Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988, for an Address to Her Majesty from that House praying that an Order be made.

DRAFT STATUTORY INSTRUMENTS

2006 No.

INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX

The Double Taxation Relief (Taxes on Income) (Botswana) Order 2006

Made - - - - **

At the Court at Buckingham Palace, the * day of

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 788(10) of the Income and Corporation Taxes Act 1988(**1**), and an Address has been presented to Her Majesty by that House praying that an Order be made in terms of that draft:

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 788 of that Act, and of all other relevant enabling powers, is pleased, by and with the advice of Her Privy Council, to order as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Botswana) Order 2006.

Double taxation arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order, and in the Exchange of Notes constituting an Agreement set out in Part 2 of that Schedule,

(**1**) 1988 c. 1. Section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended: the relevant amendment is that made by section 198(1) and (2) of the Finance Act 2003 (c.14).

have been made with the Government of the Republic of Botswana with a view to affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character imposed by the laws of Botswana;

(b) those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration or enforcement of the domestic laws of the United Kingdom and the laws of Botswana concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) it is expedient that those arrangements should have effect.

Clerk of the Privy Council

SCHEDULE Article 2

PART I

CONVENTION 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 AND CAPITAL GAINS

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

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) This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

(3) The existing taxes to which this Convention shall apply are in particular:

(a) in the case of the Republic of Botswana:

(i) the income tax; and

(ii) the capital gains tax;

(hereinafter referred to as "Botswana tax");

(b) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax").

(4) 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.

(5) This Convention shall also apply 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. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3

General definitions

(1) For the purposes of this Convention, unless the context otherwise requires:

(a) the term "Botswana" means the Republic of Botswana;

(b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean Botswana or the United Kingdom, as the context requires;

(d) the term "person" includes an individual, a company, a trust, an estate and any other body of persons, and does not include a partnership;

(e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(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 or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term "competent authority" means:

(i) in the case of Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of the Botswana Unified Revenue Service;

(ii) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative; and

(i) the term "national" means:

(i) in relation to Botswana, any individual possessing the nationality of Botswana and any legal person, partnership or association deriving its status as such from the laws in force in Botswana;

(ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom.

(2) As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

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, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term,

however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident only of the Contracting 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 only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both Contracting 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) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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) an installation or structure for the exploration of natural resources;

(g) a mine, an oil or gas well, a quarry or any other place of extraction of or exploration for natural resources.

(3) The term "permanent establishment" likewise encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last 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 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

(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;