinafter referred to as "Russian tax").

(2) Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of an enterprise engaged in exploration or development of mineral resources, at an effective rate different from that charged on the profits of other enterprises.

(3) Notwithstanding other provisions of this Convention, where Botswana tax is paid or payable in accordance with special Tax Agreements, ratified in terms of Botswana tax legislation, this Convention

shall not apply except to such an extent as may be provided in such Tax Agreements.

(4) The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the taxes referred to in paragraph 1). The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws.

ARTICLE 3

General definitions

- (1) For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Botswana" means the Republic of Botswana;
 - (b) the term "the Russian Federation" "(Russia)" means the territory of the Russian Federation as well as its exclusive economic zone and continental shelf as they are defined in the UN Law of the Sea Convention 1982 ;
 - (c) the terms "Contracting State" and "the other Contracting State" mean Botswana or Russia, as the context requires;
 - (d) the term "person" includes an individual, a company and any other body of persons;
 - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) the term "national" means:
 - (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
 - (i) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of Taxes;
 - (ii) in Russia, the Ministry of Finance or its authorised representative.

(2) As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Resident

(1) The term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management, place of registration or any other criterion of a similar nature, but does not include any person who is liable to tax in that State in respect only of income from sources in that State.

(2) Where by reason of the provisions of paragraph 1), an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph 1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of

effective management is situated.

ARTICLE 5

Permanent establishment

- (1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" includes especially:
- (a) place of management;
 - (b) branch;
 - (c) an office;
 - (d) factory;
 - (e) workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
 - (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months.
- (3) The term "permanent establishment" likewise encompasses:
- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) but within the country for a period or periods aggregating more than six months within any twelve month period.
- (4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- (5) Notwithstanding the provisions of paragraphs 1) and 2), where a person - other than an agent of an independent status to whom paragraph 6) applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:
- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;
 - (b) has no such authority but nevertheless maintains habitually in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, unless the activities of such persons are limited to those mentioned in paragraph 4), which if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
- (6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
- (7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, rights known as usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph 1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs 1) and 3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph 3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good reason to the contrary.

(6) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and air transport

(1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) The provisions of paragraph 1) shall also apply to profits from the participation in a pool, a joint

business or an international operating agency.

ARTICLE 9

Associated enterprises

(1) Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
- and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State -and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

- (a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 percent of the share capital of the company paying dividends;
- (b) 10 percent of the gross amount of dividends in all other cases.

This paragraph shall not affect taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs 1) and 2), shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed place situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2), interest mentioned in paragraph 1), shall be taxable only in the Contracting State where the recipient of the interest is resident if:

- (a) the recipient thereof is the government of a Contracting State, the Central Bank of a Contracting State, a political subdivision or a local authority thereof; or
- (b) such agency of the Government of the Contracting State as may be agreed in writing between the competent authorities of both Contracting States.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs 1), 2) and 3), shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, know how, design or model, computer programme, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs 1) and 2), shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then, such royalties shall be

deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 ***Capital Gains***

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.

(2) Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

(4) Gains from the alienation of any property other than that referred to in paragraphs 1), 2) and 3), shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 ***Independent personal services***

(1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may also be taxed in the other Contracting State if:

- (a) the individual has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities, but only so much thereof as is attributable to that fixed base; or
- (b) the individual is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days within any period of 12 months, but only so much thereof as is attributable to services performed in that State.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 ***Dependent personal services***

(1) Subject to the provisions of Articles 16, 18 and 19, 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 there from may be taxed in that other State.

(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 Contracting State for a period or periods not exceeding in the aggregate 183 days within any period of 12 months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a

Contracting State may be taxed in that State.

ARTICLE 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Entertainers and sportsmen

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

(3) Notwithstanding the provisions of paragraphs 1) and 2), income derived by an entertainer or sportsman from his personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by the other Contracting State, a political subdivision, a local authority or a public institution thereof.

ARTICLE 18

Pensions, annuities and similar payments

(1) Pensions, annuities and similar payments paid from a Contracting State in consideration of past employment shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Government service

(1) (a) Remuneration, other than a pension, paid by a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, political subdivision or local authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision or a local authority thereof.

ARTICLE 20

Professors, teachers, researchers and students

(1) A Professor, a teacher or a researcher who makes a temporary visit to a Contracting State for the purpose of teaching or conducting research at a university, college, school, research institute or other similar establishment, recognised by the State itself, a political subdivision or local authority thereof, and who is, or immediately before such visit was, a resident of the other Contracting State, shall be exempt, for a period not exceeding two years, from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research, provided that such remuneration arise from sources outside that first-mentioned Contracting State.

(2) The provision of paragraph 1) of this Article, shall not apply to remuneration if a research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

(3) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that

State.

ARTICLE 21

Management, consultancy and technical fees

(1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of such fees.

(3) The term "technical fees" as used in this Article means payments of any kind from a person who is resident in one of the Contracting States to any person, other than to an employee of the person making the payments, in consideration of any services of an administrative, technical, managerial or consultancy nature performed outside that State.

(4) The provisions of paragraphs 1) and 2) of this Article, shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority thereof or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 22

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph 1) shall not apply to income, other than income from immovable property as defined in paragraph 2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraph 1) and 2), items of income of resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

(4) Where, by reason of a special relationship between the person referred to in paragraph 1) and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1) exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this convention.

ARTICLE 23

Elimination of double taxation

Where a resident of a Contracting State derives income from the other Contracting State the amount

of tax on that income payable in the other Contracting State in accordance with the provisions of this convention, may be credited against the tax imposed on that resident by the first-mentioned Contracting State. The amount of credit, however, shall not exceed the amount of tax imposed on that income by the first-mentioned Contracting State computed in accordance with its taxation laws and regulations.

ARTICLE 24

Non-discrimination

(1) 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 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.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Except where the provisions of paragraph 1) of Article 9, paragraph 7) of Article 11, or paragraph 6) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the capital gains of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals who are resident in that State.

(6) The provisions of this Article shall apply to taxes which are the subject of this Convention.

ARTICLE 25

Mutual agreement procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation, not in accordance with the provisions of the Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in particular for the prevention of fraud or evasion of

such taxes, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph 1) be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

(3) The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

ARTICLE 27

Assistance in collection

(1) The Contracting States undertake to lend assistance to each other in the collection of the taxes owed by a taxpayer to the extent that the amount thereof has been finally determined according to the laws of the Contracting State making the request for assistance.

(2) In the case of a request by a Contracting State for the collection of taxes which has been accepted for collection by the other Contracting State, such taxes shall be collected by that other State in accordance with the laws applicable to the collection of its own taxes.

(3) Any request for collection by a Contracting State shall be accompanied by such certificate as is required by the laws of that State to establish that the taxes owed by the taxpayer have been finally determined.

(4) Where the tax claim of a Contracting State has not been finally determined by reason of it being subject to appeal or other proceedings, that State may, in order to protect its revenues, request the other Contracting State to take such interim measures for conservancy on its behalf as are available to the other State under the laws of that other State. If such request is accepted by the other State, such interim measures shall be taken by that other State as if the taxes owed to the first-mentioned State were the own taxes of that other State.

(5) A request under paragraphs 3) or 4), shall only be made by a Contracting State to the extent that sufficient property of the taxpayer owing taxes is not available in that State for recovery of the taxes owed.

(6) The Contracting State in which tax is recovered in accordance with the provisions of this Article shall forthwith remit to the Contracting State on behalf of which the tax was collected the amount so recovered minus where appropriate, the amount of extraordinary costs referred to in subparagraph 7) (b).

(7) It is understood that unless otherwise agreed by the competent authorities of both Contracting States:

- (a) ordinary costs incurred by a Contracting State in providing assistance shall be borne by that State;
- (b) extraordinary costs incurred by a Contracting State in providing assistance shall be borne by the other State and shall be payable regardless of the amount collected on its behalf by that other State.

(8) As soon as a Contracting State anticipates that extraordinary cost may be incurred, it shall so advise the other Contracting State and indicate the estimated amount of such costs.

(9) In this Article, the term "taxes" means the taxes to which the Convention applies and includes any interest and penalties relating thereto.

ARTICLE 28

Diplomatic agents and consular officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the rules of general international law or under the provisions of special agreements.

ARTICLE 29

Entry into force

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its laws for the bringing into force of this Convention.

(2) The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that of the entry into force of this Convention;
- (b) In Russia:
 - (i) in respect of taxes withheld at source, to income arising on or after the first day of January in the calendar year next following the year in which this Convention enters into force;
 - (ii) in respect of other taxes on income, to taxes arising for any fiscal year beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, the Convention shall cease to have effect:

- (a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that in which the notice of termination is given;
- (b) In Russia:
 - (i) in respect of taxes withheld at source, to income arising on or after the first day of January in the calendar year next following in which the notice of termination is given;
 - (ii) in respect of other taxes on income, to taxes arising for any fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given.

Done at Gaborone, this 8th day of April, 2003 in duplicate in the English and Russian languages, both texts being equally authentic.

HON. BALEDZI GAOLATHE,
*For the Government of
the Republic of Botswana*

MR. SERGEI D. SHATALOV,
*For the Government of
the Russian Federation*

BOTSWANA SEYCHELLES DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(under section 53(1))

(3rd December, 2004)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

- 1. Citation
- 2. Approval and effective date of commencement

Schedule

S.I. 123, 2004,
Act 14, 2006.

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of Seychelles for the avoidance

of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana Seychelles Double Taxation Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of Seychelles is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of Seychelles desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

ARTICLE 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

(1) This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.

(3) The existing taxes to which this Agreement shall apply are:

(a) in the Republic of Botswana:

(i) the income tax including any withholding tax, prepayment or advance tax payment with respect to aforesaid tax; and

(ii) the capital gains

(hereinafter referred to as "Botswana tax"); and

(b) in the Republic of Seychelles:

(i) the business tax; and

(ii) the petroleum income tax (hereinafter referred to as "Seychelles tax")

(4) Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

(5) This Agreement shall apply also 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. The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Botswana" means the Republic of Botswana;

(b) the term "Seychelles" means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;

(c) the terms "Contracting State" and "the other Contracting State" mean Botswana or Seychelles as the context requires;

(d) the term "company" means any body corporate or any entity, which is treated as a body

- corporate for tax purposes;
- (e) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of Taxes; and
 - (ii) in Seychelles, the Minister of Finance or his authorized representative
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft is operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "person" includes an individual, a partnership, a company, a trust, an estate of a deceased person, and any other body of persons which is treated as an entity for tax purposes.
- (j) the term "public authority" means a Ministry, a department, a division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of the Government or any other body which is carrying out a governmental function or service or a body or person specified by an Act.

(2) As regards the application of the provisions of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State, for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation or registration, place of management or any other criterion of a similar nature, but does not include any person who is liable to tax in that State in respect only of income from sources in that State.

(2) Where by reasons of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the state in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if an individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

Permanent establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

- (2) The term "permanent establishment" includes especially:
- (a) a place of management;
 - (b) a branch;

- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; or
- (g) an installation or structure used for the exploration of natural resources provided that the installation or structure continues for a period of not less than 183 days.

(3) The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activity in connection with such site or activity, but only where such site, project or activity continues for a period of not less than 183 days.
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating not less than 183 days in any twelve month period commencing or ending in the fiscal year concerned.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person-

- (a) has, and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;
- (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of the enterprise;

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

(8) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

(1) Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

(2) The term "immovable property" shall have the meaning, which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats or aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) Where profits include items of income, which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Traffic

(1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic

include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

Associated Enterprises

(1) Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying dividends; or
- (b) 10 per cent of the gross amount of dividends in all other cases This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends were distributed.

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights (not being debt-claims) participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the

undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 7.50 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a political subdivision, a local authority or a public authority thereof.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds and debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematography films and films, tapes or disks for radio or television broadcasting) any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local

authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property in respect of which the royalties are paid is effectively connected and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.

(2) Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that state.

(4) Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

(5) Notwithstanding the provisions of paragraph 4, gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occur at any time during the six years next following the date on which the individual has ceased to be a resident of that first-mentioned State.

ARTICLE 14

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other contracting state for the purposes of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Agreement, where a resident of a Contracting State is present in the other Contracting State for a period or periods aggregating not less than 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18 and 19, 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.

(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 Contracting State for a period or periods aggregating less than 183 days in any twelve-month period commencing or ending in the fiscal 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 Contracting State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16

Director's Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company, which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Entertainers and Sportspersons

(1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Article 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

(3) Income derived by a resident of a Contracting State from the activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 shall be exempt from tax in that other State if the visit to that State is supported wholly or mainly by public funds of the first mentioned State, the political subdivision or a local authority or a public authority thereof.

ARTICLE 18

Pensions and Annuities

(1) Subject to the provisions of paragraph 2 of Article 19, pension and other similar remuneration and annuities paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1, pensions and other similar payments made under the social security legislation of a Contracting State shall be taxable only in that State.

(3) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Government service

- (1) (a) Remuneration, other than a pension paid by a Contracting State, political subdivision, a local authority or a public authority thereof to an individual in respect of services rendered to that State, political subdivision, local authority or public authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2) (a) Any pension paid by, or out of funds created by, a Contracting State, political subdivision, a local authority or a public authority thereof to an individual in respect of services rendered to that State, political subdivision, local authority or public authority shall be taxable only in that state.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, political subdivision, a local authority or a public authority thereof.

ARTICLE 20

Students and Trainees

(1) A student, apprentice or business trainee who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received outside that first-mentioned State for the purpose of his maintenance, education and training.

(2) In respect of grants or scholarships not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

ARTICLE 21

Technical fees

(1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of such fees.

(3) The term "technical fees" as used in this article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature performed outside that State.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State, a political subdivision, a local authority, a public authority or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 22

Other Income

(1) Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23

Elimination of Double Taxation

(1) Double taxation shall be eliminated as follows:

- (a) In Botswana, subject to the provisions of the law of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, Seychelles tax payable under the laws of Seychelles and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in Seychelles shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Seychelles tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
- (b) In Seychelles, subject to the provisions of the law of Seychelles regarding the allowance of a credit against Seychelles tax of tax payable under the laws of a country outside Seychelles, Botswana tax payable under the laws of Botswana and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in Botswana shall be allowed as a credit against any Seychelles tax payable in respect of the same profits or income by reference to which the Botswana tax is computed. However, the amount of such credit shall not exceed the amount of the Seychelles tax payable on that income in accordance with the laws of Seychelles.

(2) For the purposes of paragraph 1 of this Article, the terms "Botswana tax payable" and "Seychelles tax payable" shall be deemed to include the amount of tax which would have been paid in Botswana or in Seychelles, as the case may be, but for any exemption or reduction granted in accordance with laws designed to promote economic development in that Contracting State.

ARTICLE 24

Non-discrimination

(1) 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 are or may be subject. 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.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(4) Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, or paragraph (6) of Article 12, paragraph (6) of Article 21 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

ARTICLE 25

Mutual agreement procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24,

to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation, not in accordance with the provisions of this Agreement.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement, in particular for the prevention of fraud or evasion of such taxes, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; and
- (c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

(3) The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

ARTICLE 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry into force

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of these notifications.

(2) The provisions of this Agreement shall apply:

- (a) In Botswana, in respect of income tax and capital gains tax, on taxable income derived on or after the first day of July of the year next following that of the entry into force of this Agreement.
- (b) In Seychelles, in respect of business tax and petroleum tax, on taxable income derived on or after the first day of January of the year next following that of the entry into force of this Agreement.

ARTICLE 29

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, this Agreement shall cease to have effect:

- (a) In Botswana, in respect of income tax and capital gains, on taxable income derived on or after the first day of July of the year next following that in which the notice of termination is given.
- (b) In Seychelles, in respect of business tax and petroleum tax, on taxable income derived on or after the first day of January of the year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned being duly authorised thereto have signed this Agreement. DONE at Johannesburg, this 26th day of August, 2004, in duplicate in the English language.

HE Mr. Motlhwane K.J. Masisi

Hon. Jeremie Bonnelame

FOR THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA

FOR THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES

BOTSWANA-SOUTH AFRICA DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

*(under section 53(1))
(28th November, 2003)*

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

Schedule

S.I. 63, 2003,
Act 14, 2006.

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana-South Africa Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of South Africa is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of South Africa desiring to conclude a Convention for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, have agreed as follows:

ARTICLE 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

- (a) in Botswana:
 - (i) the income tax including any withholding tax, or any prepayment or advance tax payment with respect to the aforesaid tax; and
 - (ii) the capital gains tax;
(hereinafter referred to as "Botswana tax"); and
- (b) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies; and
 - (iii) the withholding tax on royalties;
(hereinafter referred to as "South African tax").

2. Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

3. Notwithstanding any other provision of the Convention, where Botswana tax is paid or payable in accordance with a Tax Agreement under the Botswana Income Tax Act, the Convention shall not apply except to such an extent as may be provided in such Tax Agreement and mutually agreed by the competent authorities.

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Botswana" means the Republic of Botswana;
- (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Botswana or South Africa, as the context requires;
- (d) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;
- (e) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of Taxes; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
- (f) the term "enterprise" applies to the carrying on of any business;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
- (i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State; and
- (j) the term "person" includes an individual, a company, a trust, an estate and any other body of persons that is treated as an entity for tax purposes.

2. As regards the application of the provisions of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
- (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and
- (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of more than six months.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
- (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person#-

- (a) has, and habitually exercises in that State any authority to conclude contracts in the name of the enterprise;
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which such goods or merchandise are regularly delivered on behalf of the enterprise;

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats, aircraft and rail or road transport vehicles shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Transport

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in that State

2. For the purposes of this Article, profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include:

(a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,

(b) profits derived from the rental of rail or road transport vehicles, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or

financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 ***Dividends***

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or
- (b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting states shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 ***Interest***

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a political subdivision or a local authority thereof, or any agency wholly owned and controlled by that Government or subdivision or authority.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting state when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property

referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist directly or indirectly principally of such property, may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles, shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

5. Notwithstanding the provisions of paragraph 4, gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occur at any time during the period of ten years next following the date on which the individual has ceased to be a resident of the first-mentioned State.

ARTICLE 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, 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.

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 the period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 15

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned State, a

political subdivision or a local authority thereof.

ARTICLE 17

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 18

Government Service

1. (a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

Students, Apprentices and Business Trainees

Students, apprentices or business trainees who are present in a Contracting State solely for the purpose of their education or training and who are, or immediately before being so present were residents of the other Contracting State, shall be exempt from tax in the first - mentioned State on payments received from outside that first-mentioned State for the purpose of their maintenance, education or training.

ARTICLE 20

Technical Fees

1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of such fees.

The competent authorities of the Contracting States shall settle the mode of application of this limitation by mutual agreement.

3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein and the technical fees are effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that

State. Where, however, the person paying the technical fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 22

Elimination of Double Taxation

1. Double taxation shall be eliminated as follows:

- (a) In Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, South African tax payable under the laws of South Africa and in accordance with this Convention, whether directly or by deduction, on profits or income liable to tax in South Africa shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the South African tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
- (b) In South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa, Botswana tax paid by residents of South Africa in respect of income taxable in Botswana, in accordance with the provisions of this Convention, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

2. For the purposes of paragraph 1 of this Article, the terms "Botswana tax paid" and "South African Tax payable" shall be deemed to include the amount of tax which would have been paid in Botswana or South Africa, as the case may be, but for an exemption or reduction granted in accordance with laws which establish schemes for the promotion of economic development in Botswana or South Africa, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph.

3. A grant given by a Contracting State or a political subdivision thereof to a resident of the other Contracting State in accordance with laws which establish schemes for the promotion of economic development in Botswana or South Africa, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph, shall not be taxable in the other State.

ARTICLE 23

Non-discrimination

1. 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.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 20 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Botswana, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

6. In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a joint commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in particular for the prevention of fraud or evasion of such taxes, in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information

obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 26

Assistance in Recovery

1. The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.

2. Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph 1 of Article 25 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

ARTICLE 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry into Force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall apply:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Convention enters into force; and
- (b) with regard to other taxes, in respect of tax years or years of assessment beginning on or after the thirtieth day following the date upon which the Convention enters into force.

3. The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the Government of the Republic of Botswana and the Government of the Republic of South Africa which entered into force on 21 September 1978 shall be terminated with effect from the date of entry into force of this Convention and shall cease to have effect for any period thereafter for which the provisions of this Convention shall apply.

ARTICLE 29

Termination

1. This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event the Convention shall cease to apply:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
- (b) with regard to other taxes, in respect of tax years or years of assessment beginning after the

end of the calendar year in which such notice is given.

HON. BALEDZI GAOLATHE,
*For the Government of
the Republic of Botswana*

MR. SERGEI D. SHATALOV,
*For the Government of
the Russian Federation*

PROTOCOL

On signing the Convention between the Government of the Republic of Botswana and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the signatories being duly authorised thereto, have in addition agreed on the following provisions which shall form an integral part of the said Convention:

1. With reference to Article 3:

It is understood that the term "business" includes the performance of professional services and of other activities of an independent character.

2. With reference to Article 7:

- (a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall be determined on the basis of the amount which is attributed to the actual activity of the permanent establishment for such sales or business.
- (b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall be determined on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.
- (c) It was furthermore agreed that notwithstanding the above-mentioned paragraphs, neither Contracting State is prevented from requisitioning necessary information in relation to such sale of goods or merchandise or carrying out of such contracts and is not prevented from enforcing the provisions of the Convention dealing with "Associated Enterprises".

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Gaborone in duplicate, this 7th day of August, 2003

HON. BALEDZI GAOLATHE,
*For the Government of
the Republic of Botswana*

MR. SERGEI D. SHATALOV,
*For the Government of
the Russian Federation*

BOTSWANA-ZIMBABWE DOUBLE TAXATION AVOIDANCE AGREEMENT ORDER

(section 53(1))

(26th July, 2004)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Approval and effective date of commencement

Schedule

S.I. 61, 2004.

WHEREAS in exercise of the powers conferred on him by section 53(1) of the Income Tax Act the Minister of Finance and Development Planning has, on behalf of Government, entered into an Agreement with the Government of the Republic of Zimbabwe for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

AND WHEREAS in accordance with the provisions of section 53(2) of the Income Tax Act the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made-

1. Citation

This Order may be cited as the Botswana-Zimbabwe Double Taxation Avoidance Agreement Order.

2. Approval and effective date of commencement

The Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Republic of Zimbabwe is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of Zimbabwe desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have agreed as follows:

ARTICLE 1

Persons covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes covered

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, on total capital gains or elements of income or capital gains.
3. The existing taxes to which this Agreement shall apply are, in particular:
 - (a) in Botswana:
Income tax including taxation of capital gains (hereinafter referred to as "Botswana tax").
 - (b) in Zimbabwe:
 - (i) The income tax;
 - (ii) Non-resident shareholders' tax;
 - (iii) Non-residents' tax on interest;
 - (iv) Non-residents' tax on fees;
 - (v) Non-residents' tax on royalties;
 - (vi) Residents' tax on interest; and
 - (vii) The capital gains tax;
(hereinafter referred to as "Zimbabwean tax");
4. Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.
5. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term "Botswana" means the Republic of Botswana;
 - (b) the term "Zimbabwe" means the Republic of Zimbabwe;
 - (c) the term "company" means any body corporate or any entity which is treated as an entity for tax purposes;
 - (d) the term "competent authority" means
 - (i) in the case of Botswana, the Minister responsible for Finance or the authorized representative;

- (ii) in the case of Zimbabwe, the Commissioner General or the authorized representative.
 - (e) the terms "a Contracting State" and "the other Contracting State" mean Botswana or Zimbabwe as the context requires;
 - (f) the term "enterprise" applies to carrying on of any business and includes performance of professional services and other activities of an independent character;
 - (g) the term "international traffic" means any transport by ship, aircraft or rail or transport vehicle operated by an enterprise of a Contracting State except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
 - (h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.
 - (i) the term "person" includes an individual, a company, a trust, an estate and any other body of persons which is treated as an entity for tax purposes.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 ***Resident***

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, but does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has a habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5 ***Permanent Establishment***

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;
 - (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months

3. The term "permanent establishment" likewise encompasses:
 - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any period of twelve months;
 - (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelvemonth period commencing or ending in the fiscal year concerned.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary nature;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:
 - (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;
 - (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of the enterprise;

unless the activities of such person are limited to those mentioned in paragraph 4 which if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For purposes of this Agreement, the term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, aircraft and rail and road transport vehicles shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforementioned, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Transport

1. Profits of an enterprise of a Contracting State derived from the operation or rental of ships, aircraft or rail or road transport vehicles in international traffic and the rental of containers and related equipment which is incidental to the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 shall also apply to the share of profits from the operation of ships, aircraft or rail or road transport vehicles derived by a resident of a Contracting State through participation in a pool, a joint venture business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where:
 - (a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - (b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State; and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 5 per cent of the gross amount of the dividend if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividend;
 - (b) 10 per cent of the gross amount of the dividends in all other cases.The provisions of this paragraph shall not affect taxation of the company in respect of the profits out of which the dividends were distributed.
3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consists wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be

- taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of interest.
 3. Notwithstanding the provisions of paragraph 2, interest mentioned in paragraph 1 shall be taxable only in the Contracting State where the recipient of the interest is resident if:
 - (a) The recipient thereof is the Government of a Contracting State, the Central Bank of a Contracting State or a local authority thereof, or
 - (b) The interest is paid in respect of a loan granted or guaranteed by a financial institution of a public character with the objective of promoting exports and development, if the credit granted or guaranteed:
 - (i) contains an element of subsidy; or
 - (ii) is for purposes approved by the Minister of Finance.
 4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
 5. The provisions of paragraph 1, 2 and 3 shall not apply if the beneficial owner of the interest being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
 6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
 7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs and other means of production for radio or television broadcasting) any patent, trade mark, design or model, plan, secret formula or process or for the use of or the right to use industrial, commercial or scientific equipment involving a transfer of know-how or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such cases the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a

resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13 ***Technical fees***

1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of the such fees.
3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of an administrative, technical, managerial or consultancy nature.
4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, and the technical fees are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority thereof or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by the permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14 ***Capital gains***

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other State.
3. Gains derived by a resident of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles shall be taxable only in that State.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.
5. Notwithstanding the provisions of paragraph 4, gains from the alienation of shares or other corporate

rights of a company which is a resident of one of the Contracting States derived by an individual who has become a resident of the other Contracting State, may be taxed in the first-mentioned Contracting State if the alienation of the shares or other corporate rights occur at any time during the ten years next following the date on which the individual has ceased to be a resident of that first-mentioned State.

ARTICLE 15

Income from Employment

1. Subject to the provisions of Articles 16, 18 and 19, 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.
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 Contracting State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicles operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sports-person, from that person's personal activities as such, exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 15 be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived as aforesaid if the activities of entertainers or sportspersons in the Contracting State are supported wholly or substantially from public funds of the other Contracting State, local authorities or public institutions thereof, directly or indirectly.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.
2. Notwithstanding the provisions of paragraph 1, pensions and other similar payments made under the social security legislation of the Contracting State shall be taxable only in that State.
3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority or statutory

body thereof to an individual in respect of services rendered to that State or local authority or statutory body shall be taxable only in that state.

- (b) However such remunerations shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2. (a) Any pension paid by, or out of funds created by, a Contracting State, or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or local authority or statutory body shall be taxable in that State.
 - (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that other State.
- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a local authority or a statutory body thereof.

ARTICLE 20

Students and Apprentices

- 1. A student, apprentice or business trainee who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that State for the purposes of his maintenance, education or training.
- 2. In respect of grants or scholarships not covered by paragraph 1 a student or business apprentice referred to in paragraph 1 shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

ARTICLE 21

Other Income

- 1. Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
- 2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
- 3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

ARTICLE 22

Elimination of Double Taxation

- 1. Double taxation shall be eliminated as follows:
 - (a) In the case of Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, Zimbabwean tax payable under the laws of Zimbabwe and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in Zimbabwe shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Zimbabwean tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
 - (b) In the case of Zimbabwe, subject to the provisions of the laws of Zimbabwe regarding the allowance as a credit against Zimbabwean tax of the tax payable in a country outside Zimbabwe (which shall not affect the general principle hereof) Botswana tax payable, whether directly or by deduction, in respect of taxable income or chargeable gains from sources within Botswana shall be allowed as a credit against any Zimbabwean tax computed by reference to the same taxable income or chargeable gains by reference to which the Botswana tax is computed.
- 2. The terms "Botswana tax payable" and "Zimbabwean tax payable" referred to in paragraphs 1 and 2 respectively, shall be deemed to include the tax which would have been payable but for any legal provisions concerning reduction in the rates of tax or exemption from tax for the promotion of

economic development.

ARTICLE 23

Non-discrimination

1. 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 are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or local authorities, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use

the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).
3. The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

ARTICLE 26

Assistance in Recovery

1. The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.
2. Claims, which are the subject of requests for assistance, shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph 1 of Article 25 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.
3. It is understood that unless otherwise agreed by the competent authorities of both Contracting States:
 - (a) ordinary costs incurred by a Contracting State in providing assistance shall be borne by that State;
 - (b) extraordinary costs incurred by a Contracting State in providing assistance shall be borne by the other State and shall be payable regardless of the amount collected on its behalf by the first mentioned State.
4. As soon as a Contracting State anticipates that extraordinary costs may be incurred, it shall so advise the other Contracting State and indicate the estimated amount of such costs.

ARTICLE 27

Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry into Force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of this Agreement shall apply with regards to taxes covered by this Agreement on or after the first day of the second month following the date upon which the Agreement enters into force.

ARTICLE 29

Termination

1. This Agreement shall remain in force until termination by one of the Contracting States. Either Contracting State may terminate the Agreement through the diplomatic channel, by giving notice of termination on or before June 30th in any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement.
2. In such case the Agreement shall cease to apply after the end of the calendar year in which notification is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at GABORONE this 16th day of June 2004 in duplicate in the English language.

Hon. Baledzi Gaolathe

Hon. Dr H. M. Murerwa

FOR THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA
FOR THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE

Agent's Full Name.....