

INCOME TAX ACT
(Cap. 52:01)

**BOTSWANA – KINGDOM OF SWEDEN DOUBLE TAXATION
AVOIDANCE AGREEMENT (AMENDMENT) ORDER, 2013**
(Published on 31st May, 2013)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Amendment of Schedule to S.I. No. 120 of 1992
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 Development Planning has, on behalf of the Government, entered into a Protocol amending the Double Taxation Avoidance Agreement with the Government of the Kingdom of Sweden;

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 – Kingdom of Sweden Double Taxation Avoidance Agreement (Amendment) Order, 2013.

Citation

2. The Schedule to the Botswana – Kingdom of Sweden Double Taxation Avoidance Agreement Order, 1992 is amended as set out in the Schedule hereto.

Amendment
of Schedule to
S.I. No. 120
of 1992

3. The Protocol amending the Double Taxation Avoidance Agreement set out in the Schedule hereto between the Government of the Republic of Botswana and the Government of the Kingdom of Sweden is presented to the National Assembly for approval and shall, upon approval, take effect from the date specified in the Agreement.

Approval
and effective
date of
commencement

SCHEDULE

The Government of the Republic of Botswana and the Government of the Kingdom of Sweden, desiring to amend the Convention between the Government of the Kingdom of Sweden and the Government of the Republic of Botswana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Stockholm on 19 October 1992 (in this Protocol referred to as “the Convention”),

HAVE AGREED as follows:

ARTICLE I

Article 26 (Exchange of information) 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 political subdivisions or 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.
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 II

1. The current wording of Article 28 (Limitation of benefits) of the Convention shall become paragraph (1).
2. The following paragraphs (2) and (3) shall be added to Article 28 (Limitation of benefits) of the Convention:
“(2) Notwithstanding any other provisions of this Convention, where:
 - (a) a company that is a resident of a Contracting State derives its income primarily from other States:
 - (i) from activities such as banking, shipping, financing or insurance, or
 - (ii) from being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business primarily in other States; and
 - (b) such income would bear a significantly lower tax under the laws of that State than income from similar activities carried out within that State or from being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business in that State, as the case may be, any provisions of this Convention conferring an exemption or a reduction of tax shall not apply to the income of such company and to the dividends paid by such company.
- (3) Any provision of this Convention conferring an exemption or reduction of tax shall not apply to the income of/or to the dividends paid by, a company resident in a Contracting State that is entitled to special tax benefits in Botswana under the Income Tax Act, Part XVI, Sections 137-142, or any substantially similar law enacted in Botswana.”

ARTICLE III

1. Each of the Contracting States shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Protocol.
2. The Protocol shall enter into force on the thirtieth day after the receipt of the later of the notifications referred to in paragraph 1 and shall thereupon have effect:
 - (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the date on which the Protocol enters into force;
 - (b) in respect of other taxes on income, on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the date on which the Protocol enters into force;
 - (c) in respect of Article 26 (Exchange of information), for requests made on or after the date of entry into force of this Protocol.
3. This Protocol shall remain in force for as long as the Convention remains in force.

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

DONE at Paris this 20th day of February, 2013, in duplicate in the English language.

H.E. LAMECK NTHEKELA,
*for the Government of the
Republic of Botswana.*

H.E. MR GUNNAR LUND,
*for the Government of the
Kingdom of Sweden.*

MADE this 20th day of May, 2013.

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