

**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.

