

BOTSWANA



Treaty Series No. 64 (1970)

Agreement
amending the Arrangement
between the Government of the
United Kingdom of Great Britain and Northern Ireland
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

Gaborone, 9 April 1970

[The Agreement entered into force on 26 June 1970]

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 1970

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AGREEMENT
AMENDING THE ARRANGEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND 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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Botswana,

Desiring to amend the Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income in force between Her Majesty's Government and the Government of the Bechuanaland Protectorate immediately before 30 September, 1966,⁽¹⁾ when the Bechuanaland Protectorate was established as an independent republic under the name of Botswana, and continued in force since that date between the Government of the United Kingdom and the Government of the Republic of Botswana (hereinafter referred to as "the Arrangement"),

Have agreed as follows:

ARTICLE 1

The Arrangement shall be amended—

(a) by the substitution for paragraph 2(1)(b) of the following new paragraph—

“(b) The term “Botswana” means the Republic of Botswana.”;

(b) by the substitution for the references therein to “Bechuanaland” or “Bechuanaland Protectorate”, “Bechuanaland enterprise” and “Bechuanaland tax” of references to “Botswana”, “Botswana enterprise” and “Botswana tax” respectively;

(c) by the addition at the end of paragraph 6 of the following new sub-paragraph—

“(3) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then sub-paragraph (1) shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this sub-paragraph the term “relevant date” means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question. Provided that this sub-paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this paragraph.”; and

⁽¹⁾ Schedule to S.I. 1949 No. 2198.

(d) by the substitution for sub-paragraphs (1) and (2) of paragraph 14 of the following two new sub-paragraphs—

“(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

- (a) Botswana tax payable under the laws of Botswana and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Botswana shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Botswana tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.
 - (b) Where a company which is a resident of Botswana pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Botswana tax for which credit may be allowed under (a) of this sub-paragraph) the Botswana tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.
- (2) If Botswana tax is payable, whether directly or by deduction, in respect of income derived from sources within the United Kingdom, then, subject to the provisions of the law of Botswana regarding the allowance as a credit against Botswana tax of tax payable in a territory outside Botswana (which shall not affect the general principle hereof)—
- (a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Botswana tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.
 - (b) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in Botswana which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this sub-paragraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.”

ARTICLE 2

(1) This Agreement shall enter into force when the last of all such things shall have been done in the United Kingdom and Botswana as are necessary to give the Agreement the force of law in the United Kingdom and Botswana respectively.⁽²⁾

(2) Upon the entry into force of this Agreement in accordance with paragraph (1) the new sub-paragraph (3) of paragraph 6 of the Arrangement and the new sub-paragraphs (1) and (2) of paragraph 14 thereof shall have effect immediately.

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

DONE in duplicate at Gaborone this ninth day of April 1970.

DAVID ANDERSON

J. G. HASKINS

For the Government of the United
Kingdom of Great Britain and
Northern Ireland

For the Government of the Republic
of Botswana

⁽²⁾ The Agreement entered into force on 26 June 1970.