



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

---

N\$3.80

WINDHOEK - 14 October 2005

No. 3514

---

### CONTENTS

	<i>Page</i>
<b>PROCLAMATION</b>	
No. 13      Announcement in terms of article 32(8) of the Namibian Constitution of an agreement entered into the Government of the Republic of Namibia and the Government of the Republic of Botswana for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital .....	1

---

## Proclamation

---

by the

**PRESIDENT OF THE REPUBLIC OF NAMIBIA**

No. 13

2005

ANNOUNCEMENT IN TERMS OF ARTICLE 32(8) OF THE NAMIBIAN  
CONSTITUTION OF AN AGREEMENT ENTERED INTO THE GOVERNMENT  
OF THE REPUBLIC OF NAMIBIA AND THE GOVERNMENT OF THE  
REPUBLIC OF BOTSWANA FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON  
INCOME AND CAPITAL

In terms of Article 32(8) of the Namibian Constitution, read with section 100(1) of the Income Tax Act, 1981 (Act No. 24 of 1981), I announce that the Government of the Republic of Namibia on 16 June 2004 entered into an agreement with 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 and capital.

The agreement, containing the arrangements made, is set out in the Schedule to this Proclamation.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek, this 27th day of September, Two Thousand and Five.

**HIFIKEPUNYE POHAMBA**

**President**

**BY ORDER OF THE PRESIDENT-IN-CABINET**

**SCHEDULE**

**CONVENTION**

**between**

**THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA**

**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 AND  
CAPITAL GAINS**

**The Government of the Republic of Namibia and the Government of the Republic of Botswana are desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains,**

have agreed as follows:

**Article 1**

**Persons Covered**

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

**Article 2**

**Taxes Covered**

(1) The existing taxes to which this Convention shall apply are:

(a) in Namibia:

- (i) the income tax;
- (ii) the non-resident shareholders' tax; and
- (iii) the petroleum income tax;

(hereinafter referred to as "Namibian tax");

- (b) in Botswana:
  - (i) the income tax including any withholding tax, prepayment or advance tax payment with respect to the aforesaid tax; and
  - (ii) the capital gains tax;(hereinafter referred to as “Botswana tax”); and
- (2) Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term ‘a mineral enterprise’ means an enterprise carrying on the business of mining.
- (3) This Convention shall apply also to any identical or substantially similar taxes, which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes referred to in paragraph (1). The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Convention without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an exchange of diplomatic notes.

### **Article 3** **General Definitions**

- (1) For the purposes of this Convention, unless the context otherwise requires:
  - (a) the term “Namibia” means the Republic of Namibia and when used in a geographical sense, includes the territorial sea as well as the exclusive economic zone and continental shelf, over which Namibia exercises sovereign rights in accordance with its internal law and subject to international law, concerning the exploration and exploitation of natural resources of the sea-bed and its subsoil and adjacent waters;
  - (b) the term “Botswana” means the Republic of Botswana;
  - (c) the terms “Contracting State” and “the other Contracting State” mean Namibia or Botswana as the context requires;
  - (d) the term “company” means any body corporate or any entity, which is treated as a body corporate for tax purposes;
  - (e) the term “competent authority” means:
    - (i) in Namibia, the Minister of Finance or the authorized representative;
    - (ii) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner of Taxes; and
  - (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (g) the term “international traffic” means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
  - (h) the term “national” means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
  - (i) the term “person” includes an individual, a company incorporated or unincorporated, a trust, an estate, a partnership and any other juridical person which is treated as an entity for tax purposes.
- (2) As regards the application of the provisions of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that State, concerning the taxes to which this Convention applies.

#### **Article 4 Resident**

- (1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature, but this term 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 reasons 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 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 no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
  - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- (3) Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

**Article 5**  
**Permanent establishment**

- (1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (2) The term “permanent establishment” includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;
  - (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of more than six months.
- (3) The term “permanent establishment” likewise encompasses:
  - (a) a building site, a construction, assembly or installation project or supervisory activity in connection with such site or activity, but only where such site, project or activity continues for a period of more than six months;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than six months in any twelve month period.
- (4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage or display 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 or display;
  - (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 for 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 subparagraphs (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), (2) and (3), where a person - other than an agent of an independent status to whom paragraph (6) applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person-
- (a) has, and habitually exercises in that State an authority to conclude contracts in the name of the enterprise; and
  - (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of 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 a person is acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he or she will not be considered an agent of an independent status within the meaning of this paragraph.
- (7) 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 laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the

working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats, aircraft or rail or road transport vehicles shall not be regarded as immovable property.

- (3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
- (4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
- (5) Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by the company or legal person, income derived by the owner from the direct use, letting or use in any other form of his or her right of enjoyment may be taxed in that State. The provisions of this paragraph shall apply notwithstanding the provisions of Articles 7 and 14.

### **Article 7**

#### **Business profits**

- (1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are 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 business 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8** **International Traffic**

- (1) Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in that State.
- (2) For the purposes of this Article, profits from the operation of ships, aircraft, rail or road transport vehicles in international traffic shall include:
  - (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic; and
  - (b) profits derived from the rental of rail or road transport vehiclesif such profits are incidental to the profits to which the provisions of paragraph (1) apply.
- (3) Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State;
- (4) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

### **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 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

### **Article 10** **Dividends**

- (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent.

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

- (3) The term “dividends” as used in this Article means income from shares, 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (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 or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on the 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 recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
- (3) Notwithstanding the provisions of paragraph (2), interest mentioned in paragraph (1) shall not be taxable in the Contracting State where the interest arises if -
  - (a) the recipient thereof is the Government of the other Contracting State or a local authority thereof or any agency wholly owned and controlled by that Government or authority;
  - (b) the interest is paid in respect of a loan granted or guaranteed by a financial institution of a public character with the objective of promoting exports and development, if the credit granted or guaranteed contains an element of subsidy.
- (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 and debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
- (5) The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- (7) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

**Article 12****Royalties**

- (1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
- (3) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematography films and films, tapes or disks for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment involving a transfer of know-how or for information concerning industrial, commercial or scientific experience.
- (4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or 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 or a fixed base in connection with which the right or property in respect of which the royalties are paid is effectively connected and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- (6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

**Article 13****Capital Gains**

- (1) 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, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in that other State.
- (2) Gains from alienation of movable property forming part of the business property

of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

- (3) Gains of an enterprise of a Contracting State from the alienation of ships, aircraft, rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles shall be taxable only in that state.
- (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.
- (5) Notwithstanding the provisions of paragraph (4), gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occurs at any time during the ten years next following the date on which the individual has ceased to be a resident of that first-mentioned State.

#### **Article 14** **Independent Personal Services**

- (1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may also be taxed in the other Contracting State if:
  - (a) the individual has a fixed base regularly available to him in the other contracting state for the purposes of performing his activities but only so much thereof as is attributable to that fixed base; or
  - (b) the individual is present in that other State for a period or periods exceeding in the aggregate 183 days within any 12 months, but only so much thereof as is attributable to services performed in that State.
- (2) The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### **Article 15** **Dependent Personal Services**

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

resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days 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 or a fixed base, which the employer has in the other Contracting State.
- (3) Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

#### **Article 16 Director's 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 Entertainers and Sportspersons**

- (1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a 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 Article 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
- (3) Income derived by a resident of a Contracting State from the activities exercised in the other Contracting State as envisaged in paragraphs (1) and (2) shall be exempt from tax in that other State if the visit to that State is supported wholly or mainly by public funds of the first mentioned State or a local authority thereof.

#### **Article 18 Pensions and Annuities**

- (1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration for past employment and annuities arising in a Contracting State and paid to a resident of the other Contracting State shall be taxed in the first-mentioned Contracting State.
- (2) Notwithstanding the provisions of paragraph (1), pensions and other similar payments made under the social security legislation of a Contracting State shall be taxable only in that State.

- (3) 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) Remuneration, other than a pension 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 remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
- (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) Any pension 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.
- (3) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

**Article 20**  
**Students and Trainees**

- (1) A student, business apprentice or trainee who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received outside that first-mentioned State for the purpose of his maintenance, education and training.
- (2) In respect of grants or scholarships not covered by paragraph (1), a student, business apprentice or trainee referred to in paragraph (1) shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the first-mentioned Contracting State.

**Article 21**  
**Technical fees**

- (1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
- (2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 15 per cent of the gross amount of such fees.

- (3) The term “technical fees” as used in this article means payments of any kind from a person who is resident in one of the Contracting States to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature performed outside that State.
- (4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- (6) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 22**

### **Other Income**

- (1) Items of income of a resident of a Contracting State wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
- (2) The provisions of paragraph (1) shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (3) Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

**Article 23**  
**Elimination of Double Taxation**

- (1) Double taxation shall be eliminated as follows:
- (a) In Namibia, where a resident of Namibia derives income or capital gains from Botswana the amount of the tax on that income or gains paid in Botswana in accordance with the provisions of this Convention may be credited against Namibian tax imposed on that resident. The amount of credit, however, shall not exceed the amount of Namibian tax on that income or gains computed in accordance with the taxation laws and regulations of Namibia.
  - (b) In Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax paid under the laws of a country outside Botswana, Namibia tax paid under the laws of Namibia and in accordance with this Convention, whether directly or by deduction, on profits or income liable to tax in Namibia shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the Namibia 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.

**Article 24**  
**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 are or may be subject. 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) 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.
- (4) 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 21 apply, interest, royalties, technical fees 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.
- (5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.



**Article 25**  
**Mutual Agreement procedure**

- (1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.
- (2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
- (3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.
- (4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**Article 26**  
**Exchange of information**

- (1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention, in particular for the prevention of fraud or evasion of such taxes, insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (2) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws 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; and

- (c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
- (3) The competent authorities should, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made, as well as exchange information regarding tax avoidance where appropriate.

#### **Article 27**

#### **Diplomatic Agents and Consular Officers**

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

#### **Article 28**

#### **Assistance in Recovery**

- (1) The Contracting States shall, to the extent permitted by the respective domestic laws, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.
- (2) Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph (1) of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of the Contracting State.
- (3) The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

#### **Article 29**

#### **Entry into force**

- (1) Each of the Contracting States shall notify to the other the completion of the procedures required by its laws for the bringing into force of this Convention. This Convention shall enter into force on the date of receipt of the later of these notifications.
- (2) The provisions of this Convention shall apply:
- (a) In Namibia,
    - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year following that in which the notice is given; and
    - (ii) in respect of other taxes, for any tax year of assessment beginning on or after the first day of March in the calendar year next following that in which the Convention enters into force.
  - (b) In Botswana, in respect of income tax and capital gains tax, on taxable income and gains derived on or after the first day of July of the year next following that of the entry into force of this Convention.

**Article 30**  
**Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, this Convention shall cease to have effect:

- (a) In Namibia,
  - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year following that in which the notice is given; and
  - (ii) in respect of other taxes, for any tax year of assessment beginning on or after the first day of March in the calendar year next following that in which the Convention enters into force.
- (b) In Botswana, in respect of income tax and capital gains tax, on taxable income and gains derived on or after the first day of July of the year next following that in which the notice of termination is given.

In witness whereof the undersigned being duly authorised thereto have signed this Convention.

Done at Gaborone, this 16th day of June, 2004 in duplicate in the English language.

**B.R. KUKURI**  
**FOR THE GOVERNMENT OF THE**  
**REPUBLIC OF NAMIBIA**

**B. GAOLATHE**  
**FOR THE GOVERNMENT OF THE**  
**REPUBLIC OF BOTSWANA**

\_\_\_\_\_