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IN THE SECOND SESSION OF THE SEVENTH PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

Report of the

FINANCE COMMITTEE

on the

AGREEMENT 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

JUNE, 2018

1.0 INTRODUCTION

The **Agreement 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 dated 11th March 2017** was laid in Parliament on 15th May, 2018 by the Honourable Minister responsible for Monitoring and Evaluation, Dr. Anthony Akoto Osei on behalf of the Minister responsible for Finance.

The Agreement was subsequently *referred* to the Finance Committee for consideration and report in accordance with articles 75(2) of the 1992 Constitution and Order 169 of the Standing Orders of the Parliament of Ghana.

The Chief Director and other officials from the Ministry of Finance and the Ghana Revenue Authority attended upon and assisted the Committee in its deliberations on the Agreement.

The Committee expresses its gratitude to the Chief Director and the officials from the Ministry of Finance and Ghana Revenue Authority (GRA) for attending upon the Committee.

2.0 REFERENCES

The Committee referred to the following documents *inter alia* during its deliberations on the Agreement:

a. The 1992 Constitution of Ghana.

b. The Standing Orders of the Parliament of Ghana.

c. Income Tax Act, 2015 (Act 896)

d. Revenue Administration Act, 2016 (Act 915)

3.0 BACKGROUND

The Government of the Republic of Ghana and the Government of the Republic of Mauritius in their desire to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, have entered into the present Agreement.

The Agreement would come into force upon ratification by Parliament in accordance with the 1992 Constitution of the Republic of Ghana.

4.0 PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to avoid the double payment of taxation on the same income or capital gains in Ghana and in Mauritius, as well as to prevent fiscal evasion.

5.0 CONTENT OF THE AGREEMENT

The Agreement contains 31 articles.

Article 1 provides that the Agreement covers persons who are residents in one or both of the Contracting States.

Article 2 provides for the taxes covered under the Agreement. Generally, the Agreement applies to taxes on income and capital gains imposed on behalf of a Contracting State or its political subdivisions or local authorities, irrespective of the manner in which they are levied. In particular, the Agreement applies to "the income tax" in Ghana and the income tax in Mauritius as well as other taxes of similar character.

The terms used in the Agreement are defined in article 3.

Article 4 clarifies who a "resident" is for the purpose of the Agreement. The term "resident of a Contracting State" is defined as "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".

The article further makes provision for determining the status of a person who by virtue of the definition above, is a resident of both Contracting States.

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Article 5 is on "permanent establishment". It means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term includes

a. A place of management
b. A branch
c. An office
d. A factory
e. A workshop
f. A warehouse, in relation to a person providing storage facilities for others
g. A mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
h. An installation or structure used for the exploration of natural resources
i. A building site or construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts more than 6 months within any 12 month period
j. The furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or connected project for a period or periods aggregating to more than 6 months within any 12 month period.

Under article 6, 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.

Article 7 provides that 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.

Article 8 determines how profits from shipping and air transport are to be taxed.

Article 9 distributes the taxing rights in respect of associated enterprises.

Per article 10, dividends paid by a company which is a resident of Contracting State to a resident of the other Contracting State may be taxed in that other State. 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 the State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax

so charged shall not exceed 7 percent of the gross amount of the dividends.

Article 11 apportions taxing rights with respect to interest arising in a Contracting State and paid to a resident of the other Contracting State.

Per Article 12, Royalties are to be taxed at a rate not exceeding 8 percent of the gross amount of the royalties where the royalties arise in one Contracting State and the beneficial owner of the royalty is a resident of the other Contracting State.

Article 13 is on technical services fees. These fees arising in Contracting State and paid to a resident of the other Contracting State may be taxed in that other state. But where such fees are taxed in a Contracting State where they arise, the tax shall not exceed 10 percent of the gross amount of the fees if the beneficial owner of the fees is a resident of the other Contracting State.

Article 14 makes provision for the taxing of capital gains derived by a resident of a Contracting State from the alienation of immovable and movable property.

Article 15 provides that 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 in which case it may be taxed in that other state.

Article 16 stipulates that an income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character is generally to be taxable only in that Contracting State unless the service provider has a fixed base in the other Contracting State or that his stay in the other Contracting State amounts to 183 days in any 12 month period in a fiscal year. In any case, such rate of tax shall not exceed ten percent (10%).

Article 17 permits directors' fees derived by a resident of a Contracting State for being a member of the board of directors of a company which is resident of the other Contracting State to be taxed in that other Contracting State.

By article 18, income derived by entertainers and sportsmen who are resident in one Contracting State from their activities in the other Contracting State may be taxed in the other Contracting State.

Article 19 makes pensions and other similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, to be taxable only in that other State, except where such pensions are as part of the Social Security system of a Contracting State, in which case the pension will be taxable only in the paying State.

Article 20 provides for the taxing of salaries, wages and other similar remuneration, other than pension, paid by a Contracting State or a political subdivision thereof to an individual in respect of services rendered to that State.

Article 21 makes the remuneration of visiting professors and researchers from one Contracting State to the other State to be exempt from tax where the period does not exceed two years if the remuneration is derived by him from outside the State visited.

Article 22 states that a student or business apprentice 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 purposes of his maintenance, education or training.

Article 23 deals with other income not otherwise dealt with in the preceding articles.

Article 24 makes provision for the elimination of double taxation.

Article 25 prohibits discrimination against the nationals of a Contracting State relative to the nationals of the other State in the same circumstances.

Article 26 provides for the procedures by which a person can present his case for redress where the person considers that the actions of one or both Contracting States will result in him being taxed in a manner contrary to the Agreement.

Article 27 empowers the competent authorities of the Contracting States to exchange information that is foreseeably relevant for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement.

Article 28 excludes the fiscal privileges of members of diplomatic missions or consular posts from the application of the Agreement.

Article 29 requires each Contracting State to lend assistance to the other in the collection of 'revenue claims'.

Articles 30 and 31 cover entry into force and termination respectively.

6.0 OBSERVATIONS

6.1 Permanent Establishment

The Committee observed that the an entity from a Contracting State in the other Contracting State shall be deemed to be a permanent establishment if that entity lasts for more than six (6) months within any twelve (12) months period.

6.2 Dividends

The Committee further observed that the Dividend Tax rate applicable under the Agreement shall not exceed seven percent (7%) of the gross amount of the dividend. The Committee noted that presently, the domestic Dividend Tax rate in Ghana is eight percent (8%) and therefore the potential loss of revenue under this tax would be one percent (1%).

6.3 Royalties

The Committee noted that under the Agreement, tax on Royalties arising in a Contracting State but whose beneficial owner is a resident of the other Contracting State shall not exceed eight percent (8%) of the gross amount of the Royalties. The Committee finds this to be a huge incentive as the present domestic rate in Ghana was said to be fifteen percent (15%) for non-residents.

6.4 Interest Earned

The tax on interest earned applicable under the Agreement is stipulated not to exceed seven percent (7%) of the gross amount of the interest. However, an interest is to be exempt from tax if the recipient is the beneficial owner and the payer or recipient of the interest is the Government of Contracting State itself, a political subdivision thereof or a public body.

The Committee was informed that at the time of negotiating this Agreement, the domestic tax rate in Ghana was 10%. However, it has since come down to 8% presently and therefore the potential loss would be 1%, other things being equal.

6.5 Mauritius vrs India Treaty Challenges

Some Members expressed concern about the Agreement with Mauritius, a country they believed were having challenges with their Double Taxation Agreement with India.

To this it was explained to the Committee that due to the significantly high ethnic Indian population in Mauritius, India previously granted unusually high favorable terms to Mauritius. These highly favourable terms were said to have been unduly taken advantage by persons who wanted to invest in India who conveniently did so through Mauritius in order to take advantage of the benefits of the DTA between the two countries.

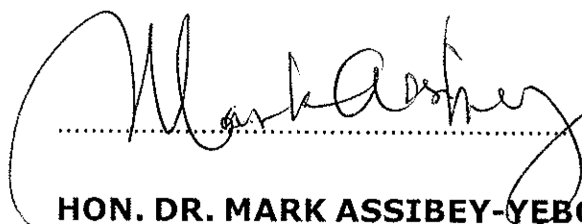
The Committee was informed that India and Mauritius have successfully renegotiated their Tax Treaty and therefore there is no problem between the two nations.

7.0 CONCLUSION

The Committee, having carefully examined the Agreement, finds that its passage is an important step towards an enhanced cooperation between Ghana and Mauritius for preventing fiscal evasion and for the avoidance of double taxation.

In accordance with Order 161(1) of the Standing Orders of the House, the Committee recommends to the House to adopt this report and *approve by resolution*, the **Agreement 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 dated 11th March 2017** in accordance with Article 75(2)(b) of the 1992 Constitution and the Standing Orders of the House.

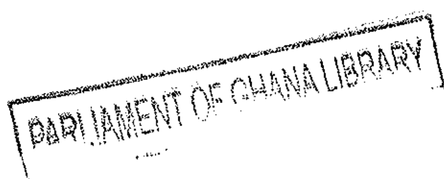
Respectfully Submitted.



HON. DR. MARK ASSIBEY-YEBOAH
(CHAIRMAN, FINANCE COMMITTEE)

EVELYN BREFO-BOATENG (MS.)
(CLERK, FINANCE COMMITTEE)

11TH JUNE, 2018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