

N° 7615

CHAMBRE DES DEPUTES

Session ordinaire 2019-2020

PROJET DE LOI

portant approbation de l'« Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance », et le Protocole y relatif, faits à Luxembourg, le 19 septembre 2018

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*(Dépôt: le 10.6.2020)***SOMMAIRE:**

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ARRETE GRAND-DUCAL DE DEPOT

Nous HENRI, Grand-Duc de Luxembourg, Duc de Nassau,

Sur le rapport de Notre Ministre des Affaires étrangères et européennes et après délibération du Gouvernement en conseil;

Arrêtons:

Article unique. Notre Ministre des Affaires étrangères et européennes est autorisé à déposer en Notre nom à la Chambre des Députés le projet de loi portant approbation de l'« Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance », et le Protocole y relatif, faits à Luxembourg, le 19 septembre 2018.

Palais de Luxembourg, le 4 juin 2020

*Le Ministre des Affaires étrangères
et européennes,*

Jean ASSELBORN

HENRI

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TEXTE DU PROJET DE LOI

Article unique Sont approuvés l'« Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance », et le Protocole y relatif, faits à Luxembourg, le 19 septembre 2018.

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EXPOSE DES MOTIFS

L'objet du présent projet de loi est d'approuver la Convention fiscale avec la République du Botswana.

Les conventions contre les doubles impositions constituent un élément essentiel de la politique fiscale du Luxembourg. L'objet d'une telle convention fiscale est l'élimination de la double imposition juridique et la conclusion d'un tel accord est indispensable au bon développement des relations économiques bilatérales et favorise l'échange de biens et de services ainsi que les mouvements de capitaux, de technologies et de personnes. La convention prévoit une répartition claire des compétences fiscales pour l'imposition des personnes physiques et des personnes morales.

Le projet de loi confirme les efforts effectués ces dernières années par le Gouvernement luxembourgeois en vue de compléter et d'améliorer progressivement son réseau de conventions fiscales particulièrement avec les pays d'Afrique.

La Convention entre le Luxembourg et le Botswana a pour vocation de promouvoir les relations économiques par l'élimination de la double imposition juridique, tout en limitant les pratiques de chalandage fiscal. Cette volonté est expressément énoncée dans le préambule de la Convention, lequel répond ainsi aux exigences du nouveau standard issu des travaux sur les problèmes de l'érosion de la base d'imposition et le transfert de bénéfices de l'OCDE.

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COMMENTAIRES DES ARTICLES DE LA CONVENTION

La Convention retient le titre et le préambule préconisés par l'Action 6 des travaux BEPS. L'objectif est de mettre en évidence, dans le titre de la Convention, le rôle des conventions dans la prévention de l'utilisation abusive des conventions fiscales. Au préambule, il est précisé qu'il s'agit d'éliminer la double imposition, et ce, sans créer des possibilités de double non-imposition ou d'imposition réduite par l'évasion ou la fraude fiscales, en particulier par des mécanismes de chalandage fiscal.

L'article 1^{er} dispose que la Convention s'applique aux personnes qui sont des résidents de l'un des États contractants ou de ces deux États.

L'article 2 énumère les impôts couverts par la Convention.

Du côté luxembourgeois, la Convention vise l'impôt sur le revenu des personnes physiques, l'impôt sur le revenu des collectivités, l'impôt sur la fortune et l'impôt commercial communal.

Le paragraphe 4 dispose qu'aucune disposition de la présente Convention ne limite le droit des États contractants de prélever sur les bénéfices des exploitations minières un impôt à un taux effectif autre que celui qui est à charge d'une quelconque autre entreprise.

L'article 3 énonce les définitions nécessaires à l'interprétation des termes et expressions utilisés dans la Convention. L'expression « trafic international » englobe, complémentirement au modèle de l'OCDE, les véhicules routiers ainsi que le trafic ferroviaire. Il est précisé au paragraphe 2 que le droit fiscal prévaut sur les autres branches du droit pour l'interprétation des termes et expressions non définis par ailleurs dans la Convention.

L'article 4 définit la notion de résidence. En donnant une définition de l'expression « résident d'un État contractant », l'article 4 permet de résoudre les cas de double résidence et constitue le critère essentiel de répartition du droit d'imposer entre les deux États.

Le paragraphe 1^{er} vise en principe les personnes qui sont assujetties à l'impôt dans un État contractant en vertu de la législation interne de cet État. Il précise donc que sont des résidents les personnes

assujetties à l'impôt en raison de leur domicile, de leur résidence, de leur siège de direction ou de tout autre critère de nature analogue.

Le paragraphe 2 clarifie les règles applicables aux personnes physiques en cas de double résidence. Conformément au modèle de l'OCDE, il reprend les critères habituels de foyer d'habitation permanent, de centre des intérêts vitaux, de séjour habituel et de nationalité. En dernier lieu, les autorités compétentes doivent trancher la question d'un commun accord.

Le paragraphe 3 retient le siège de direction effective comme critère de préférence pour les personnes autres que les personnes physiques afin de déterminer l'État de résidence de ces personnes.

Le point I. du Protocole de la Convention relatif à l'article 4 prévoit entre autres qu'un organisme de placement collectif qui est établi dans un État contractant est considéré comme un résident de l'État contractant dans lequel il est établi et comme le bénéficiaire effectif des revenus qu'il reçoit.

L'article 5 adopte une définition plus large de la notion d'établissement stable que celle retenue au modèle de l'OCDE.

Ainsi, le paragraphe 2 (g) complète la liste d'exemples de l'expression « établissement stable » qui peuvent être considérés comme constituant un établissement stable dans les conditions du paragraphe 1 en ajoutant une installation ou une structure utilisée pour l'extraction de ressources naturelles, à condition que l'installation ou la structure se poursuive pendant une période ou des périodes de plus de 183 jours au cours d'une période quelconque de douze mois commençant ou se terminant durant l'année fiscale concernée.

Le paragraphe 3 (a) considère comme établissement stable un chantier de construction, de montage ou d'installation, ou des activités de surveillance s'y rattachant lorsque ce chantier ou ces activités ont une durée supérieure à six mois.

Par ailleurs, le paragraphe 3 (b) prévoit que la fourniture de services, y compris les services de consultants, par une entreprise agissant par l'intermédiaire de salariés ou d'autre personnel engagé à cette fin constitue un établissement stable mais seulement lorsque ces activités se poursuivent (pour le même projet ou un projet connexe) sur le territoire d'un État contractant pendant une période ou des périodes représentant un total de plus de 183 jours pendant une période quelconque de douze mois commençant ou se terminant durant l'année fiscale concernée.

Le paragraphe 7 étend le champ d'application de l'établissement stable aux entreprises d'assurance. Une telle disposition ne figure pas dans le modèle de l'OCDE mais elle est reprise dans certaines de nos conventions.

En vertu de cette disposition, les entreprises d'assurance d'un État contractant sont considérées comme ayant un établissement stable dans l'autre État contractant, dès lors que, par l'intermédiaire d'une personne autre qu'un agent jouissant du statut indépendant, elles perçoivent des primes ou assurent des risques situés dans cet autre État. Ne sont pas visées par cette mesure les opérations de réassurance.

L'article 6 qui traite de l'imposition des revenus immobiliers reprend le principe général que le revenu des biens immobiliers est attribué à l'État dans lequel est situé le bien immobilier qui produit le revenu.

L'article 7 qui concerne l'imposition des bénéfices des entreprises suit l'approche du modèle de l'OCDE dans sa version de l'année 2008 à l'exception du paragraphe 3 qui est repris du modèle de l'ONU.

L'article 8 concerne l'imposition des bénéfices d'une entreprise d'un État contractant provenant de l'exploitation en trafic international de navires, d'aéronefs, de véhicules ferroviaires ou routiers ainsi que de l'exploitation de bateaux servant à la navigation intérieure. Il attribue le droit d'imposition de ces bénéfices à l'État où se trouve le siège de direction effective de l'entreprise.

L'article 9 correspond au modèle de l'OCDE. Il permet à un État d'opérer des ajustements de bénéfices à des fins fiscales lorsque des transactions ont été conclues entre des entreprises associées dans des conditions autres que celles de pleine concurrence. La rectification de la comptabilité des transactions entre entreprises associées peut entraîner une double imposition économique. Le paragraphe 2 vise à supprimer ces doubles impositions.

L'article 10 régit le droit d'imposition des dividendes. Il partage le droit d'imposition des dividendes entre l'État de la source et l'État de résidence du bénéficiaire. Le paragraphe 2 traitant de l'impôt pouvant être perçu par l'État de la source, prévoit que l'impôt établi dans cet État ne peut

excéder 5 pour cent du montant brut des dividendes, si le bénéficiaire effectif est une société qui détient directement au moins 25 pour cent du capital de la société qui paie les dividendes.

Dans les autres cas, la retenue maximale s'élève à 10 pour cent du montant brut des dividendes.

L'article 11 réserve un droit d'imposition des intérêts à l'État de la source, mais il limite l'exercice de ce droit en fixant un plafond à l'imposition qui ne peut pas dépasser 7,5 pour cent du montant brut des intérêts.

Le paragraphe 3 prévoit sous certaines conditions une exemption de la retenue à la source. Il s'agit des intérêts qui ne sont imposables que dans l'État contractant dont la personne qui reçoit les intérêts est un résident si le bénéficiaire effectif de ces intérêts est un résident de cet État, et:

- est cet État ou sa banque centrale ou l'une de ses collectivités locales;
- si les intérêts sont versés par l'État dans lequel ils sont générés ou par l'une de ses collectivités locales ou l'un de ses établissements publics;
- si l'intérêt est versé au titre d'un prêt, d'une créance ou d'un crédit qui est dû à cet État ou consenti, accordé, garanti ou assuré par lui ou par l'une de ses collectivités locales ou agences de financement des exportations.

L'article 12 dispose que la Convention partage le droit d'imposition des redevances entre l'État de la source et l'État de résidence du bénéficiaire, contrairement à la disposition du modèle de l'OCDE qui ne prévoit qu'une imposition dans l'État de résidence du bénéficiaire des redevances. L'imposition dans l'État de la source ne peut excéder 7,5 pour cent du montant brut des redevances.

Le paragraphe 3 qui définit le terme « redevances » a été repris du modèle de l'ONU.

Contrairement au modèle de l'OCDE, l'article 13 prévoit un article particulier pour le traitement des rémunérations pour des services techniques et retient une imposition dans l'État de la source qui ne peut excéder 7,5 pour cent du montant brut de ces rémunérations.

L'article 14 traite les gains en capital et ne contient pas de disposition concernant l'aliénation d'actions de sociétés à prépondérance immobilière.

L'article 15 régit le droit d'imposition en matière de revenus d'emploi. Il suit l'approche adoptée au modèle de l'OCDE.

L'article 16 traite de manière classique les rémunérations des administrateurs de sociétés.

L'article 17 relatif aux artistes et aux sportifs, attribue à l'État où se produisent les intéressés le droit d'imposer les revenus provenant des services rendus dans cet État. Cet article est complété par rapport à l'article 17 du modèle de l'OCDE par un paragraphe 3 spécifiant que les revenus des artistes ou sportifs sont exempts d'impôt dans l'État de l'exercice lorsque ces activités y sont exercées et que le séjour dans cet État est supporté entièrement ou substantiellement par des fonds publics.

L'article 18 régit le droit d'imposition des pensions. En ce qui concerne les pensions du secteur privé, payées en vertu d'un emploi antérieur, visées au paragraphe 1^{er} de l'article 18, un droit d'imposition exclusif est attribué à l'État de résidence du bénéficiaire.

Le paragraphe 2 de l'article 18 déroge à cette règle prévue au paragraphe 1^{er} en stipulant que les pensions et autres sommes payées en application de la législation sur la sécurité sociale ne sont imposables que dans l'État de la source.

Par ailleurs, le paragraphe 3 dispose que les pensions et autres rémunérations similaires provenant d'un État contractant et payées à un résident de l'autre État contractant en vertu d'un régime de pension complémentaire ou résultant de dotations faites par l'employeur à un régime interne, ne sont imposables que dans le premier État contractant dans la mesure où les cotisations, allocations, primes d'assurances ou dotations dont découlent les pensions et autres rémunérations visées sous rubrique, ont été soumises à une imposition « à l'entrée » dans le premier État.

Cette disposition permet d'éviter que les cotisations, allocations, primes d'assurances ou dotations ayant été soumises à une imposition forfaitaire lors de la constitution au Grand-Duché ne soient imposables une seconde fois lors du versement de la pension.

L'article 19 reprend les dispositions relatives aux rémunérations concernant les fonctions publiques.

L'article 20 complète la Convention par rapport au modèle de l'OCDE en prévoyant un article relatif à l'imposition des professeurs, enseignants et chercheurs. Celui-ci prévoit sous certaines conditions l'exemption dans l'État hôte pour une période n'excédant pas deux années sur la rémunération touchée pour cet enseignement ou ces recherches.

Les dispositions précitées ne s'appliquent pas aux revenus reçus au titre de recherches, si ces recherches sont principalement entreprises dans l'intérêt privé d'une personne ou de plusieurs personnes déterminées.

L'article 21 permet, conformément au modèle de l'OCDE, d'exonérer les étudiants, les stagiaires et apprentis dans l'État où ils séjournent sous certaines conditions.

L'article 22 détermine le régime fiscal des revenus non expressément visés dans les autres articles de la Convention. À l'instar du modèle de l'OCDE, il prévoit l'imposition exclusive de ces revenus dans l'État de résidence de leur bénéficiaire effectif, à moins qu'ils ne puissent être rattachés à un établissement stable dont celui-ci dispose dans l'autre État.

L'article 23 fixe les modalités d'imposition de la fortune.

L'article 24 traite des modalités de l'élimination des doubles impositions par les deux États.

Le Luxembourg a choisi la méthode de l'exemption avec réserve de progressivité pour éviter la double imposition. Cette méthode consiste à exonérer de l'impôt luxembourgeois les revenus et la fortune imposables au Botswana, mais à en tenir compte pour calculer le taux d'impôt applicable aux revenus et à la fortune qui sont imposables au Luxembourg.

En ce qui concerne les dividendes, les intérêts, les redevances et les rémunérations pour services techniques dont le droit d'imposition est, aux termes des articles 10, 11, 12 et 13, partagé entre l'État d'où proviennent les revenus et l'État dont le bénéficiaire est un résident, le Luxembourg applique pour ces catégories de revenus la méthode de l'imputation. Il en est de même pour les revenus des artistes et sportifs visés à l'article 17.

Cette méthode consiste à intégrer ces revenus de source étrangère dans la base d'imposition luxembourgeoise, mais à déduire de l'impôt luxembourgeois l'impôt payé sur ces revenus au Botswana. La déduction ne peut toutefois pas dépasser l'impôt luxembourgeois relatif à ces revenus.

Le sous-paragraphe (c) du paragraphe 2 est conforme au modèle de l'OCDE. La disposition proposée par l'OCDE a pour objet d'éviter l'absence d'imposition qui résulterait de désaccords entre l'État de résidence et l'État de la source sur les faits d'un cas spécifique ou sur l'interprétation des dispositions de la Convention. Cette disposition permet ainsi d'éviter une double exonération, de sorte à ne pas aboutir à un résultat qui est contraire à l'objet d'une Convention tendant à éviter les doubles impositions.

Le sous-paragraphe (d) du paragraphe 2 prévoit la prise en compte, pour les besoins de l'imputation, lors de l'imposition au Luxembourg des dividendes, intérêts, redevances et rémunérations pour services techniques provenant de source botswanaise, d'un impôt fictif botswanais. Ainsi, le Luxembourg considère que le montant de l'impôt botswanais sur les dividendes, intérêts, redevances et rémunérations pour services techniques est perçu aux taux prévus aux articles 10, 11, 12 et 13, même si le Botswana accorde une réduction sur ces taux afin d'encourager des investissements.

Le point II. du Protocole de la Convention relatif à l'article 24 prévoit que la disposition relative au sous-paragraphe (d) du paragraphe 2 est applicable pour une période de 10 ans et peut être prorogée d'un commun accord entre les autorités compétentes des deux États.

Le Botswana a opté d'une manière générale pour la méthode de l'imputation.

Les articles 25 à 32 contiennent certaines dispositions spéciales ainsi que les dispositions finales de la Convention.

L'article 25 traite de l'élimination de la discrimination fiscale dans certaines situations précises.

L'article 26 règle les cas où une procédure amiable peut être engagée entre les autorités compétentes des deux États tout en prévoyant que les autorités compétentes doivent s'efforcer de régler par voie d'accord amiable la situation des contribuables qui ont fait l'objet d'une imposition non conforme aux dispositions de la Convention. Le paragraphe 1^{er} dispose qu'une personne peut soumettre son cas à l'autorité compétente de l'un ou l'autre État contractant.

L'article 27 régit l'échange de renseignements entre les États contractants. L'article suit l'approche adoptée au modèle de l'OCDE.

Le point III. du Protocole de la Convention relatif à l'article 27 détermine les modalités à respecter lors d'une demande d'information provenant d'un État contractant et transmise à l'autre État contractant. Ceci a pour but d'évaluer l'importance et la pertinence de la demande et de pouvoir y répondre efficacement de manière précise.

L'article 28 prévoit l'assistance en matière de recouvrement des impôts. Cet article énonce les règles suivant lesquelles les États contractants peuvent se prêter mutuellement assistance dans le cadre du recouvrement de l'impôt. L'assistance au recouvrement est limitée aux impôts visés par la Convention.

L'article 29 reprend les règles applicables aux membres des missions diplomatiques et des postes consulaires. Il suit l'approche adoptée au modèle de l'OCDE.

L'article 30 reprend une disposition sur le droit aux avantages de la Convention. La disposition reprise est la règle des objets principaux stipulant qu'un avantage prévu par la Convention n'est pas accordé s'il est raisonnable de conclure que l'octroi de cet avantage était un des objets principaux d'un montage ou d'une transaction ayant permis, directement ou indirectement, de l'obtenir.

Le paragraphe 2 reprend une disposition optionnelle figurant aux commentaires du modèle de l'OCDE dans sa version 2017 qui met en place un processus de consultation entre les autorités compétentes. Ainsi, l'autorité compétente à laquelle la demande a été adressée consulte l'autorité compétente de l'autre État avant de rejeter une demande présentée par un résident de cet autre État.

L'article 31 établit les règles relatives à l'entrée en vigueur de la Convention dans les deux États contractants.

L'article 32 arrête les modalités selon lesquelles la Convention pourra être dénoncée.

La Convention est complétée par un Protocole dont les principales dispositions ont été commentées avec les articles auxquels il se réfère. Le Protocole forme partie intégrante de la Convention.

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FICHE D'ÉVALUATION D'IMPACT

Mesures législatives et réglementaires

Intitulé du projet:	Projet de loi portant approbation de l'« Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance», et le Protocole y relatif, faits à Luxembourg, le 19 septembre 2018
Ministère initiateur:	Ministère des Finances
Auteur:	Yoann Le Dorze
Tél. :	247-52361
Courriel:	yoann.ledorze@co.etat.lu
Objectif(s) du projet:	Approbation d'un traité international en matière fiscale
Autre(s) Ministère(s)/Organisme(s)/Commune(s)impliqué(e)(s):	/
Date:	14 mai 2020

Mieux légiférer

1. Partie(s) prenante(s) (organismes divers, citoyens,...) consultée(s): Oui: Non: ¹

Si oui, laquelle/lesquelles:

Remarques/Observations:

2. Destinataires du projet:

- Entreprises/Professions libérales: Oui: Non:
- Citoyens: Oui: Non:
- Administrations: Oui: Non:

¹ Double-click sur la case pour ouvrir la fenêtre permettant de l'activer

3. Le principe « Think small first » est-il respecté? Oui: Non: N.a.:²
(c.-à-d. des exemptions ou dérogations sont-elles prévues suivant la taille de l'entreprise et/ou son secteur d'activité?)
Remarques/Observations:
4. Le projet est-il lisible et compréhensible pour le destinataire? Oui: Non:
Existe-t-il un texte coordonné ou un guide pratique, mis à jour et publié d'une façon régulière? Oui: Non:
Remarques/Observations:
5. Le projet a-t-il saisi l'opportunité pour supprimer ou simplifier des régimes d'autorisation et de déclaration existants, ou pour améliorer la qualité des procédures? Oui: Non:
Remarques/Observations:
6. Le projet contient-il une charge administrative³ pour le(s) destinataire(s)? (un coût imposé pour satisfaire à une obligation d'information émanant du projet?) Oui: Non:
Si oui, quel est le coût administratif approximatif total? (nombre de destinataires x coût administratif⁴ par destinataire)
7. a) Le projet prend-il recours à un échange de données inter-administratif (national ou international) plutôt que de demander l'information au destinataire? Oui: Non: N.a.:
Si oui, de quelle(s) donnée(s) et/ou administration(s) s'agit-il?
b) Le projet en question contient-il des dispositions spécifiques concernant la protection des personnes à l'égard du traitement des données à caractère personnel? Oui: Non: N.a.:
Si oui, de quelle(s) donnée(s) et/ou administration(s) s'agit-il?
8. Le projet prévoit-il:
– une autorisation tacite en cas de non réponse de l'administration? Oui: Non: N.a.:
– des délais de réponse à respecter par l'administration? Oui: Non: N.a.:
– le principe que l'administration ne pourra demander des informations supplémentaires qu'une seule fois? Oui: Non: N.a.:
9. Y a-t-il une possibilité de regroupement de formalités et/ou de procédures (p. ex. prévues le cas échéant par un autre texte)? Oui: Non: N.a.:
Si oui, laquelle:
10. En cas de transposition de directives communautaires, le principe « la directive, rien que la directive » est-il respecté? Oui: Non: N.a.:
Sinon, pourquoi?
11. Le projet contribue-t-il en général à une:

2 N.a.: non applicable.

3 Il s'agit d'obligations et de formalités administratives imposées aux entreprises et aux citoyens, liées à l'exécution, l'application ou la mise en oeuvre d'une loi, d'un règlement grand-ducal, d'une application administrative, d'un règlement ministériel, d'une circulaire, d'une directive, d'un règlement UE ou d'un accord international prévoyant un droit, une interdiction ou une obligation.

4 Coût auquel un destinataire est confronté lorsqu'il répond à une obligation d'information inscrite dans une loi ou un texte d'application de celle-ci (exemple: taxe, coût de salaire, perte de temps ou de congé, coût de déplacement physique, achat de matériel, etc...).

- a. simplification administrative, et/ou à une Oui: Non:
 b. amélioration de la qualité réglementaire? Oui: Non:
 Remarques/Observations:
12. Des heures d'ouverture de guichet, favorables et adaptées aux Oui: Non: N.a.:
 besoins du/des destinataire(s), seront-elles introduites?
 Remarques/Observations:
13. Y a-t-il une nécessité d'adapter un système informatique auprès Oui: Non:
 de l'Etat (e-Government ou application back-office)?
 Si oui, quel est le délai pour disposer du nouveau système?
14. Y a-t-il un besoin en formation du personnel de l'administration Oui: Non: N.a.:
 concernée?
 Si oui, lequel?
 Remarques/Observations:

Egalité des chances

15. Le projet est-il:
- principalement centré sur l'égalité des femmes et des hommes? Oui: Non:
 - positif en matière d'égalité des femmes et des hommes? Oui: Non:
 Si oui, expliquez de quelle manière:
 - neutre en matière d'égalité des femmes et des hommes? Oui: Non:
 Si oui, expliquez pourquoi: Les questions d'égalité des femmes et des hommes ne sont pas touchées par l'échange et la protection réciproque d'informations classifiées.
 - négatif en matière d'égalité des femmes et des hommes? Oui: Non:
 Si oui, expliquez de quelle manière:
16. Y a-t-il un impact financier différent sur les femmes Oui: Non: N.a.:
 et les hommes ?
 Si oui, expliquez de quelle manière:

Directive « services »

17. Le projet introduit-il une exigence relative à la liberté Oui Non N.a.
 d'établissement soumise à évaluation⁵ ?
 Si oui, veuillez annexer le formulaire A, disponible au site
 Internet du Ministère de l'Economie:
www.eco.public.lu/attributions/dg2/d_consommation/d_march_int_rieur/Services/index.html
18. Le projet introduit-il une exigence relative à la libre prestation Oui Non N.a.
 de services transfrontaliers⁶ ?
 Si oui, veuillez annexer le formulaire B, disponible au site
 Internet du Ministère de l'Economie:
www.eco.public.lu/attributions/dg2/d_consommation/d_march_int_rieur/Services/index.html

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⁵ Article 15, paragraphe 2 de la directive « services » (cf. Note explicative, p. 10-11)

⁶ Article 16, paragraphe 1, troisième alinéa et paragraphe 3, première phrase de la directive « services » (cf. Note explicative, p.10-11)

FICHE FINANCIERE

(art. 79 de la loi du 8 juin 1999 sur le Budget, la Comptabilité
et la Trésorerie de l'État)

Le Projet de loi portant approbation de l'« Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance », et le Protocole y relatif, faits à Luxembourg, le 19 septembre 2018, ne comporte pas de dispositions dont l'application est susceptible de grever le budget de l'Etat.

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TEXTE DE LA CONVENTION

AGREEMENT

**between the Government of the Grand Duchy of
Luxembourg and the Government of the Republic
of Botswana for the elimination of double taxation
with respect to taxes on income and on capital and
the prevention of tax evasion and avoidance**

The Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States)

HAVE AGREED as follows:

Article 1

Persons covered

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

Article 2

Taxes covered

- (1) This Agreement shall apply to taxes on income and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
- (3) The existing taxes to which the Agreement shall apply are in particular:
 - (a) in Botswana:
 - (i) the income tax including any withholding tax, prepayment or advance tax payment with respect to aforesaid tax; and

- (ii) the capital gains tax;
(hereinafter referred to as “Botswana tax”);
 - (b) in Luxembourg:
 - (i) the income tax on individuals (l’impôt sur le revenu des personnes physiques);
 - (ii) the corporation tax (l’impôt sur le revenu des collectivités);
 - (iii) the capital tax (l’impôt sur la fortune); and
 - (iv) the communal trade tax (l’impôt commercial communal);
(hereinafter referred to as “Luxembourg tax”).
- (4) Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term “a mineral enterprise” means an enterprise carrying on the business of mining.
- (5) The Agreement shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General definitions

- (1) For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term “Botswana” means the Republic of Botswana;
 - (b) the term “Luxembourg” means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;
 - (c) the terms “Contracting State” and “the other Contracting State” mean Botswana or Luxembourg as the context requires;
 - (d) the term “person” includes an individual, a company, a trust, an estate, a collective investment vehicle or undertaking and any other body of persons;
 - (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term “enterprise” applies to the carrying on of any business;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “international traffic” means any transport by a ship, aircraft, rail or road vehicle operated by an enterprise that has its place of effective management in a Contracting State, except when the ship, aircraft, rail or road vehicle is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means:
 - (i) in Botswana, the Minister responsible for finance, represented by the Commissioner General of the Botswana Unified Revenue Service or a representative of the Commissioner General;
 - (ii) in Luxembourg, the Minister of Finance or his authorised representative;
 - (j) 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;
 - (k) the term “business” includes the performance of professional services and of other activities of an independent character.

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

Article 4

Resident

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

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

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (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 only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of 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 only of the State in which its place of effective management is situated.

Article 5

Permanent establishment

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

(2) The term “permanent establishment” includes especially:

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

(3) The term “permanent establishment” likewise encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection with such site or activities, 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 a Contracting State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned.
- (4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, 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) Notwithstanding the provisions of paragraphs (1) and (2), where a person – other than an agent of an independent status to whom paragraph (6) applies – is acting 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.
- (6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
- (7) Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to who paragraph (6) applies.
- (8) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from immovable property

- (1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
- (2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry,

rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise.

Article 7

Business profits

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

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

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

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

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

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

Article 8

International transport

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

- (2) Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (3) If the place of effective management of a shipping enterprise or of an inland waterways transport 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 boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
- (4) The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

- (1) Where
- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
- and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
- (2) Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

- (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases.
- This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- (3) The term “dividends” as used in this Article means income from shares, “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 treat-

ment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 11

Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest referred to in paragraph (1) shall be taxable only in the Contracting State of which the recipient is a resident if the beneficial owner of the interest is a resident of that State, and:

- (a) is that State or the Central Bank or a local authority thereof;
- (b) if the interest is paid by the State in which the interest arises or by a local authority or statutory body thereof;
- (c) if the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a local authority or export financing agency thereof.

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

(5) The provisions of paragraph (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

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

Article 12

Royalties

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

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

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

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

Article 13

Fees for technical services

(1) Fees for technical services 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 fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but where the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the fees for technical services.

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, and the fees for technical services are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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

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

Article 14

Capital gains

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Gains from the alienation of ships, aircraft, rail or road vehicles operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft, rail or road vehicles, or boats, 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 15

Income from employment

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
- (3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft, rail or road vehicles operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' fees

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

Article 17

Artistes and sportspersons

- (1) Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
- (2) Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
- (3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is wholly or substantially supported by public funds. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

Pensions

- (1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.
- (2) Notwithstanding the provisions of paragraph (1), pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.
- (3) Notwithstanding the provisions of paragraph (1), pensions and other similar remuneration (including lump-sum payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State, provided that such payments derive from contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf and that these contributions, provisions or the pensions or other similar remuneration have been subjected to tax in the first-mentioned State under the ordinary rules of its tax laws.
- (4) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

Government service

- (1) (a) Salaries, wages and other similar remuneration paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2) (a) Notwithstanding the provisions of paragraph (1), pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
(b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- (3) The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 20

Professors, teachers and researchers

- (1) A professor, teacher or researcher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State, shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State.
- (2) This Article shall apply to income from research only if such research is undertaken in the public interest and not primarily for the benefit of some private person or persons.

Article 21

Students

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

Article 22

Other income

- (1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
- (2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a

Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 23

Capital

- (1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
- (2) Capital represented by 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 may be taxed in that other State.
- (3) Capital represented by ships, aircraft, rail or road vehicles operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft, rail or road vehicles and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 24

Elimination of double taxation

Double taxation shall be eliminated as follows:

- (1) Subject to the provisions of the law of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, Luxembourg tax payable under the laws of Luxembourg and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in Luxembourg shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Luxembourg tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
- (2) Subject to the provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:
 - (a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Botswana, Luxembourg shall, subject to the provisions of sub-paragraphs (b) and (c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.
 - (b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12, 13 and 17 may be taxed in Botswana, Luxembourg shall allow as a deduction from the income tax on individuals or from the corporation tax of that resident an amount equal to the tax paid in Botswana. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Botswana.
 - (c) The provisions of sub-paragraph (a) shall not apply to income derived or capital owned by a resident of Luxembourg where Botswana applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph (2) of Articles 10, 11, 12 or 13 to such income.
 - (d) Where by reason of the relief given under the provisions of Botswana laws for the purpose of encouraging investment in Botswana, the Botswana tax actually levied on dividends, interest, royalties or fees for technical services arising in Botswana is lower than the respective rate referred to in Articles 10, 11, 12 and 13, then the amount of the tax paid in Botswana

on such dividends, interest, royalties and fees for technical services shall be deemed to have been paid at the respective rates referred to in Articles 10, 11, 12 and 13.

Article 25

Non-discrimination

- (1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
- (2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
- (3) Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, paragraph (6) of Article 12, or paragraph (6) of Article 13, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
- (4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
- (5) The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
- (6) The provisions of this Article shall apply to taxes covered by this Agreement.

Article 26

Mutual agreement procedure

- (1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
- (2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
- (3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They

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

(4) The competent authorities of the Contracting States may communicate with each other directly, 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.

Article 27

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph (1) by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph (1), or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

Article 28

Assistance in collection

(1) The Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which this Agreement relates, together with the interest, costs, and additions to the taxes and fines not being of a penal character.

(2) Such application must be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes being collected are due.

(3) At the request of the competent authority of a Contracting State, the competent authority of the other Contracting State will ensure, according to the provisions of laws and regulations applied to collection of the above-mentioned taxes in the last State, collection of fiscal claims covered by the first paragraph, which are recoverable in the first State. These claims shall not enjoy any privilege in the requested State and the latter is not obliged to apply means of execution which are not authorised by the provisions of laws and regulations of the requested State.

(4) The provisions of paragraph (1) of Article 27, shall apply equally to all information brought, for the application of the preceding paragraphs of the present Article, to the knowledge of the competent authority of the requested State.

Article 29

Members of diplomatic missions and consular posts

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

Article 30

Entitlement to benefits

(1) Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

(2) Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

Article 31

Entry into force

(1) The Contracting States shall notify each other in writing, through diplomatic channels, that the procedures required by its law for the entry into force of this Agreement have been satisfied. The Agreement shall enter into force on the date of receipt of the last notification.

(2) The provisions of the Agreement shall have effect:

(a) in Botswana;

- (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and
- (ii) with regard to other taxes, in respect of tax years or years of assessment beginning on or after the thirtieth day following the date upon which the Agreement enters into force;

(b) in Luxembourg:

- (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the Agreement enters into force; and

- (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the Agreement enters into force.

Article 32

Termination

- (1) This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force.
- (2) The Agreement shall cease to have effect:
 - (a) in Botswana:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the end of the calendar year in which such notice is given; and
 - (ii) with regard to other taxes, in respect of tax years or years of assessment beginning after the end of the calendar year in which such notice is given;
 - (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the notice is given; and
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Luxembourg, this 19th day of September 2018, in the English language.

*For the Government of the
Grand Duchy of Luxembourg*
Pierre GRAMEGNA
Minister of Finance

*For the Government of the
Republic of Botswana*
Samuel O. OUTLULE
*Ambassador of the Republic of Botswana
to the Grand Duchy of Luxembourg*

*

PROTOCOL

At the moment of the signing of the Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, both sides have agreed upon the following provisions, which shall form an integral part of the Agreement:

I. With reference to Article 4:

A trust, an estate, a collective investment vehicle or undertaking which is established in a Contracting State shall be considered as a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives.

II. With reference to Article 24:

The provisions of paragraph (2) (d) shall apply for a period of 10 years beginning on 1 January of the calendar year next following the year in which the Agreement enters into force. This period may be extended by mutual agreement between the competent authorities.

III. With reference to Article 27:

The competent authority of the requesting State shall provide the following information to the competent authority of the requested State when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Luxembourg, this 19th day of September 2018, in the English language.

*For the Government of the
Grand Duchy of Luxembourg*

Pierre GRAMEGNA
Minister of Finance

*For the Government of the
Republic of Botswana*

Samuel O. OUTLULE
*Ambassador of the Republic of Botswana
to the Grand Duchy of Luxembourg*

*

AGREEMENT

**between the Government of the Grand Duchy of
Luxembourg and the Government of the Republic
of Botswana for the elimination of double taxation
with respect to taxes on income and on capital and
the prevention of tax evasion and avoidance**

The Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States)

HAVE AGREED as follows:

Article 1

Persons covered

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

*Article 2****Taxes covered***

- (1) This Agreement shall apply to taxes on income and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
- (3) The existing taxes to which the Agreement shall apply are in particular:
- (a) in Botswana:
- (i) the income tax including any withholding tax, prepayment or advance tax payment with respect to aforesaid tax; and
 - (ii) the capital gains tax;
(hereinafter referred to as “Botswana tax”);
- (b) in Luxembourg:
- (i) the income tax on individuals (l’impôt sur le revenu des personnes physiques);
 - (ii) the corporation tax (l’impôt sur le revenu des collectivités);
 - (iii) the capital tax (l’impôt sur la fortune); and
 - (iv) the communal trade tax (l’impôt commercial communal);
(hereinafter referred to as “Luxembourg tax”).
- (4) Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term “a mineral enterprise” means an enterprise carrying on the business of mining.
- (5) The Agreement shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

*Article 3****General definitions***

- (1) For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term “Botswana” means the Republic of Botswana;
 - (b) the term “Luxembourg” means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;
 - (c) the terms “Contracting State” and “the other Contracting State” mean Botswana or Luxembourg as the context requires;
 - (d) the term “person” includes an individual, a company, a trust, an estate, a collective investment vehicle or undertaking and any other body of persons;
 - (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term “enterprise” applies to the carrying on of any business;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (h) the term “international traffic” means any transport by a ship, aircraft, rail or road vehicle operated by an enterprise that has its place of effective management in a Contracting State, except when the ship, aircraft, rail or road vehicle is operated solely between places in the other Contracting State;
- (i) the term “competent authority” means:
 - (i) in Botswana, the Minister responsible for finance, represented by the Commissioner General of the Botswana Unified Revenue Service or a representative of the Commissioner General;
 - (ii) in Luxembourg, the Minister of Finance or his authorised representative;
- (j) 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;
- (k) the term “business” includes the performance of professional services and of other activities of an independent character.

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

Article 4

Resident

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

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

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (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 only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of 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 only of the State in which its place of effective management is situated.

Article 5

Permanent establishment

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

- (2) The term “permanent establishment” includes especially:
- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and
 - (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned.
- (3) The term “permanent establishment” likewise encompasses:
- (a) a building site, a construction, assembly or installation project or supervisory activities in connection with such site or activities, 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 a Contracting State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned.
- (4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, 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) Notwithstanding the provisions of paragraphs (1) and (2), where a person – other than an agent of an independent status to whom paragraph (6) applies – is acting 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.
- (6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
- (7) Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other

Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to who paragraph (6) applies.

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

Article 6

Income from immovable property

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

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

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

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise.

Article 7

Business profits

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

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

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

in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

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

Article 8

International transport

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

(2) Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(3) If the place of effective management of a shipping enterprise or of an inland waterways transport 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 boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

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

Article 9

Associated enterprises

(1) Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

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

*Article 10****Dividends***

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

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

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

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

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

*Article 11****Interest***

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest referred to in paragraph (1) shall be taxable only in the Contracting State of which the recipient is a resident if the beneficial owner of the interest is a resident of that State, and:

- (a) is that State or the Central Bank or a local authority thereof;
- (b) if the interest is paid by the State in which the interest arises or by a local authority or statutory body thereof;
- (c) if the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a local authority or export financing agency thereof.

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

(5) The provisions of paragraph (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

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

Article 12

Royalties

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

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

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

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

Article 13

Fees for technical services

(1) Fees for technical services 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 fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but where the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the fees for technical services.

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, and the fees for technical services are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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

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

Article 14

Capital gains

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Gains from the alienation of ships, aircraft, rail or road vehicles operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such

ships, aircraft, rail or road vehicles, or boats, 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 15

Income from employment

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

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

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft, rail or road vehicles operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' fees

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

Article 17

Artistes and sportspersons

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

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

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

*Article 18****Pensions***

- (1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.
- (2) Notwithstanding the provisions of paragraph (1), pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.
- (3) Notwithstanding the provisions of paragraph (1), pensions and other similar remuneration (including lump-sum payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State, provided that such payments derive from contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf and that these contributions, provisions or the pensions or other similar remuneration have been subjected to tax in the first-mentioned State under the ordinary rules of its tax laws.
- (4) The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

*Article 19****Government service***

- (1) (a) Salaries, wages and other similar remuneration paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
- (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2) (a) Notwithstanding the provisions of paragraph (1), pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- (3) The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

*Article 20****Professors, teachers and researchers***

- (1) A professor, teacher or researcher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State, shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State.
- (2) This Article shall apply to income from research only if such research is undertaken in the public interest and not primarily for the benefit of some private person or persons.

*Article 21****Students***

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

*Article 22****Other income***

- (1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
- (2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

*Article 23****Capital***

- (1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
- (2) Capital represented by 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 may be taxed in that other State.
- (3) Capital represented by ships, aircraft, rail or road vehicles operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft, rail or road vehicles and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

*Article 24****Elimination of double taxation***

Double taxation shall be eliminated as follows:

- (1) Subject to the provisions of the law of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, Luxembourg tax payable under the laws of Luxembourg and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in Luxembourg shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Luxembourg tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
- (2) Subject to the provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

- (a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Botswana, Luxembourg shall, subject to the provisions of sub-paragraphs (b) and (c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.
- (b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12, 13 and 17 may be taxed in Botswana, Luxembourg shall allow as a deduction from the income tax on individuals or from the corporation tax of that resident an amount equal to the tax paid in Botswana. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Botswana.
- (c) The provisions of sub-paragraph (a) shall not apply to income derived or capital owned by a resident of Luxembourg where Botswana applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph (2) of Articles 10, 11, 12 or 13 to such income.
- (d) Where by reason of the relief given under the provisions of Botswana laws for the purpose of encouraging investment in Botswana, the Botswana tax actually levied on dividends, interest, royalties or fees for technical services arising in Botswana is lower than the respective rate referred to in Articles 10, 11, 12 and 13, then the amount of the tax paid in Botswana on such dividends, interest, royalties and fees for technical services shall be deemed to have been paid at the respective rates referred to in Articles 10, 11, 12 and 13.

Article 25

Non-discrimination

- (1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
- (2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
- (3) Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, paragraph (6) of Article 12, or paragraph (6) of Article 13, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
- (4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
- (5) The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
- (6) The provisions of this Article shall apply to taxes covered by this Agreement.

*Article 26****Mutual agreement procedure***

- (1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
- (2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
- (3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
- (4) The competent authorities of the Contracting States may communicate with each other directly, 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.

*Article 27****Exchange of information***

- (1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
- (2) Any information received under paragraph (1) by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph (1), or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (3) In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
- (4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) but in no case shall

such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

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

Article 28

Assistance in collection

(1) The Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which this Agreement relates, together with the interest, costs, and additions to the taxes and fines not being of a penal character.

(2) Such application must be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes being collected are due.

(3) At the request of the competent authority of a Contracting State, the competent authority of the other Contracting State will ensure, according to the provisions of laws and regulations applied to collection of the above-mentioned taxes in the last State, collection of fiscal claims covered by the first paragraph, which are recoverable in the first State. These claims shall not enjoy any privilege in the requested State and the latter is not obliged to apply means of execution which are not authorised by the provisions of laws and regulations of the requested State.

(4) The provisions of paragraph (1) of Article 27, shall apply equally to all information brought, for the application of the preceding paragraphs of the present Article, to the knowledge of the competent authority of the requested State.

Article 29

Members of diplomatic missions and consular posts

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

Article 30

Entitlement to benefits

(1) Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

(2) Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

*Article 31****Entry into force***

- (1) The Contracting States shall notify each other in writing, through diplomatic channels, that the procedures required by its law for the entry into force of this Agreement have been satisfied. The Agreement shall enter into force on the date of receipt of the last notification.
- (2) The provisions of the Agreement shall have effect:
- (a) in Botswana:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of tax years or years of assessment beginning on or after the thirtieth day following the date upon which the Agreement enters into force;
 - (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the Agreement enters into force; and
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the Agreement enters into force.

*Article 32****Termination***

- (1) This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force.
- (2) The Agreement shall cease to have effect:
- (a) in Botswana:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the end of the calendar year in which such notice is given; and
 - (ii) with regard to other taxes, in respect of tax years or years of assessment beginning after the end of the calendar year in which such notice is given;
 - (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the notice is given; and
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Luxembourg, this 19th day of September 2018, in the English language.

*For the Government of the
Grand Duchy of Luxembourg*
Pierre GRAMEGNA
Minister of Finance

*For the Government of the
Republic of Botswana*
Samuel O. OUTLULE
*Ambassador of the Republic of Botswana
to the Grand Duchy of Luxembourg*

PROTOCOL

At the moment of the signing of the Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Botswana for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, both sides have agreed upon the following provisions, which shall form an integral part of the Agreement:

I. With reference to Article 4:

A trust, an estate, a collective investment vehicle or undertaking which is established in a Contracting State shall be considered as a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives.

II. With reference to Article 24:

The provisions of paragraph (2) (d) shall apply for a period of 10 years beginning on 1 January of the calendar year next following the year in which the Agreement enters into force. This period may be extended by mutual agreement between the competent authorities.

III. With reference to Article 27:

The competent authority of the requesting State shall provide the following information to the competent authority of the requested State when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Luxembourg, this 19th day of September 2018, in the English language.

*For the Government of the
Grand Duchy of Luxembourg*

Pierre GRAMEGNA
Minister of Finance

*For the Government of the
Republic of Botswana*

Samuel O. OUTLULE
*Ambassador of the Republic of Botswana
to the Grand Duchy of Luxembourg*

