

AVOIDANCE OF DOUBLE TAXATION AGREEMENTS (DTA) BETWEEN NIGERIA & OTHER COUNTRIES

PUBLISHED DTA

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INCOME TAX TREATY

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**NIGERIA - BELGIUM DTA
INCOME TAX TREATY**

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE KINGDOM OF BELGIUM
AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND CAPITAL GAINS**

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. The taxes to which this Agreement shall apply are:

(a) in Nigeria:

- (i) the personal income tax;
- (ii) the companies income tax;
- (iii) the petroleum profits tax; and
- (iv) the capital gains tax

(hereinafter referred to as "Nigerian tax");

(b) in Belgium:

- (i) the individual income tax (impôt des personnes physiques - personenbelasting);
- (ii) the corporate income tax (impôt des sociétés - vennootschapsbelasting);
- (iii) the income tax on legal entities (impôt des personnes morales - rechtspersonenbelasting);
- (iv) the income tax on non-residents (impôt des non-résidents - belasting der niet-verblijfhouders);
- (v) the special levy assimilated to the individual income tax (cotisation spéciale assimilée à l'impôt des personnes physiques - met de personenbelasting gelijkgestelde bijzondere heffing),

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax (hereinafter referred to as "Belgian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this 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 which have been made in their respective taxation laws.

3. This Agreement shall not apply, in the case of Belgium, to the corporate income tax to the extent that such tax is payable, in accordance with Belgian law, by a company which is a resident of Belgium in the event of the repurchase by that company of its own shares or in the event of the distribution of its assets.

Article 3 **General Definitions**

1. In this Agreement, unless the context otherwise requires:

(a) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the continental shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the seabed and subsoil and their natural resources may be exercised;

(b) the term "Belgium" means the Kingdom of Belgium; when used in a geographical sense, it means the national territory and any area beyond the territorial sea of Belgium within which under Belgian law and in accordance with international law Belgium exercises sovereign rights or its jurisdiction;

(c) the term "national" means":

(i) in relation to Nigeria, any citizen of Nigeria and any legal person, partnership, association or other entity deriving its status as such from the law in force in Nigeria;

(ii) in relation to Belgium, any individual possessing the Belgian nationality and any legal person, partnership or association deriving its status as such from the laws in force in Belgium;

(d) the terms "a Contracting State" and "the other Contracting State" mean Nigeria or Belgium as the context requires;

(e) the term "person" means an individual, a company or any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the respective laws of each Contracting State;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means:

(i) in the case of Nigeria, the Minister of Finance or his authorised representative;

(ii) in the case of Belgium, the Minister of Finance or his authorised representative.

2. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

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 incorporation or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident 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 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 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 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 of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities shall endeavour to resolve the case by mutual agreement, due regard being had to its place of effective management or incorporation or to any other relevant criterion.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than three months;
- (h) the provision of supervisory activities for more than three months on a building site or construction or assembly project;
- (i) the installation, or the provision of supervisory activities in connection with such installation, incidental to the sale of machinery or equipment where the charge payable for such installation exceeds 10% of the sale price of the machinery or equipment free-on-board.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed 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.

4. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained solely for any of the activities mentioned in paragraph 3 of this Article.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. A person (other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply) who acts in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts or carries on any business activities on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 of this Article; or
- (b) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which have a controlling interest in it.

Article 6

Income From Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

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, live-stock and equipment used in agriculture and forestry, rights to which the provisions of the 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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:

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business 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 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 by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

For the purpose of this paragraph, interest payable to a banking enterprise by its permanent establishment or vice versa shall be allowed as a deduction to the extent that it represents a reimbursement of actual expenses.

4. 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. Provided that where that permanent establishment is also used as a sales outlet for the

goods or merchandise so purchased, the profits on such sales may be attributed to that permanent establishment.

5. 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

Shipping and Air Transport

1. A resident of a Contracting State shall be exempt from tax in the other Contracting State in respect of profits or gains derived from the operation of ships or aircraft in international traffic.

2. However, no exemption shall be granted if such operation in international traffic is carried on by a resident of only one of the Contracting States. In such a case, the tax charged shall not exceed 1% of the earnings of the resident derived from the other Contracting State.

For the purpose of this paragraph, the term "earnings" means income from freight, mails and sale of tickets and other such income less refunds and payments of wages and salaries of ground staff.

3. Notwithstanding the provisions of paragraph 2 of this Article, the provisions of paragraph 1 of this Article shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency in which residents of both Contracting States take part.

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 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.

Article 10 **Dividends**

1. Dividends derived from a company which is a resident of a Contracting State by 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) 12.5% of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividends;
- (b) 15% 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.

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

3. The provisions of paragraphs 1 and 2 of this Article shall not apply where the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State a permanent establishment or performs in that other State independent personal services from a fixed base situated therein and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. 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 to a resident of the first-mentioned State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State nor subject the

company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

5.The provisions of this Article shall not apply if the right giving rise to the dividends was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

6.The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident, and also any other item (other than interest relieved from tax under the provisions of Article 11 of this Agreement) which, under the law of the Contracting State of which the company paying the dividends is a resident, is treated as a dividend or distribution of a company. In the case of Belgium the term also means income which is taxable under the head of income on capital invested by the members of a company other than a company with share capital, which is a resident of Belgium.

Article 11

Interest

1.Interest derived from a Contracting State by 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 12.5% of the gross amount of the interest.

3.The provisions of paragraphs 1 and 2 of this Article 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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4.Interest shall be deemed to arise in a Contracting State where the payer is that State itself, a political subdivision, a local authority or 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 or a fixed base in

connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment of fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. Where owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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.

6. The provisions of this Article shall not apply if the right or property giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

7. 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" does not include for the purpose of this Article income dealt with in paragraph 6 of Article 10.

Article 12

Royalties

1. Royalties derived from a Contracting State by 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 from which they are derived and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 12.5% of the gross amount of the royalties.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Royalties shall be deemed to be derived in a Contracting State where the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where,

however, the person paying the royalties, whether he is resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5. Where, owing to 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 that case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

7. In this Article the term "royalties" means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes used for radio and television broadcasting, any patent, trade mark, design, model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

Article 13

Capital Gains

1. Gains derived in a Contracting State by a resident of the other Contracting State from the sale or alienation of movable and immovable property including shares in companies may be taxed in each of the Contracting States in accordance with the laws of the respective States.

2. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft in international traffic, shall be taxable only in that State.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the

purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2.The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1.Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 of this Article, 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 the year of assessment or in the taxable period, as the case may be; 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 or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16

Directors' Fees

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 of a company which is a resident of the other Contracting State may be taxed in that other State.

2. However, any other remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15.

Article 17

Artists And Athletes

1. Notwithstanding the provisions of Articles 14 and 15, 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 an athlete, from his 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions And Annuities

1. Pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in the State from which such income is derived.

2. 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.

Article 19

Government Service

1.(a) Remuneration, other than a pension, 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 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. The provisions of Articles 15 and 16 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, or a political sub-division or a local authority thereof for the purpose of profits.

Article 20

Students And Trainees

1. A student or business apprentice who, immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is temporarily present in the first-mentioned Contracting State primarily for the purpose of his education or training shall be exempt from tax in that first-mentioned Contracting State on:

- (a) payments made to him by persons residing outside that first- mentioned Contracting State for the purpose of his maintenance, education or training; and
- (b) remuneration from employment in that first-mentioned Contracting State, provided that the remuneration constitutes earnings reasonably necessary for his maintenance and education.

2. An individual who, immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is temporarily present in the first-mentioned State primarily for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his arrival in the first-mentioned State in connection with that visit, be exempt from tax in that State.

Article 21

Teachers

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a University or any other similarly recognised educational institution in that State and who, immediately before that visit, was a resident of the other Contracting State shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose.

2. This Article shall apply to income from research only if such research is undertaken by the professor or teacher in the public interest and not primarily for the benefit of some other private person or persons.

Article 22

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. Notwithstanding the provisions of paragraph 1 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 23

Elimination Of Double Taxation

1. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle thereof):

(a) Belgian tax payable under the laws of Belgium and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Belgium (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Belgian tax is computed.

(b) In the case of a dividend paid by a company which is a resident of Belgium to a company which is a resident of Nigeria and which controls directly or indirectly at least 10% of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Belgian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Belgian tax payable by the company in respect of the profits out of which such dividend is paid. In any case, the amount of tax credit to be granted under this sub-paragraph shall not exceed the proportion of Nigerian tax which such profits, income or chargeable gains bear to the entire profits, income or chargeable gains chargeable to Nigerian tax.

2. In the case of Belgium, double taxation shall be avoided as follows:

(a) Where a resident of Belgium derives income not dealt with in sub-paragraph (b) or (c) below which may be taxed in Nigeria in accordance with the provisions of this Agreement, other than those of paragraph 2 of Article 10, of paragraphs 2 and 5 of Article 11 and of paragraphs 2 and 5 of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

(b) Where a resident of Belgium derives from Nigeria items of his aggregate income for Belgian tax purposes which are:

- dividends taxable in accordance with paragraph 2 of Article 10 and not exempt from Belgian tax under sub-paragraph (c) below,
- interest taxable in accordance with paragraph 2 or 5 of Article 11, and
- royalties taxable in accordance with paragraph 2 or 5 of Article 12,

the fixed proportion of the foreign tax for which provision is made under Belgian law shall, under the conditions and at the rate provided for by such law, be allowed as a credit against Belgian tax relating to such income.

Notwithstanding the provisions of its law, Belgium shall also allow the credit provided for in this sub-paragraph in respect of tax which may be charged in Nigeria on dividends, interest and royalties by virtue of this Agreement and the

law of Nigeria, but which is temporarily remitted or reduced under special provisions designed to promote the economic development of Nigeria.

(c) Where a company which is a resident of Belgium owns shares or other rights in a company with share capital which is a resident of Nigeria and which is subject to Nigerian tax on its profits, the dividends which are paid to it by the latter company and which may be taxed in Nigeria in accordance with paragraph 2 of Article 10, shall be exempt from the corporate income tax in Belgium to the extent that exemption would have been accorded if the two companies had been residents of Belgium.

(d) Where, in accordance with Belgian law, losses of an enterprise carried on by a resident of Belgium which are attributable to a permanent establishment situated in Nigeria have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (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 Nigeria by reason of compensation for the said losses.

Article 24

Non-Discrimination

1. Notwithstanding the provisions of Article 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 are or may be subjected.

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. 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.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes, which are granted to individuals as resident.

5. Nothing in this Article shall be construed as preventing a Contracting State:

(a) from taxing the total amount of the profits attributable to a permanent establishment in that State of a company being a resident of the other Contracting State or of an association having its place of effective management in that other State at the rate of tax provided by the law of the first-mentioned State, but this rate may not exceed the maximum rate applicable to the profits of companies which are residents of that first- mentioned State;

(b) from imposing its withholding tax on dividends derived from a holding which is effectively connected with a permanent establishment or a fixed base maintained in that State by a company which is a resident of the other Contracting State or by an association which has its place of effective management in that other State and is taxable as a body corporate in the first-mentioned State.

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 resident or a national of a Contracting State 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 not in accordance with the Agreement.

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 may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 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.

Article 27

Diplomatic and Consular Officials

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding paragraph 1 of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is liable to tax in that other State only if he derives income from sources therein, shall be deemed to be a resident of the sending State.

Article 28

Entry Into Force

1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force thirty days after the date of the latter of the notification referred to in paragraph 1 and its provisions shall have effect:

(a) in Nigeria:

(i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;

(ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;

(b) in Belgium:

(i) in respect of taxes due at source on income credited or payable on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;

(ii) in respect of taxes other than taxes due at source, on income of any taxable period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force.

Article 29 Termination

This Agreement shall continue in force until terminated. Either of the Contracting States may through diplomatic channels give written notice of termination at least six months before the end of any calendar year, and in that event, this Agreement shall cease to be effective:

(a) in Nigeria:

(i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the notice of termination is given;

(ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given;

(b) in Belgium:

(i) in respect of taxes due at source on income credited or payable on or after 1st January in the calendar year immediately following that in which the notice of termination is given;

(ii) in respect of taxes other than taxes due at source, on income of any taxable period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given.

In witness whereof, the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Brussels, this twentieth day of November 1989 in the English language.

**NIGERIA - CANADA
INCOME TAX TREATY**

**AGREEMENT BETWEEN
THE GOVERNMENT OF CANADA AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS**

**Article 1
Personal Scope**

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

**Article 2
Taxes Covered**

1. The taxes which are the subject of the present Agreement are:

(a) in Canada:

-- the income taxes imposed by the Government of Canada,
(hereinafter referred to as "Canadian tax");

(b) in Nigeria:

- (i) the personal income tax;
- (ii) the companies income tax;
- (iii) the petroleum profits tax; and
- (iv) the capital gains tax;

(hereinafter referred to as "Nigerian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

**Article 3
General Definitions**

1. In this Agreement, unless the context otherwise requires:

(a) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, according

- to international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
- (b) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial sea of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the continental shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the seabed and subsoil and their natural resources may be exercised;
- (c) the term "national" means:
- (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (d) the terms "a Contracting State" and "the other Contracting State" mean Nigeria or Canada as the context requires;
- (e) the term "person" includes an individual, an estate, a trust, a company, a partnership and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term "société" also means a "corporation" within the meaning of Canadian law;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means, in the case of Nigeria, the Federal Minister of Finance and Economic Development or his authorized representative; and in the case of Canada, the Minister of National Revenue or his authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4 **Fiscal Residence**

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.
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident 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 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 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 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 of this Article a company is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is incorporated.

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;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - (g) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activities continue for a period of more than three months; and

(h) an installation, or the provision of supervisory activities in connection with an installation, incidental to the sale of machinery or equipment where the charge payable for such installation or activities exceeds 10 per cent of the sale price of the machinery or equipment free-on-board.

3. 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 for 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.

4. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 3 of this Article.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

6. A person (including a subsidiary company, associated company or any other company, or any personnel thereof or any other person) who is resident of a Contracting State, other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply, acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

(a) he has, and habitually exercised in that State an authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which have a controlling interest in it.

7. Subject to the preceding provisions of this Article, 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.

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. For the purposes of this Agreement, 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 and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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 or has carried 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:
 - (a) that permanent establishment;
 - (b) sales in the other State of the same or similar property or merchandise as that sold through that permanent establishment; or
 - (c) other business activities of the same or similar nature as those carried on in that other State through that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions those deductible expenses shown to have been incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the Contracting 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. 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. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment.

5. 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

Shipping and Air Transport

1. A resident of a Contracting State shall be exempt from tax in the other Contracting State in respect of profits or gains derived from the operation of ships or aircraft in international traffic.

2. Notwithstanding the provisions of paragraph 1 of this Article, where no enterprise of a Contracting State has, in a year, derived earnings in the other Contracting State from the operation of aircraft in international traffic, earnings derived in that year in the first-mentioned State by a resident of the other State from the operation of aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged shall not exceed the lesser of:

- (a) one per cent of such earnings, and
- (b) the lowest amount of Nigerian tax that would have been imposed on such earnings if they had been derived by a resident of any third State in which no enterprise of the first-mentioned State had derived earnings from the operation of aircraft in international traffic in that year.

For the purposes of this paragraph, the term "earnings" means the amount by which the gross revenues exceeds the aggregate of any refund thereof and the remuneration of personnel located in that State other than remuneration in respect of services rendered aboard an aircraft.

3. The provisions of paragraph 1 of this Article shall also apply to profits derived from participation in a pool, a joint business or an international operation 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 an appropriate adjustment to the amount of 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. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws and, in any case, after more than six years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State.

4. The provisions of paragraphs 2 and 3 of this Article shall not apply in the case of fraud, willful default or neglect.

Article 10 Dividends

1. Dividends derived from a company which is a resident of a Contracting State by 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 12.5 per cent of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, or any other item (other than interest relieved from tax under the provisions of Article 11)

which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply where the beneficial owner of the dividends, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment, or performs in that other State independent personal services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, 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 and beneficially owned by persons who are not residents of the other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

6. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 12.5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits attributable to a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

7. The provisions of this Article shall not apply if the right or property giving rise to the dividend was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

Article 11

Interest

1. Interest derived from a resident of a Contracting State by 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 law of that State, but if the beneficial owner of the interest is subject to tax thereon in the other State, the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the government of the other Contracting State or a political subdivision or a local authority thereof or any agency or instrumentality of any such government, subdivision or authority.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply where the beneficial owner of the interest, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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. The provisions of this Article shall not apply if the right or property giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

Article 12

Royalties

1. Royalties derived from a resident of a Contracting State by 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 law of that State, but if the beneficial owner of the royalties is subject to tax thereon in the other State, the tax so charged shall not exceed 12.5 per cent of the gross amount of the royalties.
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 or tapes used for radio and television 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, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply where the beneficial owner of the royalties, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 or fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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. The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

Article 13

Capital Gains

1. Each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

2. Notwithstanding the provision of paragraph 1 of this Article, gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic shall be taxable only in that State.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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 of this Article, 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 calendar year 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 or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the person carrying on the operation of the ship or aircraft is a resident.

Article 16

Directors' Fees

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 of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes And Athletes

1. Notwithstanding the provisions of Articles 7, 14 and 15, 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of the personal activities of an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by a non-profit organization or by entertainers or athletes if the visit to that Contracting State is substantially supported by public funds of a Contracting State and the activities are not performed for the purpose of profit.

Article 18

Pensions And Annuities

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of 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. Notwithstanding any other provision of this Agreement, war veteran pensions and allowances arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in that other State to the extent that such amounts would be exempt from tax if paid to a resident of the first-mentioned State.

Article 19 Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or 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 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. The provisions of Articles 15 and 16 shall apply to 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 20 Students

Payments which a student, apprentice or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first- mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21 Teachers And Researchers

1. A professor or teacher who visits Nigeria for the purpose of teaching or engaging in research at a University or any other similarly recognized educational institution in Nigeria and who, immediately before that visit was a resident of Canada shall be exempted from tax in Nigeria in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in

Nigeria for such purpose provided that during the said period of two years he is also exempt from tax in Canada in respect of such remuneration from Nigeria.

2. Paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a specific person or persons.

Article 22 Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

Article 23 Elimination Of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:

(a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Nigeria on profits, income or gains arising in Nigeria shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Nigeria.

2. For the purposes of sub-paragraph 1(a) of this Article, the term "tax payable in Nigeria" shall be deemed to include any amount which would have been payable by a company which is resident of Canada as Nigerian tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(a) any of the following provisions, that is to say:

(i) paragraphs 16 and 17 of the Industrial Development (Income Tax Relief) Act 1971;

(ii) sections 9(6) and (7) of the Companies Income Tax Act 1979 where the loan in question is certified by the competent authority of Nigeria as being for the purpose of promoting new industrial, commercial, scientific, educational or agricultural development in Nigeria; so far as they were in force on, and have not been modified since, the date of signature of this

Agreement, or have been modified only in minor respects so as not to affect their general character; or

(b) any other provision which may subsequently be made granting exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from Canadian tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Nigerian tax was first granted in respect of that source.

3. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle hereof):

(a) Income tax payable in Canada and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Canada (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which the Canadian tax is computed.

(b) In the case of a dividend paid by a company which is a resident of Canada to a company which is resident in Nigeria and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any income tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the income tax payable in Canada by the company in respect of the profits out of which such dividend is paid.

(c) In any case the amount of any tax credit to be granted under this paragraph shall not exceed the proportion of Nigerian tax that the profits, income or chargeable gains from sources within Canada bear to the entire profits, income or chargeable gains chargeable to Nigerian tax.

4. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other State.

Article 24 **Non-discrimination**

1. The 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 are or may be subjected.
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. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 25

Mutual Agreement Procedure

1. Where a resident of a Contracting State 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, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.
2. The competent authority referred to in paragraph 1 of this Article 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 not in accordance with the Agreement.

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 may consult together for the elimination of double taxation in cases not provided for in the Agreement and for the purposes of applying this Agreement.

Article 26

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and the 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*).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information.

Article 27

Diplomatic Agents and Consular Officers

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that sending State.

7. The Agreement shall not apply to international organizations or to organizations thereof, to officials of any such body or to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

Article 28

Entry Into Force

Each of the Contracting States shall take all measures necessary to give this Agreement the force of law within its jurisdiction and each shall notify the other of the completion of such measures. This Agreement shall enter into force on the date on which the later notification is received and shall thereupon have effect:

(a) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1st January in the calendar year immediately following that in which the Agreement enters into force; and

(ii) in respect of other Canadian tax for taxation years beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;

(b) in Nigeria:

(i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the Agreement enters into force; and

(ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force.

Article 29

Termination

This Agreement shall continue in effect indefinitely but the government of either Contracting State may, on or before June 30 in any calendar year after the year in which the Agreement enters into force give to the government of the other Contracting State a notice of termination in writing through diplomatic channels; in such event, the Agreement shall cease to have effect:

(a) in Canada:

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1st January of the next following calendar year; and
- (ii) in respect of other Canadian tax for taxation years beginning on or after 1st January of the next following calendar year;

(b) in Nigeria:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January of the next following calendar year; and
- (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January of the next following calendar year.

In witness whereof the undersigned, duly authorized to that effect, have signed this Agreement.

Done in duplicate at Abuja, this 4th day of August, 1992 in the English and French languages, each version being equally authentic.

PROTOCOL

At the signing of the Agreement between the Government of Canada and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, the undersigned have agreed on the following provisions which shall be an integral part of the Agreement.

1. With reference to subparagraph 1(h) of Article 3, Article 8, paragraph 2 of Article 13 and paragraph 3 of Article 15, it is understood that in the case of Canada, ships or aircraft used principally to transport passengers or goods exclusively between places in

Canada shall, when so operated, not be considered to be operated in international traffic.

2. With reference to paragraph 1 of Article 4, it is understood that the term “resident” also includes the Government of Canada or a political subdivision or local authority thereof or any agency or instrumentality of this Government or of such subdivision or authority.

3. With reference to Article 6, paragraph 1, it is understood that in Canada income derived from immovable property includes income from the alienation of such property, such as recapture of capital cost allowance.

4. With reference to Article 11, paragraph 3, it is understood that, in the case of an agency or instrumentality, the provisions apply only where the agency or instrumentality carries out functions of a governmental nature and is not subject to tax in the State of which it is a resident.

5. It is understood that the provisions of the Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- (a) by the laws of a Contracting State in the determination of the tax imposed by that State, or
- (b) by any other agreement entered into by a Contracting State.

6. It is understood that nothing in the Agreement shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that State with respect to a partnership, trust or controlled foreign affiliate in which he has an interest.

7. It is understood that the Agreement shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

In witness whereof the undersigned, duly authorized to that effect, have signed this Protocol.

Done in duplicate at Abuja, this 4th day of August, 1992 in the English and French languages, each version being equally authentic.



**NIGERIA - FRANCE
INCOME TAX TREATY**

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE FRENCH REPUBLIC AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. The taxes which are the subject of the Agreement are:

(a) in the case of France:

(i) the income tax;

(ii) the corporation tax;

including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "French tax");

(b) in the case of Nigeria:

(i) the personal income tax;

(ii) the companies income tax;

(iii) the petroleum profits tax; and

(iv) the capital gains tax;

including any withholding tax with respect to the aforesaid taxes;

(hereinafter referred to as "Nigerian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. In this present Agreement, unless the context otherwise requires:
 - (a) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial sea of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria and in accordance with international law concerning the continental shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the sea-bed, sub-soil, their natural resources, and superjacent waters may be exercised;
 - (b) the term "France" means the European and overseas departments of the French Republic and any area outside the territorial sea of those departments which is in accordance with international law, an area within which France may exercise rights with respect to the sea-bed, sub-soil, their natural resources and superjacent waters;
 - (c) the term "national" means:
 - (i) in relation to France, any individual possessing the nationality of France and any legal person, partnership, association or other entity deriving its status as such from the laws in force in France;
 - (ii) in relation to Nigeria, any citizen of Nigeria and any legal person, partnership, association or other entity deriving its status as such from the laws in force in Nigeria;
 - (d) the terms "a Contracting State" and "the other Contracting State" mean Nigeria or France as the context requires;
 - (e) the term "person" comprises an individual, a company or any other body of persons;
 - (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the laws of each Contracting State;
 - (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term "competent authority" means, in the case of Nigeria, the Minister of Finance and Economic Development or his authorised representatives; and in the case of France, the Minister in charge of the budget or his authorised representative.

2. As regards the application of this Agreement by a Contracting State any term not otherwise defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

Article 4
Fiscal Residence

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting 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 of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question of residence by mutual agreement.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site, a construction or assembly project or supervisory activities in connection therewith but only where such site, project or activities continue for a period of more than 3 months;
- (h) installation or the provision of supervisory activities in connection therewith incidental to the sale of machinery or equipment where the charges payable for such installation or equipment exceeds 10% of the free-on-board sales price of the machinery or equipment.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed 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.

4. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 3 of this Article.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. A person (other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply), who acts in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if:

- (a) such a person has, and habitually exercises in that Contracting State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
- (b) such a person habitually secures orders for the sale of goods or merchandise in

the first-mentioned Contracting State exclusively or almost exclusively on behalf of the enterprise itself or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

7. Subject to the preceding provisions of this Article the fact that a company which is a resident of a State controls or is controlled by a company which is a resident of the other State, shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income From Immovable Property

1. Income derived by a resident of a State from immovable property (including income from agriculture or forestry) situated in the other 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 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 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 and to income from immovable property used for the performance of independent personal services.

5. Where the ownership of shares or other corporate rights in a company or a legal person entitles the owner to the enjoyment of immovable property situated in France and held by this company or this legal person, the income derived by the owner from the direct use, letting or use in any other form of his right of enjoyment may be taxed in France.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise shown to have been incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting 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 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 by way of interest on money lent to the head office of the enterprise or any of its other offices.

4. 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. Provided that where that permanent establishment is also used as a sales outlet for goods so purchased the profits on such sales shall be attributed to such permanent establishment.

5. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of these Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. A resident of a Contracting State shall be exempt from tax in the other State in respect of profits or gains derived from the operations of ships or aircrafts in international traffic.

2. However, no exemption shall be granted if such operations in international traffic are carried on by an enterprise of only one of the Contracting States. In such a case, the tax charged shall not exceed 1% of the earning of the enterprise derived from the other Contracting State.

For the purpose of this paragraph "earnings" means income arising from the carriage of passengers, mails, livestock or goods less refunds and payments of wages and salaries of ground staff.

3. The provisions of paragraph 1 shall also apply to profits derived from participation in a pool, a joint business or an inter- national 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 the Contracting State includes in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State may make an appropriate adjustment 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 taxation authorities of the Contracting States shall, if necessary, consult each other.

Article 10 Dividends

1. Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - (a) 12.5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends;
 - (b) 15% 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 profit out of which the dividends are paid.

3. 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 State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.
5. The provisions of this Article shall not apply if the right giving rise to the dividend was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.
6. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and also any other item (other

than interest relieved from tax under the provisions of Article 11 of this Agreement) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

Article 11

Interest

1. Interest derived from 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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 12.5% of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2 of this Article interest arising in a Contracting State and paid:
 - (a) in the other Contracting State to the Government of that State or local authority thereof or any agency or instrumentality of that Government or local authority;
 - (b) in connection with a loan or credit supported by the Government of the other Contracting State; shall be exempt from taxation in the first-mentioned State provided the interest and conditions imposed on such loans are not on commercial bases.
4. 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision (in case of Nigeria), a local authority, a government instrumentality or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever commercial 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. The provisions of this Article shall not apply if the debt- claim giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

8. 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.

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 the royalties the tax so charged shall not exceed 12.5% of the gross amount of the royalties.

3. 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision (in case of Nigeria), a local authority, a statutory body or 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 or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5. 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 State, due regard being had to the other provisions of this Agreement.

6. The provisions of this Article shall not apply if a right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

7. In the Article the term "royalties" 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, any cinematograph films and films or tapes used for radio and television broadcasting, any patent, trade mark, design, model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

Article 13

Capital gains

1. Gains derived from the sale or alienation of movable and immovable property including shares in companies may be taxed in each of the Contracting States in accordance with the law in the respective States.

2. Gains from the alienation of ships and aircrafts operated in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 21, 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 Contracting State for a period or periods not exceeding in the aggregate 183 days in any 12 consecutive months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

Article 16

Directors' Fees

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 of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes And Athletes

1. Notwithstanding the provisions of Articles 14 and 15, 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 an athlete, from his 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 **Government Service**

1. Remuneration, other than pension paid by a Contracting State, a political subdivision (in case of Nigeria), a local authority or any instrumentality of government thereof, to an individual in respect of services rendered to that State, that political subdivision (in case of Nigeria), that local authority or that instrumentality of government shall be taxable only in that State. Such remuneration shall however be taxable only in the other Contracting State if the services in respect of which the remuneration is paid are rendered in the other Contracting State and the recipient is a resident and a national of that other State, provided that he did not become a resident of that other State solely for the purpose of rendering the services.

2. The provisions of Articles 15 and 16 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision (in case of Nigeria), a local authority or any instrumentality of government thereof for the purpose of profits.

Article 19 **Pensions and Annuities**

1. Pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable in the State from which such income is derived.

2. 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 moneys' worth.

Article 20 **Students and Trainees**

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments arise from sources outside that other State.

2. Notwithstanding the provisions of Articles 14 and 15, remuneration which a student or business apprentice who is, or was, formerly a resident of a Contracting State and who is present in the other Contracting State primarily for the purpose of his education or training, derives from services rendered in that other State shall not be taxed in that other State, provided that such services are in connection with his education or training or that the remuneration of such services is necessary to supplement the resources available to him for the purpose of his maintenance.

Article 21

Teachers and Researchers

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a University or any other similarly recognised educational institution in that State and who immediately before that visit was a resident of the other Contracting State shall be exempted from tax by the first- mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. During the said period of two years, the other Contracting State shall also exempt him from tax in respect of such remuneration from the first- mentioned State in respect of the teaching or research.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a specific person or persons.

Article 22

Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State shall be taxed in accordance with the domestic laws of each Contracting State.

Article 23

Elimination Of Double Taxation

1. As regards Nigeria: Subject to the provisions of the laws of Nigeria regarding the allowances as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle hereof):

(a) French tax payable under the laws of France and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within France (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profit, income or chargeable gains by reference to which French tax is computed.

(b) In the case of dividend paid by a company which is a resident of France to a company which is resident in Nigeria and which controls directly or indirectly at least 10% of voting power in the company paying the dividend, the credit shall take into account (in addition to any French tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) French tax payable by the company in respect of the profits out of which such dividend is paid.

2. In the case of France: Profits and other positive income arising in Nigeria and which are taxable in that State in accordance with the provisions of this Agreement, may also be taxed in France where such income is received by a resident of France. The Nigerian tax shall not be deductible in France for the computation of taxable income. But the beneficiary shall be entitled to a tax credit against French tax in the basis of which such income is included.

Such credit shall be equal:

(a) in the case of income referred to in Articles 10, 11, 12, 13 and 22 to the amount paid in Nigeria in accordance with the provisions of these Articles. However, it shall not exceed the amount of French tax attributable to such income.

In cases where Nigerian tax is wholly relieved or reduced below the rates specified in Articles 10, 11 and 12 by special incentive measures designed under Nigerian laws to promote economic, industrial and commercial developments in Nigeria, the tax credit shall be equal to the normal tax provided for in paragraph 2 of Articles 10, 11, 12 of this Agreement or under the Nigerian domestic law whichever is less.

(b) In the case of other income to the amount of French tax attributable to such income, this provision shall also apply to remuneration referred to in Article 18.

Article 24

Non-Discrimination

1. Notwithstanding the provisions of Article 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 are or may be subjected.

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. 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.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes, which are granted to individuals as resident.

5. 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 resident or a national of a Contracting State 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 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 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 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 States may communicate with each other directly or meet when it seems advisable for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State, and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measure 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*).

Article 27

Diplomatic and Consular Officials

1. Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular missions, or of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding paragraph 1 of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

Article 28

Territorial Extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to the overseas territories of the French Republic which imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed

between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the denunciation of the Agreement by one of them under Article 31 shall terminate, in the manner provided for in that Article, the application of the Agreement to any territory to which it has been extended under this Article.

Article 29 **Entry Into Force**

1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

(a) in Nigeria:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;
- (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;

(b) in France:

- (i) in respect of taxes withheld at source, to amounts payable on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;
- (ii) in respect of other taxes on income, to income derived during the calendar year immediately following that in which the Agreement enters into force, or relating to the accounting period beginning during this same calendar year.

Article 30 **Termination**

This Agreement shall continue in force until terminated. Either of the Contracting States may through diplomatic channels give written notice of termination at least six months before the end of any calendar year. In such event the Agreement shall cease to be effective:

- (a) in Nigeria:
 - (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or before 31st December in the calendar year in which the notice of termination is given;
 - (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year in which the notice of termination is given;
- (b) in France;
 - (i) in respect of taxes withheld at source, to amounts payable before or on the 31st December of the calendar year for the end of which the termination has been notified;
 - (ii) in respect of other taxes, to income derived during the calendar year for the end of which the termination has been notified or relating to the accounting period ending during this year.

In witness whereof, the undersigned, duly authorized thereto, have signed this Agreement.

Done in duplicate, in the English and French languages, both texts being equally authoritative.

PROTOCOL

At the time of signature of this Agreement between the Government of the French Republic and the Government of the Federal Republic of Nigeria for the avoidance of double taxation with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall form an integral part of this Agreement.

1. In respect of paragraph 1(d) of Article 3, the term "international traffic" also means any transport by a container where such transport is supplementary to a transport in international traffic.

2. In respect of Article 6, income from shares, rights or participations in a company or a legal person owning immovable property situated in France, which, under the

French laws, is subjected to the same taxation treatment as income from immovable property, may be taxed in France.

3. (a) In respect of Article 7 it is understood that the provisions of paragraph 1 shall include:
 - (i) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment;
 - (ii) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

However, the provisions (i) and (ii) above shall apply only where sales and business activities are effected directly by the enterprise in the other Contracting State through other outlets than the permanent establishment for the purpose of depleting the profits that would otherwise have been attributable to the permanent establishment.

- (b) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of this permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment the profits of such permanent establishment are not determined on the basis of the total amount of the contract, but are determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

- (c) In respect of paragraph 3 of Article 7, it is understood that reimbursement in the case of banking includes interest that may be recouped by the head office from the permanent establishment not being interest on money lent from the funds belonging to the head office.

4. In respect of Article 10 a resident of Nigeria who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (*précompte*) relating to such dividends, in the event it had been paid by the distributing company. Such prepayment (*précompte*) shall be refunded subject to the deduction of the tax levied according to the national laws and the provisions of paragraph 2.

The gross amount of the prepayment (précompte) refunded shall be deemed to be dividends for the purposes of the provisions of this Agreement.

5. In respect of paragraph 4 of Article 12, payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultant or supervisory services shall be deemed not to be payments received as a consideration for information concerning industrial, commercial or scientific experience.

6. In respect of Article 24:

- (a) Nothing in paragraph 1 shall be construed as preventing France from granting only to persons possessing the French nationality the benefit of the exemption of the capital gains derived from the alienation of immovable property or part of immovable property constituting a residence in France of French persons who are not domiciled in France, according to the provisions of Article 15C of the "Code général des impôts".
- (b) Nothing in paragraph 5 shall be construed as preventing France from applying the provisions of Article 212 of the "Code général des impôts" as regards interest paid by a French company to a foreign parent company.

In witness whereof the undersigned, duly authorised thereto by their respective Government, have signed this Protocol to the Agreement.

Done in duplicate, in the English and French languages, both texts being equally authoritative.

**NIGERIA - NETHERLANDS
INCOME TAX TREATY
(1991)**

**AGREEMENT BETWEEN
THE KINGDOM OF THE NETHERLANDS AND
THE FEDERAL REPUBLIC OF NIGERIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

**Chapter I
Scope of the Agreement**

**Article 1
Personal scope**

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

**Article 2
Taxes covered**

1. The existing taxes to which the Agreement shall apply are in particular:

(a) in the Netherlands:

- the income tax (inkomstenbelasting);
- the wages tax (loonbelasting);
- the company tax (vennootschapsbelasting), including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 ("Mijnwet Continentaal Plat, 1965");
- the dividend tax (dividendbelasting)

(hereinafter referred to as "Netherlands tax");

(b) in Nigeria:

- the personal income tax;
- the companies income tax;
- the petroleum profits tax;
- the capital gains tax

(hereinafter referred to as "Nigerian tax").

2. This Agreement shall apply also to any identical or substantially similar taxes which 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 States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Chapter II
Definitions

Article 3
General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "State" means the Netherlands or Nigeria, as the context requires; the term "States" means the Netherlands and Nigeria;
- (b) the term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea bed and its sub-soil under the North Sea, over which the Kingdom of the Netherlands has certain rights in accordance with international law;
- (c) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the Continental Shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the States, except when the ship or aircraft is operated solely between places in the other State;
- (h) the term "nationals" means:
 - (1) in relation to the Netherlands: all individuals possessing the nationality of the Netherlands and all legal persons, partnerships and associations deriving their status as such from the law in force in the Netherlands;
 - (2) in relation to Nigeria: all citizens of Nigeria and all legal persons, partnerships and associations deriving their status as such from the law in force in Nigeria;
- (i) the term "competent authority" means:
 - (1) in the Netherlands, the Minister of Finance or his authorized representative;
 - (2) in Nigeria, the Minister of Finance or his authorized representative.

2. As regards the application of the Agreement by one of the States any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

Article 4
Fiscal residence

1. For the purposes of this Agreement, the term "resident of one of the States" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation or management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident 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 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 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 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 States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both States, the competent authorities of the States shall settle the question by mutual agreement and determine the mode of application of the Agreement to such person.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. (a) Notwithstanding the provisions of paragraphs 1 and 2, the term "permanent establishment" shall include a building site, a construction, assembly or installation project, as well as supervisory activities in connection therewith, the furnishing of services including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if these activities continue for a period of more than three months.

(b) However, in the case of installation activities which are incidental to the sale of machinery by an enterprise in the other State, and the installation activities are necessary to complete the sale of that machinery or equipment, then in such a case, such installation shall not constitute a permanent establishment unless it lasts for more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed 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.

5. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 4 of this Article.

6. An enterprise shall not be deemed to have a permanent establishment in one of the States 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 one of the States on behalf of an enterprise of the other State, that enterprise shall be deemed to

have a permanent establishment in the first-mentioned 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, 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; or

(b) habitually secures orders for the sale of goods or merchandise in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise itself or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

8. Subject to the preceding provisions of this Article, the fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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 one of the States from immovable property (including income from agriculture or forestry) situated in the other 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 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 the 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 of this Article 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 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business profits

1.The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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 of this Article, where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business 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.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. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment.

5.In the case of profits from survey, supply, installation or construction activities only so much of them is attributable to a permanent establishment as results from the actual

performance of these activities through that permanent establishment. Accordingly, profits from deliveries of goods, whether or not in connection with these activities, to that permanent establishment by the head office, another permanent establishment or a third person shall not be attributed to that permanent establishment. Provided such profits do not accrue in the execution of such survey, supply, installation or construction activities in the other State.

6. 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

Shipping and air transport

1. A resident of one of the States shall on reciprocal basis only, be exempt from tax in the other State in respect of profits derived from the operations of ships or aircraft in international traffic.

2. For the purposes of this Agreement, profits derived by an enterprise of one of the States from the operation of ships or aircraft in international traffic include profits from the rental on a bareboat basis of ships or aircraft operated in international traffic provided that such profits are incidental to the profits described in paragraph 1 of this Article.

3. The provisions of paragraph 1 of this Article 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 one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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 one of the States includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other 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 an appropriate adjustment 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 States shall if necessary consult each other.

Article 10 **Dividends**

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 12.5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends;
- (b) 15% 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, or other rights, not being debt-claims participating in profits as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of one of the States derives profits or income from the other 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 or a fixed base 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.

Article 11

Interest

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 12.5% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in one of the States and paid to the Government of the other State, a political subdivision or local authority thereof, or any agency or instrumentality (including a financial institution) owned or controlled by that Government, political subdivision or local authority, as well as interest on loans insured or guaranteed by the Government of that other State, a political subdivision or local authority thereof, shall be exempt from tax in the first-mentioned State. In the case of loans made by the above-mentioned agencies or instrumentalities the provisions of this paragraph will only apply in case these loans are not made on normal commercial conditions.

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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne

by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 State, due regard being had to the other provisions of this Agreement.

Article 12 **Royalties**

1. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 12.5% of the gross amount of the royalties.

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, or films or tapes used for radio or television 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, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties

shall be deemed to arise in the State in which the permanent establishment or fixed base 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 State, due regard being had to the other provisions of this Agreement.

Article 13

Capital gains

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other 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 one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of one of the States 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 exempt from tax in the other State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident. However, gains from the alienation of shares issued by a company resident in the other State may be taxed in that other State except if such gains are realized in the course of a corporate organization, reorganization, amalgamation, division or similar transaction.

Article 14

Independent personal services

1. Income derived by a resident of one of the States in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2.The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

1.Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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 of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised in the other 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 the fiscal year or the year of assessment of that State, 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 or a fixed base 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 State of which the enterprise is a resident.

Article 16

Directors' fees

Directors' fees or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a "bestuurder" or a "commissaris" of a company which is a resident of the other State may be taxed in that other State.

Article 17

Artistes and athletes

1.Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.

2.Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another

person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions and annuities

1. Subject to the provisions of paragraph 2 of Article 19:

(a) pensions and other similar remuneration, whether or not of a periodical nature, which are paid by an enterprise of one of the States to a resident of the other State in consideration of an employment formerly exercised in the service of that enterprise, may be taxed in the first-mentioned State;

(b) all other pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

2. Annuities arising in one of the States and paid to a resident of the other State, may be taxed in the first-mentioned 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.

Article 19

Government service

1. (a) Remuneration, other than a pension, paid by one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

(b) However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who:

(1) is a national of that State; or

(2) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority and any payment to an individual under the social security system of one of the States may be taxed in that State.

3. The provisions of Articles 15 and 16 shall apply to remuneration in respect of services rendered in connection with a business carried on by one of the States or a political subdivision or a local authority thereof for the purpose of profits.

Article 20

Professors, teachers and researchers

1. Payments which a professor, teacher or researcher who is or was immediately before visiting one of the States a resident of the other State and who is present in the first-mentioned State for the primary purpose of teaching or scientific research at a university, college, school or other educational or scientific research institution accredited by the Governments, receives for such teaching or research, shall be exempt from tax in the first-mentioned State for a period not exceeding three years in the aggregate from the date of his first arrival in the first-mentioned State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21 Students

1. An individual who is a resident of one of the States immediately before making a visit to the other State and is temporarily present in the other State solely as a student at a recognised university, college, school or other similar recognised educational institution in that other State or as a business or technical apprentice therein, shall be exempt from tax in that other State on

(a) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration not exceeding U.S. \$ 2000 for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

The benefits under this paragraph shall only extend for such period of time as may be reasonable or customarily required to effectuate the purpose of the visit.

2. An individual who is a resident of one of the States immediately before making a visit to the other State and is temporarily present in the other State for a period not exceeding three years for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either State or from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of either State shall be exempt from tax in that other State on

(a) the amount of such grant, allowance or award;

(b) all remittances from abroad for the purposes of his maintenance, education or training.

Article 22 Other income

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that state.

2. Notwithstanding the provisions of paragraph 1 of this Article, items of income of a resident of one of the States not dealt with in the foregoing Articles of this Agreement and arising in the other State may also be taxed in that other State.

Chapter IV **Elimination of double taxation**

Article 23 **Elimination of double taxation**

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed in Nigeria.

2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 4 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, Article 15, Article 16 and Article 19 of this Agreement may be taxed in Nigeria and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 4 of Article 13, Article 17, sub-paragraph (a) of paragraph 1 and paragraph 2 of Article 18 and paragraph 2 of Article 22 of this Agreement may be taxed in Nigeria to the extent that these items are included in the basis referred to in paragraph 1 of this Article. The amount of this deduction shall be equal to the tax paid in Nigeria on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

Where by reason of the relief given under the provisions of Nigerian laws for the purposes of encouraging investment in Nigeria the Nigerian tax actually levied on interest arising in Nigeria or on royalties arising in Nigeria is lower than the tax Nigeria may levy according to paragraph 2 of Article 11 and paragraph 2 of Article 12, respectively, then the amount of the tax paid in Nigeria on such interest and royalties shall be deemed to have been paid at the rates of tax mentioned in the said provisions.

However, if the general tax rates under Nigerian laws applicable to the afore-mentioned interest and royalties are reduced below those mentioned in this paragraph, those lower rates shall apply for the purposes of this paragraph.

The provisions of this paragraph shall only apply for a period of ten years after the date on which the Agreement became effective. This period may be extended by mutual agreement between the competent authorities.

4. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle hereof):

(a) Netherlands tax payable under the laws of the Netherlands and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within the Netherlands (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Netherlands tax is computed.

(b) In the case of a dividend paid by a company which is a resident of the Netherlands to a company which is resident in Nigeria and which controls directly or indirectly at least 10% of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Netherlands tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Netherlands tax payable by the company in respect of the profits out of which such dividend is paid.

For the purposes of this Article in determining the taxes on income paid to the Netherlands, the investment premiums and bonuses and disinvestment payments as meant in the Netherlands Investment Account Law ("Wet investeringsrekening") shall not be taken into account as they do not form part of the taxes referred to in paragraphs 1(a) and 2 of Article 2.

Chapter V **Special provisions**

Article 24 **Non-discrimination**

1. Notwithstanding the provisions of Article 1, nationals of one of the States shall not be subjected in the other 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 are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of one of the States has in the other 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. Nothing contained in this Article shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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. 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 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 State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the 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 State, with a view to the avoidance of taxation which is not in accordance with the Agreement.
3. The competent authorities of the 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 States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of information

1. The competent authorities of the States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for carrying out the provisions of this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment, collection, enforcement in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement and shall be used only for such purposes.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on one of the States the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 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*).

Article 27

Diplomatic agents and consular officers

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding paragraph 1 of Article 4, an individual who is a member of a diplomatic, consular or permanent mission of one of the States which is situated in the other State or in a third State, and who is subject to tax in the other State or in that third State only if he derives income from sources therein, shall be deemed to be a resident of the sending State.

Article 28

Territorial extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications to either or both of the countries Aruba or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Agreement shall not also terminate any extensions of the Agreement to any country to which it has been extended under this Article.

Article 29
Entry into force

1. The Governments of the States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:
 - (a) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;
 - (b) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force.

Article 30
Termination

This Agreement shall continue in force until terminated. Either of the States may through diplomatic channels give written notice of termination at least six months before the end of any calendar year. In such event the Agreement shall cease to be effective:

- (a) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the notice of termination is given;
- (b) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorized thereto, have signed this Agreement.

Done at Lagos this 11th day of December 1991, in duplicate, in the English language.

PROTOCOL

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, this day concluded between the Kingdom of the Netherlands and the Federal Republic of Nigeria, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I.Ad Article 7

In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment, may be considered attributable to that permanent establishment. This provision will only be applicable where sales or business activities are effected by an enterprise of one of the States in the other State through other outlets or fixed points than its permanent establishment.

II.Ad Article 7

Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultant or supervisory services shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply.

III.Ad Article 8

If the competent authorities of the States have agreed on the basis of Article 25 that profits as meant in Article 8 are derived by an enterprise or enterprises of one of the States from the operation of ships or aircraft in international traffic to or from places in the other State and that such profits are not derived by an enterprise or enterprises of the other State from the operation of ships or aircraft in international traffic to or from places in the first-mentioned State and that such situation has a permanent nature, the condition of reciprocity as envisaged in paragraph 1 of Article 8 is not met, and no

exemption shall be granted; in such case, the tax so charged shall be 1% of the earnings of the enterprise derived from the other State.

For the purposes of the foregoing sentence, the term "earnings" means income derived by a shipping or air transport enterprise of one of the States from the carriage of passengers, mail, livestock or goods boarded or loaded in the other State, less the refunds and payments of wages and salaries of ground staff and excluding the income derived from the carriage of passengers, mail, livestock or goods which are brought to that other State solely for transshipments or transfers.

IV.Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as costsharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9. However, this does not prevent one of the States from checking the above-mentioned arrangements for conditions as meant in paragraph 1 of Article 9.

V.Ad Articles 10, 11 and 12

(i) The competent authorities of the States shall by mutual agreement settle the mode of application of the reductions and exemptions from tax in the State of source given by Articles 10, 11 and 12.

(ii) Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 and 12, applications for refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

VI.Ad Article 13

It is understood that the terms corporate organization, reorganization, amalgamation, division or similar transaction refer to a transfer of shares within a group of associated enterprises. In that case the shares will be evaluated for the transferee at the bookvalue of the transferor.

VII.Ad Article 16

It is understood that "bestuurder" or "commissaris" of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company or the supervision thereof, respectively.

VIII.Ad Article 24

It is understood that in both States, interest, royalties and other disbursement paid by an enterprise of one of the States to a resident of the other State, for the purpose of determining according to its tax legislation the taxable profits of such enterprise, are deductible in the same way as if they had been paid to a resident of the first-mentioned State.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done at Lagos this 11th day of December 1991, in duplicate, in the English language.

**NIGERIA - PAKISTAN
INCOME TAX TREATY**

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. The taxes, irrespective of the manner in which they are imposed, which are the subject of this Agreement are:

(a) in Nigeria:

- (i) the personal income tax;
- (ii) the companies income tax;
- (iii) the petroleum profits tax; and
- (iv) the capital gains tax;

(hereinafter referred to as "Nigerian tax");

(b) in Pakistan:

- (i) the income tax;
- (ii) the super tax; and
- (iii) the sur-charge;

(hereinafter referred to as "Pakistan tax").

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

In this Agreement, unless the context otherwise requires:

- (a) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the Continental Shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the seabed and subsoil and their natural resources may be exercised;
- (b) the term "Pakistan" used in a geographical sense means Pakistan as deemed in the constitution of the Islamic Republic of Pakistan and also includes any area outside the territorial waters of Pakistan which under the international law and the laws of Pakistan is an area within which the rights of Pakistan with respect to the seabed and its subsoil and other natural resources may be exercised;
- (c) the term "national" means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships, and associations deriving their status as such from the law in force in a Contracting State;
- (d) the term "a Contracting State" and "the other Contracting State" means Nigeria or Pakistan as the context requires;
- (e) the term "person" means an individual, a company or any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the laws of each Contracting State;
- (g) the term "enterprise" of a "Contracting State" and "enterprise of the other Contracting State", means respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means, in the case of Nigeria, the Federal Minister of Finance and Economic Development or his authorised representative and, in the case of Pakistan, the Central Board of Revenue or its authorised representatives.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4 **Fiscal Residence**

1. For the purpose 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 incorporation or management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident 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 resident 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 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 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 of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting State shall settle the question by mutual agreement.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than three months;
- (h) the provision of supervisory activities for more than three months on a building site or construction or assembly project;
- (i) installation or the provision of supervisory activities in connection with such installation incidental to the sale of machinery where the charge payable for such installation exceeds 10% of the sale price of the machinery or equipment free-on-board.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed 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.

4. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 3 of this Article.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. A person (other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply) who acts in a Contracting State on behalf of an

enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts or carries on any business activities on behalf of the enterprise, unless his activities are limited to those referred to in paragraph 3 of this Article; or
- (b) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise itself or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

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.

Article 6

Income From Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.
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 and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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:

- (a) that permanent establishment;
- (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business 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 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 use of patents or other rights, or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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: provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment.

5. Where profits include items 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

Shipping and air transport

1. A resident of a Contracting State shall be exempt from tax in the other Contracting State in respect of profits or gains derived from the operations of ships or aircraft in international traffic.

2. However, no exemption shall be granted if such operations in international traffic are carried on by an enterprise of only one of the Contracting States. In such a case, the tax charged shall not exceed 1% of the earnings of the enterprise derived from the other Contracting State.

For the purpose of this paragraph, "earnings" means income from the carriage of passengers, mails, livestock or goods less refunds and payments of emoluments of ground staff in the Contracting State.

3. The provisions of paragraph 1 of this Article shall also apply to profits derived from 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 an appropriate adjustment 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 State shall, if necessary, consult each other.

Article 10 **Dividends**

1. Dividends derived from a company which is a resident of a Contracting State by 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 law of that State, but where the recipient of a dividend is subject to tax thereon in the other Contracting State the tax so charged shall not exceed:
 - (a) 12.5% of the gross amount of the dividend, if the recipient is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividend;
 - (b) 15% of the gross amount of the dividend 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 provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State of which the company paying the dividends is a resident, a permanent establishment or a fixed base situated therein and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provision of Article 7 or 14, as the case may be, shall apply.
4. 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 and beneficially owned by persons who are not residents of the other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid on the undistributed profits consist wholly or partly of profits or income arising in that other State.
5. The provisions of this Article shall not apply if the right giving rise to the dividends was created or assigned for reasons other than bona fide commercial consideration.

6. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and also any other item (other than interest relieved from tax under the provisions of Article 11) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

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 law of that State but if the beneficial owner of the interest is subject to tax hereon in the other State, the tax so charged shall not exceed 15% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of that Government or local authority.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State of which the company paying the interest is a resident, a permanent establishment or a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon in the absence of

such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regards being had to the other provisions of this Agreement.

7. The provisions of this Article shall not apply if the right or property giving rise to the interest was created or assigned for reasons other than bona fide commercial consideration.

8. 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 profit, and, in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures.

Article 12 **Royalties**

1. Royalties derived from a resident of a Contracting State by 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 from which they are derived and according to the law of that State, but where the beneficial owner of the royalties is subject to tax thereon in the other State, the tax so charged shall not exceed 15% of the gross amount of the royalties.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State of which the company paying the royalties is a resident a permanent establishment or a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political subdivision, a local authority or 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 or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, such royalties shall be deemed to arise in a Contracting State in which the permanent establishment or fixed base is situated.

5. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other persons, 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 absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In that case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned for reasons other than bona fide commercial consideration.

7. In this Article the term "royalties" means payment of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes used for radio and television broadcasting, any patent, trade mark, design, model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

Article 13 Capital Gains

1. Gains from the alienation of immovable property shall be taxable only in the Contracting State in which the property is situated.

2. Gains from the alienation of movable property may be taxed in the Contracting State in which the property is situated.

3. Gains from the alienation of shares in a company which is resident of a Contracting State may be taxed in that State.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 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 of this Article, 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 the year of assessment; 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 or fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise deriving the profits from the operation of the ship or aircraft is a resident.

Article 16 Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in the other State.

Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, 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 an athlete, from his 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to

another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 **Government Service**

1. Remuneration, other than a pension, paid by a Contracting State, or a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State, or a political subdivision or local authority shall be taxable only in that State. Such remuneration shall however be taxable only in the other Contracting State if the services in respect of which the remuneration is paid are rendered in the other Contracting State and the recipient is a resident and a national of that other State provided that he did not become a resident of that other State solely for the purpose of rendering the services.
2. The provisions of Article 15, 16 and 17 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State or political subdivision or a local authority thereof for the purpose of profits.

Article 19 **Pensions and Annuities**

1. Any pension or annuity paid by or out of funds created by a Contracting State or 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.
2. Any pension (other than a pension referred to in paragraph 1) or annuity derived by a resident of a Contracting State from sources in the other Contracting State may be taxed in that other State.
3. The term "pension" means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received in the course of performance services.
4. 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.

Article 20 **Students and Trainees**

1. A student or business apprentice who, immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is present in the first-

mentioned Contracting State primarily for the purpose of his education or training shall be exempt from tax in that first-mentioned Contracting State on:

- (a) payments made to him by persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training;
- (b) remuneration from employment in that first-mentioned Contracting State, provided that the remuneration constitutes earnings reasonably necessary for his maintenance and education.

2. An individual who, immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is temporarily present in the first-mentioned State primary for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his arrival in the first-mentioned State in connection with that visit, be exempt from tax in that State.

Article 21

Teachers and Researchers

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a University or any other similarly recognised educational institution in that State and who, immediately before that visit, was a resident of the other Contracting State shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. During the said period of two years the other Contracting State shall also exempt him from tax in respect of the teaching or research.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a specific person or persons.

Article 22

Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

Article 23

Elimination Of Double Taxation

1. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle hereof):

(a) Pakistan tax payable under the laws of Pakistan and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Pakistan (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Pakistan tax is computed. In any case the amount of tax credit to be granted shall not exceed the proportion of the Nigerian tax which such profits, income or chargeable gains bear to the entire profits, income or chargeable gains chargeable to Nigerian tax.

(b) In the case of a dividend paid by a company which is a resident of Pakistan to a company which is resident in Nigeria and which controls directly or indirectly at least 10% of the voting power in the company paying the dividend the credit shall take into account (in addition to any Pakistan tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) Pakistan tax payable by the company in respect of the profits out of which such dividend is paid.

2. In the case of Pakistan, subject to the provisions of the laws of Pakistan regarding the allowance as a credit against Pakistan tax, the amount of Nigerian tax payable, under the laws of Nigeria and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Pakistan, in respect of income from sources within Nigeria which has been subjected to tax both in Pakistan and Nigeria, shall be allowed as a credit against the Pakistan tax payable in respect of such income but to an amount not exceeding that proportion of Pakistan tax which such income bears to the entire income chargeable to Pakistan tax.

3. For the purposes of allowance as credit against the tax payable in Nigeria or Pakistan, as the context requires, the tax payable in a Contracting State shall be deemed to include the tax which is otherwise payable in that State but has been reduced or exempted by the State in pursuance of its tax incentive programme.

Article 24

Non-Discrimination

1. Notwithstanding the provisions of Article 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 requirement to which nationals of that other State in the same circumstances are or may be subjected.

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 carrying on the same activities.

3. 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.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes, which are granted to individuals as residents.

Article 25

Mutual Agreement Procedure

1. Where a resident or a national of a Contracting State 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 laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. If his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national.

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 taxation authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

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 may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation

to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes.

2. In no case shall the provisions of paragraph 1 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.

Article 27

Effect On Diplomatic and Consular Officials

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special Agreements.

2. Notwithstanding paragraph 1 of Article 4, an individual who is a member of the diplomatic consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in the other State only if he derives income from sources therein shall not be deemed to be a resident of that other State.

Article 28

Entry Into Force

1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived immediately after the Agreement enters into force;
- (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force.

Article 29

Termination

This Agreement shall continue in force until terminated. Either of the Contracting States may through diplomatic channels give written notice of termination at least six months before the end of any calendar year. In such event the Agreement shall cease to be effective:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived immediately after the notice of termination is given;
- (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done at Lagos on 10th October, 1989 in two original copies each in the English language.

**NIGERIA - PHILIPPINES
INCOME TAX TREATY**

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. The taxes which are the subject of this Agreement are:

(a) in the case of the Philippines:

- the income taxes presently imposed by the Government of the Republic of the Philippines

(hereinafter referred to as "Philippine tax");

(b) in Nigeria:

(i) the personal income tax;

(ii) the companies income tax;

(iii) the petroleum profits tax; and

(iv) the capital gains tax

(hereinafter referred to as "Nigerian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. In this Agreement, unless the context otherwise requires:

(a) the term "Philippines" means the Republic of the Philippines and when used in a geographical sense means the national territory comprising the Republic of the Philippines;

(b) the term "Nigeria" means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the continental shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the sea-bed and subsoil and their natural resources may be exercised;

(c) the term "national" means:

(i) in relation to the Philippines:

(aa) any individual possessing the citizenship of the Philippines;

(bb) any legal person, partnership or association created, organized or incorporated under the laws of the Philippines;

(ii) in relation to Nigeria, any citizen of Nigeria and any legal person, partnership, association or other entity deriving its status as such from the law in force in Nigeria;

(d) the terms "a Contracting State" and "the other Contracting State" mean the Philippines or Nigeria as the context requires;

(e) the term "person" comprises an individual, an estate or its executor, a trust or its trustee, a company or any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the laws of each Contracting State;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means, in the case of the Philippines, the Secretary of Finance or his authorized representative; and in the case of Nigeria, the Minister of Finance or his authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4 **Fiscal residence**

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 incorporation or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident 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 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 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 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 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is incorporated.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than three months;
- (h) the provision of supervisory activities for more than three months on a building site or construction or assembly project;
- (i) installation or the provision of supervisory activities in connection with such installation incidental to the sale of machinery or equipment where the charge payable for such installation exceeds 5 per cent of the sale price of the machinery or equipment free-on-board.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed 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.

4. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 3 of this Article.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

6. A person, including a subsidiary company, associated company or any other company, or any personnel thereof or any other person who acts in a Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

(a) he has, and habitually exercises in that State, an authority to conclude contracts or carry on any business activities on behalf of the enterprise, unless his activities are limited to those specified in paragraph 3 of this Article; or

(b) he habitually secures orders for the sale of goods or merchandise in that State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which have a controlling interest in it.

7. Subject to the preceding provisions of this Article, 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.

Article 6

Income From Immovable Property

1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such property is situated.

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 the 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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:

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business 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 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 commissions for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment.

5. Where profits include items 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
Shipping and air transport

1. Profits derived by an enterprise of one of the States from the operation of ships and aircraft in international traffic may be taxed in that State.
2. However, such profits may also be taxed in the other State, but only in so far as such profits are derived from that other State, the tax so charged shall not exceed the lesser of:
 - (a) the rate of 1½ per cent applied on the gross revenue derived from that other State; or
 - (b) the lowest rate of Philippine tax applied on such profits derived by an enterprise of a third state.
3. For the purposes of this Article, profits derived from the other State mean profits as determined under its domestic law.
4. The provisions of paragraphs 1, 2 and 3 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 an appropriate adjustment 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.

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 recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

(a) 12½ per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 10 per cent of the capital of the paying company;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 the 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14 as the case may be, 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 or a fixed base 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. Nothing in this Article shall prevent either Contracting State from imposing, apart from the corporate income tax, a tax on remittances of profits by a branch to its head office provided that the tax so imposed shall not exceed 15 per cent of the amount remitted.

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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of that Government or local authority.

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 and debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the State in which the income arises, including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 a 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.

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, if such resident is the beneficial owner of the royalties.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State. However, the tax so charged shall not exceed 20 per cent.

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, 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, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or video-tapes for use in connection with television or tapes for the use of radio broadcasting.

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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 obligation 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 Contracting 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 between 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.

Article 13 Capital Gains

1. Gains derived from the sale or alienation of immovable and movable property shall be taxed only in the Contracting State in which the property is situated.
2. Gains derived from the alienation of shares of a company shall be taxed only in the Contracting State where the company is a resident.
3. Gains from the alienation of ships and aircraft operated in international traffic, shall be taxable only in the Contracting State of which the enterprise is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 of this Article, 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;
- (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 or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise deriving the profits from the operation of the ship or aircraft is a resident.

Article 16 Directors' Fees

1. Directors' fees, and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. If the remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, it may be taxed in accordance with the provisions of Article 15.

Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised pursuant to a special program between the Governments of the two Contracting States for cultural exchange and supported substantially from the public funds of either Contracting State or a political subdivision or a local authority thereof or from the funds of a statutory body or a non-profit organization thereof.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised pursuant to a special program between the Governments of the two Contracting States for cultural exchange and supported substantially from the public funds of either Contracting State or a political subdivision or a local authority thereof or from the funds of a statutory body or a non-profit organization thereof.

Article 18

Government Service

1. (a) Remuneration other than pensions paid by a Contracting State, or a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State or a political subdivision or local authority shall be taxable only in that State.

(b) Such remuneration shall however be taxable only in the other Contracting State if the services in respect of which the remuneration is paid are rendered in the other Contracting State and the recipient is a resident and a national of that other State, provided that he did not become a resident of that other State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 19 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, or political subdivision or a local authority thereof for the purpose of profits.

Article 19

Pensions and Annuities

1. Pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in the State where such income is derived.

2. 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.

Article 20

Student and Trainees

1. A student or business apprentice who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college or other similar educational institution for the purpose of apprenticeship shall be exempt from tax in that other State on:

- (a) all remittances from abroad for the purposes of his maintenance or education;
- (b) in the case of a student, any remuneration earned with a view to supplementing the resources available to him for such purpose for an aggregate period of not more than five years from the date of his first arrival; and
- (c) in the case of business apprentice, any remuneration earned for an aggregate period of not more than two years from the date of his first arrival, provided that such services are in connection with his training or are incidental thereto.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance program entered into by the Governments of the Contracting States shall, for the period of the grant, be exempt from tax in that other State on:

- (a) the amount of such grant, allowance or award; and
- (b) all remittances from abroad for the purposes of his maintenance, education or training.

Article 21

Teachers and Researchers

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a university or any other similarly recognized educational institution in that State and who, immediately before that visit, was a resident of the other Contracting State shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. During the said period of two years, the other Contracting State shall also exempt him from tax in respect of such remuneration from the first-mentioned State in respect of the teaching or research.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a specific person or persons.

Article 22

Other Income

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in the State where the income arises.

Article 23 **Elimination of Double Taxation**

1. Subject to the existing provisions of the laws of the Philippines of tax paid outside the Philippines and to subsequent modifications of those provisions -- which shall not affect the general principles thereof -- tax payable under the laws of Nigeria on profits, income or gains arising in Nigeria shall be deducted from any Philippine tax payable in respect of such profits, income or gains. The deduction shall not, however, exceed that part of the Philippine income tax, as computed before the deduction is given, which is otherwise due on the income which may be taxed in Nigeria.

2. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle hereof):

(a) Philippine tax payable under the laws of the Philippines and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within the Philippines (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Philippine tax is computed.

(b) In the case of a dividend paid by a company which is a resident of the Philippines to a company which is a resident in Nigeria and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Philippine tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Philippine tax payable by the company in respect of the profits out of which such dividend is paid.

3. If a resident of one of the States derives gains which may be taxed in the other State in accordance with Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State of the said gains.

4. Taxes which have been relieved or reduced in one of the Contracting States by virtue of the national law of that Contracting State for a limited period of time shall be considered as though such tax had been paid and shall be allowed tax credit in the other Contracting State in an amount equal to the tax which would have been appropriate to the income concerned if no such relief had been given or no such reduction had been allowed.

Article 24
Non-Discrimination

1. Notwithstanding the provisions of Article 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 are or may be subjected.

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. 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.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes, which are granted to individuals as resident.

5. Notwithstanding the preceding provisions of this Article, either Contracting State may, in the promotion of necessary industry or business, limit to its nationals the enjoyment of tax incentives granted by it. However, such incentives which are available to nationals of any third state shall likewise be available to nationals of the other Contracting State.

6. In this Article, the term "taxation" means taxes, which are the subject of this Agreement.

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 laws 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 the

Contracting State of which he is a national. The case must be presented within two years from the first notification of the action which gives rise to taxation not in accordance with the provisions of this 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 this Agreement.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

4. 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 this Agreement.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes.

2. The competent authorities may, through consultations, develop appropriate conditions, methods and techniques concerning the matters respecting how such exchange shall be made, as well as exchanges of information regarding avoidance of tax where appropriate.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws or the 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.

Article 27

Effect On Diplomatic and Consular Officials

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special Agreements.
2. Notwithstanding paragraph 1 of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

Article 28

Miscellaneous Rules

Subject to the provisions of Article 21, nothing in this Agreement shall be construed as preventing the Philippines from taxing its citizens who may be residing in Nigeria, in accordance with its domestic legislation. However, no credit shall be given by Nigeria for taxes paid in pursuant thereto.

Article 29

Entry Into Force

1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force thirty days after the date of the completion of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:
 - (a) in respect of withholding tax on income and taxes on capital gains derived by a non-resident in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;
 - (b) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the Agreement enters into force.

Article 30

Termination

This Agreement shall continue in force until terminated. Either of the Contracting States may through diplomatic channels give written notice of termination at least six months before the end of any calendar year.

In such event, the Agreement shall cease to be effective:

(a) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the notice of termination is given;

(b) in respect of other taxes in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Manila this 30th day of September 1997.

**NIGERIA - ROMANIA
INCOME TAX TREATY**

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND
THE GOVERNMENT OF ROMANIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

Scope of the Agreement

Article 1

Personal Scope

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

Article 2

Taxes covered

1. The taxes which are the subject of the present Agreement are:

(a) in Romania:

- (i) tax on income derived by individuals and corporate bodies;
- (ii) tax on the profits of foreign representation and companies with participation of foreign capital constituted under Romanian Law;
- (iii) tax on income derived from agricultural activities

(hereinafter referred to as "Romanian tax");

(b) in Nigeria:

- (i) the personal income tax;
- (ii) the companies income tax;
- (iii) the petroleum profits tax; and
- (iv) the capital gains tax

(hereinafter referred to as "Nigerian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of the existing taxes. The competent authorities of the

Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3 **General definitions**

1. In this Agreement, unless the context otherwise requires:

(a) the term "Nigeria" means the Federal Republic of Nigeria, including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the Continental Shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the sea bed and subsoil and their natural resources may be exercised;

(b) the term "Romania" means Romania and, used in a geographical sense, indicates the territory of Romania, including its territorial sea as well as the exclusive economic zone and the continental shelf over which Romania exercises sovereign rights, in accordance with its internal law and with the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea bed and subsoil of these waters;

(c) the terms "a Contracting State" and "the other Contracting State" mean Nigeria or Romania as the context requires;

(d) the term "national" means:

(i) in relation to Nigeria, any citizen of Nigeria and any legal person, partnership, association or other entity deriving its status as such from the law in force in Nigeria;

(ii) in relation to Romania, any individual having the citizenship of Romania and any legal person, partnership, association or any other entity created under the law in force in Romania;

(e) the term "person" comprises an individual, a company or any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purpose under the laws of each Contracting State;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means, in the case of Nigeria, the Minister of Finance and Economic Development, or his authorised representative; and in the case of Romania, the Minister of Finance or his authorised representative; the term "territorial administrative unit" is used in relation to Romania; the term "territorial subdivision" and "local authority" are used in relation to Nigeria.

2.As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4

Fiscal residence

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, place of incorporation or any other criterion of a similar nature.

2.Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident 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 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 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 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 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is incorporated.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than three months;
- (h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than three months within any 12-month period.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprises;
- (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 fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (d) 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;
- (e) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (f) the sale of goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition after the closing of the mentioned fair or exhibition provided that such fair or exhibition is approved by the Governments of the two Contracting States.

4. The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained for any of the activities mentioned in paragraph 3 of this Article.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. A person, including a subsidiary company, associated company or any other company, or any personnel thereof or any other person (other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply) who acts in a Contracting State on behalf of an enterprise of the other Contracting State shall be

deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts or carry on business activities on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3; or
- (b) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise itself and other enterprises controlled by it or which have a controlling interest in it.

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.

Article 6

Income from immovable property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

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 the 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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:

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business 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 by 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 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 by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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. Provided that where that permanent establishment is also selling the goods or merchandise so purchased, irrespective where the sales took place, the profits on such sales may be attributed to that permanent establishment.

5. Where profits include items 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

Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic may be taxed in the other Contracting State if such operation is carried on only by any enterprise of that Contracting State, but the tax charged shall not exceed 1 per cent of the earnings of the enterprise derived from that other State. For the purpose of this paragraph, the term "earnings" means income arising in that other State from the sale of tickets and other income from the transportation by air of passengers, livestock, goods or mail less refunds on account of services not rendered and payments of wages and salaries of ground staff.

3. Notwithstanding the provisions of paragraph 2 of this Article, profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be exempt from tax in the other Contracting State if the competent authorities of the Contracting States on the basis of reciprocity by mutual agreement agree to such an exemption.

4. The provisions of paragraphs 1 and 2 of this Article 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 an appropriate adjustment 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.

Article 10 **Dividends**

1. Dividends derived from a company which is a resident of a Contracting State by 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 law of that State, but where the recipient of a dividend is subject to tax thereon in the other Contracting State the tax so charged shall not exceed 12.5 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply where the beneficial owner or the dividends, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment, or performs in that other State independent personal services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be shall apply.

4. 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 and beneficially owned by persons who are not residents of the other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

5. The provisions of this Article shall not apply if in the opinion of the competent authorities, the right giving rise to the dividends was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

6. The term "dividends" as used in this Article means income from shares, or any other items (other than interest, relieved from tax under the provisions of Article 11 of this Agreement) which, under the law of the Contracting State of which the company paying the dividends is a resident, is treated as a dividend or distribution of a company. For the purposes of this paragraph, profits distributed by joint companies shall be regarded as dividends.

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 law of that State but if the beneficial owner of the interest is subject to tax thereon in the other State, the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State, an administrative-territorial unit or a local authority thereof or any agency or bank unit or instrumentality of that Government, an administrative-territorial unit or a local authority or if the debt-claims of a resident of the other Contracting State are warranted, insured or directly or indirectly financed by a financial institution wholly owned by the Government of the other Contracting State, provided that the loan or debt-claims giving rise to such interest is not on commercial basis.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State of which the company paying the interest is a resident a permanent establishment or a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division or an administrative territorial unit, a local authority or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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.The provisions of this Article shall not apply if in the opinion of the competent authorities, the right of property giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

8.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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

Article 12

Royalties

1.Royalties derived from a resident of a Contracting State by 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 from which they are derived and according to the law of that State, but where the beneficial owner of the royalties is subject to tax thereon in the other State, the tax so charged shall not exceed 12.5 per cent of the gross amount of the royalties.

3.The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State of which the company paying the royalties is a resident a permanent establishment or a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4.Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division or an administrative territorial unit, a local authority or 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 or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5.Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other persons, 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 that case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. The provisions of this Article shall not apply if in the opinion of the competent authorities, the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

7. In this Article the term "royalties" means payment of any kind received as consideration for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television 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 or for information concerning industrial, commercial or scientific experience.

Article 13

Capital gains

1. Capital gains derived from the sale or alienation of movable and immovable property including shares in companies may be taxed in each of the Contracting States in accordance with the law in the respective States.

2. Gains from the alienation of ships and aircraft operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

1. Subject to the provisions of Articles 16, 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 in the other Contracting State, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article remuneration derived by a resident in 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; 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 or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

Article 16 **Directors' fees**

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 of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17 **Artistes and athletes**

1. Notwithstanding the provisions of Articles 14 and 15, 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 an athlete, from his 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Income derived from such activities performed within the framework of cultural agreements concluded between the Contracting States are reciprocally exempted from tax only if such activities are sponsored by the government of a Contracting State and the activities are not carried out for the purpose of profits.

Article 18

Government service

1. (a) Remuneration other than pensions paid by a Contracting State, an administrative territorial unit, a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State, an administrative territorial unit, a political sub-division or a local authority shall be taxable only in that State.

(b) Such remuneration shall however be taxable only in the other Contracting State if the services in respect of which the remuneration is paid are rendered in the other Contracting State and the recipient is a resident and a national of that other State, provided that he did not become a resident of that other State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, an administrative territorial unit, a political subdivision or a local authority thereof for the purpose of profits.

Article 19

Pensions and annuities

1. Pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in the State from which such income is derived.

2. 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.

Article 20

Students and trainees

1. A student or business apprentice who, immediately before visiting a Contracting State is or was a resident of the other Contracting State and who is present in the first-mentioned Contracting State for the purpose of his education or training shall be exempt from tax in that first-mentioned Contracting State on:

(a) payments made to him by persons residing outside that first-mentioned Contracting State for the purpose of his maintenance, education or training; and

(b) remuneration from employment in that first-mentioned Contracting State, provided that such employment being a full time employment, lasts not more than 183 days in the year of assessment.

2. An individual who, immediately before visiting a Contracting State is or was resident of the other Contracting State and who is temporarily present in the first-mentioned State primarily for the purpose of study, research or training as a recipient of a grant,

allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his arrival in the first-mentioned State in connection with that visit, be exempt from tax in the State, for a period not exceeding the period of the grant.

Article 21

Teachers

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a University or any other similarly recognised educational institution in that State and who, immediately before that visit was a resident of the other Contracting State shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. During the said period of two years, the other Contracting State shall also exempt him from tax in respect of such remuneration from the first-mentioned State in respect of the teaching or research.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for benefit of a specific person or persons.

Article 22

Other income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

Article 23

Elimination of double taxation

1. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle hereof):

(a) Romanian tax payable under the laws of Romania and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Romania (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Romanian tax is computed;

(b) in the case of a dividend paid by a company which is a resident of Romania to a company which is resident in Nigeria and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Romanian tax for which credit may be allowed under

the provisions of sub-paragraph (a) of this paragraph) Romanian tax payable by the company in respect of the profits out of which such dividend is paid.

2. Where a resident of Romania derives profits, income or capital gains which, in accordance with the provisions of this Agreement, may be taxed in Nigeria, Romania shall allow as a deduction from the Romanian tax on profits, income and capital gains respectively of that person an amount equal to the tax paid in Nigeria on those profits, income or capital gains as the case may be. Such deduction shall not however exceed that part of the Romanian tax which is appropriate to the profits, income or capital gains which may be taxed in Nigeria.

3. For the purpose of paragraph 2 of this Article the tax paid in Nigeria shall be deemed to include any amount which should have been paid or payable as Nigerian tax for any year but for an exemption or deduction of tax granted that year or any part thereof.

Article 24
Non-discrimination

1. Notwithstanding the provisions of Article 1, nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation of 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 are or may be subjected.

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 Contracting State than the taxation levied on enterprises of that other State carrying on the same activities.

3. 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.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes, which are granted to individuals as resident.

5. 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 resident or a national of a Contracting State 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 five years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authorities 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 taxation authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

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 may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of information

1.The taxation authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeal in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes.

2.In no case shall the provisions of paragraph 1 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.

Article 27

Effect on diplomatic and consular officials

1.Nothing in this Agreement shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

2.Notwithstanding paragraph 1 of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

Article 28
Entry into force

1.The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2.The Agreement shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the Agreement enters into force;
- (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the Calendar year immediately following that in which the Agreement enters into force.

Article 29
Termination

This Agreement shall continue in force until terminated. Either of the Contracting States may through diplomatic channels give written notice of termination at least six months before the end of any calendar year.

In such event the Agreement shall cease to be effective:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the notice of termination is given;
- (ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments have signed this Agreement.

Done at ..., this 21st day of July 1992, in duplicate, in the English and Romanian languages, both texts being equally authentic.

In the case there is any divergence of interpretation of the provisions of this Agreement the English text shall prevail.

PROTOCOL

At the signing today of the Agreement between the Government of Romania and the Government of the Federal Republic of Nigeria for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital gains, the undersigned have agreed upon the following provision which shall form an integral part of the Agreement:

To Article 7

It is hereby understood that Romania shall reserve its rights to tax commission arising in Romania and payable to a resident of Nigeria in accordance with its domestic law.

In witness whereof the undersigned, duly authorized thereto, by their respective Governments have signed this Protocol.

Done at ..., this 21st day of July 1992, in duplicate, in the English and Romanian languages, both texts being equally authentic. In the case there is any divergence of interpretation of the provisions of this protocol the English text shall prevail.

**NIGERIA – SOUTH AFRICA
INCOME TAX TREATY**

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE

PREVENTION OF

FISICAL EVASION WITH RESPECT TO

TAXES ON INCOME AND ON CAPITAL GAINS

Preamble

The Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria, 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 gains,

Have agreed as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are:
 - a. In Nigeria:
 - (i) the personal income tax;
 - (ii) the companies income tax;
 - (iii) the petroleum profits;
 - (iv) the capital gains tax; and
 - (v) the education tax;(hereinafter referred to as “Nigerian tax”); and
 - b. in South Africa:
 - (i) the normal tax; and

(ii) the secondary tax on companies;

(hereinafter referred to as “South African tax”).

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by their Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The component authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purpose of this Agreement, unless the context otherwise requires:
- (a) the term “Nigeria” means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria concerning the Continental Shelf, as an area within which the rights of the Federal Republic of Nigeria with respect to the sea-bed and subsoil and their natural resources may be exercised;
 - (b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
 - (c) the terms “a Contracting State” and “the other Contracting State” mean Nigeria or South Africa, as the context requires;
 - (d) the term “company” means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in each Contracting State;
 - (e) the term “competent authority” means:
 - (i) in Nigeria, the Federal Minister of Finance or his authorized respective; and

- (ii) in South Africa, the Commissioner for the South African Revenue Service of his authorized representative;
 - (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively and enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) the term “national” means:
 - (i) any individual possessing the citizenship or nationality of a Contracting State;
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State; and
 - (i) the term “person” includes an individual, a company and any other body of persons which is treated as an entity under the taxation laws in force in each Contracting State.
2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined shall, unless the context otherwise requires, have the meaning which 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 laws of that State.

Article 4

Resident

1. For the purpose of the Agreement, the term “resident of a Contracting State” means:
- (a) in Nigeria, any person who, under the laws of Nigeria, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, but this term does not include any person who is liable to tax in Nigeria in respect only of income or capital gains from sources in Nigeria;

- (b) in South Africa, any individual who is ordinarily resident in South Africa and any person other than an individual which has its place of effective management in South Africa;
 - (c) that State itself and any political subdivision or local authority thereof.
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 interest);
 - (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, the competent authorities of the States shall settle the question by mutual agreement and determine the mode of application of the Agreement to such person.

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.

3. The term “permanent establishment” likewise encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 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 for 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; and
- (f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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. The term “permanent establishment” shall include a fixed place of business used as a sales outlet notwithstanding the fact that such fixed place of business is otherwise maintained in paragraph 4 of this Article.
6. A person, other than an agent of an independent status to whom paragraph 7 of this Article applies, who acts in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:
 - (a) he has, and habitually exercises in that State, an authority to conclude contracts or carries on any business activities on behalf of the enterprise, unless his activities are limited to those specified in paragraph 4 of this Article; or
 - (b) he habitually secures orders for the sales of goods or merchandise in that State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which have a controlling interest in it.
7. 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.
8. 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.

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 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 right to work, mineral deposits, sources and other natural resources. Ships 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 paragraph 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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. However, profits derived from sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment may be considered attributable to that permanent establishment if it established that such sales or activities were structured in a manner intended to avoid taxation in the State where the permanent establishment is situated.
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 the determination of 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 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 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 banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far 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 by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment.
6. For the purpose 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 reasons 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

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. However, no exemption shall be granted if such operations in international traffic are carried on by an enterprise of only one of the Contracting States. In such case, the tax charged shall not exceed 1 per cent of the earnings of the enterprise derived from the other Contracting State. For the purposes of this paragraph “earnings” means total takings less commissions paid to sales agents, arising from

the carriage of passengers, mail, livestock or goods loaded or shipped in the other State less refunds and payments of wages and salaries of ground staff.

3. For the purpose of this Article, profits from the operation of ships or aircraft in international traffic shall include:

(a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,

(b) profits derived from the use or rental of containers,

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

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 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 independent enterprises, then that other State may make an appropriate adjustment 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.

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 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) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

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 or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, 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 in so far as such dividends are paid to a resident of that other State or in so far as holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on 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. The provisions of this Article shall not apply if the right giving rise to the dividend was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

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 7.5 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a political subdivision or a local authority thereof, the Central Bank of Nigeria, the South African Reserve Bank or any agency or instrumentality of that Government or subdivision or authority.
4. The term “interest” as used in this Article means income from debt-claim 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. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.
5. The provisions of paragraph 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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 a 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. The provisions of this Article shall not apply if the right or property giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the royalties.
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, tapes or discs for radio or television 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 or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 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, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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. The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, 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 that State.
4. Gains from the alienation of any property other than those referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Agreement, where an individual who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.
2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent Personal Services

1. Subject to the provisions of Articles 16, 17, 18 and 19, 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 in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is represent 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 fiscal year 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 or a fixed base 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 by an enterprise of a Contracting State may be taxed in that State.

Article 16
Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, 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 his 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 his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

Article 18
Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, 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 State.
2. 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.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, 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 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 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 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, 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 20

Students and Apprentices

1. A student or 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 purpose of his maintenance, education or training.

2. An individual who, immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is temporarily present in the first-mentioned State primarily for the purpose of study, research or training as a recipient of a grant, allowance or reward from a scientific, educational, religious

or charitable organization or under a technical assistance programme entered into by the Government of either Contracting State shall, from the date of his arrival in the first-mentioned State in connection with that visit, be exempt from tax in that State in respect of such grant, allowance or reward.

Article 21 ***Other Income***

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State, may be taxed in that other State.

Article 22 ***Elimination of Double Taxation***

Double taxation shall be eliminated as follows:

- (a) in Nigeria, subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle thereof):
 - (i) South African tax payable under the laws of South Africa and in accordance with this Agreement; whether directly or by deduction, on profits, income or chargeable gains from sources within South Africa (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which South African tax is computed;
 - (ii) in the case of a dividend paid by a company which is a resident of South Africa to a company which is resident in Nigeria and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any South African tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the South African tax payable by the company in respect of the profits out of which such dividend is paid;
- (b) in South Africa, Nigerian tax paid by residents of South Africa in respect of income taxable in Nigeria, in accordance with the provisions of this Agreement, shall be deducted from taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

Article 23
Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the 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 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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties 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.
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 that first-mentioned State are or may be subjected.
5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Nigeria, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24
Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with 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 23, 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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information including documents as is necessary for carrying out the provisions of this Agreement or of the domestic law of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the

Agreement. 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.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or the 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).

Article 26

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. Notwithstanding subparagraph (a) of paragraph 1 of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

Article 27

Entry into Force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force thirty days after the date of receipt of the later of these notifications.
2. The provisions of the Agreement shall apply:
 - (a) In Nigeria:

- (i) in respect of withholding tax on income and taxes on capital gains derived by a non-resident, in relation to income and capital gains derived on or after 1 January in the calendar year immediately following that in which the Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.
- (b) In South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 28
Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting after the year in which the Agreement entered into force.
2. In such event the Agreement shall cease to apply:
 - (a) in Nigeria:
 - (i) in respect of withholding tax on income and taxes on capital gains derived by non-resident, in relation to income and capital gains derived on or after 1st January in the calendar year immediately following that in which the notice of termination is given; and
 - (iii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year immediately following that in which the notice of termination is given;
 - (b) in South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and

- (iv) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE atin duplicate, thisday of2000.

**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF NIGERIA**

**NIGERIA - UNITED KINGDOM
OF GREAT BRITAIN**

INCOME TAX TREATY

AGREEMENT BETWEEN
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Federal Republic of Nigeria Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude an Agreement or the avoidance of double taxation and the prevention of fiscal evasion with respect to income and capital gains;

Have agreed as follows:

**Article 1.
Personal Scope**

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

**Article 2.
Taxes Covered**

(1) The taxes which are the subject of this Agreement are:

(a) In the United Kingdom

- (i) The income tax
 - (ii) The corporation tax;
 - (iii) The capital gains tax; and
 - (iv) The petroleum revenue tax;
- (hereinafter referred to as "United Kingdom tax")

(b) In Nigeria

- (i) The personal income tax;
 - (ii) The companies income tax;
 - (iii) The capital gains tax; and
 - (iv) The petroleum profits tax;
- (hereinafter referred to as "Nigerian tax").

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either contracting State after the date of signature of this Agreement in addition to, or in place of existing taxes. The competent authority of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

**Article 3.
General Definitions**

(1) In this Agreement, unless the context otherwise require

(a) the term "United Kingdom" means Great Britain and Northern Ireland , including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "Nigeria" means the Federal Republic of Nigeria Including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated ,concerning the Continental Shelf as an area within which the rights of the Federal Republic of Nigeria respect to the sea bed and sub-soil and their natural resources may be exercised;

(c) the term "national" means:

(i) in relation to the United Kingdom, any individual who under the law in the United Kingdom status of the United Kingdom National, provided he has the right of abode in the United Kingdom and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Nigeria, any citizen of Nigeria and any legal person , partnership, association or other entity deriving its status as such from the law in force in Nigeria;

(d) the terms " a Contracting State" and "the other Contracting State" mean the United Kingdom or Nigeria as the context requires;

(e) the term "person" means an individual, a company or any other body of persons

(f) the term "company" means anybody corporate or entity is treated as a body corporate for tax purposes under the laws of 'Contracting State'

g) the term "enterprise of a Contracting State" and "enterprise of the other Contracting State" means respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means , in the case of United Kingdom, the Board of Inland Revenue or its authorised representatives and in the case of Nigeria, the Honourable Minister of Finance or his authorised representative.

2) As regards the application of this Agreement by a Contracting State any term not defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

Article 4. Fiscal Residence

(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 incorporation, place of management or any other criterion of a similar nature.

(2) Where by reason of the provisions of paragraph (1) of this article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; in both states, he shall be deemed to be a resident 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 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 of the State of which he is 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) of this article, a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5. Permanent Establishment

(1) For the purpose of this Agreement, the term "permanent establishment" means a fixed place of business through which 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 factory;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for not more than three months;
- (h) the provision of supervisory activities for more than three months on a building site or construction or assembly project: and
- (i) installation or the provision of supervisory activities in connection therewith incidental to the sale of machinery or equipment where the charges payable for such activities exceed ten per cent of the free on board sale price of the machinery or equipment.

3) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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 belong 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.

(4) The term "permanent establishment" shall include a fixed place of business used as a sales outlet notwithstanding that such fixed place of business is otherwise maintained for any other activity mentioned in paragraph (3) of this Article.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(6) A person (including a subsidiary company, associated in or any other company, or any personnel thereof of any other person), other than an agent of an independent status to whom the provisions of paragraph (5) of this Article apply, who act in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first mentioned Contracting State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts or carry on any business activities on behalf of the enterprise, unless his activities are limited to the purchase of merchandise for that enterprise; or
- (b) he habitually secures orders for the sale of goods or merchandise in that State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which controlling interest in it.

(7) Subject to the preceding provisions of this Article, 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.

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 landed property apply, usufruct of immovable property and right to variable or fixed payments as consideration for the working of or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) of this Article 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) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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 profit of the enterprise may be taxed in the other State but only so much of them as is attributable that permanent establishment.

(2) Subject to provisions of paragraph (3) of this article 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 profit which it might be expected to make if it distinct and separate enterprise engaged in the same or activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In the determination of the profit of a permanent establishment there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business 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 deductions shall be allowed in respect of amounts, if any, paid (otherwise towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its offices by way of royalties, fees or other similar payment in return for use of or other rights, or by way of commission, for specific services performed or for management, or, except in the case of banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profit of a permanent establishment, for amount 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 payment 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) No profits shall be attributed to a permanent establishment by the reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise:

Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profit on such sales may be attributed to that permanent establishment.

(5) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Article shall not be affected by the provisions of this Article.

Article 8. Shipping and Air Transport

- (1) A resident of a Contracting State shall be exempt from tax in the other Contracting State in respect of profits or gains derived from the operation of ships of aircraft in international traffic.
- (2) The provisions of paragraph (1) of this Article shall also apply to profits derived 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 enterprise in their commercial or financial relations which differ from those which would be made between independent enterprise, 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 profit of an enterprise of that State and taxes accordingly-profit 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 condition made between the two enterprise had been those which would have made between independent enterprises, then that other State shall make an appropriate adjustment 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 competent authorities of the Contracting State shall if necessary consult each other.

Article 10. Dividends

- (1) Dividends derived from a company which is a resident of a Contracting State by 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 dividend is a resident according to the law of that State, but where the recipient of the dividend is subject to tax thereon in the other Contracting State the tax so charged shall not exceed:
 - (a) 12½ per cent of the gross amount of the dividend if the recipient is a company which controls directly or indirectly at least ten percent of the voting power in the company paying the dividend;

(b) Fifteen per cent of the gross amount of the dividend in all other cases

(3) The term "dividends" as used in this Article means income from shares, or any other item (other than interest relieved from tax under the provisions of Article 11 of this Agreement) which, Under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution a Company.

4) The provisions of paragraphs (1) and (2) of the Article shall not apply where the beneficial owner of the dividends, being a resident of one of the Contracting State, has in the other Contracting State a permanent establishment, or performs in that other State independent personal services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case the provisions of Article 7 or 14, as the case may be 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 and beneficially owned by persons who are not residents of the other state, or subject to the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

6) The provisions of this Article shall not apply if the right giving rise to the dividends was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

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 law of that State, but where such interest is paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this article , interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of contracting State, has in the other Contracting State in which the interest arises a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated

therein, and the debt-claim in respect of which the interest paid is effectively connected with that permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14 as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself a political sub-division, a local authority or 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 Contracting State permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, then such interest shall be deemed to arise in the state in which the permanent establishment or fixed base 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 interest 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 provision 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) 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.

(8) The provisions of this Article shall not apply if the debt-claim giving rise to the interest was created mainly for the purpose of taking of this Article and not for bona-fide commercial reasons.

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 law of that State, but where such royalties are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged shall not exceed 12 1/2 per cent of the gross amount of the royalties.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply if the beneficial owner of the royalties, being a resident of Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base

situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or 14, as the case may be, shall apply.

(4) Royalties shall be deemed to arise in a Contracting State when the buyer is that State itself a political subdivision, a local authority or a resident of that State. When, however, the person paying the royalty whether he is resident of a Contracting State or not, has in contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by that permanent establishment or fixed base, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(5) where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other persons, the amount of the royalties paid, having regard to the use right or information for which they are paid, exceeds the amount which could 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 contracting State, due regard being had to the other provisions of this agreement.

(6) The provisions of this Article shall not apply if the right or property given rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

(7) In this Article the term "royalties" means payment of any kind received as consideration for the use of, or for the right to use ,any copy right of literary, artistic or scientific work including cinematography films and films or tapes used for radio and television broadcasting ;, any patent, trade mark, design, model, plan, secret formula or process or for the use of, or the fight to use industrial, commercial or scientific equipment.

Article 13. Capital Gains

Except as provided in Article 8 of this Agreement (Shipping and air transport), each Contracting State may tax capital gains in accordance with the provisions of its domestic law

Article 14. Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of, professional services or other independent activities of a similar character shall be taxable only in the State unless he has a fixed base regularly available to him in the other Contracting State

for the purpose of performing his activities, in which case so much of the income may be taxed in that other Contracting State as is attributable to that fixed base.

(2) The term 'professional service' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. Dependent Personal Services

(1) Subject to the provisions of Article 16, 17, 18 and 19, salaries and 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 contracting country State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, 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 a year of assessment; and
- (b) the remuneration is paid by, or on behalf of, an employer not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or Fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

Article 16. Director's Fees

Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of board of director of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. Artists and Athletes

(1) Notwithstanding the provisions of Article 14 and 15, 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 an athlete, from his personal activities as such exercised in the contracting State, may be taxed in that other State.

(2) where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income, may notwithstanding the provisions of Article 7, 14, and 15, be taxed in the contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. Pensions and Annuities

(1) Pensions and other similar remuneration paid in consideration of , past employment to a resident of a Contracting state and any annuity paid to such a resident shall be taxable only in the State from which such income is derived.

(2) The provisions of paragraph (1) of this Article shall not apply where a pension or similar remuneration is paid in respect of an employment which terminated before 6th April, 1979 in the United Kingdom, or 1st April, 1979 in Nigeria, or where an annuity is paid in respect of an obligation which existed at 6th April, 1979 in the United Kingdom or 1st April, 1979 in Nigeria. Any such pension, similar remuneration or annuity paid to a resident of a Contracting State shall be taxable only in that State.

3) Notwithstanding the provisions of paragraphs (1) and (2) of this Articles:
(a) Pensions paid by, or out of funds created by, a Contracting States or a political sub-division or a local authority thereof to individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such a pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that state and if the employment in respect of which the pension is paid terminated before 6th April, 1979 in the United Kingdom or 1st Apr.; 1979 in Nigeria.

(4) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertained period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19. Government Service

(1) (a) Remuneration, other than a pension, paid by a Contracting state or political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in other Contracting State if the services are rendered in that other State and the individual is a resident and a national of that State.

(2) The provisions of Articles 15 and 16 shall apply to 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 20. Students and Trainees

(1) An individual who is or was a resident of one of the Contracting States immediately before making a visit to other Contracting State and is temporarily present in that other Contracting State solely as a student at a university, college, school or other recognised educational institution in that other Contracting State or as a business or technical apprentice therein, shall be exempt from tax in that other Contracting State on:

(a) All Remittances for the purposes of his maintenance, education or training made to him from sources outside that other Contracting State; and

(b) any income derived from the other Contracting State in respect of services rendered in that other Contracting State other than services rendered by a business or technical apprentice to the person or partnership to whom he is apprenticed) with a view to supplementing the resources available to him for such purposes, not exceeding the sum of 750 pounds sterling or the equivalent in Nigerian naira at the parity rate of exchange during any year of assessment in addition to personal allowances provided under the tax law of that other state:

Provided that the benefits of this sub-paragraph shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall individual have the benefits of this sub-paragraph for more than six consecutive years of assessment

(2) An individual who is or was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for the purposes of study, research or training solely as a recipient of a grant allowance or award from the Government of either of the Contracting States from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the government of either of the Contracting States shall be exempt from tax in that other Contracting State on:

(a) the amount of such grant, allowance or award; and

(b) any income derived from that other Contracting State in respect of the services in that other Contracting State are performed in connection with his study, research, training or are incidental thereto:

Provided that in no event shall an individual have the benefit of this sub-paragraph for more than two consecutive years of assessment.

(3) An individual who is or was a resident of one of Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as an employee of, or under contract with, the

government or an enterprise of the first-mentioned Contracting State the purpose of acquiring technical, professional or business experiences shall be exempt from tax in that other Contracting State on:

- (a) all remittances for the purposes of his maintenance, education or training made to him from sources outside Contracting State and
- (b) any remuneration not exceeding the sum of 750 pounds sterling or the equivalent in Nigerian Naira at the parity rate of exchange for personal services rendered in that other State, provided such services are in connection with his studies or training or are incidental thereto, in addition to any personal allowances provided under the tax law of that other State. Provided that in no event shall an individual have the benefits of this sub-paragraph for more than two consecutive years of assessment.

Article 21.

Teachers

- (1) A professor or teacher who visits one of the Contracting State for the purpose of teaching or engaging in research at a university or any other recognised educational institution in that Contracting State and who, immediately before that visit, was a resident of the other Contracting State shall be exempted from tax by the first-mentioned Contracting State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his arrival in that State for such purpose.
- (2) The exemption provided in this Article may be applied by contracting State in which the teaching or research is performed either to the current payments to such professor or teacher in anticipation of fulfilment of the requirements of paragraph (1) or by way of withholding any refund, but in both cases exemption shall be conditional upon fulfilment of the requirements of paragraph (1).
- (3) This Article shall apply only to income from research if such research is undertaken by the professor or teacher in the public interest and not primarily for the benefit of some other private person or persons.

Article 22.

Elimination Of Double Taxation

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) Nigerian tax payable under the laws of Nigeria and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Nigeria shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which Nigerian tax is computed: Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax payable.

b) In the case of a dividend paid by a company which is a resident of Nigeria to a company which is a resident of the United Kingdom and which controls directly or indirectly at least ten per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Nigerian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraphs) the Nigerian tax payable by the company in respect of the profits of which such dividend is paid

2) For the purposes of paragraph (1) of this Article, the term "Nigeria tax payable" shall be deemed to include any amount which would have been payable as Nigerian tax for any year, but for an exemption or reduction of tax granted for that year or any part thereof under

a) any of the following provisions, that is to say:

(i) paragraphs 16 and 17 of the Industrial Development (Income Tax Relief) Act 1971;

(ii) section 9(6) and (7) of the Companies Income Tax Act 1979 where the loan in question is certified by the competent authority of Nigeria as being for the purpose of promoting new industrial, commercial, scientific, educational or agricultural development in Nigeria, so far as they were in force on, and have not been modified. Since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character ; or

(b) any other provision which may subsequently be made granting an exception or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially , similar character, if it has not been modified thereafter or has modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exception from, or reduction of Nigerian tax was first granted in respect of that source.

3. Subject to the provisions of the law of Nigeria regarding the allowance as a credit against Nigerian tax of tax payable in a territory outside Nigeria (which shall not affect the general principle thereof).

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from source within the United Kingdom (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to; the same profits, income or chargeable gains by reference to which United Kingdom tax is computed.

(b) In the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is resident in Nigeria and which controls directly or indirectly at least ten percent of the voting right in the company paying the dividend, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under the provisions of subparagraph (1) of this paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid. In any case the tax credit to be granted under this paragraph shall not exceed the proportion of the Nigerian tax which such profits, income or chargeable gain bear to the entire profits, income or chargeable gains liable to Nigerian tax.

(4) For the purpose of paragraphs (1) and (3) of this Article profits, Income and capital gains owned by a resident of one of the Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in the Contracting State.

(5) Nothing in this Article shall entitle a person who is a resident of a contracting State to credit against tax of that Contracting State of tax of the other contracting state if the terms of the transactions giving rise to profits on which the tax of the other Contracting State is payable are not such as might be expected in a bonafide commercial transaction and if they have as their main object, or one of their main objects obtaining of that credit.

Article 23. 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 is more

burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(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 enterprise of that other State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one 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 that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident ; in that state or any of the personal allowances, reliefs and reduction for tax purposes, which are granted to individuals so resident.

(5) In this Article the term "taxation" means taxes of every kind and description.

Article 24. Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the action of one or both of the Contracting States result or will result from him in taxation not in accordance with this Agreement, with the competent of the contracting state of which of which he is resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to and if it is not itself able to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

(3) The competent authorities of the Contracting State Shall endeavour to resolve by mutual agreement any difficulties or doubt arising as to the interpretation or application of the Agreement.

(4) The competent authorities of the Contracting State may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25.

Exchange Of Information

The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out provisions of this Agreement or for the prevention of fraud or for the administration of statutory provision against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall as secret and shall not be disclosed to any persons other than those (including a court or administrative body) concerned with the assessment, collection, enforcement or prosecution in respect of tax which are the subject of this Agreement. No information shall be exchanged which would disclose any trade, business, industrial, professional secret or trade process.

Article 26.

Diplomatic Agents and Consular Officials

(1) Nothing in this Agreement shall effect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding paragraph (1) of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives his income from sources therein, shall not be deemed to be resident of that other State.

Article 27.

Entry Into Force

Each of the Contracting States shall notify to the other completion of the procedures required by its law for the bringing into the completion of this Agreement. The Agreement shall enter into force thirty days after the date of the later of these notifications and shall there upon have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any financial year beginning on or after 6th April in the calendar year following that in which the Agreement enters into force;

(ii) in respect of corporation tax, for any financial year beginning or after 1st April in the calendar year next following that in which the Agreement enters into force;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1st January in the calendar year that in which the Agreement enters into force;

(b) in Nigeria:

(i) in respect of withholding tax on capital gains and taxes on income derived by a non-resident, in relation to income and capital derived on or

after 1st January in the calendar year next following which the Agreement enters into force;

(ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year following next to that in which the Agreement enters into force;

Article 28. Termination

This Agreement shall remain in force indefinitely but either contracting State may terminate the Agreement, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year.

In such event, the Agreement shall cease to have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or before 1st April in the calendar year next following that in which the notice is given,

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1st January in the calendar year next following that in which the notice is given;

(b) In Nigeria:

(i) in respect of withholding tax on income and taxes on capital gains levied by a non - resident, in relation to income and capital gain derived on or after 1st January in the calendar year next following that in which the notice is given.

(ii) in respect of other taxes, in relation to income of any basis period beginning on or after 1st January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto by respective Governments, have signed this Agreement.

Done in duplicate at London this 9th day of June 1987.

For the Government of the United Kingdom of Great Britain and Northern Ireland.

YOUNG

For the Government the Federal Republic of Nigeria.

O. DOVE-EDWIN