MEMORANDUM TO PARLIAMENT

ON THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF GHANA

AND

THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS

MINISTER OF FINANCE

DATE: 29th MARCH, 2018

EXECUTIVE SUMMARY

1. PARLIAMENT DECISION REQUESTED

Honorable Members are hereby invited to consider and ratify, the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital Gains, between the Government of the Republic of Ghana and the Government of the Republic of Mauritius.

2. BACKGROUND

Ghana as part of its diplomatic and international economic relations has signed nine Double Taxation Agreements (DTAs) which are in force with the following countries;

a. Belgium
b. Denmark
c. France
d. Germany
e. Italy
f. Netherlands
g. United Kingdom
h. South Africa
i. Switzerland

Double taxation arises where the same income or capital or person is taxed in both the Source and Residence States. Juridical double taxation occurs where a person is taxed on worldwide income in more than one country on the basis that the person is regarded as a resident for tax purposes in each of them. Economic double taxation occurs where the same income or capital is taxed by the two countries in the hands of different persons. DTAs are entered into in order to eliminate such situations where income from one of the treaty countries will be taxed twice. The threat of being taxed twice discourages investment since an investor stands to be taxed both in the source country and in the Resident country. Double taxation therefore leads to an increase in cost of investment.

The negotiations with the republic of Mauritius have been concluded and signed. Ghana as a dualist State would have to ratify the signed DTA by Parliament before the agreement has the force of law.

3. JUSTIFICATION FOR GOVERNMENT ACTION

The Convention, like any other double taxation agreement, is desirable for the following reasons:

a. To facilitate outbound investment by resident by:
   - removing or reducing double taxation on investment in the other jurisdiction
   - reducing excessive source country taxation
   - in the case of low tax countries, creating a competitive advantage for its residents by reducing or removing source taxation
   - reducing or removing tax discrimination on investments in the other country

b. To facilitate and encourage inbound investment and inbound transfers of skills and technology by residents of the other country by:
   - removing or reducing double taxation on the inbound investment or transfers
   - reducing excessive source taxation
   - developing a closer relationship between the tax authorities and business for instance through the mutual agreement procedure

c. To reduce cross border tax avoidance and evasion through:
   - exchange of information
   - mutual assistance in collection of taxes

d. For political reasons including;
   - sending a message of willingness to adopt international tax norms
   - fostering diplomatic or other relations with the other jurisdictions
   - strengthening regional diplomatic, trade and economic ties
   - complying with international obligations

4. SUMMARY OF THE PROVISIONS OF THE CONVENTION

The Convention applies to persons who are residents of one or both of the contracting States.

Articles 1 and 2 cover the scope of the Treaty, specifying the persons to whom the tax treaty applies. It also identifies the taxes to which the treaty applies.

Articles 3 to 5 cover Definitions which include general definitions. Article 3 includes definition for a number of terms used in the treaty. The meaning given to the term in this Article applies for all purposes of the treaty unless otherwise stated in the Convention. Article 4 sets out the criteria for determining who a resident is purposes of the Convention and Article 5 describes what constitutes a Permanent Establishment. This concept determines when a country may tax business profits for non-resident enterprise

Articles 6 to 23 cover Taxation of Income. These includes provisions on income from immovable property, business profits, shipping and air transport, associated enterprises, dividends, interest, royalties, and service fees amongst others.

Article 24 relates to provisions on the elimination of double taxation. With the credit method being used by Ghana for addressing double taxation, Ghana is obliged to reduce its normal tax claims on its residents by the amount of tax that those residents have already paid to the source State in this case Mauritius on income or profits that may be taxed in that State in accordance with the treaty.

Article 25 relates to provisions on non-discrimination, noting that tax discrimination can be a significant barrier to cross-border investment and activities where different tax treatment puts foreign investors at a competitive disadvantage to locals conducting similar activities. This Article seeks to

address common forms of tax discrimination, by imposing an obligation on both Contracting States to remove that discrimination in certain situations where it arises.

Article 26 is on the mutual agreement procedure. This article provides a mechanism for which taxpayers and tax administrations can resolve issues and uncertainties relating to the application of Tax Conventions or interpretation of the Tax Conventions and the elimination of double taxation.

Article 27 relates to provisions on exchange of information. The Convention authorizes and requires tax administrations to obtain and exchange relevant tax information, including information held by financial institutions. This is a very powerful tool in preventing fiscal evasion by taxpayers and, from the perspective of many developing countries, also important in curtailing the capital flight that is often accomplished through tax evasion and avoidance.

Article 28 relates to provisions on diplomatic agents and consular officers noting that this Agreement shall not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law.

Article 29 relates to provisions on assistance in collection. This article requires the tax administration of each country to provide assistance to the other in collecting taxes owed in that other country as if the debt were its own tax claim. These provisions are a useful adjunct to exchange of information in that they ensure that taxpayers cannot evade taxes in one country by moving their residence or assets to a treaty partner country

Articles 30 and 31 relates to final provisions which include entry into force and termination. Once the treaty has entered into force, the provisions of the treaty will have effect from the date set out in the treaty. Noting that when the treaty is ratified by Parliament this year it will enter into force in the year 2018

With respect to the provisions on Passive income. The following favorable rates were secured;

Article 10, deals with the distributions of corporate profits, in the form of dividends paid from a company in Ghana to its shareholders in Mauritius. The dividends may be taxed in both the country of residence of the shareholder (Mauritius) and the country of which the paying company is a resident (Ghana). Taxation in the source State, however, is limited if the beneficial owner of the dividends is a resident of the other State. The dividend in this case shall **not exceed 7 per cent** of the gross amount of the dividends.

Article 11 allocates taxing rights over interest arising in one Contracting State (Ghana) and derived by a resident of the other Contracting State (Mauritius). To prevent excessive taxation and to achieve a sharing of revenue from such income between the two countries, source taxation is limited to a percentage of the gross amount of the interest. In this instance the tax rate for such interest shall not **exceed 7 per cent** of the gross amount of the interest.

Article 12 is the article on royalties. This is to prevent excessive taxation and to achieve a sharing of revenue from such income between the two countries, however, source taxation is limited to a

percentage of the gross amount of the royalties. The tax charged under the treaty shall not **exceed 8 per cent** of the gross amount of the royalties.

Article 13 is the article on Technical Services fees. Under this Article, a Contracting State is entitled to tax fees for technical services if the fees are paid by a resident of that State or by a non-resident with a permanent establishment or fixed base in that State and the fees are borne by the permanent establishment or fixed base. It is not necessary for the technical services to be performed in that State. Fees for technical services are defined to mean payments for services of a managerial, technical or consultancy nature. This may also be taxed in the Contracting State in which they arise, and the tax charged shall not exceed 10 per cent of the gross amount of the Technical Services fees.

5. CABINET DECISION

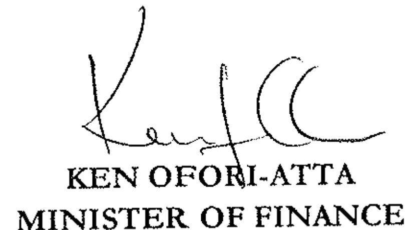
At Cabinet's Twelfth Meeting held at the Flagstaff house on 20th July, 2017, approval was given for the Convention to be submitted to Parliament for ratification.

6. RECOMMENDATIONS

On the basis of the above, the House is hereby invited to consider and ratify the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains between the Republic of Ghana and the Republic of Mauritius.

Please find attached copies of the convention.

Respectfully submitted.



KEN OFORI-ATTA
MINISTER OF FINANCE

DATED: 29th MARCH, 2018