

INCOME TAX ACT
(Cap. 52:01)

**BOTSWANA-MAURITIUS DOUBLE TAXATION AVOIDANCE AGREEMENT
(AMENDMENT) ORDER, 2016**
(Published on 26th February, 2016)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Amendment of Schedule to S.I. 84 of 1995
3. Approval and effective date of commencement

SCHEDULE

WHEREAS in the exercise of the powers conferred on him by section 53 (3) of the Income Tax Act (Cap. 52:01), the Minister of Finance and Development Planning has, on behalf of the Government, entered into a Protocol amending the Double Taxation Agreement with the Republic of Mauritius;

AND WHEREAS in accordance with the provisions of section 53 (3) of the Income Tax Act, the said Agreement shall be laid before the National Assembly, and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE the following Order is hereby made —

- | | |
|---|---|
| <p>1. This Order may be cited as the Botswana-Mauritius Double Taxation Avoidance Agreement (Amendment) Order.</p> | Citation |
| <p>2. The Botswana-Mauritius Double Taxation Avoidance Agreement Order, 1995, is amended as set out in the Schedule hereto.</p> | Amendment of Schedule to S.I. 84 of 1995 |
| <p>3. The Protocol amending the Double Taxation Agreement Order set out in the Schedule hereto between the Government of the Republic of Botswana with the Government of the Republic of Mauritius is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.</p> | Approval and effective date of commencement |

SCHEDULE

The Government of the Republic of Botswana and the Government of the Republic of Mauritius desiring to amend the Convention between the Republic of Botswana and the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, signed at Port Louis on 26th September, 1995 (hereinafter referred to as "the Convention"), have agreed as follows:

ARTICLE 1

The definition of the term "competent authority" in paragraph (1)(i) in Article 3 of the Convention is amended as follows:

- (a) in sub-paragraph (i) by deleting the words "the Commissioner of Taxes" and replacing them with the words "the Minister of Finance and Development Planning represented by the Commissioner General of the Botswana Unified Revenue Service", and
- (b) in sub-paragraph (ii) by deleting the words "the Commissioner of Income Tax" and replacing them with the words "the Minister to whom responsibility for the subject of finance is assigned".

ARTICLE 2

Article 27 of the Convention shall be deleted and replaced by the following:

"ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in particular for the prevention of fraud or evasion of such taxes, in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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, 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such other use.

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 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 3

Each of the Contracting States shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Protocol, which shall form an integral part of the Convention. The Protocol shall enter into force on the date of receipt of the later of those notifications and shall have effect from that date.

ARTICLE 4

This Protocol shall remain in force as long as the Convention remains in force.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Protocol in two originals in the English language.

DONE at Gaborone on the 15th day of August in the year 2015.

HON. O. K. MATAMBO,
*for the Government of the
Republic of Botswana.*

HON. M. J. N. ETIENNE GHISLAIN SINATAMBOU,
*for the Government of the
Republic of Mauritius.*

MADE this 14th day of February, 2016.

O.K. MATAMBO,
*Minister of Finance and Development
Planning.*