

1978 No. 183

INCOME TAX

**The Double Taxation Relief (Taxes on Income) (Botswana)
Order 1978***Laid before the House of Commons in draft**Made - - - - - 9th February 1978*

At the Court at Buckingham Palace, the 9th day of February 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972(b) and section 39 of the Finance Act 1965(c), as amended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Botswana) Order 1978.
2. It is hereby declared—
 - (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Botswana with a view to affording relief from double taxation in relation to income tax and corporation tax and taxes of a similar character imposed by the laws of Botswana; and
 - (b) that it is expedient that those arrangements should have effect.

N. E. Leigh,

Clerk of the Privy Council.

(a) 1970 c. 10.

(b) 1972 c. 41.

(c) 1965 c. 25.

SCHEDULE**AGREEMENT 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**

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

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

ARTICLE 1**Taxes covered**

- (1) The taxes which are the subject of this Agreement are:
 - (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) the income tax; and
 - (ii) the corporation tax;
 - (b) in Botswana:

the income tax.
- (2) This Agreement shall also apply 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 to each other any changes which are made in their respective taxation laws.
- (3) 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 a business of mining.

ARTICLE 2**General definitions**

- (1) In this Agreement, unless the context otherwise requires:
 - (a) 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;
 - (b) the term "Botswana" means the Republic of Botswana;
 - (c) the term "national" means:
 - (i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing

that citizenship or the citizenship of any other Commonwealth country or territory, provided that in either case he has the right of abode in the United Kingdom; and any legal person, association or other entity deriving its status as such from the law in force in the United Kingdom;

- (ii) in relation to Botswana, any citizen of Botswana who derives his status as such from his connection with Botswana and any other person deriving its legal status as such from the law in force in Botswana;
 - (d) the term “United Kingdom tax” means tax imposed by the United Kingdom being tax to which this Agreement applies by virtue of the provisions of Article 1; the term “Botswana tax” means tax imposed by Botswana being tax to which this Agreement applies by virtue of the provisions of Article 1;
 - (e) the term “tax” means United Kingdom tax or Botswana tax, as the context requires;
 - (f) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Botswana, as the context requires;
 - (g) the term “person” comprises an individual, a company and any other body of persons corporate or not corporate;
 - (h) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (i) 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;
 - (j) the term “competent authority” means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Botswana the Commissioner of Taxes or his authorised representative;
 - (k) the term “political subdivision”, in relation to the United Kingdom, includes Northern Ireland.
- (2) As regards the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 3

Fiscal domicile

(1) For the purposes of this Agreement, the term “resident of a Contracting State” means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State only by reason of the fact that he derives income from sources therein. The terms “resident of the other Contracting State”, “resident of both Contracting States”, “resident of the United Kingdom” and “resident of Botswana” shall be construed accordingly.

(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 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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer;
- (b) if the Contracting State with which his personal and economic relations are closer cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting 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 of the Contracting 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 of the Contracting State in which its place of effective management is situated.

ARTICLE 4

Permanent establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the 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 mine, oil well, quarry or other place of extraction of natural resources;
- (f) an installation or structure used for the exploration of natural resources;
- (g) a building site or construction or assembly project which exists for more than 183 days.

(3) The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing the services within that other Contracting State of artistes or athletes referred to in Article 16.
- (5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (6) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- (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, where such person is acting in the ordinary course of his 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 5

Limitation of relief

Where under any provision of this Agreement any person is exempted or relieved from tax in a Contracting State on certain income and that person is subject to tax in respect of that income in that other Contracting State by reference to the amount thereof which is remitted to or received in that other State, the exemption or relief from tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to the amounts so remitted or received.

ARTICLE 6

Income from immovable property

- (1) Income from immovable property may be taxed in the Contracting State in which such property is situated.
- (2) (a) The term “immovable property” shall, subject to the provisions of sub-paragraph (b) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" 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, or the right to prospect for, mineral deposits, sources and other natural resources, and mining and prospecting information; ships, boats 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 professional 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) 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 at arm's length 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 of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) 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.

(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) Where profits include items 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

A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

ARTICLE 9

Associated enterprises

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.

ARTICLE 10

Dividends

(1) Dividends derived from a company which is a resident of Botswana by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Botswana but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

- (2) (a) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Botswana may be taxed in Botswana.
 - (ii) Where a resident of Botswana is entitled to a tax credit in respect of such a dividend under the provisions of sub-paragraph (b) of this paragraph tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
 - (iii) Except as provided in sub-paragraph (a) (ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Botswana shall be exempt from any tax in the United Kingdom which is chargeable on dividends.
- (b) A resident of Botswana who receives dividends from a company which is a resident of the United Kingdom shall, subject to the

provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends and to the payment of any excess of such credit over his liability to United Kingdom tax.

(c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends. For the purpose of this sub-paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(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 corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article 11 of this Agreement) which, under the law 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 where a resident of a Contracting State has in the other Contracting State a permanent establishment through which he carries on a business or a fixed base from which he performs professional services and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 13, as the case may be, shall apply.

(5) If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividend is paid then paragraphs (1) and (2) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question. However this paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purposes of securing the benefit of this Article.

(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 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.

ARTICLE 11**Interest**

(1) Interest arising in a Contracting State which is derived and beneficially owned by 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 law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

(3) The term "interest" as used in this Article means income from money lent and shall include income deemed by the law of the Contracting State in which such income arises to be income from money lent, but shall not include income deemed by the law of the Contracting State in which it arises to be a dividend or distribution.

(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 professional services from a fixed base situated therein, and the indebtedness on which the interest arises is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 13, as the case may be, shall apply.

(5) 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

(a) does not bear tax in respect thereof in the Contracting State of which it is a resident; and

(b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired that debt-claim.

(7) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of interest 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 that 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.

(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 derived and beneficially owned by the Government of the other Contracting

State, a political subdivision or local authority thereof, or any agency or instrumentality wholly owned by that Government, political subdivision or local authority.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State which are derived and beneficially owned by 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 law of that State, but the tax so charged shall not exceed 15 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, or for information 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 professional 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 a case, the provisions of Article 7 or Article 13, as the case may be, shall apply.

(5) Where, owing to 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 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 that 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 13

Independent personal services

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall not be taxable in the other Contracting State if he is subject to tax in respect thereof in the Contracting State of which he is a resident 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 Contracting State but only so much of it as is 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 14**Employments**

(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 may be taxed in that State. However, if the employment is exercised in whole or in part in the other Contracting State then, to the extent that the employment is so exercised, such remuneration as is derived therefrom may also 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 not be taxed in that other State if:

- (a) the recipient of the remuneration is present in that other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is a resident of the first-mentioned State; and
- (c) the remuneration is subject to tax in the first-mentioned State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 15**Directors' fees**

Directors' fees and 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**Artistes and athletes**

Notwithstanding the provisions of Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

ARTICLE 17**Pensions**

(1) Subject to the provisions of paragraphs (1) and (2) of Article 18 pensions and other similar remuneration in consideration of past employment and any annuity paid to a resident of a Contracting State 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 18**Governmental functions**

(1) Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a Botswana national without also being a United Kingdom national.

(2) Remuneration or pensions paid by, or out of funds created by Botswana or a political subdivision or a local authority thereof to any individual in respect of services rendered to the Government of Botswana or a political subdivision or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Botswana unless the individual is a United Kingdom national without also being a Botswana national.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 19**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 Contracting 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 the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 20**Elimination of double taxation**

(1) 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 Agreement, whether directly or by deduction, on profits or income from sources within Botswana (excluding, save as provided hereafter in this paragraph 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 or income 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 preceding provisions of this paragraph) the Botswana tax payable by the company in respect of the profits out of which such dividend is paid.

(2) For the purposes of paragraph (1) of this Article, where a development approval order is made under Section 52, or a tax agreement is entered into on or after 1 July 1973 under Section 54 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.

(3) Subject to the provisions of the law of Botswana regarding the allowance as a credit against Botswana tax of tax payable in a territory outside Botswana (which shall not affect the general principle hereof) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Botswana tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed.

(4) For the purposes of paragraphs (1) and (3) of this Article profits and income owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

(5) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount of such profits included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (3) of this Article.

ARTICLE 21

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) 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 Contracting 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) 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, nor as obliging the United Kingdom to grant to a company which is a resident of Botswana a greater relief from United Kingdom income tax chargeable on dividends received from a company which is a resident of the United Kingdom than the relief to which the first-mentioned company may be entitled under the provisions of Article 10 of this Agreement.

ARTICLE 22

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 this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(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 an appropriate 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 not in accordance with the Agreement.

(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.

(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 23

Exchange of information

The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection, enforcement or prosecution in respect of taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 24

Entry into force

(1) This Agreement shall come into force on the date when the last of all such things shall have been done in the United Kingdom and Botswana as are necessary to give the Agreement the force of law in the United Kingdom and Botswana respectively, and shall thereupon have effect:

- (a) in the United Kingdom:
- (i) in respect of income tax, for any year of assessment beginning on or after 6 April 1976;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1976;
- (b) in Botswana:
- in respect of income tax, for any tax year beginning on or after 1 July 1976.

(2) The Arrangement made in 1949 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Bechuanaland Protectorate, as amended by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Botswana signed at Gaborone on 9 April 1970, shall terminate and cease to be effective in respect of taxes to which the present Agreement in accordance with the provisions of paragraph (1) of this Article applies.

ARTICLE 25

Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1981. In such event, the Agreement shall cease to have effect:

- (a) in the United Kingdom:
- (i) in respect of income tax, for any year of assessment beginning on or after 6 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 1 April in the calendar year next following that in which the notice is given;
- (b) in Botswana:
- in respect of income tax, for any tax year beginning on or after 1 July 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 Agreement.

Done in duplicate at London this 5th day of October 1977.

FOR THE GOVERNMENT
OF THE UNITED KINGDOM AND
NORTHERN IRELAND:
E. Rowlands

FOR THE GOVERNMENT
OF THE REPUBLIC OF
BOTSWANA:
Q. K. J. Masire

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Agreement with Botswana scheduled to this Order (which is to replace the Arrangement made with the Bechuanaland Protectorate in 1949 as amended by the Agreement made with Botswana in 1970) shipping and air transport profits, certain trading profits not arising through a permanent establishment, pensions (other than Government pensions) and the earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence. Where an enterprise resident in one country carries on business through a permanent establishment in the other, the profits of the enterprise which are attributable to that permanent establishment may be taxed in that other country. Government salaries and pensions are normally to be taxed by the paying Government only. Certain payments made to visiting students and business apprentices are, subject to certain conditions, to be exempt in the country visited. Income from immovable property may be taxed in the country in which the property is situated and income derived by public entertainers from their personal activities may be taxed in the country in which those activities are exercised.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. The credit to be given in the United Kingdom for tax payable in Botswana is to include credit for tax spared under certain provisions of Botswana law.

The treatment of dividends takes account of the introduction of the imputation system of company taxation in the United Kingdom. Where a United Kingdom company pays a dividend to a resident of Botswana (other than to a company which controls 10 per cent or more of the voting power in the paying company), the beneficial owner will, subject to certain conditions, receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less a deduction at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit.

Dividends paid by Botswana companies to residents of the United Kingdom will, in general, be subject to tax in Botswana at a rate not exceeding 15 per cent.

The maximum rate of tax to be imposed by the country of source upon interest and royalties paid to a resident of the other country is, in general, not to exceed 15 per cent. Interest received by the Government (or a governmental body) will be exempt from tax in the country of source.

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Agreement is to take effect in the United Kingdom as respects income tax for the tax year 1976/77 and subsequent years and as respects corporation tax for the financial year commencing on 1 April 1976 and subsequent years.

SI 1978/183
ISBN 0-11-083183-7

