

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

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 ON CAPITAL

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**THE GOVERNMENT OF THE KINGDOM OF BELGIUM,
THE GOVERNMENT OF THE FLEMISH COMMUNITY,
THE GOVERNMENT OF THE FRENCH COMMUNITY,
THE GOVERNMENT OF THE GERMAN-SPEAKING COMMUNITY,
THE GOVERNMENT OF THE FLEMISH REGION,
THE GOVERNMENT OF THE WALLOON REGION,
and THE GOVERNMENT OF THE BRUSSELS-CAPITAL REGION,
on the one hand,**

AND

**THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA,
on the other hand,**

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

HAVE AGREED as follows

CHAPTER I - SCOPE OF THE AGREEMENT

Article 1

Persons Covered

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

Article 2

Taxes Covered

- 1 This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied
- 2 There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation
- 3 The existing taxes to which the Agreement shall apply are in particular
 - a) in the case of Botswana
 - (i) the income tax including any withholding tax, prepayment or advance tax payment with respect to aforesaid tax, and
 - (ii) the capital gains tax,(hereinafter referred to as "Botswana tax"), and
 - b) in the case of Belgium
 - (i) the individual income tax,
 - (ii) the corporate income tax,
 - (iii) the income tax on legal entities,
 - (iv) the income tax on non-residents,including the prepayments and the surcharges on these taxes and prepayments,
(hereinafter referred to as "Belgian tax")
- 4 The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement 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 taxation laws

CHAPTER II - DEFINITIONS

Article 3

General Definitions

- 1 For the purposes of this Agreement, unless the context otherwise requires
- a)
 - (i) the term "Botswana" means the Republic of Botswana,
 - (ii) the term "Belgium" means the Kingdom of Belgium, used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction,
 - b) the terms "a Contracting State" and "the other Contracting State" mean Botswana or Belgium as the context requires,
 - c) the term "business" includes the performance of professional services and of other activities of an independent character,
 - d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes in the Contracting State of which it is a resident,
 - e) the term "competent authority" means
 - (i) in the case of Botswana, the Minister responsible for finance, represented by the Commissioner General of the Botswana Unified Revenue Service or a representative of the Commissioner General and
 - (ii) in the case of Belgium, as the case may be, the Minister of Finance of the federal Government and/or of a Region and/or of a Community, or his 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, the terms also include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State,
 - h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State,
 - i) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State, and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State,

- j) the term "pension fund" means any person established in a Contracting State
 - (i) that administers pension schemes or provides retirement benefits, or
 - (ii) that earns income on behalf of one or more persons operated to administer pension schemes or provide retirement benefits, andprovided it is either
 - A) in the case of Belgium, regulated by the Financial Services and Markets Authority (FSMA) or by the National Bank of Belgium, or registered with the Belgian Tax Administration, or
 - B) in the case of Botswana, an entity established under Botswana law and regulated by the Non Bank Financial Institutions Regulatory Authority,
 - k) the term "person" includes an individual, a company, a trust, an estate and any other body of persons which is treated as an entity for tax purposes
- 2 As regards the application of the Agreement 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 Agreement 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 Agreement, 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, 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 in that State or capital situated therein
- 2 Where by reason 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 only 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 not 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 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 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 only of the State in which its place of effective management is situated

Article 5

Permanent Establishment

- 1 For the purposes of this Agreement, 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, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, and
 - g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned
- 3 The term "permanent establishment" likewise encompasses:
- a) a building site, a construction, assembly or installation project or on-site supervisory activity in connection with such site or activity, but only where such site, project or activity continue for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned,
 - b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature are exercised and continue (for the same or connected project) within a 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, display or delivery 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, display or delivery,
 - 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 of 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 sub-paragraphs 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 and 2, 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 a person
- a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, or
 - 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 persons are acting in the ordinary course of their business
- 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

CHAPTER III - TAXATION OF INCOME

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 law 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, 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 and aircraft 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.

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 is 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 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 Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary, the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article
- 5 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
- 6 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
- 7 Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article

Article 8 **International Transport**

- 1 Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated
- 2 For the purpose of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular
 - a) profits from the leasing of ships or aircraft engaged in international traffic on charter fully equipped, manned and supplied,
 - b) profits from the leasing of ships or aircraft on a bare boat charter basis if such leasing activity is an ancillary activity for the enterprise engaged in international traffic,
 - c) profits from the leasing of containers if such leasing activity is an ancillary activity for the enterprise engaged in international traffic
- 3 If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident
- 4 The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency

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, 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 such an adjustment as it considers appropriate 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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other
- 3 The provisions of paragraph 2 shall not apply in case of fraud or wilful default by one of the concerned enterprises in the transactions leading to an adjustment of profits in accordance with paragraph 1

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
 - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a pension fund, provided that the shares or other rights in respect of which such dividends are paid are held for the purpose of an activity mentioned under Article 3, 1), j),
 - b) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 25 per cent of the capital of the company paying the dividends, or

- c) 12 per cent of the gross amount of the dividends in all other cases

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid

- 3 The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income -even paid in the form of interest- which is subjected to the same taxation treatment as income from shares by the tax legislation of the State of which the paying company 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State
- 6 No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment

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 beneficial owner of the interest is a resident of the other Contracting State, 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 shall be exempted from tax in the Contracting State in which it arises if it is
- a) paid in respect of a loan granted, guaranteed or insured or a credit extended, guaranteed or insured under a scheme organised by a Contracting State or one of its political subdivisions or local authorities in order to promote export and/or economic development,
 - b) paid to a pension fund provided that the debt-claim in respect of which such interest is paid is held for the purpose of an activity mentioned in Article 3, 1), j),

- c) paid to the other Contracting State, to one of its political subdivisions or local authorities or to a public entity
- 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 or debentures. However, the term "interest" shall not include for the purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10
- 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply
- 6 Interest shall be deemed to arise in a Contracting State when the payer is 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 Agreement
- 8 No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment

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
 - a) 8 per cent of the gross amount of the royalties paid for the use of, or the right to use, any industrial, commercial or scientific equipment involving the transfer of know-how,
 - b) 10 per cent of the gross amount of the royalties in all other cases

- 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 cinematograph films and films, tapes or disks for television or radio 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 the 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment In such case the provisions of Article 7 shall apply
- 5 Royalties shall be deemed to arise in a Contracting State when the payer is 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 Agreement
- 7 No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment

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 may be taxed in that other State
- 2 Gains from the 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State
- 3 Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated

- 4 Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights participating in profits of a company more than 50 per cent of the value of which is derived directly or indirectly from immovable property situated in the other Contracting State, may be taxed in that other State. However, this paragraph does not apply to gains derived from the alienation of shares
 - a) quoted on a recognised stock exchange of one of the States,
 - b) alienated or exchanged in the framework of a reorganisation of a company, of a merger, of a scission, or of a similar operation,
 - c) 50 per cent or more of the value of which is derived from immovable property through which the company carries out its activity,
 - d) owned by a person who owns directly less than 50 per cent of the capital of the company of which the shares have been alienated
- 5 Gains from the alienation of any property other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident

Article 14

Income from Employment

- 1 Subject to the provisions of Articles 15, 17 and 18, 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 State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable period 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 which the employer has in the other State
- 3 Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated

Article 15
Company Managers

- 1 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 or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State

The preceding provision shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those exercised by a person referred to in the said provision

- 2 Remuneration derived by a person referred to in paragraph 1 from a company which is a resident of a Contracting State in respect of the discharge of day-to-day functions of a managerial or technical, commercial or financial nature and remuneration received by a resident of a Contracting State in respect of his day-to-day activity as a partner of a company, other than a company with share capital, which is a resident of a Contracting State, shall be taxable in accordance with the provisions of Article 14, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the "employer" were references to the company

Article 16
Artistes and Sportspersons

- 1 Notwithstanding the provisions of Articles 7 and 14, 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 that person's 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 that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised
- 3 The provisions of paragraphs 1 and 2 shall not apply if the activities exercised in a Contracting State are substantially supported from public funds of the other Contracting State or a political subdivision or a local authority thereof. In such case, income derived from such activities shall be taxable only in that other Contracting State

Article 17
Pensions

- 1 Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration and annuities arising in a Contracting State and paid to a resident of the other Contracting State may 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
- 4 Pensions and other similar remuneration arise in a Contracting State to the extent that the employment, in consideration of which pensions and other similar remuneration are paid, was exercised in that Contracting State and to the extent that the contributions to a pension scheme have given rise in that State to tax relief in determining the tax on the salaries, wages and other similar remuneration derived in respect of the employment or on the profits of an enterprise which may be taxed in that State

Article 18 Government Service

- 1 a) Salaries, wages and other similar remuneration, other than a pension dealt with in paragraph 2, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State
- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that 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 a) Any pension or other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State
- b) However, such pension or other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State
- 3 The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof

Article 19 Students

- 1 A student, apprentice or business 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 from 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 or business apprentice 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 20 **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 law 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 7.5 per cent of the gross amount of such fees
- 3 The term "technical fees" as used in this Article means payments of any kind 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 other than services which under paragraph 3 of Article 5 are considered as a permanent establishment
- 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, and the technical fees are effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply
- 5 Notwithstanding the provisions of paragraph 2, the beneficial owner of the technical fees may choose to be taxed as if the activities giving rise to the technical fees were exercised through a permanent establishment situated in the Contracting State where such technical fees arise. In such a case, the provisions of Article 7 shall apply
- 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 law of each Contracting State, due regard being had to the other provisions of this Agreement

Article 21 **Other Income**

- 1 Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 the Agreement and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV - TAXATION OF CAPITAL

Article 22 Capital

- 1 Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
- 2 Capital represented by 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 may be taxed in that other State.
- 3 Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- 4 All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V - METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23 Elimination of Double Taxation

- 1 In the case of double taxation, Botswana shall eliminate this double taxation as follows:

In Botswana, subject to the provisions of the law of Botswana regarding the allowance as a credit against Botswana tax of tax payable under the laws of a country outside Botswana, Belgian tax payable under the laws of Belgium and in accordance with this Agreement, whether directly or by deduction, on profits, income or capital liable to tax in Belgium shall be allowed as a credit against any Botswana tax payable in respect of the same profits, income or capital by reference to which the Belgian tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income or capital in accordance with the laws of Botswana.

2 In the case of double taxation, Belgium shall eliminate this double taxation as follows:

- a) Where a resident of Belgium derives income, not being dividends, interest or royalties, or owns elements of capital which are taxed in Botswana in accordance with the provisions of this Agreement, Belgium shall exempt such income or such elements of capital from tax but if such resident is an individual, Belgium shall only exempt such income from tax to the extent that such income is effectively taxed in Botswana.
- b) Notwithstanding the provisions of subparagraph a) and any other provision of the Agreement, Belgium shall, for the determination of the additional taxes established by Belgian municipalities and conurbations, take into account the earned income (*revenus professionnels – beroepsinkomsten*) that is exempted from tax in Belgium in accordance with subparagraph a). These additional taxes shall be calculated on the tax which would be payable in Belgium if the earned income in question had been derived from Belgian sources.

Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Belgium is exempted from tax in Belgium, Belgium may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, apply the rate of tax which would have been applicable if such income or elements of capital had not been exempted.

- c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of Botswana shall be exempted from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.
- d) Where a company which is a resident of Belgium derives from a company which is a resident of Botswana dividends which are not exempted in accordance with subparagraph c), such dividends shall nevertheless be exempted from the corporate income tax in Belgium if the company which is a resident of Botswana is effectively engaged in the active conduct of a business in Botswana. In such case, such dividends shall be exempted under the conditions and within the limits provided for in Belgian law except those related to the fiscal regime applicable to the company which is a resident of Botswana or to the income out of which the dividends are paid. This provision shall only apply to dividends paid out of income generated by the active conduct of a business.
- e) Where a company which is a resident of Belgium derives from a company which is a resident of Botswana dividends which are included in its aggregate income for Belgian tax purposes and which are not exempted from the corporate income tax according to subparagraphs c) or d), Belgium shall deduct from the Belgian tax relating to these dividends, the Botswana tax levied on these dividends in accordance with Article 10 and the Botswana tax levied on the profits out of which these dividends are paid. This deduction shall not exceed that part of the Belgian tax which is proportionally relating to these dividends.

- f) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, the Botswana tax levied on that income shall be allowed as a credit against Belgian tax relating to such income
- g) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Botswana have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in subparagraph a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in Botswana by reason of compensation for the said losses

CHAPTER VI - SPECIAL PROVISIONS

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, in particular with respect to residence, are or may be subjected. 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 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 20, 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State
- 4 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.
- 5 Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are granted to individuals so resident

- 6 The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description

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 Agreement, he may, irrespective of the remedies provided by the domestic law 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 the Agreement
- 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 the Agreement. 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 the Agreement
- 4 The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Agreement and particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other State from the exemptions or reductions of tax provided for in the Agreement
- 5 The competent authorities of the Contracting States shall communicate directly with each other for the application of the Agreement
- 6 Where,
 - a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
 - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States

Article 26
Exchange of Information

- 1 The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
- 2 Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes, when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
- 3 In no case shall the provisions of paragraphs 1 and 2 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,
 - 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*).
- 4 If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
- 5 In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
- 6 The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange of information should be made.

Article 27
Assistance in the Collection of Taxes

- 1 The Contracting States shall lend assistance to each other in order to recover taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, 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 paragraphs 1 and 2 of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a 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 28
Members of Diplomatic Missions and Consular Posts

- 1 Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements
- 2 For the purposes of the Agreement, persons who are members of diplomatic missions or consular posts of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and on capital as are residents of that State
- 3 The Agreement shall not apply to international organisations, to organs or officials thereof and to persons who are members of diplomatic missions or consular posts of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or on capital

Article 29
Miscellaneous

Notwithstanding the other provisions of this Agreement, the benefits of the Agreement shall not apply if income is paid or derived in connection with an artificial arrangement

CHAPTER VII - FINAL PROVISIONS

Article 30 Entry into Force

- 1 Each Contracting State shall notify the other Contracting State of the completion of the procedures required by its laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date on which the later of these notifications is received.
- 2 The provisions of the Agreement shall have effect
 - a) in Botswana
 - (i) with respect to income tax and capital gains tax, on taxable income or gains derived on or after the first day of July of the year next following the year in which the Agreement entered into force,
 - (ii) with respect to other taxes, on taxes due in respect of taxable events taking place on or after the first day of July of the year next following the year in which the Agreement entered into force,
 - b) in Belgium
 - (i) with respect to taxes due at source, on income credited or payable on or after January 1 of the year next following the year in which the Agreement entered into force,
 - (ii) with respect to other income taxes, on income of taxable periods beginning on or after January 1 of the year next following the year in which the Agreement entered into force,
 - (iii) with respect to other taxes, on taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Agreement entered into force

Article 31 Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, written notice of termination not later than the 30th June of any calendar year from the fifth year following that in which the Agreement entered into force. In the event of termination before July 1 of such year, the Agreement shall cease to have effect.

- a) in Botswana
 - (i) with respect to income tax and capital gains tax, on taxable income or gains derived on or after the first day of July of the year next following the year in which the notice of termination is given,
 - (ii) with respect to other taxes, on taxes due in respect of taxable events taking place on or after the first day of July of the year next following the year in which the notice of termination is given,

b) in Belgium

- (i) with respect to taxes due at source, on income credited or payable on or after January 1 of the year next following the year in which the notice of termination is given,
- (ii) with respect to other income taxes, on income of taxable periods beginning on or after January 1 of the year next following the year in which the notice of termination is given,
- (iii) with respect to other taxes, on taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the notice of termination is given

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement

DONE in duplicate at *Pretoria* .. , this *30th* day of *November* . 2017, in the English language

**FOR THE GOVERNMENT
OF THE KINGDOM OF BELGIUM:**

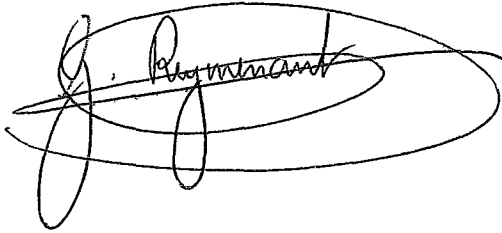


**FOR THE GOVERNMENT
OF THE REPUBLIC OF BOTSWANA:**

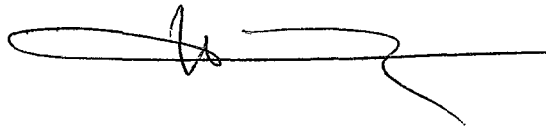
ZENENE SIWOMBE



**FOR THE GOVERNMENT
OF THE FLEMISH COMMUNITY:**

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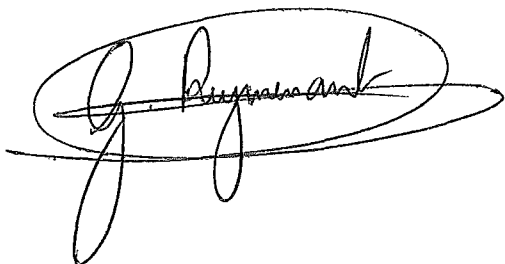
**FOR THE GOVERNMENT
OF THE FRENCH COMMUNITY:**

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**FOR THE GOVERNMENT
OF THE GERMAN-SPEAKING
COMMUNITY:**

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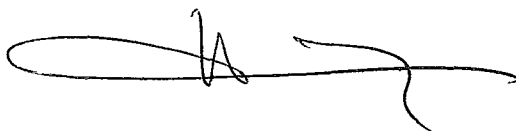
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OF THE FLEMISH REGION:**

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**FOR THE GOVERNMENT
OF THE WALLOON REGION:**

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**FOR THE GOVERNMENT
OF THE BRUSSELS-CAPITAL REGION:**

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PROTOCOL

At the moment of signing the Agreement between the Government of the Kingdom of Belgium 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 on capital, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement

1. Ad Article 3, paragraph 2:

In the interpretation of the provisions of the Agreement which are identical or in substance similar to the provisions of the OECD Model Tax Convention, the tax administrations of the Contracting States shall follow the general principles of the commentary of the Model Convention provided the Contracting States did not include in that commentary any observations expressing a disagreement with those principles and to the extent the Contracting States do not agree on a divergent interpretation in the framework of paragraph 3 of Article 25

2. Ad Article 14, paragraphs 1 and 2:

It is understood that an employment is exercised in a Contracting State when the activity in respect of which the salaries, wages and other similar remuneration are paid, is effectively carried on in that State. The activity is effectively carried on in that State where the employee is physically present in that State for carrying on the activity, irrespective of the residence of the payer, the place in which the contract of employment was made, the residence of the employer, the place or time of payment, or the place where the results of the work are exploited. If an activity is effectively carried on in a Contracting State, only that part of the remuneration that is attributable to such activity may be taxed in that State

3. Ad Article 23, sub-paragraph 2, a):

For the application of sub-paragraph 2, a) of Article 23

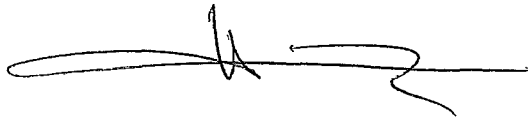
- (i) an item of income is taxed in Botswana where such item of income is subjected in Botswana to the tax regime that is normally applicable to such item of income according to Botswana tax laws

- (ii) an item of income is effectively taxed in Botswana where such item of income is subjected to tax in Botswana and does not benefit as such from an exemption from tax therein


IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol

DONE in duplicate at *Pretoria* , this *30 November* 2017, in the English language

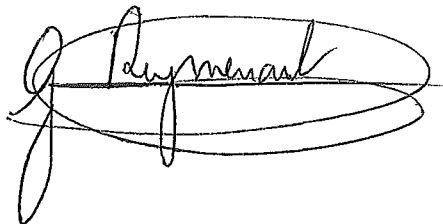
**FOR THE GOVERNMENT
OF THE KINGDOM OF BELGIUM:**



**FOR THE GOVERNMENT
OF THE REPUBLIC OF BOTSWANA:**

ZENENE SINDIMBE


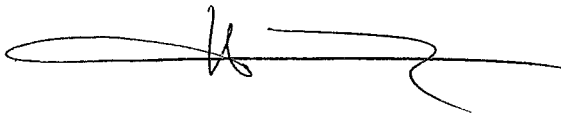
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OF THE FLEMISH COMMUNITY:**



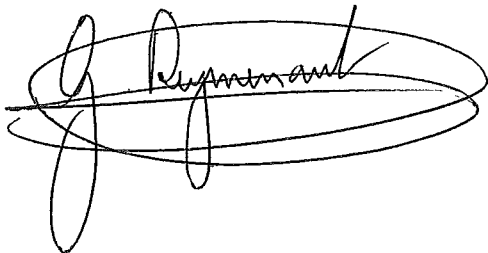
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OF THE FRENCH COMMUNITY:**

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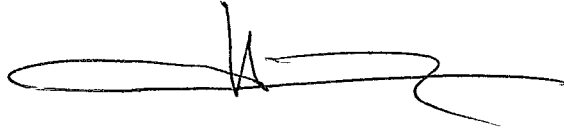
**FOR THE GOVERNMENT
OF THE GERMAN-SPEAKING
COMMUNITY:**

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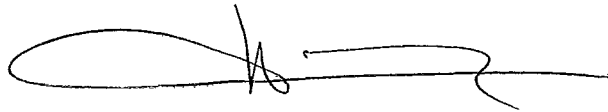
**FOR THE GOVERNMENT
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OF THE WALLOON REGION:**

A handwritten signature in black ink, consisting of a large loop on the left, a vertical stroke, and a horizontal line extending to the right.

**FOR THE GOVERNMENT
OF THE BRUSSELS-CAPITAL REGION:**

A handwritten signature in black ink, consisting of a large loop on the left, a vertical stroke, and a horizontal line extending to the right.