

INCOME TAX ACT 1970

TAXES (BOTSWANA) ORDER 2013

*Approved by Tynwald
Coming into operation*

*19 November 2013
22 November 2013*

The Council of Ministers makes the following Order under section 104B of the Income Tax Act 1970.

1 Title

This Order is the Taxes (Botswana) Order 2013.

2 Commencement

If approved by Tynwald, this Order comes into operation on 22 November 2013.¹

3 Interpretation

In this Order “applicable arrangement” means the arrangement for the exchange of information relating to tax matters contained in an agreement between the Government of the Isle of Man and the Government of the Republic of Botswana signed in London on 14 June 2013 and set out in the Schedule.

4 Information exchange arrangement

It is declared that –

- (a) the applicable arrangement has been made with the Government of the Republic of Botswana with a view to the exchange of information necessary or foreseeably relevant for carrying out laws (whether in the Island or the Republic of Botswana) concerning any taxes to which the applicable arrangement relates; and

¹ Tynwald approval is required by section 104B(6) of the Income Tax Act 1970.

(b) the arrangement should have effect as part of the law of the Island.

5 Modification of the effect of certain provisions of the Income Tax Act 1970

(1) For the purpose of implementing or otherwise giving effect to the applicable arrangement the Income Tax Act 1970 is to be treated as having effect subject to the following modifications.

(2) In section 105C(5) (power to call for documents, etc. of taxpayer) after “pending appeal” insert “either in the Island or Botswana”.

(3) In section 105D (power to call for documents relating to taxpayer) —

(a) in subsection (1) for the words after “the Assessor” substitute “believes it to be necessary for the purpose of responding to a request made by the Government of the Republic of Botswana in accordance with the applicable arrangement”; and

(b) in subsection (6)(a) after “such form” insert “and authenticated in such manner”.

(4) In section 105E (notices under s. 105D : further provisions) —

(a) after subsection (2) insert —

“(2A) In determining a reference under subsection (2), the Commissioners shall take account of the requirements of the applicable arrangement.”; and

(b) in subsection (6)(a) for “General Revenue” substitute “General Revenue of the Island or the Revenue of Botswana”.

(5) In section 105F(5)(a) (s. 105D : auditors and tax advisers) after “such form” insert “and authenticated in such manner”.

(6) In section 105O (interpretation of ss. 105C to 105N) insert the following definitions alphabetically —

““applicable arrangement” means the arrangement for the exchange of information relating to tax matters contained in an agreement between the Government of the Isle of Man and the Government of the Republic of Botswana signed in London on 14 June 2013;

“Botswana” shall be construed in accordance with the applicable

arrangement;

“income tax” includes any tax to which the applicable arrangement relates, and “tax”, “liability to income tax” and “liability” shall be construed accordingly;

“Income Tax Acts” includes the laws of the Island or of Botswana that relate to any tax to which the applicable arrangement relates, and “this Act” shall be construed accordingly;

“taxpayer” includes a person who is or may be liable to any tax to which the applicable arrangement relates.”.

MADE 24th October 2013

W GREENHOW
Chief Secretary

EXPLANATORY NOTE
(This note is not part of the Order)

This Order is made under section 104B of the Income Tax Act 1970. It implements an arrangement negotiated between the Government of the Isle of Man and the Government of the Republic of Botswana for the exchange of information relating to tax matters.

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE ISLE OF MAN
AND
THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA
FOR
THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS

WHEREAS the Government of the Isle of Man and the Government of the Republic of Botswana wish to agree the terms and conditions governing the exchange of information relating to tax matters and thereby protect the tax base of the Parties;

WHEREAS it is acknowledged that the Government of the Isle of Man has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Republic of Botswana;

NOW, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

ARTICLE 1
SCOPE OF THE AGREEMENT

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement, recovery or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by the Parties:

(a) in the case of Botswana:

(i) Income tax including taxation of capital gains;

(ii) Value Added Tax; and

(b) in the case of the Isle of Man:

(i) the Income Tax;

(ii) the Value Added Tax.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3

DEFINITIONS

1. In this Agreement:
 - (a) "Botswana" means the Republic of Botswana;
 - (b) "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
 - (c) "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - (d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) "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 or his authorised representative; and
 - (ii) in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate;

- (f) "criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- (g) "criminal tax matters" means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- (h) "information" means any fact, statement, document or record in whatever form;
- (i) "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (j) "Parties" means:
 - (i) Botswana; and
 - (ii) the Isle of Man;
- (k) "person" includes an individual, a company or any other body or group of persons;
- (l) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (m) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if

the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- (n) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- (o) "requested Party" means the Party to this Agreement which is requested to provide or has provided information or assistance in response to a request;
- (p) "requesting Party" means the Party to this Agreement submitting a request for or having received information or assistance from the requested Party;
- (q) "tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Party, 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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 4

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use at its own discretion all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws,

in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- (b)
 - (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, and within the constraints of Article 1 any other persons in an ownership chain, including in the case of collective investment funds or schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries; and
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries,

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) the grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting

Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the requesting Party within 30 days of the receipt of the request and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the competent authority of the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

ARTICLE 5
TAX EXAMINATIONS ABROAD

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party, to the extent permitted under its domestic laws.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct

of the examination shall be made by the requested Party conducting the examination.

4. For the purposes of this Article the term "domestic laws" refers to laws or instruments governing entry into, or exit from, the territories of the Parties.

ARTICLE 6
POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose upon a requested Party any obligation to provide items subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 4, shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would

not be able to obtain under its laws or in the normal course of administrative practice.

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

ARTICLE 7
CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information shall not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement shall not be disclosed to any other jurisdiction.

ARTICLE 8

COSTS

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be extraordinary.

ARTICLE 9
MUTUAL AGREEMENT PROCEDURES

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.

3. The Parties may also agree on other forms of dispute resolution should this become necessary.

ARTICLE 10
MUTUAL TECHNICAL ASSISTANCE

If both competent authorities of the Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

ARTICLE 11

NO PREJUDICIAL OR RESTRICTIVE MEASURES

1. A Party shall not apply prejudicial or restrictive measures based on harmful tax practices to residents, nationals or citizens of the other Party so long as this Agreement is in force and effective.

2. For the purposes of this Article, “prejudicial or restrictive measures based on harmful tax practices” means measures applied by one Party to residents, nationals or citizens of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3. Without limiting the generality of paragraph 2 the term “prejudicial or restrictive measures” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

ARTICLE 12

ENTRY INTO FORCE

The Parties shall notify each other in writing, through appropriate channels, of the completion of the necessary internal procedures for the entry into force of this Agreement. This Agreement shall enter into force 30 days after receipt of the later notification. Upon the entry into force, it shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 13
TERMINATION

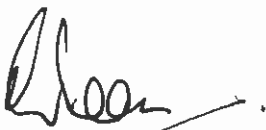
1. This Agreement shall remain in force until terminated by either Party.

2. Either Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed the Agreement.

DONE at London in duplicate this 14th day of June 2013, in the English language.



Hon. Eddie Teare MHK
**For the Government of
the Isle of Man**



H.E. Roy W. Blackbeard
**For the Government of
the Republic of Botswana**