

INCOME TAX ACT
(No. 12 of 1995)

**BOTSWANA — FRANCE DOUBLE TAXATION AVOIDANCE
AGREEMENT ORDER, 2002**
(Published on 5th July, 2002)

WHEREAS in exercise of the powers conferred on him by section 52(1) of the Income Tax Act (No. 12 of 1995) the Minister of Finance and Development Planning has, on behalf of Government, entered into 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 52(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. This Order may be cited as the Botswana — France Double Taxation Avoidance Agreement Order, 2002.

Citation

2. 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.

Approval
and effective
date of
commencement

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 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 per cent 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 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 arising 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 sub-paragraph (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.*

MADE this 24th day of June, 2002.

B. GAOLATHE,
Minister of Finance and Development Planning.