

No. 45157*

**South Africa
and
Botswana**

**Convention between the Government of the Republic of South Africa 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 (with protocol).
Gaborone, 7 August 2003**

Entry into force: *20 April 2004 by notification, in accordance with article 28*

Authentic texts: *English*

Registration with the Secretariat of the United Nations: *South Africa, 1 August 2008*

**Afrique du Sud
et
Botswana**

**Convention entre le Gouvernement de la République sud-africaine et le Gouvernement de la République du Botswana tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole).
Gaborone, 7 août 2003**

Entrée en vigueur : *20 avril 2004 par notification, conformément à l'article 28*

Textes authentiques : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 1er août 2008*

* *The text reproduced below is the original text of the agreement as submitted. For ease of reference, it was sequentially paginated. The relevant Treaty Series volume will be published in due course.*

Le texte reproduit ci-dessous est le texte authentique de l'accord tel que soumis pour l'enregistrement. Pour référence, il a été présenté sous forme de la pagination consécutive. Le volume correspondant du Recueil des Traités sera disponible en temps utile.

[ENGLISH TEXT – TEXTE ANGLAIS]

CONVENTION
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
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 Republic of South Africa 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, 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 Botswana:
 - (i) the income tax including any withholding tax, or any prepayment or advance tax payment with respect to the aforesaid tax; and
 - (ii) the capital gains tax;(hereinafter referred to as "Botswana tax"); and
 - (b) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies; and
 - (iii) the withholding tax on royalties;(hereinafter referred to as "South African tax").
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. Notwithstanding any other provision of the Convention, where Botswana tax is paid or payable in accordance with a Tax Agreement under the Botswana Income Tax Act, the Convention shall not apply except to such an extent as may be provided in such Tax Agreement and mutually agreed by the competent authorities.

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the 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 that 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 "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Botswana or South Africa, as the context requires;
 - (d) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;
 - (e) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner of Taxes; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
 - (f) the term "enterprise" applies to the carrying on of any business;
 - (g) 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;
 - (h) 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;

- (i) 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; and
 - (j) the term "person" includes an individual, a company, a trust, an estate and any other body of persons that is treated as an entity for tax purposes.
2. As regards the application of the provisions of the 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 law of that State for the purposes of the taxes to which the 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 that person's 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 from sources therein.
- 2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);
 - (b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;
 - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
 - (d) if the individual 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.