

**INCOME TAX ACT
(Cap. 52:01)**

**BOTSWANA-FRANCE DOUBLE TAXATION AVOIDANCE
AGREEMENT (AMENDMENT) ORDER, 2017**

(Published on 13th October, 2017)

ARRANGEMENT OF PARAGRAPHS

1. Citation
2. Amendment of Schedule to S.I. No. 51 of 2002
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, the Minister of Finance and Economic Development has, on behalf of Government, entered into a Protocol amending the Double Taxation Agreement with the French Republic;

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 —

1. This Order may be cited as the Botswana-France Double Taxation Avoidance Agreement (Amendment) Order, 2017.

Citation

2. The Botswana-France Double Taxation Avoidance Agreement, 2002 is amended as set out in the Schedule hereto.

Amendment of
Schedule to
S.I No. 51 of
2002
Approval and
effective date of
commencement

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 French Republic is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

SCHEDULE

The Government of the Republic of Botswana and the Government of the French Republic desiring to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Gaborone on 15th April, 1999 (in this Protocol referred to as “the Convention”), have agreed as follows:

ARTICLE I

Article 26 of the Convention shall be deleted and replaced by the following:

“ARTICLE 26

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 local authorities, insofar 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 use.
3. Each Contracting State shall take the necessary measures to ensure the availability of information as well as the ability of its competent authority to access information and to transmit it to its counterpart. 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, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE II

1. Each of the Contracting States shall notify to the other the completion of the procedures required as far as it is concerned for the bringing into force of this Protocol. This Protocol shall enter into force on the first day of the month following the date of receipt of the later of these notifications.
2. The provisions of the Protocol shall have effect on any calendar year or accounting period beginning:
 - (a) in Botswana, on or after the first day of July of the calendar year next following the date of signature of this Protocol; and
 - (b) in France, on or after the first day of January of the calendar year next following the date of signature of this Protocol.
3. The provisions of 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.

DONE in duplicate at on this day of in the year 20..... in the English and French languages, both texts being equally authentic.

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

H. E. MR PIERRE VOILLERY
*for the Government of
the French Republic*

MADE this 25th day of September, 2017.

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