COMPANIES INCOME TAX ACT, CAP. 60 LFN; 1990

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CHAPTER C21

COMPANIES INCOME TAX ACT

An Act to consolidate the provisions of the Companies Income Tax Act 1961 and to make other provisions relating thereto.

[1979 No. 28.]

[1st April, 1977] [Commencement.]

PART I

Administration

1. Establishment and constitution of the Board

(1) There shall continue to be a Board of which the official name shall be the Federal Board of Inland Revenue (in this Act referred to as the "Board") whose operational arm shall be called and known as the Federal Inland Revenue Service (in this Act referred to as "the Service"). [1993 No. 3.]

(2) The Board shall comprise—

(a) an executive chairman who shall be a person within the Service experienced in taxation to be appointed by the President;

(b) the directors and heads of departments of the Service;

(c) the officer from time to time holding or acting in the post of Director with responsibility for planning, research and statistics in the Federal Ministry of Finance;

(d) a member of the National Revenue Mobilisation Allocation and Fiscal Commission;

(e) a member from the Nigerian National Petroleum Corporation not lower in rank than an Executive Director;

(f) a Director from the National Planning Commission;

(g) a Director from the Nigeria Customs Service;

(h) the Registrar-General of the Corporate Affairs Commission; and

(i) the legal adviser to the Service. [1993 No. 3.]

(3) Any seven members of the Board, of whom one shall be the chairman or a Director of a department within the Service, shall constitute a quorum. [1993 No. 3.]

(4) The secretary (who shall be an ex-officio member of the Board) shall be nominated by the Board from within the Service. [1993 No. 3.]

(5) Notwithstanding that the legal adviser to the Board is at any time a member of the Board, he may appear for and represent the Board in his professional capacity in any proceedings in which the Board is a party; and the legal adviser shall not in such circumstances give evidence on behalf of the Board. [1993 No. 3.]

(6) The secretary shall summon a meeting of the Board whenever the business requiring its attention so warrants, or upon any request of a member; and a majority decision of the members on any matter obtained by him in written correspondence shall be treated in all respects as though it were a decision of the Board in actual meeting unless any member has requested the submission of that matter to such meeting. [1993 No. 3.]

2. Establishment of Technical Committee of the Board

(1) There shall be a technical Committee of the Board (in this Act referred to as "the Technical Committee") which shall comprise—

(a) the Executive Chairman of the Board as chairman;

(b) all the Directors and heads of department of the Service;

(c) the legal adviser of the Service; and

(d) the secretary to the Board. [1993 No. 3.]

(2) The Technical Committee may co-opt from the Service such staff as it may require for the discharge of its functions. [1993 No. 3.]

(3) The functions of the Technical Committee shall be to—

(a) consider all tax matters that require professional and technical expertise and make recommendations to the Board;

(b) advise the Board on all the powers and duties specifically listed in section 3 of this Act and in the First Schedule to this Act; and [First Schedule.]

(c) attend to such other matters as may from time to time be referred to it by the Board. [1993 No. 3.]

3. Powers and duties of the Board

(1) The due administration of this Act and the tax shall be under the care and management of the Board who may do all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister.

(2) Whenever the Board shall consider it necessary with respect to any tax or penalty due, the Board may acquire, hold and dispose of any property taken as security for or in satisfaction of any such tax or penalty or of any judgment debt due in respect of any such tax or penalty and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed by the Minister.

(3) The Board may sue and be sued in its official name and, subject to an express provision under any subsidiary legislation or otherwise, the Board may authorise any person to accept service of any document to be sent, served upon or delivered to the Board.

(4) The Board may by notice in the Federal Gazette or in writing—

(a) authorise any person within or outside Nigeria to perform or exercise, on behalf of the Board, any power or duty conferred on the Board other than the powers or duties specified in the First Schedule, or to receive any notice or other document to be given or delivered to, or served upon, the Board under or in consequence of this Act and any subsidiary legislation made thereunder; and [First Schedule.]

(b) with the consent of the Minister, authorise the Joint Tax Board to perform or exercise, on behalf of the Board, any power or duty conferred on the Board including the powers or duties specified in the First Schedule.

(5) In the exercise of the powers and duties conferred upon it, the Board shall be subject to the authority, direction and control of the Minister and any written direction, order or instruction given by him after consultation with the chairman shall be carried out by the Board:

Provided that the Minister shall not give any direction, order or instruction in respect of any particular person which would have the effect of requiring the Board to raise an additional assessment upon such person or to increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given to or to defer the collection of any tax, penalty or judgment debt due by such person, or which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or to any offence relating to tax.

(6) Every claim, objection, appeal, representation or the like made by any person under any provision of this Act or of any subsidiary legislation made thereunder shall be made in accordance with this Act and subsidiary legislation.

(7) In any claim or matter or upon any objection or appeal under this Act or under any subsidiary legislation made thereunder, any act, matter or thing done by or with the authority of the Board, in pursuance of any provisions of this Act or subsidiary legislation made thereunder, shall not be subject to challenge on the ground that such act, matter or thing was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

4. Signification and execution of powers, duties, etc.

(1) Anything required to be done by the Board, in relation to the powers or duties specified in the First Schedule, may be signified under the hand of the chairman or of the secretary. [First Schedule.]

(2) Any authorisation given by the Board under or by virtue of this Act shall be signified under the hand of the chairman unless such authority is notified in the Federal Gazette.

(3) Subject to subsection (1) of this section, any notice or other document to be given under this Act, or under any subsidiary legislation made thereunder, shall be valid if—

(a) it is signed by the chairman or by any person authorised by him; or

(b) such notice or document is printed and the official name of the Board is duly printed or stamped thereon.

(4) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Board, in accordance with the provisions of this section, shall be presumed to be so given and signified, notified, or otherwise without further proof, until the contrary is shown.

5. Power to amend the First Schedule

The Minister may at any time by order delete any of the powers or duties specified in the First Schedule to this Act or include therein additional powers or duties or otherwise amend such Schedule or substitute a new Schedule therefor. [First Schedule.]

6. Official secrecy

(1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the profits or items of the profits of any company, as secret and confidential.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or profits or losses of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

(a) other than a person to whom he is authorised by the Minister to communicate it; or

(b) otherwise than for the purposes of this Act or of any enactment in Nigeria imposing tax on the income of persons other than companies,

shall be guilty of an offence against this Act.

(3) Any proceedings for an offence against this section may be taken by or in the name of the Board but not by any other person except with the consent of the Attorney-General of the Federation.

(4) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provision of this Act, or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax on income or profits in Nigeria.

(5) Where under any law in force in any Commonwealth country provision is made for the allowance of relief from income tax in respect of the payment of income tax in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in

that country of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from the tax in Nigeria or from income tax in that country.

(6) Where any agreement or arrangement with any other country with respect to relief for double taxation of income or profits includes provisions for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax, the obligation as to secrecy imposed by this section shall not prevent the disclosure of such information to the authorised officers of the Government of such country.

(7) Notwithstanding anything contained in this section, the Board may permit the Auditor-General of the Federation or any officer duly authorised in that behalf by him to have such access to any records or documents as may be necessary for the performance of his official duties, and the Auditor-General or any such officer shall be deemed to be a person employed in carrying out the provisions of this Act for the purposes of this section.

7. Forms

The Board may, from time to time, specify the form of returns, claims, statements and notices under this Act.

8. Service and signature of notices

(1) Except where it is provided by this Act that service shall be effected either personally or by registered post, the provisions of section 26 of the Interpretation Act (which relates to service by post) shall apply to the service of a notice, if such notice is addressed in accordance with the provisions of subsection (3) of this section. [Cap. I23.]

(2) Where a notice is sent by registered post it shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such registered letter is awaiting him at a post office, if such notice is addressed in accordance with the provisions of subsection (3) of this section:

Provided that a notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

(3) A notice to be served in accordance with subsection (1) or (2) of this section shall be addressed—

(a) in the case of a company registered in Nigeria, to the registered office of the company or any other known address of the company; [1996 No. 30.]

(b) in the case of a company incorporated outside Nigeria, either to the individual authorised to accept service of process under the Companies and Allied Matters Act at the address filed with the Registrar-General of Companies, if any, or to the registered office of the company wherever it may be situated; and [Cap. C20.]

(c) in the case of an individual or body of persons, to the last known business or private address of such individual or body of persons.

(4) Without prejudice to sections 68 and 85 (1) (c) of this Act, in any case where service of any notice under this Act has proved impossible, the notice may be served by being left at the appropriate office or address as determined under subsection (3) of this section or by posting it to the office or address or by publishing it in one issue of the Federal Gazette.

(5) Any person who obstructs any officer of the Board in the exercise of his functions under this Act or who uses violence on such officer, shall be guilty of an offence and shall on conviction—

(a) in the case of a first offence, be liable to imprisonment for six months or to a fine of not less than N2,000 or to both such imprisonment and fine; and

(b) in the case of a second or subsequent offence and in any case where violence is used on any such officer, be sentenced to imprisonment for six months without the option of a fine.

PART II

Imposition of tax and profits chargeable

9. Charge of tax

(1) Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of—

(a) any trade or business for whatever period of time such trade or business may have been carried on;

(b) rent or any premium arising from a right granted to any other person for the use or occupation of any property; and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company, then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last-mentioned period or over the five years beginning with that date, whichever is the shorter;

(c) dividends, interests, royalties, discounts, charges or annuities; [1993 No. 3.]

(d) any source of annual profits or gains not falling within the preceding categories;

(e) any amount deemed to be income or profit under a provision of this Act or, with respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Act; [Cap. P8.]

(f) fees, dues and allowances (wherever paid) for services rendered;

(g) any amount of profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds. [1991 No. 63.]

(2) For the purposes of this section, interest shall be deemed to be derived from Nigeria if—

(a) there is a liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made; or

(b) the interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of whichever way the interest may have accrued.

(3) In this section, “dividend” means—

(a) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholders; and

(b) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money’s worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

10. Identification of a company

The incorporation number of a company, to which the provisions of section 8 apply, shall serve as the identification number of the company and shall be displayed by the company on all business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, Ministries and all Government agencies. [1991 No. 21.]

11. Charge of tax on interest relating to foreign and agricultural loans, and certain reliefs

(1) Notwithstanding any other provisions of this Act but subject to the provisions of the following subsections, where during any calendar year commencing on or after 1 January, 1971, any foreign loan of an amount (or of an aggregate amount) which is not less than N150,000 is granted by a foreign company to any person carrying on any trade, business, profession or vocation in Nigeria for the purposes of that trade, business, profession or vocation, then any interest derived by the foreign company from that loan (being an interest which by virtue of subsection (10) of this section derived or deemed to be derived from Nigeria) shall—

(a) if the loan is not repayable by the borrower until after the expiration of a period of not less than ten years, commencing from the date on which the loan is granted, be exempt from tax;

(b) if the loan is not repayable by the borrower until after the expiration of a period of less than ten years but not less than five years, commencing from the date on which the loan is granted, be chargeable to tax for each relevant year of assessment at half the rate of tax specified in section 40 of this Act.

(2) If, in any case to which subsection (1) of this section applies, any such event as is mentioned in subsection (3) of this section occurs, no tax exemption or tax relief, as the case may be, shall be granted or made under the said subsection (1) or, if any such exemption or relief has been granted or made, it shall be withdrawn.

(3) The events referred to in subsection (2) of this section are—

(a) in a case to which paragraph (a) of subsection (1) of this section applies, the loan is repaid to the foreign company within a period of less than eight years;

(b) in a case to which paragraph (b) of subsection (1) of this section applies, the loan is repaid to the foreign company within a period of less than four years.

(4) The President may by order direct that no tax exemption or tax relief shall be made or granted under this section in respect of any foreign loan specified in the order or, if any such exemption or relief has been granted or made, that it shall be withdrawn.

(5) All such additional assessments and adjustments of assessments shall be made as may be necessary for or in consequence of the withdrawal of any exemption or relief under this section, and may be so made at any time.

(6) Interest payable on any foreign loan granted on or after 1 April, 1978 shall be exempted from tax as prescribed in Table I in the Third Schedule to this Act.

(7) Interest on any loan granted by a bank on or after 1 January 1977 to a company engaged in—

(a) agricultural trade or business; or

(b) the fabrication of any local plant and machinery; or

(c) as working capital for any cottage industry established by the company under the Family Economic Advancement Programme,

shall be exempted from tax, provided the moratorium is not less than eighteen months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted. [1998 No. 18.]

(8) For the purpose of subsection (7) of this section, where a bank grants a loan to a company, it shall disclose to the Board the following information—

(a) the amount of the loan;

(b) the moratorium;

(c) the date repayment is due to commence;

(d) the amount of repayment, showing capital and interest; and

(e) the full particulars of the recipient of the loan and its permanent address. [1991 No. 63.]

(9) In this section—

"agricultural trade or business" means any trade or business connected with—

(a) the establishment or management of plantations for the production of rubber, oil palm, cocoa, coffee, tea and similar crops;

(b) the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;

(c) animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming and deep sea fish-trawling; [1993 No. 3.]

"base lending rate" means the weighted average of the cost of fund to any bank; [1991 No. 63.]

"foreign company" means any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria;

"foreign loan", in relation to any foreign company, means any loan granted by that company with moneys brought into Nigeria from any territory or country outside Nigeria, or any loan granted by that company in any territory or country outside Nigeria, in a currency other than Nigerian currency.

(10) Interest payable on any loan granted by a bank on or after 1 April, 1980 for the purpose of manufacturing goods for export, shall be exempted from tax on the presentation of a certificate issued by the Nigerian Export Promotion Council stating that the level of export specified has been achieved by the company. A company shall be deemed to be engaged in manufacturing for export if the Nigerian Export Promotion Council certifies that no less than one half of its manufactured goods disposed of in its year of account is sold outside Nigeria and is not re-exported to Nigeria.

12. Full disclosure or agreement to be made

Any company entering into any agreement (whether oral or written) in respect of any service under paragraph (f) of section 9 (1) of this Act shall forthwith make a full disclosure to the Board in writing of the terms of such agreement.

13. Nigerian companies

(1) The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria.

(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria—

(a) if that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base;

(b) if it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;

(c) if that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract; and

(d) where the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arm's length transaction. [1993 No. 3.]

(3) For the purpose of subsection (2) (a) of this section a fixed base shall not include facilities used solely for the—

(a) storage or display of goods or merchandise;

(b) collection of information. [1993 No. 3.]

14. Companies engaged in shipping or air transport

(1) Where a company other than a Nigerian company carries on the business of transport by sea or air, and any ship or aircraft owned or chartered by it calls at any port or airport in Nigeria, its profits or loss to be deemed to be derived from Nigeria shall be the full profits or loss arising from the carriage of passengers, mails, livestock or goods shipped, or loaded into an aircraft, in Nigeria:

Provided that this subsection shall not apply to passengers, mails, livestock or goods which are brought to Nigeria solely for trans-shipment or for transfer from one aircraft to another or in either direction between an aircraft and a ship.

(2) For the purposes of the preceding subsection, where the Board is satisfied that the taxation authority of any other country computes and assesses on a basis not materially different from that prescribed by this Act the profits of a company which operates ships or aircraft, and that authority certifies—

(a) the ratio of profits or loss, before any allowance by way of depreciation, of an accounting period to the total sums receivable in respect of the carriage of passengers, mails, livestock or goods; and

(b) the ratio of allowances by way of depreciation for that period to that same total,

then the full profits or loss of that period shall be taken to be that proportion of the total sums receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria which is produced by applying the first-mentioned ratio to that total, and in place of any allowances to

be given under the provisions of the Second Schedule there shall be allowed the amount produced by applying the second-mentioned ratio to that same total. [Second Schedule.]

(3) Where at the time of assessment, the provisions of subsection (2) of this section cannot for any reason be satisfactorily applied, the profits to be deemed to be derived from Nigeria may be computed on a fair percentage on the full sum receivable in respect of the carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria:

Provided that where any company has been assessed for any year by reference to such percentage, it shall be entitled to claim at any time within six years after the end of such year that its liability for that year be re-computed on the basis provided by subsection (2) of this section; and where such claim has been made and a certificate has been produced to the satisfaction of the Board as provided in that subsection, such repayment of tax shall be made as may be necessary to give effect to this proviso, save that, if the company fails to agree with the Board as to the amount of the tax to be so re-computed and re-paid, the Board shall give notice to the company of refusal to admit the claim and the provisions of this Act with respect to objections and appeals shall apply accordingly with any necessary modifications.

(4) For the purposes of this section, the tax payable by any company for any year of assessment shall not be less than two per cent of the full sum receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria.

15. Cable undertakings

Where a company other than a Nigerian company carries on the business of transmission of messages by cable or by any form of wireless apparatus, it shall be assessable to tax as though it operates ships or aircraft, and the provisions of the preceding section shall apply mutatis mutandis to the computation of its profits deemed to be derived from Nigeria as though the transmission of messages to places outside Nigeria were equivalent to the shipping or loading of passengers, mails, livestock or goods in Nigeria.

16. Insurance companies

(1) Notwithstanding anything to the contrary contained in this Act, it is hereby provided that—

(a) in the case of an insurance company, whether proprietary or mutual, other than a life insurance company or a Nigerian company, which carries on business through a permanent establishment in Nigeria, and whose profits accrue in part outside Nigeria, the profits on which tax may be imposed shall be ascertained by taking the gross premiums and interest and other income receivable in Nigeria (less any premium returned to the insured and premiums paid on reinsurances), and deducting from the balance so arrived at, a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period for which the profits are being ascertained, and adding thereto, a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at deducting the actual losses in Nigeria (less the amount recovered in respect thereof under reinsurance), the agency expenses in Nigeria and a fair proportion of the expenses of the head office of the company;

(b) in the case of a life insurance company, whether proprietary or mutual, other than a Nigerian company, which carries on business through a permanent establishment in Nigeria, the profits on which tax may be imposed shall be the investment income less the management expenses, including commission:

Provided that where the profits of such a company accrue in part outside Nigeria, the profits shall be that proportion of the total investment income of the company as the premiums receivable in Nigeria bear to the total premiums receivable, less the agency expenses in Nigeria and a fair proportion of the expenses of the head office of the company:

Provided further that, for the purposes of the foregoing proviso, in the case of such an insurance company having its head office outside Nigeria, the Board may substitute some basis other than that therein prescribed for ascertaining the required proportion of the total investment income:

Provided that any amount distributed in any form as dividend from the actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be a part of the total profits of the company;

(c) in the case of an insurance company which is a Nigerian company, the profits on which tax may be imposed shall be ascertained in accordance with the foregoing provisions of this section as though the whole investment and premium income of the company were received in Nigeria, and all the expenses and other outgoings of the company were incurred in Nigeria.

(2) Not more than three months after an actuarial revaluation of the unexpired risks or any other revaluation has taken place, the company shall provide the Board full particulars of the revaluation carried out.

(3) For the purposes of this section, the term "permanent establishment" in relation to an insurance company, means a branch, management or other fixed place of business in Nigeria, but does not include an agency in Nigeria unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such company.

(4) For the purposes of this section, references to an insurance company include, references to any insurer registered under or pursuant to the Insurance Act. [Cap. I17.]

(5) For the purposes of this Act, where an insurance company carries on life insurance business in conjunction with insurance business of any other class, the life insurance business shall be treated as a separate business from any other class of insurance business carried on by the company. [1996 No. 31.]

17. Authorised unit trust scheme

(1) Where under any of the provisions of the Investments and Securities Act, a unit trust scheme is established for the purpose of providing facilities for the participation of the public, as beneficiaries under a trust, in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever, this Act shall, in respect of the income arising to the trustees of an authorised unit trust, have effect— [Cap. I24.]

(a) as if the trustees were a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom;

(b) as if the rights of the unit holders were shares in the company; and

(c) as if so much of the income accruing to the trustees as is available for payment to the unit holders were dividends on such shares,

and reference in this Act to a company shall be construed in accordance with this subsection. [1991 No. 63.]

(2) For the purpose of section 32 of this Act, the profits of an authorised unit scheme, on which tax may be imposed, shall be ascertained by taking the income accruing to the trustees from all sources of the investment of the unit trust and deducting therefrom sums disbursed as management expenses, including remuneration for the managers. [1991 No. 63.]

(3) Where the trustees of a unit trust receive a payment on which the unit trust suffers tax by deduction (not being franked investment income), the tax thereon shall be set-off against any income on the trustees by an assessment made for the year of assessment in which the receipt, on which the tax

deduction was made, falls to be taken into account in ascertaining the tax payable by the unit trust for the year of assessment. [1991 No. 63.]

(4) The provisions of section 53 of this Act shall apply to a dividend accruing to the trustees of a unit trust. [1991 No. 63.]

(5) So much of the profit accruing to the trustees of a unit trust as is available for payment to unit holders or for investment shall be deemed to be dividends paid or payable by the trustees to the unit holders in proportion to their rights, and the provisions of section 21 of the Personal Income Tax Act shall apply to a dividend paid or payable to any member of an authorised unit trust.[1991 No. 63. Cap. P8.]

(6) In this section—

"authorised unit trust" means, as respect a year of assessment, a unit trust scheme that is authorised by the Commission under section 125 of the Investment and Securities Act to carry on the business of dealing in a unit trust scheme; [Cap. I24.]

"unit trust scheme" means any arrangement made for the purpose of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

"unit holder" means any investor, beneficiary or person who acquired units in a unit trust scheme and who is entitled to a share of the investments subject to the trusts of a unit trust scheme;

"trustee" under a unit trust means the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be invested in accordance with the terms of the trust.

18. Profits of a company from certain dividends

The profits of a company from a dividend received from any other company shall be—

(a) if that other company is resident in a country to which section 44 of this Act applies, the amount of that dividend increased by the amount of any tax imposed in that country relative to that dividend; and

(b) if that other company is resident in a country to which section 45 of this Act applies, the amount of that dividend as computed under the provisions of subsection (5) of section 46 of this Act:

Provided that a dividend distributed—

(i) by a Nigerian company and satisfied by the issue of shares of the company paying the dividend; or

(ii) if the company is a Nigerian company, out of any profits exempted from tax by any provision of this Act, or of the Industrial Development (Income Tax Relief) Act; or [Cap. I7.]

(iii) if the company is chargeable to tax under the provisions of the Petroleum Profits Tax Act, out of any profits to which section 60 of that Act applies, [Cap. P13.]

shall be excluded from the profits of any other company which is a shareholder in such company. [1993 No. 3.]

19. Payment of dividend by a Nigerian company

Where a dividend is paid out as profit on which no tax is payable due to— [1996 No. 30.]

(a) no total profits; or

(b) total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company,

is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

20. Nigerian dividends received by companies other than Nigerian companies

In the case of a company which is neither a Nigerian company nor engaged in a trade or business in Nigeria at any time during a year of assessment—

(a) no tax shall be charged on it for that year in respect of any dividend received by it from a Nigerian company apart from tax withheld under section 80 of this Act;

(b) where any dividend is paid out of profits on which no tax is payable due to no total profits or total profits which are less than the amount of dividend which is paid, whether the recipient of the dividend is a Nigerian company or not, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if such dividend is the total profits of the company for the year of assessment which relates to accounts out of which the dividend is declared;

(c) nothing in this Act shall confer on such company or on the company paying the dividend, a right to repayment of tax paid by reason of the provisions of this section.

21. Certain undistributed profits may be treated as distributed

(1) Where it appears to the Board that a Nigerian company controlled by not more than five persons, with a view to reducing the aggregate of the tax chargeable in Nigeria on the profits or income of the company and those persons, has not distributed to its shareholders as dividend, profits made in any period for which accounts have been made up by such company, which profits could have been distributed without detriment to the company's business as it existed at the end of that period, it may direct that any such undistributed profits of such period be treated as distributed.

(2) Any amount of profits treated as distributed under the provisions of the foregoing subsection shall, for the purposes of this Act and any enactment in Nigeria imposing tax on the incomes of persons other than companies, be deemed to be profits or income from a dividend accruing to those persons who are shareholders in the company in proportion to their shares in the ordinary capital thereof on such day, and the amount of such profits or income to be taken for assessment in the hands of each such person shall be his due proportion thereof increased by such amount in respect of tax deemed to be deducted at source, as the Board may determine.

(3) Any direction by the Board under this section shall be made in writing and be served upon the company, and shall specify—

(a) the day to be taken for the purposes of the preceding subsection;

(b) the net amount of those profits so deemed to be distributed;

(c) the rate of tax deemed to be deducted, being the rate prescribed in subsection (2) of section 80 of this Act;

(d) the gross amount which, after deduction of tax at the said rate, leaves such net amount of those profits; and

(e) the net Nigerian rate of tax applicable to those profits, being such rate as would have been computed or agreed by the Board under the provisions of subsection (2) of section 43 of this Act if those profits had been distributed by the company as a dividend.

(4) For the purposes of this section, the Board may give notice to any company which it has reason to believe is controlled by not more than five persons requiring it to supply, within such reasonable time limited in such notice, full particulars of its shareholders on any day.

(5) Any direction by the Board under this section with respect to the profits of any accounting period of a company, shall be made not later than two years after the receipt by the Board of the duly audited accounts of the company for that period.

(6) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act, such direction were an assessment.

22. Artificial transactions, etc.

(1) Where the Board is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would otherwise be affected, by the transaction and any company concerned shall be assessable accordingly.

(2) For the purpose of this section—

(a) "disposition" includes any trust, grant, covenant, agreement or arrangement;

(b) transactions between persons one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the Board those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length.

(3) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act such direction were an assessment.

23. Profits exempted

(1) There shall be exempt from the tax—

(a) the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;

(b) the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;

(c) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company;

(d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Board may prescribe;

(e) the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union; [Cap. T14.]

(f) dividend distributed by Unit Trust; [1996 No. 32.]

(g) the profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria;

(h) the profits of any body corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purposes of export or otherwise) of that commodity;

(i) the profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State, not being profits derived from any trade or business carried on by that corporation or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority;

(j) any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria;

(k) dividend, interest, rent, or royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels. For the purpose of this subsection, "Government approved channels", means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act; [Cap. F34.]

(l) the interest on deposit accounts of a foreign non-resident company:

Provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1 January 1990 through Government approved channels; [1991 No. 21.]

(m) the interest on foreign currency domiciliary account in Nigeria accruing on or after 1 January 1990; [1991 No. 21.]

(n) nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Act, such that the provisions of sections 78, 79 and 80 of this Act, shall apply to a dividend, interest, rent or royalty which is a part of the profits or income referred to in subsections (1) (a) to (f) and (h) to (l) of this section;

(o) dividend received from small companies in the manufacturing sector in the first five years of their operation; [1996 No. 31.]

(p) dividend received from investments in wholly export-oriented businesses;[1996 No. 31.]

(q) the profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts; [1996 No. 32.]

(r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies. [1996 No. 32.]

Power to exempt

(2) The President may exempt by order—

(a) any company or class of companies from all or any of the provisions of this Act; or

(b) from tax all or any profits of any company or class of companies from any source,

on any ground which appears to it sufficient.

(3) The President may by order amend, add to or repeal any exemption made by notice or order under the provisions of subsection (2) or (4) of section 9 of the Personal Income Tax Act in so far as it affects a company, and, subject to the foregoing, the following notices and order shall continue in force for all purposes of this Act— [Cap. P8.]

(a) the Income Tax Exemption (Interest on Nigerian Public Loans) Notice; [L.N. 220 of 1943.]

(b) the Income Tax (Exemption) (Nigerian Broadcasting Corporation) Order; [L.N. 85 of 1957.]

(c) the Railway Loan (International Bank) (Exemption of Interest) Notice. [L.N. 111 of 1958.]

PART III

Ascertainment of profits

24. Deductions allowed

Save where the provisions of subsection (2) or (3) of section 14 or 16 of this Act apply, for the purpose of ascertaining the profits or loss of any company of any period from any source chargeable with tax under this Act, there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profits including, but without otherwise expanding or limiting the generality of the foregoing—

(a) any sum payable by way of interest on any money borrowed and employed as capital in acquiring the profits;

(b) rent for that period, and premiums, the liability for which was incurred during that period, in respect of land or building occupied for the purposes of acquiring the profits, subject, in the case of residential accommodation occupied by employees of the company, to a maximum of 100% of the basic salary of employees; [1996 No. 30. 1996 No. 32.]

(c) in the case of any property-holding company—

(i) expenses attributable to the maintenance of the property, [1999 No. 98.]

(ii) directors' remuneration, which shall not exceed N10,000 per annum in respect of each director, and the number of directors to be so remunerated shall in no case exceed three;[1996 No. 30.]

(d) any outlay or expenses incurred during the year in respect of—

(i) salary, wages or other remuneration paid to the senior staff and executives;

(ii) cost to the company of any benefit or allowance provided for the senior staff and executives, which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry of Employment, Labour and Productivity, and the Productivity, Prices and Income Board, as the case may be;[1991 No. 21.]

(e) any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the profits, or for the renewals, repair or alteration of any implement, utensil or articles so employed;

(f) bad debts incurred in the course of a trade or business proved to have become bad during the period for which the profits are being ascertained, and doubtful debts to the extent that they

are respectively estimated to the satisfaction of the Board to have become bad during the said period notwithstanding that such bad or doubtful debts were due and payable before the commencement of the said period:

Provided that—

(i) where in any period a deduction under this paragraph is to be made as respects any particular debt, and a deduction has in any previous period been allowed either under the Companies Income Tax Act 1961 or this Act in respect of the same debt, the appropriate reduction shall be made in the deduction to be made for the period in question; [1961 No. 22.]

(ii) all sums recovered during the said period on account of amounts previously written off or allowed either under the Companies Income Tax Act 1961 or this Act in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be profits of the trade or business of that period;

(iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed either were included as a receipt of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of paragraph (e) of section 23 (1) of this Act made in the course of normal trading or business operations;

(g) any contribution to a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under the powers conferred upon it by paragraph (g) of section 85 of the Personal Income Tax Act, subject to the provisions of the Fourth Schedule to the Act and to any conditions imposed by that Board; and any contribution other than a penalty made under the provisions of any enactment establishing a national provident fund or other retirement benefits scheme for employees throughout Nigeria;

[Cap. P8.]

(h) in the case of the Nigerian Railway Corporation such deductions as are allowed under the provisions of the Authorised Deductions (Nigerian Railway Corporation) Rules, which Rules shall continue in force for all purposes of this Act; [L.N. 195 of 1959.]

(i) in the case of profits from a trade or business, any expenses or part thereof—

(i) the liability for which was incurred during that period wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and which is not specifically referable to any other period or periods; or

(ii) the liability for which was incurred during any previous period wholly, exclusively, necessarily and reasonably for the purpose of such trade or business and which is specifically referable to the period of which the profits are being ascertained; and

(iii) the expenses proved to the satisfaction of the Board to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund which is not deductible under any other provision of this section; [1993 No. 3.]

(j) such other deduction as may be prescribed by the Minister by any rule.

25. Deductible donations

(1) Subject to the provisions of this section and notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profits or loss of any company for any period from any source

chargeable with tax under this Act, there shall be deducted the amount of any donation made for that period by that company to any fund, body or institution in Nigeria to which this section applies.

(2) Without prejudice to section 27 of this Act, it is hereby declared for the avoidance of doubt that the provisions of subsection (1) of this section shall have effect if, but only if, the donations are made out of the profits of the company, and are not expenditure of a capital nature.

(3) Except to such extent (if any) as the President may by order in the Federal Gazette otherwise direct, any deduction to be allowed to any company, under subsection (1) of this section, for any year of assessment, shall not exceed an amount which is equal to ten per cent of the total profits of that company for that year as ascertained before any deduction is made under this section.

(4) There shall be excluded from the sum allowable as a deduction under this section, any outgoings and expenses which are allowable as deductions under section 24 of this Act.

(5) This section shall apply to—

(a) the public funds;

(b) the statutory bodies and institutions;

(c) the ecclesiastical, charitable, benevolent, educational and scientific institutions,

established in Nigeria, which are specified in the Fifth Schedule to this Act. [Fifth Schedule.]

(6) The Minister may by order in the Federal Gazette amend the said Schedule in any manner whatsoever:

Provided that no fund, body or institution shall be added to that Schedule, in exercise of the powers conferred under the foregoing provisions of this subsection, unless the fund is a public fund established in Nigeria, or the body or institution is a statutory body or institution, or is a body or institution of a public character, established in Nigeria.

(7) In this section references to donations made by a company do not include references to any payments made by the company for valuable consideration.

26. Deduction for research and development

(1) Notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of reserve made out of the profits of that period by that company for research and development.

(2) The deduction to be allowed to any company under subsection (1) of this section for any year of assessment shall not exceed an amount which is equal to ten per cent of the total profits of that company for that year as ascertained before any deduction is made under this section and section 25 of this Act.

(3) Companies and other organisations engaged in research and development activities for commercialisation shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose. [1996 No. 32.]

27. Deductions not allowed

Notwithstanding any other provision of this Act, no deduction shall be allowed for the purpose of ascertaining the profits of any company in respect of—

(a) capital repaid or withdrawn and any expenditure of a capital nature;

(b) any sum recoverable under an insurance or contract of indemnity;

(c) taxes on income or profits levied in Nigeria or elsewhere, other than tax levied outside Nigeria on profits which are also chargeable to tax in Nigeria where relief for the double taxation of those profits may not be given under any other provision of this Act;

(d) any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme except as permitted by paragraph (g) of section 24 of this Act;

(e) the depreciation of any asset;

(f) any sum reserved out of profits, except as permitted by paragraph (f) of section 24 or 25 of this Act or as may be estimated to the satisfaction of the Board, pending the determination of the amount, to represent the amount of any expense deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;

(g) any expense of any description incurred within or outside Nigeria for the purpose of earning management fee unless prior approval of an agreement giving rise to such management fee has been obtained from the Minister;

(h) any expense whatsoever incurred within or outside Nigeria as management fee under any agreement entered into after the commencement of this section except to the extent as the Minister may allow;

(i) any expense of any description incurred outside Nigeria for and on behalf of any company except of a nature and to the extent as the Board may consider allowable.

28. Waivers or refund of liability or expenses

When a deduction has been allowed to a company under the provisions of section 24 or 25 of this Act in respect of any liability of, or any expense incurred by that company and such liability is waived or released or such expense is refunded to the company, in whole or in part, then the amount of that liability or expense which is waived, released or refunded, as the case may be, shall be deemed to be profits of the company on the day on which such waiver, release or refund was made or given.

PART IV

Ascertainment of assessable profits

29. Basis for computing assessable profits

(1) Save as provided in this section, the profits of any company for each year of assessment from such source of its profits (hereinafter referred to as “the assessable profits”) shall be the profits of the year immediately preceding the year of assessment from each such source:

Provided that in respect of any company which makes up its accounts to any date between 1 January and 31 March, 1980, the profits to be assessed to tax—

(a) in 1980 year of assessment, shall be the profits of the period from the beginning of the accounting year to 31 December, 1979; and

(b) in 1981 year of assessment, shall be the profits for 1 January to the end of the company’s accounting year in 1980.

(2) When the Board is satisfied that a company has made or intends to make up accounts of its trade or business to some day other than the 31st day of December, it may direct that the assembled profits of

that company shall be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment:

Provided that where the assessable profits of a company have been computed by reference to accounts made up to a certain day, and such company fails to make up an account to the corresponding day in the year following the assessable profits of that company for the year of assessment in which such failure occurs and for two years of assessment next following shall be computed on such basis as the Board in its discretion may decide.

New trade or business

(3) The assessable profits of any company from any trade or business for the year of assessment in which it commenced to carry on such trade or business (or in the case of a company other than a Nigerian company, for the year of assessment in which it commenced to carry on such trade or business in Nigeria) and for the two following years of assessment (which years are in this subsection respectively referred to as "the first year", "the second year", and "the third year") shall be ascertained in accordance with the following provisions—

(a) for the first year the assessable profits shall be the profits of that year;

(b) for the second year the assessable profits shall, unless such notice as hereinafter mentioned is given, be the amount of the profits of one year from the date of the commencement of the trade or business as determined for the purposes of paragraph (a) of this subsection;

(c) for the third year the assessable profits shall, unless such notice as hereinafter mentioned is given, be computed in accordance with subsection (1) of this section;

(d) a company shall be entitled, on giving notice in writing to the Board within two years after the end of the second year, to require that the assessable profits both for the second year and the third year (but not for one or other only of those years) shall be the profits of the respective years of assessment:

Provided that the company may, by notice in writing given to the Board within twelve months after the end of the third year, revoke the notice, and in such case, the assessable profits both for the second year and the third year shall be computed as if the first notice had never been given:

Provided that if the basis period for the second or third year is the period of nine months from 1 April to 31 December, 1980, the profits of that basis period shall be grossed up as if they were the profits of twelve months;

(e) where such notice as aforesaid has been given or revoked, such additional assessments or such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to paragraph (d) of this subsection:

Provided that if the company fails to agree with the Board as to the amount of any reduction of an assessment or repayment of tax, the Board shall give notice to the company of refusal to admit such reduction or repayment and the provisions of Part XI of this Act shall apply accordingly with any necessary modifications as though such notice were an assessment.

Cessation of trade or business

(4) Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) its assessable profits therefrom shall be—

(a) as regard the year of assessment in which the cessation occurs, the amount of the profits of that year;

(b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the profits as computed in accordance with the foregoing subsections, or the amount of the profits of such year, which ever is the greater;

(c) Provided that where the profits of such year is for a period of nine months from 1st April to 31st December, 1980, the profits shall be grossed up as if they were the profits of twelve months; and

(d) the company shall not be deemed to derive assessable profits from such trade or business for the year of assessment following that in which the cessation occurs.

(5) Where the provisions of subsection (1) of this section apply, such additional assessment or, on a claim being made by the company for this purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to these provisions:

Provided that, if the company fails to agree with the Board as to the amount of any reduction of an assessment or repayment of tax, the Board shall give notice to the company of refusal to admit the claim to such reduction or repayment and the provisions of Part XI of this Act shall apply accordingly with any necessary modifications as though such notice were an assessment.

Apportionment of profits

(6) Where in the case of any trade or business it is necessary, in order to arrive at the profits of any year of assessment or other period, to allocate or apportion to specific periods the profits or loss of any period for which accounts have been made up, or to aggregate any such profits or loss or apportioned parts thereof, it shall be lawful to make such allocation, apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods, unless the Board, having regard to any special circumstances, otherwise directs.

Receipts and payments after cessation of a trade or business

(7) Where, after the date on which a company has permanently ceased to carry on a trade or business (as determined for the purposes of subsection (4) of this section), the company, its receivers or liquidators, receive or pay any sum which would have been included in or deducted from the profits of that trade or business if it had been received or paid prior to that date, such sum shall be deemed for all purposes of this Act to have been received or paid by the company on the last day before such cessation occurred.

Certain partnership

(8) Where a company is engaged in a trade or business in partnership with any other person in Nigeria, that trade or business shall be deemed to constitute a separate source of profits, and the assessable profits of the company from that source shall be determined under the provisions of the Personal Income Tax Act in like manner as would be the assessable income of any individual partner in that partnership: [Cap. P8.]

Provided that, with respect to any assets of such partnership, where any annual, initial or balancing allowance or charge would fall to be given to or made upon the company for any year under the provisions of the Fifth Schedule to that Act, if the company were an individual partner in that partnership, such allowance or charge shall be given or made as though due under the provisions of the Second Schedule and in place of any other allowance or charge arising thereunder with respect to the same asset. [Fifth Schedule. Second Schedule.]

Trades or businesses sold or transferred

(9) Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to

Nigeria and any asset employed in such trade or business is sold or transferred, if the Board is satisfied that one company has control over the other or that both are controlled by some other person or are members of a recognised group of companies, the Board may in its discretion direct that—

(a) the provisions of subsections (3) and (4) of this section shall not apply to such trade or business; and

(b) for the purposes of the Second Schedule to this Act, each such asset shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure thereon on the day following such sale or transfer; and

[Second Schedule.]

(c) the company acquiring each such asset shall not be entitled to any initial allowance with respect to that asset under the said Schedule and any allowances deemed to have been received by the vendor company under the provisions of this paragraph:

Provided that the Board in its discretion—

(i) may require either company directly affected by any such direction which is under consideration by the Board to guarantee or give security, to the satisfaction of the Board, for payment in full of all tax due or to become due by the company selling or transferring such trade or business; and

(ii) may impose such conditions as it sees fit on either or both the companies directly affected,

and in the event of failure by either company to carry out or fulfil such guarantee or conditions, the Board may revoke the direction and make all such additional assessments or repayments of tax as may be necessary so as to give effect to such revocation; and for the purposes of this subsection, reference to a trade or business shall include references to any part thereof.

Trade or business transferred under Part II of the Companies and Allied Matters Act

(10) Where, in pursuance of Chapter 3 of Part II of the Companies and Allied Matters Act, a company (in this subsection referred to as "the re-constituted company") is incorporated under that Act to carry on any trade or business previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the re-constituted company, then, if the Board is satisfied that the trade or business carried on by the re-constituted company immediately after the incorporation of that company under the Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the following provisions of this subsection shall have effect, that is— [Cap. C20.]

(a) the provisions of subsections (3) and (4) of this section shall not apply to the trade or business carried on by the re-constituted company;

(b) for the purposes of the Second Schedule to this Act, the assets so vested in the re-constituted company shall be deemed to have been sold to it, on the day of the incorporation of that company, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased; and [Second Schedule.]

(c) the re-constituted company shall not be entitled to any initial allowances as respects those assets and shall be deemed to have received all allowances given to the foreign company in respect of those assets under the Second Schedule to this Act and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or subsection (9) of this section; and [Second Schedule.]

(d) subject to subsection (11) of this section, the amount of any loss incurred during any year of assessment by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits or income of that company for any such year, under the provisions of this Act or the corresponding provisions of the Companies Income Tax Act 1961 or the Income Tax Act, shall be deemed to be a loss incurred by the re-constituted company in its trade or business during the year of assessment in which its trade or business commenced; and the amount of that loss shall, in accordance with section 31 of this Act, be deducted from the assessable profits of the re-constituted company; [1961 No. 22. Cap. 85 1958 Edition.]

(e) no deduction shall be made under paragraph (d) of this subsection in respect of any loss to which that paragraph relates—

(i) except to the extent, (if any) to which it is proved by the re-constituted company to the satisfaction of the most senior officer in the Industrial Inspectorate Division of the Federal Ministry of Industry (hereinafter in this subsection referred to as "the director") that the loss was not the result of any damage or destruction caused by any military or other operations connected with the civil war in which Nigeria was engaged and which ended on 15 January, 1970:

Provided that the President may by order direct that, to the extent specified in the order, a deduction under paragraph (d) of this subsection shall be made in respect of a loss which was the result of any damage or destruction caused by any military or other operations connected with the said civil war;

(ii) unless within three years after the incorporation of the re-constituted company a claim for the deduction is lodged by that company with the director and a copy of the claim is forwarded by that company to the Board; and

(f) any deduction to which paragraph (d) of this subsection applies, shall be made as far as possible from the amount, if any, of the assessable profits of the re-constituted company for the year of assessment in which its trade or business commenced and, so far as it cannot be so made, then from the amount of the assessable profits of the next year of assessment, and so on, but such deductions shall not be made against the profits of the company after the fourth year from the commencement of such business,

and in this subsection "foreign company" means a company incorporated outside Nigeria before 18 November, 1968, and having on that date an established place of business in Nigeria.

Board may call for returns and information relating to certain assets, etc.

(11) For the purposes of subsections (9) and (10) of this section, the Board may by notice require any person (including a company to which any assets have vested in pursuance of Chapter 3 of Part II of the Companies and Allied Matters Act) to prepare and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, not being a period of less than 21 days from the service thereof. [Cap. C20.]

(12) No merger, take-over, transfer or restructuring of the trade or business carried on by a company shall take place without having obtained the Board's direction under subsection (9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gains Tax Act. [Cap. C1.]

30. Board's power to assess and charge on turn-over of trade or business

(1) Notwithstanding section 40 of this Act, where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Board that for any year of assessment, the trade or business produces either

no assessable profits or assessable profits which in the opinion of the Board are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the assessable profits of the company cannot be ascertained, the Board may, in respect of that trade or business, and notwithstanding any other provisions of this Act if the company is a—

(a) Nigerian company, assess and charge that company for that year of assessment on such fair and reasonable percentage of the turn-over of the trade or business as the Board may determine;

(b) if that company is a company other than a Nigerian company and—

(i) that company has a fixed base of business in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to the fixed base;

(ii) that company operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, assess and charge to the extent that the profit is attributable to the business or trade carried on through that person;

(iii) that company executes one single contract involving surveys, deliveries, installations or construction, assess and charge the company for that year of assessment on such a fair and reasonable percentage of the turnover of the contract; and

(iv) the trade or business is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, assess and charge on a fair and reasonable percentage of that part of the turnover as may be determined by the Board. [1993 No. 3.]

(2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings, shall apply to an assessment or additional assessment made under this section as they apply to an assessment or additional assessment made under any other section of this Act.

PART V

Ascertainment of total profits

31. Total profits from all sources

(1) The total profits of any company for any year of assessment, shall be the amount of its total assessable profits from all sources for that year together with any additions thereto to be made in accordance with the provisions of the Second Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of this section, section 32 and of the said Schedule.

[Second Schedule.]

(2) Subject to the provisions of subsection (4) of this section, there shall be deducted—

(a) the amount of a loss which the Board is satisfied has been incurred by the company in any trade or business during any preceding year of assessment:

Provided that—

(i) in no circumstances shall the aggregate deduction from assessable profits or income in respect of any such loss exceed the amount of such loss; and

(ii) a deduction under this section for any particular year of assessment shall not exceed the amount, if any, of the assessable profits, included in the total profits for that year of assessment, from the trade or business in which the loss was incurred and shall be made as far as possible from the amount of such assessable profits of the first year of assessment after that in which the loss was incurred and, so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on; but such deductions shall not be made against the profit of the company after the fourth year from the year of commencement of such business;

(iii) the period for carrying forward any loss in sub-paragraph (ii) of this paragraph, shall be limited to four years after which period any such loss shall lapse;

(b) the amount of any loss which, under paragraph (d) of subsection (10) of section 29 is deemed to be a loss incurred by the company during the year of assessment in which its trade or business commenced, so however that any deduction in respect of that loss shall be made as provided under paragraph (f) of that subsection.

(3) The amount of any loss incurred by a company engaged in an agricultural trade or business for the year of assessment in which it commenced to carry on such trade or business, shall be deducted as far as possible from the assessable profits of the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on (without limit as to time) until the loss has been completely set off against the company's subsequent assessable profits.

(4) For the purposes of subsection (2) of this section, the loss incurred during any year of assessment shall be computed, where the Board so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 29 of this Act for the computation of assessable profits for the following year of assessment if such profits had arisen.

(5) Where under the provisions of subsection (6) of section 29 of this Act for the purpose of computing the profits of a period from a source chargeable with tax under this Act, being a period the profits of which are assessable profits from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to any such specific period, except to the extent that such loss or part thereof exceeds the aggregate profits apportioned to the remaining specific period or periods within that whole period.

32. Reconstruction investment allowance

(1) Where a company has incurred an expenditure on plant and equipment, there shall be allowed to that company an investment allowance as provided in subsection (2) of this section and shall be in addition to an initial allowance under the Second Schedule of this Act. [1993 No. 3. Second Schedule.]

(2) The rate at which investment allowance is to be allowed for the purpose of subsection (1) of this section shall be 10 per cent of the actual expenditure incurred on such plant and equipment. [1993 No. 3.]

(3) Any provisions of the Second Schedule applicable to an initial allowance shall also apply to an investment allowance under this section, except that an investment allowance shall not be taken into account in ascertaining the residue of qualifying expenditure in respect of an asset, for the purpose of the said Schedule.

(4) If in the case of any qualifying expenditure incurred on the new asset, any such event as is mentioned in the next following subsection occurs within a period of five years beginning with the date on which the expenditure was incurred, no investment allowance shall be made in respect of the expenditure, or if such allowance has been made before the occurrence of the event, it shall be withdrawn.

(5) The events referred to in subsection (4) of this section are—

(a) any sale or transfer of the asset representing the expenditure made by the company incurring the expenditure otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;

(b) any appropriation of the asset representing the expenditure made by the company incurring the expenditure to a purpose other than a chargeable purpose;

(c) any sale, or transfer or other dealing with the asset representing the expenditure by the company incurring the expenditure, being a case where it appears that the expenditure was incurred in contemplation of the asset being so dealt with, and being a case where it is shown either—

(i) that the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset; or

(ii) that the incurring of the expenditure and the asset being so dealt with were not bona fide business transactions or were artificial or fictitious transactions, and were designed for the purpose of obtaining tax allowances.

(6) A company incurring any expenditure in respect of which an investment allowance has been made and has not been withdrawn, shall give notice to the Board if, to the knowledge of the company, any of the events as is mentioned in subsection (5) of this section occurs at any time before the expiration of five years beginning with the date when the expenditure was incurred.

(7) Any notice of a sale or transfer given under subsection (6) of this section shall state the name and address of the person to whom the sale or transfer is made.

(8) Where an asset in respect of which an investment allowance has been made is sold or transferred, it shall be the duty of the purchaser or transferee, and of the personal representatives of any such person, on being required to do so by any officer duly authorised by the board to give that officer all such information as he may require, and as they have or can reasonably obtain, about any sale or transfer of the asset representing the expenditure or about any other dealing with the asset.

(9) Any person who, without reasonable excuse, fails to comply with this section, shall be guilty of an offence and liable on conviction to a penalty not exceeding N100 plus the amount of tax lost by the granting of the investment allowance made in respect of the expenditure in question.

(10) All such additional assessments and adjustments of assessments shall be made as may be necessary in consequence of the withdrawal of any investment allowance, and may be so made at any time.

(11) For the purposes of this section—

“artificial or fictitious transactions” has the same meaning as in section 22 of this Act;

“chargeable purpose” means the purpose of putting the assets to a use such that profits accrue or are intended to accrue therefrom and will be chargeable tax;

“initial allowance” has the same meaning as in the Second Schedule to this Act; [Second Schedule.]

“qualifying expenditure” has the same meaning as in the Second Schedule to this Act.[Second Schedule.]

33. Payment of minimum tax

(1) Notwithstanding any other provisions in this Act where in any year of assessment the ascertainment of total assessable profits from all sources of a company results in a loss, or where a company’s

ascertained total profits results in no tax payable or tax payable which is less than the minimum tax, there shall be levied and paid by the company the minimum tax as prescribed by subsection (2) of this section. [1991 No. 21.]

(2) For the purposes of subsection (1) of this section the minimum tax to be levied and paid shall—

(a) if the turnover of the company is N500,000 or below and the company has been in business for at least four calendar years be—

(i) 0.5 per cent of gross profit; or

(ii) 0.5 per cent of net assets; or

(iii) 0.25 per cent of paid-up capital; or

(iv) 0.25 per cent of turnover of the company for the year,

whichever is higher; or

(b) if the turnover is higher than N500,000, be whatever is payable in paragraph (a) of this subsection plus such additional tax on the amount by which the turn-over is in excess of N500,000 at a rate which shall be 50 per cent of the rate used in paragraph (a) (iv) of this subsection. [1991 No. 21.]

(3) The provisions of this section shall not apply to—

(a) a company carrying on agricultural trade or business as defined in subsection (9) of section 11 of this Act.

(b) a company with at least 25 per cent imported equity capital; and

(c) any company for the first four calendar years of its commencement of business. [1991 No. 21.]

(4) (a) Nothing in this section shall exempt any company from payment of any levy or tax imposed on the total profits of the company under section 40 of this Act so however that the tax payable under subsection (1) of this section, shall be the amount by which the amount computed under subsection (2) thereof exceeds the amount that is levied and payable under section 40 of this Act;

(b) For the purposes of this section and the Second Schedule to this Act, the capital allowance for any assessment year in which a minimum tax is payable, shall be computed and the amount so computed, together with any unabsorbed allowances brought forward from previous years, shall be deducted as far as possible from the assessable profits of the assessment year and, so far as it cannot be completely deducted, the amount by which the total amount of the capital allowance exceeds the amount of the assessable profit of the assessment year, shall be carried forward to the next assessment year.

[Second Schedule. 1993 No. 3.]

34. Rural investment allowance

(1) Where a company incurs capital expenditure on the provisions of facilities such as electricity, water, tarred road or telephone for the purpose of a trade or business which is located at least 20 kilometers away from such facilities provided by the government, there shall be allowed to the company in addition to an initial allowance under the Second Schedule to this Act an allowance (in this Act called “rural investment allowance”) at the appropriate per cent certain as set out in subsection (2) of this section of the amount of such expenditure: [Second Schedule.]

Provided that where any allowance has been given in pursuance of this section, no investment allowance under section 32 of this Act shall be due or be given in respect of the same asset or in addition to the allowance given under this section. [1993 No. 3.]

(2) The rate of the rural investment allowance for the purpose of this section shall be as follows—

(a)	no facilities at all	100%
(b)	no electricity	50%
(c)	no water	30%
(d)	no tarred road	15%
(e)	no telephone	5%

[1993 No. 3.]

(3) For the purpose of this section the rural investment allowance shall be made against the profits of the year in which the date of completion of the investment falls and the allowance or any fraction thereof, shall not be available for carry forward to any subsequent year whenever full effect cannot be given to the allowance owing to there being no assessable profits or assessable profits less than the total allowance for the year the investment was made.

[1993 No. 3.]

35. Export processing zone allowance

(1) A company which has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an export processing zone shall be granted 100 per cent capital allowance in any year of assessment.

[1996 No. 31.]

(2) A company granted capital allowance under subsection (1) of this section shall not be entitled to an investment allowance under this Act.

[1996 No. 31.]

(3) The profit or gains of a 100 per cent export oriented undertaking established within and outside an export free zone shall be exempt from tax for the first three consecutive assessment years provided that —

(i) the undertaking is 100 per cent export oriented;

(ii) the undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;

(iii) it manufactures, produces and exports articles during the relevant year and the export proceeds form 75 per cent of its turnover;

(iv) the undertaking is not formed by transfer of machinery or plants previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25 per cent of the total value of the machinery or the undertaking;

(v) the undertaking repatriates at least 75 per cent of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.

[1996 No. 32.]

(4) For the purpose of subsection (3) of this section only the tax written down value of the assets shall be carried forward at the end of the tax holidays.

[1996 No. 32.]

(5) In this section "export processing zone" and "approved activity" have the meanings assigned to them in the Nigerian Export Processing Zone Act.

[1996 No. 31. Cap. N107.]

36. Mining of solid minerals

A new company going into the mining of solid minerals shall be exempt from tax for the first three years of its operation.

[1996 No. 32.]

37. Incomes in convertible currencies to be exempt

25 per cent of incomes in convertible currencies derived from tourists by a hotel shall be exempt from tax, provided that such income is put in a reserved fund to be utilised within five years for the building expansion of new hotels, conference centres and new facilities for the purpose of tourism development.

[1996 No. 32.]

38. Local plants and fabrication of spare parts

(1) A company which engages wholly in the fabrication of spare parts, tools and equipment for local consumption and export shall be allowed 25 per cent investment tax credit on its qualifying capital expenditure.

[1996 No. 32.]

(2) A company which purchases a locally manufactured plant, machinery or equipment for use in its business shall be allowed 15 per cent investment tax credit on such fixed asset bought for use.

[1996 No. 32.]

PART VI

Incentives to the gas industry

39. Gas utilisation (downstream operations)

(1) A company engaged in gas utilisation (downstream operations) shall be granted the following incentives, that is—

(a) an initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years;

[1998 No. 18.]

(b) as an alternative to the initial tax free period granted under paragraph (a) of this subsection, an additional investment allowance of 35 per cent which shall not reduce the value of the asset, so however that a company which claims the incentive provided under this paragraph shall not also claim the incentive provided under paragraph (c) (ii) of this subsection;

[1999 No. 30.]

(c) accelerated capital allowances after the tax-free period, as follows, that is—

(i) an annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery;

(ii) an additional investment allowance of 15 per cent which shall not reduce the value of the asset;

[1998 No. 18.]

(d) tax free dividends during the tax free period, where—

(i) the investment for the business was in foreign currency; or

[1998 No. 18.]

(ii) the introduction of imported plant and machinery during the period was not less than 30 per cent of the equity share capital of the company;

[1999 No. 30.]

(e) interest payable on any loan obtained with the prior approval of the Minister for a gas project, shall be tax deductible.

[1998 No. 19.]

(2) The tax-free period of a company shall start on the day the company commences production as certified by the Ministry of Petroleum Resources.

[1998 No. 18.]

(3) In this section—

"gas utilisation" means the marketing and distribution of natural gas for commercial purposes and includes power plant, liquified natural gas, gas to liquid plant, fertiliser plant, gas transmission and distribution pipelines;

[1998 No. 19.]

"tax-free period" means the tax-free period referred to in subsection (1) (a) of this section.

[1998 No. 18.]

PART VII

Rate of tax, deduction of tax from dividends and relief for double taxation

40. Rates of tax

(1) There shall be levied and paid for each year of assessment in respect of the total profits of every company, tax at the rate of thirty kobo for every naira.

[1996 No. 32.]

(2) In addition to any levy made pursuant to subsection (1) of this section, there shall, as from the assessment year commencing on 1 January, 1989 be levied and paid a special levy of fifteen per cent on excess profits of every company including banks and for the purpose of this subsection, "excess profits"

means the difference between total profits as computed in accordance with section 31 of this Act and standard profits as calculated in accordance with the provisions of subsection (3) of this section.

(3) For the purposes of subsection (2) of this section, "standard profits" means—

(a) in the case of every Nigerian company—

(i) the addition of the amounts arrived at after applying the percentages specified in this sub-paragraph to the amount of capital employed at the end of the accounting period, that is to say—

Paid-up capital 40 per cent

Capital or statutory reserve 20 per cent

General reserve20 per cent

Long term loan20 per cent; or

(ii) the amount of six million naira, whichever is greater;

(b) in the case of every company other than a Nigerian company and as respects any year of assessment commencing on 1 January, 1989—

(i) the amount of fifteen per cent of the turnover of the company for that year being turnover attributable to any part of the operations of the company carried out in Nigeria; or

(ii) the amount of six million naira, whichever is greater.

(4) A company which is yet to commence business after at least six months of incorporation shall for each year it obtains a tax clearance certificate pay a levy of—

(a) N500 for the first year; and

(b) N400 for every subsequent year,

before a tax clearance certificate is issued. [1991 No. 21.]

(5) The provisions of Parts VIII and XIV of this Act shall apply to subsection (3) of this section.

(6) For the purposes of paragraph (a) of subsection (4) of this section, any unabsorbed capital allowance brought forward shall be suspended until normal assessment is made; but a notional allowance shall be deemed to have been granted for the assessment year in which a turnover tax is payable.

(7) Where in any of the basis period for the year of assessment in which a company commenced business and the next following four years of assessment as determined under the provisions of section 29 of this Act, a Nigerian company engaged in manufacturing or agricultural production, mining of solid minerals or wholly export trade, earns a total gross sales (turnover) of below one million naira, there shall be levied and paid by the company, tax at the rate of twenty kobo on every naira of the total profits.

[1996 No. 31.]

(8) Notwithstanding the provisions of subsection (7) of this section, where a Nigerian company engaged in the trade and business specified in that subsection commenced business before 1 January, 1988 and makes a gross sales (turnover) of below five hundred thousand naira, there shall be levied and paid by

such company for each of the assessment years 1988, 1989 and 1990 tax at the rate of twenty kobo on every naira of the total profits.

(9) The provisions of subsections (7) and (8) of this section shall not apply to a company formed to acquire the whole or any part of the trade or business previously carried on by another company.

(10) The provisions of subsection (7) of this section may be extended for additional two years where the company shows evidence of good records and management and remained in the preferred sector of the economy as specified in that subsection.

[1993 No. 3.]

(11) Where a company has incurred an expenditure on electricity, water, tarred road or telephone for the purpose of a trade or business carried on by the company which is located at least 20 kilometers away from electricity, water, tarred road or telephone facilities which are provided by the government, the company shall be allowed a relief called "investment tax relief" for each year expenditure is incurred on each such facility at the following rate of the expenditure—

(a)	no facilities at all	100%
(b)	no electricity	50%
(c)	no water	30%
(d)	no tarred road	15%
(e)	no telephone	5%

[1993 No. 3.]

(12) For the purposes of subsection 11 of this section, a company shall not be allowed to claim the investment tax relief for more than three years and the relief shall not be available to a company already granted the pioneer status.

[1993 No. 3.]

41. Replacement of obsolete plant and machinery

Where a company has incurred an expenditure for the replacement of an obsolete plant and machinery, there shall be allowed to that company, 15% investment tax credit.

[1996 No. 32.]

42. Relief from the tax

(1) Every Nigerian company shall be entitled to relief from the tax in the manner and to the extent hereinafter provided.

(2) Relief from the tax shall be given at a rate equal to the full rate of tax upon the first N6,000 of the total profits of such a company:

Provided that where the Board is of the opinion that any remuneration charged in the accounts of a company in respect of any director's services to the company is excessive in relation to those services or the nature or extent of the trade or business carried on, it may direct that the whole or any part of that remuneration be treated as forming part of the total profits of the company for the purpose of determining the amount by which the profits to be relieved of tax shall be reduced under the foregoing provisions of this subsection.

(3) No relief shall be granted under this section to any company formed to acquire the whole or any part of trade or business previously carried on by another company.

(4) Where a company has applied any profits in respect to which relief has been given under the provisions of this section either—

(a) in payment of any dividend, other than a dividend in the form of shares arising from the capitalisation of profits; or

(b) in reduction of paid-up share capital; or

(c) in making any loan to any director of the company,

the Board in its discretion may make such assessments to tax upon the company as will counteract the benefit of such relief attributable to the profits so applied.

(5) Where a company to which relief has been given under the provisions of this section is wound up or liquidated for purposes which include, in the opinion of the Board, the transfer of the benefit of such relief to the shareholders, such assessments to tax shall be made upon the receiver or liquidator in the name of the company as will counteract the benefit of all such relief which is not counteracted by assessment under the provisions of the preceding subsection.

43. Dividends and tax on interim dividends paid by Nigerian companies

(1) In respect of every dividend paid by a Nigerian company, being a dividend to which the proviso to section 18 applies, the company shall issue to each of its shareholders a certificate setting out the amount thereof to which such shareholder is entitled and describing the profits out of which the dividend is paid, and the company shall not be entitled to deduct tax from any such dividend on payment thereof.

(2) For the purposes of this section, the net Nigerian rate of tax applicable to a dividend shall be the rate computed or agreed by the Board in the following manner—

(a) where the accounting period of a company out of the profits of which a dividend is declared to be wholly payable coincides with any single basis period of that company for a year of assessment (as determined under the provisions of Part IV of this Act) the net Nigerian rate of tax applicable to that dividend shall be computed by dividing the tax payable by the company for that year of assessment after deduction of any relief given under the provisions of section 44 or 46 by the distributable profits, as shown by the accounts of the company, arising during that period, before deduction of any tax but after deduction of any profits specified in subsection (1) of this section;

(b) in any other case, the net Nigerian rate of tax applicable to the dividend shall be determined by the Board as may appear to it to be just and equitable:

Provided that in no case shall the net Nigerian rate of tax applicable to a dividend exceed the rate specified by section 40 of this Act for the year of assessment in which payment of the dividend becomes due.

(3) Within fourteen days thereof every Nigerian company shall supply full particulars to the Board of each dividend declared, and on request of the Board shall supply a list of the shareholders to whom the dividend is payable showing their respective shares therein.

(4) In the event that the net Nigerian rate of tax applicable to a dividend has not agreed or computed by the Board before the date on which payment of that dividend becomes due, the certificate to be given for the purposes of subsection (2) of this section shall so specify, and no repayment out of tax deducted from that dividend shall be made to any shareholder until that rate has been finally determined.

(5) Nothing in this section shall be construed as requiring a company to deduct tax from a dividend that is not paid in money.

(6) Notwithstanding the foregoing provisions of this section, every company paying dividend to its shareholders shall pay tax at the prescribed rate in subsection (1) of section 40 of this Act to the Board prior to the payment of the dividend. The tax so paid shall be a deposit against the tax due from the company on the profits out of which the dividend is paid:

Provided that the provisional tax paid under section 77 (1) of this Act shall be taken into account in determining the amount of tax due under this subsection.

44. Relief in respect of Commonwealth income tax

(1) If any Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows—

(a) if the Commonwealth rate does not exceed one half of the rate of tax under this Act, the rate at which relief is to be given shall be the Commonwealth rate of tax;

(b) in any other case the rate at which relief is to be given shall be half the rate of tax under this Act.

(2) If any company, other than a Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows—

(a) if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;

(b) if the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax.

(3) For the purposes of this section—

“Commonwealth income tax” means any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland which provides for relief from tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this section;

“the rate of tax” under this Act of a company for any year of assessment means the rate determined by dividing the amount of tax imposed for that year (before the deduction of any double taxation relief granted by this Part) by the amount of the total profits of the company for that year, and the Commonwealth rate of tax shall be determined in a similar manner.

(4) Any claim for relief from tax for any year of assessment under this section shall be made not later than six years after the end of that year, and if the claim is admitted, the amount of the tax to be relieved shall be re-paid out of the tax paid for that year of assessment or set-off against the tax which the company is liable to pay for that year of assessment:

Provided that if the company fails to satisfy the Board as to the amount of the tax to be relieved, the Board shall give notice of refusal to admit the claim and the provisions of Part XI shall apply accordingly with any necessary modifications as though such notice were an assessment.

45. Double taxation arrangements

(1) If the Minister by order declares that arrangements specified in the order have been made with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed on profits charged by this Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this Act.

(2) On the making of an order under this section with respect to arrangements made with the government of any Commonwealth country or the Republic of Ireland, section 44 of this Act shall cease to have effect as respects that country and shall be deemed to have ceased to have had effect as from the beginning of the first year of assessment for which the arrangements are expressed to apply except in so far as the arrangements otherwise provide.

(3) Where any arrangements have effect by virtue of this section, any obligation as to secrecy in this Act shall not prevent the disclosure to any authorised officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(4) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

(5) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to profits which are not themselves liable to double taxation.

46. Method of calculating relief to be allowed for double taxation

(1) The provisions of this section shall have effect where, under arrangements having effect under section 45 of this Act, foreign tax payable in respect of any profits in the country with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of those profits under this Act, and in this section, “foreign tax” means any tax payable in that country which under the arrangements is to be so allowed.

(2) The amount of the tax chargeable in respect of the profits which are liable to both tax and foreign tax shall be reduced by the amount of the credit admissible under the terms of the arrangement:

Provided that no credit shall be allowed to a company for a year of assessment unless during some part of that year it was a Nigerian company.

(3) The credit shall not exceed the amount which would be produced by computing, in accordance with the provisions of this Act, the amount of the profits which are liable to both tax and foreign tax, and then charging that amount to tax at a rate ascertained by dividing the tax chargeable (before the deduction of any double taxation relief granted by this Part of this Act) on the total profits of the company entitled to the profits by the amount of the total profits.

(4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for a year of assessment for foreign tax under all arrangements having effect under section 45 of this Act shall not exceed the total tax payable by it for that year of assessment.

(5) In computing the amount of the profits—

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other profits);

(b) where tax chargeable depends on the amount received in Nigeria, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the profits; and

(c) where the profits include a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the profits shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit, but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the profits exceeds the credit thereof.

(6) Paragraphs (a) and (b) of subsection (5) of this section, but not the remainder thereof shall, apply to the computation of total profits for the purpose of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all profits in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 45 of this Act.

(7) Where—

(a) the arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the profits of a company for any year of assessment if the company elects that credit shall not be allowed in the case of those profits for that year.

(9) Any claim for an allowance by way of credit shall be made not later than two years after the end of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

(10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VIII

Persons chargeable, agents, liquidators, etc.

47. Chargeability to tax

A company shall be chargeable to tax—

(a) in its own name; or

(b) in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria in like manner and to like amount as such company would be chargeable; or

(c) in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator had been appointed.

48. Manager, etc., to be answerable

The principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Act for the assessment of the company and payment of the tax.

49. Power to appoint agent

(1) The Board may by notice in writing appoint any person to be the agent of any company and the person so declared the agent shall be agent of such company for the purposes of this Act, and may be required to pay any tax which is or will be payable by the company from any moneys which may be held by him for, or due by or to become due by him to, the company whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him.

(2) For the purposes of this section, the Board may require any person to give information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any company.

(3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though such notice were an assessment.

50. Indemnification of manager, etc., or agent

Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money coming into his hands on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Act.

51. Company wound up

Where a company is being wound up, the liquidator of the company shall not distribute any of the assets of the company to the shareholders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company, including any tax deductions made by the company under any laws in force in any part of Nigeria relating to the tax of individuals.

52. Liability to file return

(1) Whether or not a company is liable to pay tax under this Act for a year of assessment and whether or not a return has been filed under section 55 of this Act, a company shall, upon a notice from the Board, file with the Board in the prescribed form, within such reasonable time as may be stipulated in such notice, a return of income for the year of assessment designated therein together with the audited accounts and information stipulated in subsections 1 (a) and (b) of section 55 of this Act.

[1991 No. 63.]

(2) Every company whose turnover is one million naira and above shall file self-assessment return within six months of its accounting period provided that a company whose turnover is below one million naira shall file a self-assessment return as from 1998 year of assessment.

[1996 No. 32.]

53. Self-assessment of tax payable

Every company filing a return under section 58 of this Act or requested by notice of the Board to file a return under section 59 of this Act shall—

(a) in the return, compute the tax payable by the company for the year of assessment; and

[1996 No. 30.]

(b) forward with the tax return, evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax.

[1996 No. 32.]

54. Currency of assessment

Notwithstanding anything to the contrary in any law, an income tax assessment under sections 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving rise to the assessment was effected.

[1996 No. 30.]

PART IX

Returns

55. Returns and provisional accounts

(1) Every company, including a company granted exemption from incorporation, shall, at least once a year without notice or demand therefrom, file a return with the Board in the prescribed form and containing prescribed information together with the following—

(a) the audited accounts, tax and capital allowances computations and a true and correct statement in writing containing the amounts of its profits from each and every source computed in accordance with the provisions of this Act and any rules made thereunder;

(b) such particulars as may by such form or return be required for the purpose of this Act and any rules made thereunder, with respect to such profits, allowances, reliefs, deductions or otherwise as may be material under or by virtue of this Act and such rules.

[1991 No. 63.]

(2) Such form or returns shall contain a declaration which shall be signed by a director or secretary of the company that the return contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rules made thereunder and that the particulars given in such returns are true and complete.

(3) Every company shall file with the Board its audited accounts and returns—

(a) in the case of a company that has been in business for more than eighteen months, not more than six months after the end of its accounting year;

(b) in the case of a newly incorporated company, within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period as defined in section 29 (3) of this Act, whichever is earlier;

(c) in the case of a company filing self-assessment, not later than eight months after the end of its accounting period.

[1996 No. 30.]

(4) Any company which fails to comply with the provisions of this section shall be liable to pay as penalty an amount of—

(a) N2,500 in the first month in which the failure occurs; and

(b) N500 for each subsequent month in which the failure continues.

[1996 No. 30.]

(5) Where an offence under this section by a company is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer, servant or agent of the company (or the person purporting to act in any such capacity) he as well as the company shall be deemed to be guilty of the offence and shall on conviction be liable to a fine of N2,000 or imprisonment for six months, or both.

(6) For the purpose of this section—

(a) every company shall designate a representative who shall answer every query relating to the company's tax matters;

(b) a person designated by a company pursuant to paragraph (a) of this subsection shall be from members of the person knowledgeable in the field of taxation as may be approved, from time to time, by the Board.

56. Bonus for early filing of self-assessment return

A company which files a return under section 53 of this Act within the time specified for the filing of the return shall, if there is no default in the payment arrangement, be granted a bonus of one per cent of the tax payable.

[1996 No. 31.]

57. Filing of returns by companies operating in the capital market

(1) Every company operating in a Nigerian stock exchange shall, not later than seven days after the end of each calendar month, file with the Board or any other relevant tax authority, a return in the prescribed form of its transactions during the preceding calendar month.

[1999 No. 30.]

(2) A company filing a return shall, where its transactions involve—

(a) an offer in the primary market, state in the return—

(i) the type of offer;

(ii) the services rendered;

(iii) the amount of tax deducted at source; and

(iv) the amount of value added tax payable;

(b) operations in the secondary market, state in the return—

(i) the number and value of transactions carried out during the relevant calendar month;

(ii) the commission received or paid;

(iii) the amount of tax deducted at source; and

(iv) the amount of value added tax payable.

[1999 No. 30.]

58. Board may call for further returns

The Board may give notice in writing to any company when and as often as it thinks necessary requiring it to deliver within a reasonable time limited by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Act.

59. Extension of period of making returns

(1) A company may apply in writing to the Board for an extension of the time within which to comply with the provisions of sections 52, 55 (3) and 60 of this Act, provided the company—

(a) makes the application before the expiration of the time stipulated in those sections for making the returns; and

(b) shows good cause for its inability to comply with those provisions.

[1996 No. 30.]

(2) If the Board is satisfied with the cause shown in an application under subsection (1) of this section, it may in writing grant the extension of time for making the application to such time as it may consider appropriate.

[1996 No. 30.]

60. Power to call for returns, books, documents and information

(1) For the purpose of obtaining full information in respect of the profits of any company, the Board may give notice to any person requiring him, within the time limited by such notice, to—

(a) complete and deliver to the Board, any return specified in such notice;

(b) attend personally before an officer of the Federal Inland Revenue Service for examination with respect to any matter relating to such profits;

(c) produce or cause to be produced for examination at the place and time stated in such notice, which time may be from day to day for such period as the Board may consider necessary, for the purpose of such examination any books, documents, accounts and returns which the Board may deem necessary; or

(d) give orally or in writing any other information including name and address specified in such notice:

Provided that a person engaged in banking including any person appointed to carry the Federal Savings Bank Act into effect shall not be required to disclose any information unless a disclosure is required in a letter signed by the chairman of the Board.

[Cap. F20.]

(2) For the purposes of paragraphs (a) to (d) of subsection (1) of this section, the time limited by such notice shall not be less than seven days from the date of service of such notice, so however that an officer of the Board not below the rank of a Chief Inspector of Taxes may act in any of the cases

stipulated in paragraph (a) or (c) or (d) of that subsection, without giving any of the required notices set out in this section.

(3) Any person engaged in banking in Nigeria who contravenes the provisions of this section shall, in respect of each offence, be liable on conviction to a fine of N5,000 in the case of a body corporate, and in the case of an individual to a fine of N500.

(4) Nothing in the foregoing provisions of this section or in any other provisions of this Act shall be construed as precluding the Board from verifying by tax audit any matter relating to the profits of a company or any matter relating to entries in any books, documents, accounts or returns as the Board may from time to time specify in any guideline issued by the Board.

[1993 No. 3.]

61. Information to be delivered by bankers

(1) Without prejudice to section 60 of this Act, every person engaged in banking including any person charged with the administration of the Federal Savings Bank Act, shall prepare a return at the end of each month specifying the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company to the Federal Board of Inland Revenue.

[Cap. F20.]

(2) Subject to the foregoing provisions of this section, for the purpose of obtaining information relative to taxation, the Board may give notice to any person including a person engaged in banking business in Nigeria and any person charged with the administration of the Federal Savings Bank Act to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

[Cap. F20.]

Provided that a person engaged in banking business in Nigeria including any person charged with the administration of the Federal Savings Bank Act, shall not be required to disclose any further information under this section unless such disclosure is required by a notice signed by the chairman of the Board.

[Cap. F20.]

62. Return deemed to be furnished by due authority

A return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognisant of all matters therein.

63. Books of account

(1) If a company chargeable with tax fails or refuses to keep books of accounts which, in the opinion of the Board, are adequate for the purposes of income tax, the Board may by notice in writing require it to keep such records, books and accounts as the Board considers to be adequate in such form and in such language as may be specified in the said notice and, subject to the provisions of the next succeeding subsection, the company shall keep records, books and accounts as directed.

(2) Any direction of the Board made under this section shall be subject to objection and appeal in like manner as an assessment save that any decision of the Appeal Commissioners thereon shall be final.

(3) On hearing such appeal the Appeal Commissioners may confirm or modify such direction.

64. Power to enter and search premises

(1) Where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations is carried on outside Nigeria), the Board—

(a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information or any irregularity or offence in connection with, or in relation to tax, has been committed; and

(b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, registered office, any other office, or place of management of the company or in the residence of the principal officer, factor, agent or representative of the company,

the Board may authorise an officer of the Board to enter if necessary by force the premises, registered office, any other office or place of management or the residence of the principal officer, factor or agent or representative of the company, at any time from the date of such authorisation by the Board and conduct a search.

[1991 No. 21.]

(2) An authority to enter the premises, registered office, any other office or place of management or residence of the principal officer, agent or factor of a company, to conduct a search, shall be in the form contained in the Sixth Schedule to this Act, and such authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or, residence of the principal officer, agent or factor of the company, whether or not belonging to the company.

[Sixth Schedule. 1991 No. 21.]

(3) On entering the premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purpose of arriving at a fair and correct tax chargeable on the company or as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) of this section.

[1991 No. 21.]

(4) For the purpose of this section, an officer authorised by the Board to execute any warrant of search under this section may call to his assistance a police officer and it shall be the duty of the police officer when so required to aid and assist in the execution of any warrant, to obtain documents for the purposes of the tax chargeable or to be charged on the company or of the proceedings in respect of the offence referred to in section (1) of this section.

[1991 No. 21.]

(5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall immediately before the seizure if required by either—

(a) the principal officer of the company; or

(b) any other person who has had the possession or custody of those things,

provide that principal officer or person with the list of items seized or surrendered.

[1991 No. 21.]

(6) It shall be the responsibility of any person on whom such warrant as mentioned in subsection (2) of this section is served to—

(a) co-operate fully with the person or persons authorised to conduct a search by allowing easy access to the premises to be searched and to the items or documents that may be required for the investigation;

(b) answer all questions and queries put to him in the cause of the search;

(c) put in accessible position and facilitate the removal of all items that may be required to assist the investigation.

[1991 No. 21.]

(7) Any principal officer, agent, factor or representative of the company on whom a warrant of search is served who refuses to co-operate with the person or persons authorised to search or does anything tantamount to failure to co-operate or engages in an act or acts resulting in abuse, physical assault or similar misbehavior, shall be guilty of an offence and liable on conviction to a fine of N10,000 or to imprisonment of not less than 6 months or to both such fine and imprisonment.

[1991 No. 21.]

(8) Either prior to or during or after a warrant of search is being or has been served or executed on a principal officer, agent, factor or representative of the company, such principal officer, factor or agent may also be called upon to an interview before an officer of the Board to answer any query or question in connection with the activities of the company as would enable the Board to arrive at a fair and correct tax liability of the company.

[1991 No. 21.]

PART X

Assessments

65. Board to make assessments

(1) The Board shall proceed to assess every company chargeable with tax as soon as may be after the expiration of the time allowed to such company for the delivery of the audited accounts and return provided for in section 55 of this Act or otherwise as it appears to the Board practicable so to do.

(2) Where a company has delivered audited accounts and return, the Board may—

(a) accept the audited accounts and return and make an assessment accordingly; or

(b) refuse to accept the return and, to the best of its judgement, determine the amount of the total profits of the company and make an assessment accordingly.

(3) Where a company has not delivered a return and the Board is of the opinion that such company is liable to pay tax, the Board may, according to the best of its judgement, determine the amount of the total profits of such company and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver a return.

(4) Nothing in this section shall prevent the Board from making an assessment upon a company for any year before the expiration of the time within which such company is required to deliver a return or to give notice under the provisions of section 55 of this Act, if the Board or any officer of the Federal Inland Revenue Service duly authorised by the Board considers such assessment to be necessary for any reason of urgency.

(5) In this section, the reference to a return shall be construed as a reference to the accounts and return submitted pursuant to section 55 of this Act.

66. Additional assessments

(1) If the Board discovers or is of the opinion at any time that any company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Board may, within the year of assessment or within six years after the expiration thereof and as often as may be necessary, assess such company at such amount or additional amount, as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder:

Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act or under the Companies Income Tax Act 1961 the Board may at any time and as often as may be necessary, assess such company at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.

[1961 No. 22.]

(2) For the purpose of computing under subsection (1) of this section the amount or the additional amount which ought to have been charged, all relevant facts consistent with the proviso to section 76 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the same company for the same year was being made or could have been made.

67. Lists of companies assessed

(1) The Board shall, as soon as possible, prepare lists of companies assessed to tax.

(2) Such lists, herein called the assessment lists, shall contain the names and the addresses of the companies assessed to tax, the name and address of any person in whose name any such company is chargeable, the amount of the total profits of each company, the amount of tax payable by it, and such other particulars as may be determined by the Board.

(3) Where complete copies of all notices of assessment and all notices amending assessments are filed in the offices of the Board they shall constitute the assessment lists for the purposes of this Act.

68. Service of notice of assessment

The Board shall cause to be served on or sent by registered post to each company, or person in whose name a company is chargeable, whose name appears on the assessment lists, a notice stating the amount of the total profits, the tax payable, the place at which such payment should be made, and setting out the rights of the company under the next following section.

69. Revision of assessment in case of objection

(1) If any company disputes the assessment it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it.

[1996 No. 30.]

(2) An application under subsection (1) of this section shall—

(a) be made within thirty days from the date of service of the notice of assessment; and

(b) contain the ground of objection to the assessment, that is—

(i) the amount of assessable and total profits of the company for the relevant year of assessment; and

(ii) the amount of tax payable for the year,

which the company claims should be stated on the notice of assessment.

[1996 No. 30.]

(3) If the Board is satisfied that owing to absence from Nigeria, the person in whose name an assessment is made is unable to make an application within the thirty days specified in subsection (2) of this section, it shall extend the time for making the application to such time as may be reasonable in the circumstances.

[1996 No. 30.]

(4) On receipt of the notice of objection referred to in subsection (1) of this section, the Board may require the company giving the notice of objection to furnish such particulars as the Board may deem necessary and to produce all books or other documents relating to the profits of the company, and may summon any person who may be able to give evidence respecting the assessment to attend for examination by an officer of the Federal Inland Revenue Service on oath or otherwise.

(5) In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the Board as to the amount at which it is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company:

Provided that if an applicant for revision under the provisions of subsection (1) of this section fails to agree with the Board the amount at which the company is liable to be assessed, the Board shall give notice of refusal to amend the assessment as desired by such company and may revise the assessment to such amount as the Board may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this proviso.

70. Errors and defects in assessment and notice

(1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any enactment amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name of a company liable or of a person in whose name a company is chargeable; or

(ii) the description of any profits; or

(iii) amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the company intended to be charged or the person in whose name such company is chargeable and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART XI

Appeals

71. Establishment and constitution of body of Appeal Commissioners

(1) The Minister may establish by notice in the Federal Gazette, a body of Appeal Commissioners.

(2) The body of Appeal Commissioners shall consist of not more than twelve persons, none of whom shall be a public officer and one of whom shall be designated as chairman by the Minister.

(3) Each Appeal Commissioner—

(a) shall be appointed by notice in the Federal Gazette by the Minister from among persons appearing to him to have had experience and shown capacity in the management of a substantial trade or business or the exercise of the profession of law or accountancy in Nigeria;

(b) shall, subject to the provisions of this subsection, hold office for a period of three years from the date of his appointment;

(c) may at any time resign as an Appeal Commissioner by notice in writing addressed to the Minister, save that on the request of the Minister he may continue to act as an Appeal Commissioner after the date of his resignation, and sit at any further hearing in any case in which he has already sat before that date to hear an appeal, until a final decision has been given with respect to such appeal;

(d) shall cease to be an Appeal Commissioner either upon the Minister determining that his office be vacant and upon notice of such determination being published in the Federal Gazette, or upon his acceptance of a political appointment;

[1993 No. 3.]

(e) shall be paid such remuneration and allowances as may be determined by the Minister with the approval of the President.

(4) Without prejudice to the generality of paragraph (d) of subsection (3) of this section, if the Minister is satisfied that an Appeal Commissioner—

(a) has been absent from two consecutive meetings of the body of Appeal Commissioners (other than any meeting at which, by virtue of subsection (2) of section 73 of this Act, he may not sit) without the written permission of the chairman of the Board; or

(b) is incapacitated by physical or mental illness; or

(c) has failed to make any declaration and give any notice in accordance with subsection (2) of section 73 of this Act; or

(d) has been convicted of a felony, or of an offence under any enactment in Nigeria imposing tax on income or profits,

the Minister shall make a determination that his office as an Appeal Commissioner is vacant.

(5) Where for any reason there is an insufficient number of Appeal Commissioners to hear one or more particular appeals, the Minister may make an ad hoc appointment in writing, from among persons of the kind mentioned in paragraph (a) of subsection (3) of this section, of a person to be an Appeal Commissioner for the purpose of his hearing such appeal or appeals.

(6) The Minister shall designate a public officer to be secretary to the body of Appeal Commissioners and the official address of the secretary shall be published in the Federal Gazette.

(7) Those persons duly appointed as Appeal Commissioners and secretary to the body of Appeal Commissioners for the purposes of the Companies Income Tax Act 1961, and holding office as such immediately before the date of commencement of this Act shall be deemed to have been appointed or designated, as the case may be, to like officers under the provisions of this section, and the Appeal Commissioners so deemed to be appointed shall constitute the body of Appeal Commissioners on that date.

[1961 No. 22.]

(8) The Body of Appeal Commissioners shall remain in office until a new body is sworn in.

[1993 No. 3.]

72. Appeals to Appeal Commissioners

(1) Any company which, being aggrieved by an assessment made upon it, has failed to agree with the Board in the manner provided in subsection (5) of section 69 of this Act, may appeal against the assessment to the Appeal Commissioners upon giving notice in writing to the Board and to the secretary to such Appeal Commissioners within thirty days after the date of service upon such company of notice of the refusal of the Board to amend the assessment as desired.

(2) A notice of an appeal against an assessment, to be given under subsection (1) of this section, shall specify the following particulars—

(a) the official number of the assessment and the year of assessment for which it was made;

(b) the amount of the tax charged by such assessment;

(c) the amount of the total profits upon which such tax was charged as appearing in the notice of assessment;

(d) the date upon which the appellant was served with notice of refusal by the Board to amend the assessment as desired;

(e) the precise grounds of appeal against the assessment, but such grounds shall be limited to the grounds stated by the appellant in its notice of objection; and

(f) an address for service of any notices, precepts or other documents to be given to the appellant by the secretary to the Appeal Commissioners:

Provided that at any time, the appellant may give notice to such secretary and to the Board, by delivering the same or by registered post, of a change of such address but any such notice shall not be valid until delivered or received.

(3) All notices or documents to be given to the Appeal Commissioners shall be addressed to the secretary to the Appeal Commissioners in writing at any time before the hearing of such appeal.

(4) A company may discontinue any appeal by it under this section on giving notice to the secretary to the Appeal Commissioners in writing at any time before the hearing of such appeal.

(5) Notwithstanding that notice of appeal against an assessment has been given by a company under this section, the Board may revise the assessment in agreement with the company, and upon notice of such agreement being given in writing by the Board to the secretary to the Appeal Commissioners at any time before the hearing of the appeal, such appeal shall be treated as being discontinued.

(6) Upon the discontinuance of any appeal under the provisions of this section, the amount or revised amount of the assessment, as the case may be, shall be deemed to have been agreed between the Board and the company under the provisions of subsection (5) of section 69 of this Act.

73. Procedure before Appeal Commissioners, etc.

(1) As often as may be necessary, Appeal Commissioners shall meet to hear appeals in any town in which is situated an office of the Federal Inland Revenue Service and, subject to the provisions of the next following subsection, at any such meeting—

(a) any three or more Appeal Commissioners may hear and decide an appeal; and

(b) the chairman of the body of Appeal Commissioners shall preside and where the chairman is absent, the Appeal Commissioners present shall elect one of their number to be the chairman for the meeting.

(2) An Appeal Commissioner having a direct or indirect financial interest in any company (including the holding of or the beneficial interest in any shares, stock or debentures issued by such company) or being a relative of any person having such an interest, and having knowledge thereof, shall, when any appeal by such company is pending before the body of Appeal Commissioners, declare such interest to the other Commissioners and give notice to the Board in writing of such interest or relationship and interest, and he shall not sit at any meeting for the hearing of that appeal. The like provisions shall apply when the Appeal Commissioner is a legal practitioner or an accountant, and the company is or has been a client of that Appeal Commissioner.

(3) The secretary to the Appeal Commissioners shall give seven clear days' notice to the Board and to the appellant of the date and place fixed for the hearing of each appeal except in respect of any adjourned hearing for which the Appeal Commissioners have fixed a date at their previous hearing.

(4) All notices, precepts and documents, other than decisions of the Appeal Commissioners, may be signified under the hand of the secretary.

(5) All appeals before Appeal Commissioners shall be held in camera.

(6) Every company so appealing shall be entitled to be represented at the hearing of the appeal:

Provided that, if the person intended by the company to be its representative in any appeal is unable for good cause shown to attend the hearing thereof, the Appeal Commissioners may adjourn the hearing for such reasonable time as they think fit, or admit the appeal to be made by some other person or by way of written statement.

(7) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(8) At the hearing of any appeal, if the representative of the Board proves to the satisfaction of the Appeal Commissioners or the court hearing the appeal in the first instance that—

(a) the appellant has (contrary to subsection (1) of section 55 of this Act), for the year of assessment concerned, failed to prepare and deliver to the Board the statement mentioned in that subsection;

(b) the appeal is frivolous or vexatious or is an abuse of the appeal process; or

(c) it is expedient to require the appellant to pay an amount as security for prosecuting the appeal,

the Appeal Commissioners or, as the case may be, the court, may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the Board, before the day of the adjourned

hearing, an amount, on account of the tax charged by the assessment under appeal, equal to the tax charged upon the appellant for the preceding year of assessment or one half of the tax charged by the assessment under appeal, whichever is the lesser plus a sum equal to ten per cent of the said deposit, and if the appellant fails to comply with the order, the assessment against which it has appealed shall be confirmed and the appellant shall have no further right of appeal whatsoever with respect to that assessment.

(9) The Appeal Commissioners may confirm, reduce, increase or annul the assessment or make any such order thereon as they see fit.

(10) Every decision of the Appeal Commissioners shall be recorded in writing by their chairman and a certified copy of such decision shall be supplied to the appellant or the Board, by the secretary, upon a request made within three months of such decision.

(11) Where, upon the hearing of an appeal—

(a) no accounts, books or records relating to profits were produced by or on behalf of the appellant; or

(b) such accounts, books or records were so produced but the Appeal Commissioners rejected the same on the ground that it had been shown to their satisfaction that they were incomplete or unsatisfactory; or

(c) the appellant or his representative, at the hearing of the appeal, has neglected or refused to comply with a precept delivered or sent to him by the secretary to the Appeal Commissioners without showing any reasonable excuse; or

(d) the appellant or any person employed, whether confidentially or otherwise, by the appellant or his agent (other than his legal practitioner or accountant acting for him in connection with his ability to tax) has refused to answer any question put to him by the Appeal Commissioners, without showing any reasonable cause,

the chairman of the Appeal Commissioners shall record particulars of the same in his written decision.

(12) The Minister may make rules prescribing the procedure to be followed in the conduct of appeals before Appeal Commissioners.

74. Procedure following decision of Appeal Commissioners

(1) Notice of the amount of the tax chargeable under the assessment as determined by the Appeal Commissioners shall be served by the Board upon the company or upon the person in whose name such company is chargeable.

(2) Where the tax chargeable upon a company for a year of assessment in accordance with a decision of the Appeal Commissioners does not exceed N400, no further appeal by the company shall lie from that decision except with the consent of the Board.

(3) An award or judgment of the Body of Appeal Commissioners shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the party seeking to enforce the award or judgment.

(4) Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the Appeal Commissioners within one month of notification of the amount of the tax payable in pursuance of subsection (1) of this section.

75. Appeals to Court

(1) Subject to section 74 (2) of this Act, any company which having appealed against an assessment made upon it to the Appeal Commissioners under section 72 of this Act, is aggrieved by the decision of such body, may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the secretary to the Appeal Commissioners within thirty days after the date on which such decision was given. Such notice shall set out all the grounds of law on which the decision is being challenged.

(2) If the Board is dissatisfied with the decision of the Appeal Commissioners, it may appeal against such decision to the Federal High Court on a point of law by giving notice in writing as in subsection (1) of this section to the secretary to the Appeal Commissioners within thirty days after the date on which such decision was given.

(3) Upon a receipt of a notice of appeal under subsection (1) or (2) of this section, the secretary to the Appeal Commissioners shall compile the record of proceedings and judgment before the Appeal Commissioners and shall cause the same to be transmitted to the Chief Registrar of the Federal High Court along with all the exhibits tendered at the hearing before the Appeal Commissioners.

(4) The provisions of subsections (6), (7) and (9) of section 73 of this Act and of subsection (1) of section 74 of this Act shall apply to an appeal under this section with any necessary modifications.

(5) If, upon hearing of any appeal from a decision of the Appeal Commissioners given under the provisions of section 73 of this Act, a certified copy of that decision is produced before the Federal High Court and such decision contains a record by reference to—

(a) paragraph (a) of subsection (11) of that section, the Federal High Court shall dismiss such appeal; or

(b) paragraph (b) of subsection (11) of that section, the Federal High Court may dismiss such appeal upon such prima facie evidence, with respect to the accounts, books or records having been incomplete or unsatisfactory, as to the Federal High Court may seem sufficient; or

(c) paragraph (c) or (d) of subsection (11) of that section, the Federal High Court shall dismiss such appeal unless it considers that the cause of the neglect or refusal was reasonable.

(6) The cost of an appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

(7) An appeal against the decision of a judge shall lie to the Court of Appeal—

(a) at the instance of the company, where the decision of the judge is to the effect that the tax chargeable upon the company for the relevant year of assessment exceeds N1,000; and

(b) at the instance of or with the consent of the Board, in any case:

Provided that no costs shall be awarded against the company in any appeal instituted by the Board under this subsection unless such decision of the judge was to the effect mentioned in paragraph (a) of this subsection.

(8) The Chief Judge of the Federal High Court may make rules providing for the procedure in respect of appeals made under this section and until such rules are made, the rules applicable in civil appeal cases from magistrates' courts to the High Court of Lagos shall apply with such modifications as the Chief Judge of the Federal High Court may direct.

76. Assessments to be final and conclusive

Where no valid objection or appeal has been lodged within the time limited by section 69, 72 or 75 of this Act as the case may be, against an assessment as regards the amount of the total profits assessed

thereby, or where the amount of the total profits has been agreed to under subsection (5) of section 69 of this Act, or where the amount of such total profits has been determined on objection, revision under the proviso to subsection (5) of section 69 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of the Act as regards the amount of such total profits; and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 85 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provision of this Act, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim:

Provided that—

(a) where an assessment has become final and conclusive, any tax overpaid shall be repaid;

(b) nothing in section 69 or in Part XI of this Act shall prevent the Board from making any assessment or additional assessment for any year which does not involve re-opening any issue, on the same facts, which has been determined for that year of assessment under subsection (5) of section 69 of this Act by agreement or otherwise on appeal.

PART XII

Collection, recovery and repayment of tax

77. Time within which tax (including provisional tax) is to be paid

(1) Notwithstanding any other provision of this section, every company shall, not later than three months from the commencement of each year of assessment, pay provisional tax of an amount equal to the tax paid by such company in the immediately preceding year of assessment in one lump sum.

[1996 No. 30.]

(2) Tax charged by any assessment which is not or has not been the subject of an objection or appeal by the company shall be payable (after the deduction of any amount to be set-off for the purposes of collection under any provision of this Act) at the place stated in the notice of assessment within two months after service of such notice upon the company:

[1996 No. 30.]

Provided that—

(a) if such period of two months expires after the 14th day of December within the year of assessment for which the tax has been charged and the aggregate tax to be set-off, and of any tax paid for that year within such period, then payment of any balance of such tax may be made not later than that day;

[1993 No. 3. 1996 No. 30.]

(b) where the assessment notice is served on the company within the approved period of payment of provisional tax, the tax shall be paid within two months after the end of the approved period, but if such period of two months expires after the 14th day of December within the year of assessment for which the tax has been charged, then the payment of any balance of such tax may be made not later than that day;

[1993 No. 3. 1996 No. 30.]

(c) the Board in its discretion may extend the time within which payment is to be made.

(3) Subject to the provisions of subsection (3) of section 74 of this Act, collection of tax in any case where notice of an objection or appeal has been given by the company shall remain in abeyance until such objection or appeal is determined, save that the company shall have paid the provisional tax as provided in subsection (1) of this section or the tax not in dispute, whichever is higher.

(4) Upon the determination of an objection or appeal, the Board shall serve upon the company a notice of the tax payable as so determined, and that tax shall be payable within one month of the date of service of such notice upon the company:

Provided that if such period of one month expires after the 14th day of December within the year of assessment for which the tax has been charged and the condition specified in proviso (a) to subsection (2) of this section are satisfied with respect to the amount of the tax charged as so determined, then any balance of the tax payable may be paid not later than that day.

[1993 No. 3. 1996 No. 30.]

(5) A company filing self assessment shall pay the tax due within two months from the due date of filing the assessment in one lump sum or such number of monthly instalments (not being more than six) as may be approved by the Board;

Provided that where—

(a) such period of monthly instalments expires after the 30th day of November within the year of assessment for which the tax has been charged, the payment of any balance of the tax may be made not later than that day.

[1996 No. 30.]

(b) a request for instalmental payment has been made, the request shall be accompanied with proof of payment of the first instalment to the designated bank.

[1993 No. 3.]

(6) The provisions of subsection (1) of this section shall not apply to a company that files self assessment for the year of assessment.

[1993 No. 3.]

(7) Where a company is required to file a return within the time allowed under section 52 or specified under section 55 of this Act the tax as computed or shown in the return when filed shall be payable within two months from the date of filing the return, and the provisions of section 85 of this Act shall apply to the collection of the tax.

[1996 No. 30.]

(8) Notwithstanding anything to the contrary in any law, income tax payable under sections 52, 53 and 55 of this Act shall be paid to the Board in the currency in which the income giving rise to the tax was derived and paid to the company making the return.

[1996 No. 30.]

78. Deduction of tax from interest, etc.

(1) Where any interest other than interest on inter-bank deposits or royalty becomes due from one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company making such payment shall, at the date when payment is made or credited,

whichever first occurs, deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.

[Cap. P8.]

(2) The rate at which tax is to be deducted in this section shall be 10 per cent.

[1996 No. 30.]

(3) For the purposes of this section, person authorised to deduct tax includes government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

(4) The tax, when paid over to the Board, shall be the final tax due from a non-resident recipient of the payment.

(5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say—

(a) the gross amount of the interest or royalty;

(b) the name and address of the recipient; and

(c) the amount of tax being accounted for.

79. Deduction of tax on rent

(1) Where any rent becomes due from or payable by one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such rent shall, at the date when the rent is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.

[Cap. P8.]

(2) The rate at which tax is to be deducted under this section shall be 10 per cent.

[1996 No. 30.]

(3) For the purposes of this section, person authorised to deduct tax includes government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

(4) The tax, when paid over to the Board, shall be the final tax due from a non-resident recipient of the payment.

(5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say—

(a) the gross amount of the rent payable per annum;

(b) the name and address of the recipient and the period in respect of which such rent has been paid or credited;

(c) the address and accurate description of the property concerned; and

(d) the amount of tax being accounted for.

(6) Any reference to rent in this section shall be construed whenever necessary as including payments for the use or hire of any equipment, payments for charter vessels, ship or aircraft and all such other payments for the use of or hire of movable and immovable property.

80. Deduction of tax from dividend

(1) Where any dividend or such other distribution becomes due from or payable by a Nigerian company to any other company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such dividend or making such distribution shall, at the date when the amount is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.

[Cap. P8.]

(2) The rate at which tax is to be deducted under this section shall be 10 per cent.

[1996 No. 30.]

(3) Dividend received after deduction of tax prescribed in this section shall be regarded as franked investment income of the company receiving the dividend and shall not be charged to further tax as part of the profits of the recipient company. However, where such income is re-distributed and tax is to be accounted for on the gross amount of the distribution in accordance with subsection (1) of this section, the company may set-off the withholding tax which it has itself suffered on the same income.

(4) The tax, when paid over to the Board, shall be the final tax due from a non-resident recipient of the payment.

(5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say—

(a) the gross amount of the dividend or such other distribution;

(b) the name and address of the recipient;

(c) the accounting period or periods of the company in respect of the profits out of which the dividend or distribution is declared to be payable and the date on which payment is due; and

(d) the amount of tax so deducted.

81. Deduction of tax at source

(1) Income tax assessable on any company, whether or not an assessment has been made, shall, if the Board so directs, be recoverable from any payments made by any person to such company.

(2) Any such direction may apply to any person or class of persons specified in such direction, either with respect to all companies or a company or class of companies, liable to payment of income tax.

(3) Any direction under subsection (1) of this section shall be in writing addressed to the person or be published in the Federal Gazette and shall specify the nature of payments and the rate at which tax is to be deducted.

(4) In determining the rate of tax to be applied to any payments made to a company, the Board may take into account—

(a) any assessable profits of that company for the year arising from any other source chargeable to income tax under this Act; and

(b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.

(5) Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set-off for the purpose of collection against tax charged on such company by an assessment, but only to the extent that the total of such deductions does not exceed the amount of the assessment and provided the assessment is for the period to which such payments relate under the provisions of section 29 of this Act.

[1993 No. 3.]

(6) Every person required under any provisions of this Act to make any deduction from payments made to any company shall account to the Board in such manner as the Board may prescribe for the deduction so made.

(7) The Minister of Finance on the advice of the Board may make regulations for the carrying out of the provisions of this section.

82. Penalty for failure to deduct tax

Any person who being obliged to deduct any tax under section 78, 79, 80 or 81 of this Act fails to deduct or having deducted fails to pay to the Board within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall be guilty of an offence and shall be liable on conviction to a fine of 200 per cent of the tax withheld or not remitted, as the case may be.

[1996 No. 31.]

83. Accountant-General of the Federation to deduct tax

Where the person referred to under section 82 is a Ministry, Department, parastatal, institution or an agency of the Federal or a State Government or is a local government, the Board may authorise the Accountant-General of the Federation in writing to deduct from the allocation of such Federal Ministry, Department, parastatal, institution or agency of the State Government or local government such amount of tax deductible plus interest at the prevailing commercial rate.

[1993 No. 3.]

84. Payment of tax deducted

Income tax deducted under sections 78, 79, 80 and 81 of this Act shall be paid to the Board in the currency in which the deduction was made.

[1993 No. 3.]

85. Addition for non-payment of tax and enforcement of payment

(1) Subject to the provisions of subsection (3) of this section, if any tax is not paid within the periods prescribed in section 77 of this Act—

(a) a sum equal to ten per centum per annum of the amount of the tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;

(b) the tax due shall carry interest at bank lending rate from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;

[1991 No. 63.]

(c) the Board shall serve a demand note upon the company or person in whose name the company is chargeable and if payment is not made within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;

(d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.

(2) Any company which without lawful justification or excuse, the proof whereof shall lie on the company, fails to pay the tax within the period of one month prescribed in paragraph (b) of subsection (1) of this section, shall be guilty of an offence against this Act.

(3) The Board may, for any good cause shown, remit the whole or any part of the addition due under subsection (1) of this section.

86. Power to distrain for non-payment of tax

(1) Without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand note has, in accordance with the provisions of this Part of this Act, been served upon the company or upon the person in whose name the company is chargeable, then, if payment of the tax is not made within the time limited by the demand note, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due—

(a) distrain the taxpayer by his goods or other chattels, bonds or other securities;

(b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.

(2) The authority to distrain under this section shall be in the form contained in the Fourth Schedule to this Act, and such authority shall be sufficient warrant and authority to levy by distress the amount of tax due.

[Fourth Schedule.]

(3) For the purposes of levying any distress under this section, any officer authorised in writing by the Board may execute any warrant of distress and if necessary break open any building or place in the day time for the purpose of levying such distress, and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.

(4) Things distrained under this section may, at the cost of the taxpayer, be kept for fourteen days and at the end of that time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may, subject to subsection (6) of this section, be sold at any time thereafter.

(5) Out of the proceeds of any such sale there shall, in the first place, be paid the cost or charges of and incidental to the (sale and keeping of the) distress, and disposal thereunder and in the next place the amount due in respect of the tax; and the balance (if any) shall be payable to the taxpayer upon demand being made by him or on his behalf within one year of the date of the sale.

(6) Nothing in this section shall be construed so as to authorise the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by rules of court.

87. Action for tax by Board and refusal of clearance where tax is in default

(1) Tax may be sued for and recovered in a court of competent jurisdiction at the place stated in the notice of assessment as being the place at which payment should be made, by the Board in its official name with full cost of action from the company charged therewith as a debt due to the Government of the Federation.

(2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to actions for debt.

(3) In any action brought under subsection (1) of this section, the production of a certificate signed by any person duly authorised by the chairman of the Board giving the name and address of the defendant and the amount of tax due shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

(4) In addition to any other powers of collection and recovery provided in this Act, the Board may, where the tax charged on the profits of any company which carries on the business of ship owner or charterer has been in default for more than three months, whether such company is assessed directly or in the name of some other person, issue to the Nigerian Customs Service or other authority by whom clearance may be granted, a certificate containing the name or names of the said company and particulars of the tax in default, and on receipt of such certificate, the said Nigerian Customs Service or other authority shall be empowered and is hereby required to refuse clearance from any port in Nigeria to any ship owned wholly or partly or chartered by such company until the said tax has been paid.

(5) No civil or criminal proceedings shall be instituted or maintained against the said Nigerian Customs Service or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship is detained under this section affect the liability of the owner, charterer, or agent to pay harbour dues and charges for the period of detention.

88. Attendance of director, etc., at proceedings, etc.

(1) The court, before which the Board has sued a company for non-payment of tax, may issue a bench warrant on a director or other officer of the company to compel the director or officer to appear at every proceeding on the case until the final disposal of the case.

[1996 No. 30.]

(2) Where the Board has obtained judgment against a company for non-payment of tax and the judgment debt remains unpaid six months after the judgment, the court may, on the application of the Board, issue a bench warrant on a director or other officer of the company to compel the director or officer to appear in court and show cause why the judgment debt has not been paid.

[1996 No. 30.]

89. Remission of tax

The President may remit, wholly or in part, the tax payable by any company if he is satisfied that it will be just and equitable to do so.

90. Relief in respect of error or mistake

(1) If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the company for the purposes of the assessment, it may, at any time not later that six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief.

(2) On receiving any such application, the Board shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment of tax such relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the Board generally prevailing at the time when the return, statement or account was made.

(3) In determining any application under this section, the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of the company, and for this purpose the Board may take into consideration the liability of the company and assessments made upon it in respect of other years.

(4) A determination by the Board under this section shall be final and conclusive.

91. Repayment of tax

(1) Save as is otherwise in this Act expressly provided, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

(2) The Board shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

PART XIII

Offences and penalties

92. Penalty for offences

(1) Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N200, and without prejudice to section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of N40 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(2) Any person who—

(a) fails to comply with the requirements of a notice served on him under this Act; or

(b) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him,

shall be guilty of an offence against this Act.

(3) Notwithstanding any of the provisions of the Criminal Procedure Act or any other applicable law, a magistrate may dispense with personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.

[Cap. C41.]

(4) In the case of failure by a company to comply with the requirements of any notice given by the Board under the provisions of section 55 or 58 of this Act for the purpose of the tax to be charged upon the company for any year of assessment, the Board may, in lieu of the institution of proceedings under subsection (2) of this section, impose a penalty upon the company of an amount equal to the tax chargeable upon the company for the preceding year of assessment:

Provided that—

(a) written notice of the penalty shall be served upon the company; and

(b) any amount of such penalty remaining unpaid thirty days after service of such notice may be sued for and recovered in a court of competent jurisdiction by the Board in its official name with full costs of action from the company liable thereto as a debt due to the Government of the Federation; and

(c) a certificate signed by an officer of the Federal Inland Revenue Service duly authorised by the Board setting out the name and address of such company, the date of service of the said notice, and the amount of the penalty remaining unpaid, shall be sufficient authority for the court to give judgment for that amount; and

(d) the Board may remit the whole or any part of such penalty, whether before or after judgment, for any reason which appears to it to be adequate.

93. Penalty for making incorrect return

(1) Every company which, and every other person who, without reasonable excuse—

(a) makes an incorrect return by omitting or understating any profits liable to tax under this Act; or

(b) gives any incorrect information in relation to any matter or thing affecting the liability of any company to tax,

shall be guilty of an offence and shall be liable on conviction to a fine of N200 and double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

(2) No company or other person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within six years after the expiration thereof.

(3) The Board may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

(4) For the purposes of this section, a return shall be deemed to be made both by the company and any other person signing such return on behalf of the company.

94. False statements and returns

(1) Any person other than a company who—

(a) for the purpose of obtaining any deduction, set-off, relief or repayment in respect of tax for any company, or who in any return, account or particulars made or furnished with reference to tax, knowingly makes any false statement or false representation; or

(b) aids, abets, assists, counsels, incites or induces any other person—

(i) to make or deliver any false return or statement under this Act; or

(ii) to keep or prepare any false accounts or particulars concerning any profits on which tax is payable under this Act; or

(iii) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and shall be liable on conviction to a fine of N1,000 or to imprisonment for five years, or to both such fine and imprisonment.

(2) The Board may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder.

95. Penalties for offences by authorised and unauthorised persons

Any person who—

(a) being a person appointed for the due administration of this Act or employed in connection with the assessment and collection of the tax who—

(i) demands from any company an amount in excess of the authorised assessment of the tax; or

(ii) withholds for his own use or otherwise any portion of the amount of the tax collected; or

(iii) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or

(iv) defrauds any person, embezzles any money, or otherwise uses his position as to deal wrongfully with the Board; or

(b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,

shall be guilty of an offence and be liable on conviction to a fine of N600 or to imprisonment for three years or to both such fine and imprisonment.

96. Tax to be payable notwithstanding proceedings for penalties

The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any company from liability to payment of any tax for which it is or may become liable.

97. Prosecution to be with the sanction of the Board

No prosecution in respect of an offence under section 93, 94 or 95 may be commenced except at the instance of or with the sanction of the Board.

98. Savings for criminal proceedings

The provisions of this Act shall not affect any criminal proceedings under any other enactment.

99. Place of an offence

An offence under this Act shall be deemed to occur in the town where the registered office of the company is situated or at such other place as the Board may decide.

[1996 No. 30.]

PART XIV

Miscellaneous

100. Power to alter rate of tax, etc.

The President may, by order, revoke or vary for any year of assessment—

(a) the rate of tax specified in section 40; and

(b) any rate of any annual or initial allowance specified in the Second Schedule, save that with respect to an initial allowance any such variation may be expressed to apply to qualifying expenditure incurred after the date of such order or some later specified date.

[Second Schedule.]

101. Tax clearance certificate

(1) Whenever the Board is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person or, if not, give reasons for the denial.

[1993 No. 3.]

(2) Any Ministry, department or agency of Government or any commercial bank with whom any person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from such person a tax clearance certificate of three years immediately preceding the current year of assessment.

(3) A tax clearance certificate shall disclose in respect of the last three years of assessment—

(a) total profits or chargeable income;

(b) tax payable;

(c) tax paid;

(d) tax outstanding or alternatively a statement to the effect that no tax is due.

(4) The provisions of subsection (1) of this section shall apply in relation to the following, that is—

(a) application for government loan for industry or business;

(b) registration of motor vehicles;

(c) application for firearms licence;

(d) application for foreign exchange or exchange control permission to remit funds outside Nigeria;

(e) application for certificate of occupancy;

(f) application for award of contracts by Government and its agencies and registered companies;

(g) application for trade licence;

(h) application for approval of building plans;

(i) application for transfer of real property;

(j) application for import or export licence;

(k) application for plot of land;

(l) application for buying agent licence;

(m) application for pools or gaming licence;

(n) application for registration as a contractor;

(o) application for distributorship;

(p) stamping of guarantor's form for Nigerian passport;

(q) application for registration of a limited liability company or of a business name;

(r) application for allocation of market stalls;

(s) stamping of statement of the nominal share capital of a company to be registered and any increase in the registered share capital of any company; and
[1991 No. 21.]

(t) stamping of statement of the amount of loan capital.

[1991 No. 21.]

(5) An applicant for exchange control permission to remit funds to a non-resident recipient in respect of income accruing from rent, dividend, interest, royalty, fees, or any other similar income shall be required to produce a tax clearance certificate to the effect that tax has been paid on funds in respect of which the application is sought or that no tax is payable, whichever is the case.

(6) When a person who has deducted any tax under any provisions of this Act fails to pay the tax so deducted to the appropriate tax authority, no tax clearance may be issued to that person even if he has fully discharged his own tax liability under this Act.

(7) Where a person is able to produce evidence that he suffered tax by deduction at source and that the assessment year to which the tax relates falls within the period covered by the tax clearance certificate, such a person may not be denied a tax clearance certificate:

Provided that any balance of tax after credit has been given for the tax so deducted has been fully paid.

[1993 No. 3.]

102. Conduct of proceedings

Any officer of the Federal Inland Revenue Service duly authorised in writing in that regard by the chairman of the Board, may prosecute or conduct on behalf of the Board, any prosecution or other proceedings arising under this Act in any court in the Federation.

103. Power to pay reward

The Board may with the approval of the Commissioner pay rewards to any person, not being a person employed in the Federal Inland Revenue Service in respect of any information which may be of assistance to the Board in the performance of its duties under this Act.

104. Repeals, transitional provisions, etc.

(1) Subject to this section and without prejudice to the provisions of section 6 of the Interpretation Act, the Companies Income Tax Act 1961 shall, except where other provisions are made in that behalf in this Act, cease to have effect with respect to tax on the income or profits of companies for all years of assessment beginning after the 31st day of March 1977.

[Cap. I23. 1961 No. 22.]

(2) Anything made or done, or having effect as if made or done, before the date of commencement of this Act under or pursuant to any provision of the Companies Income Tax Act 1961 by the Board and having any continuing or resulting effect with respect to the taxation of the profits of a company or any matter connected therewith, shall be treated and for all purposes shall have effect as if it were made or done by the Board under the corresponding provision of this Act.

(3) All rules, orders, notices or other subsidiary legislation made under the Companies Income Tax Act 1961 shall continue to have effect as if made under the corresponding provisions of this Act.

[1961 No. 22.]

(4) All references in the Personal Income Tax Act and in any other enactment to provisions of the Companies Income Tax Act 1961 shall be construed as references to the corresponding provisions of this Act.

[Cap. P8. 1961 No. 22.]

105. Interpretation

(1) In this Act, unless the context otherwise requires—

"Board" means the Federal Board of Inland Revenue referred to in section 1 of this Act;

"company" means any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere;

"foreign company" means any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria;

"Joint Tax Board" means the Joint Tax Board established under the provisions of any enactment regulating the taxation of incomes of persons other than companies in Nigeria;

"Minister" means the Minister charged with responsibility for finance;

"Nigerian company" means any company incorporated under the Companies and Allied Matters Act or any enactment replaced by that Act;

[Cap. C20.]

"officers of the Board" includes any officer of the Federal Inland Revenue Service;

[1993 No. 3.]

"persons" includes a company or body of persons;

"tax" means the tax imposed by this Act;

"year of assessment" means a period of twelve months commencing on 1 January.

(2) Any reference in this Act to any section, Part or Schedule not otherwise identified is a reference to that section, Part or Schedule of this Act.

106. Short title and application

(1) This Act may be cited as the Companies Income Tax Act.

(2) This Act shall, except where other provision is made in that behalf in this Act, apply in respect of tax charged for the year of assessment commencing on 1 April 1977 and each succeeding year of assessment.

SCHEDULES

First Schedule

[Section 3 (4).]

Powers or duties which the Board may not delegate except to the Joint Tax Board with the consent of the Minister

1. In this schedule, any reference to powers and duties shall not include any part of any power or duty of the Board either to make enquiries or to carry out or give effect to any decision of the Board.

2. Subject to paragraph (b) of subsection (4) of section 3 of this Act, no power or duty of the Board specified or imported in the following provisions, namely—

(a) sections 1 (3), 7, 14 (2), 21, 22, 23 (1) (d), 29 (6), 29 (9), 42 (3), 42 (5), 43 (2) (b), 87 (4), 90, 91 (2), 93 (3) and 94 (2) of this Act, and in paragraphs 6 (2) and 18 of Schedule 2 thereto;

(b) section 13 of the Industrial Development (Income Tax Relief) Act;

[Cap. I7.]

(c) the powers of the Board to decide to take proceedings under subsection (3) of section 6 or to take or sanction proceedings under section 97 of this Act;

(d) the power of the Board to consider anything necessary under subsection (2) of section 3 of this Act;

(e) the power of the Board to authorise under subsections (3) and (4) of section 3 of this Act,

shall be delegated to any other person.

Second Schedule

CAPITAL ALLOWANCES

ARRANGEMENT OF PARAGRAPHS

1. Interpretation

(1) For the purposes of this Schedule—

“basis period” has the meaning assigned to it by the following provisions of this definition—

(a) in the case of company to or on which any allowance of charge falls to be made in accordance with the provisions of this Schedule, its basis period for the year of assessment is the period by reference to the profits of which any assessable profits for that year fall to be computed under the provisions of section 29 of this Act;

(b) such profits mean profits in respect of the trade or business in which there was used an asset in connection with which such allowance or charge falls to be made:

Provided that, in the case of any such trade or business—

(i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;

(ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;

(iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which, for the purposes of subsection (4) of section 29, such company permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period; and

(iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases, for the purposes of subsection (4) of section 29, to be carried on by such company and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period;

“concession” includes a mining right and a mining lease;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and the expression “leasehold interest” shall be construed accordingly and—

(a) where, with the consent of the lessor, a lease of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of this first lease;

"qualifying expenditure" means, subject to the express provisions of this Schedule, expenditure incurred in a basis period which is—

(a) capital expenditure (hereinafter called "qualifying plant expenditure") incurred on plant, machinery or fixtures;

(b) capital expenditure (hereinafter called "qualifying building expenditure") incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure which is included in sub-paragraph (a) or (c) of this definition;

(c) capital expenditure (hereinafter called "qualifying mining expenditure") incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition);

(d) capital expenditure (hereinafter called "qualifying plantation expenditure") incurred in connection with a plantation—

(i) on the clearing of land for planting;

(ii) on planting (other than replanting);

(iii) on the construction of any works or buildings which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which are likely to become valueless when the concession comes to an end to the company working the source immediately before the concession comes to an end;

(iv) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existing and extent of the deposits;

(v) on searching for or on discovering and testing deposits, or winning access thereto;

(e) and for the purposes of this definition, where—

(i) expenditure is incurred for the purposes of a trade or business by a company about to carry on such trade or business; and

(ii) that expenditure is incurred in respect of an asset owned by that company if that expenditure would have fallen to be treated as qualifying expenditure if it had been incurred by that company on the first day on which it carries on that trade or business,

that expenditure shall be deemed to be qualifying expenditure incurred by it on that day;

(f) capital expenditure, that is, qualifying research and development expenditure, incurred on equipment and facilities, patents, licences, secret formula or process or for information concerning industrial, commercial or scientific process; technical feasibility of products or processes and purchases, searching for and discovering and testing products or process for future market or use; and such other similar cost which has not brought into existence any asset;

(g) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and businesses within the meaning of section 11 of this Act;

(h) capital expenditure, that is, qualifying public transportation, motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;

(i) capital expenditure (hereinafter called qualifying public transportation (inter-city) new mass transit coach expenditure) incurred on new mass transit coach of 25 seats and above operated by a recognised corporate private establishment.

[1993 No. 3.]

"trade or business" means a trade or business or that part of a trade or business the profits of which are assessable under this Act.

Application of capital allowances to assets acquired under hire-purchase agreement, etc.

(2) This Schedule shall apply in relation to any asset acquired by any hirer under a hire-purchase agreement, the terms of which provide for the use and ultimate acquisition of the asset by the hirer, as it applied to an asset acquired by any owner of an asset for the purposes of his trade or business, but shall so apply subject to the following modifications, that is to say—

(a) the qualifying expenditure within the meaning of sub-paragraph (1) (i) of paragraph 1 of this Schedule shall, in relation to any asset so acquired under that agreement, be limited to the amount of the instalment paid by the hirer during his basis period (within the meaning of those provisions) excluding in the computation of such qualifying expenditure any interest paid under the agreement;

(b) any reference in the provisions as aforesaid to any owner of any asset shall be construed as including a reference to a hirer under the hire-purchase agreement and as excluding a reference to the person letting the goods to the hirer under the agreement.

2. Provisions relating to mining expenditure

(1) For the purposes of this Schedule, where—

(a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and such expenditure has been incurred for the purposes of a trade or business carried on by the company incurring the expenditure, or expenditure has been incurred for the purpose of trade or business about to be carried on by the company incurring the expenditure and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period; and

(b) such expenditure has not brought into existence any asset; and

(c) such trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature,

then such expenditure shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purpose of such trade or business.

(2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by any company for the purposes of a trade or business carried on by it, and which has not been disposed of, shall be deemed not to cease to be used for the purpose of that trade or business so long as such company continues to carry on that trade or business.

(3) So much of any qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information, shall be left out of account for the purposes of this Schedule:

Provided that where such costs were originally incurred by a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and meaning of "relevant interest"

(1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.

(2) Subject to the provisions of this paragraph, in this Schedule, the expression "the relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the person who incurred such expenditure was entitled when he incurred it.

(3) Where, when he incurs qualifying building expenditure or qualifying mining expenditure on the construction of a building, structure or works, a person is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

4. Sale of buildings

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, any company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction whichever is the less:

Provided that where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sales with the omission of the words "except the granting of initial allowances" and the original cost of construction shall be taken to be the amount of the purchase price on such sale:

Provided also that where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of the foregoing proviso shall have effect only in relation to the last of those sales.

5. Qualifying industrial building expenditure

For the purpose of this Schedule—

(a) where but for this paragraph a company is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by it at the end of its basis period for any year of assessment, if that asset is an industrial building or structure in use as such at the end of its basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean "qualifying industrial building expenditure" for any allowances to be made to such company, in respect of that qualifying expenditure, for that year; and

(b) “industrial building or structure” means any building or structure in regular use—

(i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;

(ii) as a dock, port, wharf, pier, jetty or other similar building structure;

(iii) for the operation of a railway for public use or for a water or electricity undertaking for the supply of water or electricity for public consumption; and

(iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

6. Initial allowances

(1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, there shall be made to that company for the year of assessment in its basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called “an initial allowance”) at the appropriate rate per centum, set forth in Table I to this Schedule, of such expenditure.

(2) Where capital expenditure is incurred on the purchase of an asset and either purchaser is a person over whom the seller has control, or the seller is a person over whom the purchaser has control, or some other person has control over both the purchaser and the seller, then, the amount of any initial allowance to be made in respect of such expenditure shall be such an amount as the Board may determine to be just and reasonable having regard to all the circumstances relating to such asset and control:

Provided that any such amount shall not exceed the amount of the initial allowance which would have been allowable apart from the provisions of this sub-paragraph.

(3) Where a company has incurred qualifying expenditure for the purchase of plants and machineries for the replacement of the old ones, there shall be allowed such company a once and for all 95 per cent capital allowances in the first year, with 5% retention as the book value until the final disposal of the asset:

Provided that the aggregate capital allowances granted in respect of any asset under this Schedule and under section 42 shall not exceed 95 per cent of the total cost of the asset.

[1996 No. 32.]

7. Annual allowances

(1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment, a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, whether or not an initial allowance was made in respect of that qualifying expenditure, there shall be made to that company for each year of assessment, in its basis period for which that asset was used for the purpose of that trade or business, an allowance (hereinafter called “an annual allowance” at the rate specified in respect thereof in Table II of this Schedule of such expenditure after the deduction of initial allowance where applicable:

Provided that an amount of N10 shall be retained in the accounts for tax purposes until the asset is disposed of:

Provided further that where the basis period for any year of assessment is a period of less that one year and such allowance for that year of assessment shall be proportionately reduced.

(2) In the case of an asset in respect of which an allowance has been granted before the commencement of this sub-paragraph, an allowance shall be made in respect of the asset for the number of years which, if added to the number of years of assessment for which allowance has already been made, equals the number of years of assessment for which allowance is to be made under the provisions of sub-paragraph (1) of this paragraph:

Provided that if an allowance has been made for a number of years which is equal to or more than the number of years specified under sub-paragraph (1) of this paragraph, a single allowance shall be made for an amount which is N10 less than the residue of the qualifying expenditure for the year of assessment in which this sub-paragraph takes effect.

8. Asset to be in use at the end of basis period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be made to a company for a year of assessment if at the end of its basis period for that year it was the owner of that asset and that asset was in use for the purposes of a trade or businesses carried on by that company.

9. Balancing allowances

Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset an allowance (hereinafter called “a balancing allowance”) shall be made to that company for that year of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be made in respect of such asset if immediately prior to its disposal it was in use by such owner in the trade or business for the purpose of which such qualifying expenditure was incurred.

10. Balancing charges

Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset, a charge (hereinafter called “a balancing charge”) shall be made on that company for that year of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date:

Provided that a balancing charge shall only be made in respect of such asset if immediately prior to its disposal it was in use by such owner in the trade or business for the purposes of which such qualifying expenditure was incurred and shall not exceed the total of any allowances made to such owner under the provisions of this Schedule in respect of such asset and in cases falling under paragraph 19 of the Fourth Schedule to the Personal Income Tax Act, of any deductions made under section 10 of that Act in respect of the capital cost of such asset.

[Fourth Schedule. Cap. P8.]

11. Residue

(1) The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in

respect of that asset, less the total of any initial or annual allowances made to such owner, in respect of that asset, before that date.

(2) For the purpose of this paragraph, an initial allowance or annual allowance shall be deemed to be made at the end of the basis period for the year of assessment for which any such allowance is made.

12. Meaning of "disposed of"

Subject to any express provision to the contrary, for the purposes of this Schedule—

(a) a building, structure or works of a permanent nature is disposed of if any of the following events occur—

(i) the relevant interest therein is sold; or

(ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession; or

(iii) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or

(iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;

(b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;

(c) assets in respect of which qualifying mining expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the trade or business of the company incurring the expenditure either on such company ceasing to carry on such trade or business or on such company receiving insurance or compensation monies therefor.

13. Value of an asset

(1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the Board, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

(2) For the purposes of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interests therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

(3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of such asset, other than by way of sale, shall have effect —

(a) in relation to any asset or the relevant interest therein disposed of not being by way of bargain made at arm's length; or

(b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

14. Apportionment

(1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset; and where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of or the price paid for that asset, as the case may be.

For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

(2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

15. Part of an asset

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Board, be just and reasonable.

16. Extension of meaning of “in use”

(1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.

(2) For the purposes of paragraphs 6, 7 and 8 of this Schedule—

(a) an asset in respect of which qualifying expenditure has been incurred by the company owning such asset for the purposes of a trade or business carried on by it shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by the company incurring such expenditure will be for the purposes of that trade or business;

(b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this sub-paragraph and the first use to which such asset is put is not for the purposes of such trade or business, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

17. Exclusion of certain expenditure

Where any company has incurred expenditure which is allowed to be deducted, in computing the profits of its trade or business under section 24 of this Act, such expenditure shall not be treated as qualifying expenditure.

18. Application of lessors

(1) Where a company owning an asset—

(a) has incurred capital expenditure in respect thereof; or

(b) leases that asset to any person under an operating lease contract for use wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by such person,

the provisions of this Schedule shall apply, as though such expenditure were incurred for the purpose of a trade or business carried on by the owner or lessor and as though the owner or lessor were using the asset for the purpose of such last-mentioned trade or business in the way in which and for the period or periods during which the asset is in fact in the first-mentioned trade or business.

[1993 No. 3.]

(2) Where however an asset is acquired by any hirer or lessee under a finance lease contract the terms of which provide for the transfer of ownership, risks and reward to the hirer or lessee, the provisions of this Schedule shall apply in the same way as it applies to an asset acquired by any owner or lessor of an asset for the purpose of his trade or business, but shall so apply subject to the following modifications that is to say—

(a) the qualifying expenditure within the provisions of this Schedule shall in relation to any asset so acquired under that contract, be limited to the amount of the total lease payments due from hirer or lessee, during his basis period excluding in the computation of such qualifying expenditure any interest or charges payable under the contract;

(b) any reference in this subparagraph to any owner or lessor of any asset shall be construed as including a reference to a hirer or lessee under the finance lease contract and as excluding a reference to the person leasing the asset to the hirer or lessee under the contract.

[1993 No. 3.]

(3) Subject to the provisions of this Schedule, where a company has incurred capital expenditure on plant and machinery or acquires same by virtue of sub-paragraph (2) of this paragraph, wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, there shall be due an investment allowance of ten per cent of such expenditure.

[1993 No. 3.]

(4) For the purposes of this Schedule the terms “operating lease” and “finance lease” shall have the meanings ascribed to them by the Statement of Accounting Standard on Leases.

[1993 No. 3.]

(5) For the purposes of this paragraph in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.

(6) When a company owning an equipment has incurred capital expenditure in respect thereof for the purposes of leasing that equipment for the use wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on or about to be carried on by a person, the provisions of this Schedule shall apply to all such leases.

(7) Subject to the provisions of this Schedule where a company has incurred expenditure wholly, exclusively, necessarily and reasonably for the purposes of agricultural plant and equipment, there shall be due to that company an investment allowance of ten per cent of such expenditure.

19. Asset used or expenditure incurred partly for the purposes of a trade or business

(1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset—

(a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of a trade or business carried on by him and partly for other purposes;

(b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by such owner and partly for other purposes.

(2) Any allowances and any charges which would be made if both such expenditure were incurred wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and such asset were used wholly and exclusively for the purposes of such trade or business shall be computed in accordance with the provisions of this Schedule.

(3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) of this paragraph shall be made as in the opinion of the Board is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

20. Disposal without change of ownership

Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of the asset after the date of such disposal—

(a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be let out of account; but

(b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

21. Meaning of “allowances made”

Any reference in this Schedule to an allowance made includes a reference to an allowance which would be made but for an insufficiency of assessable profits against which to make it.

22. Claims for allowances

No allowance shall be made to any company for any year of assessment under the provisions of this Schedule unless claimed by it for that year or where the Board is of the opinion that it would be reasonable and just so to do.

23. Election in double taxation cases

(1) Where a company makes a claim to an initial or annual allowance under this Schedule in connection with any trade or business, if the taxes in respect of the profits of the trade or business are the subject of an arrangement, having effect by virtue of section 45 of this Act, between Nigeria and any other territory, for relief from double taxation, it may elect, at the time of making such claim or within such reasonable time thereafter as the Board may allow, that that allowance shall be calculated at a lesser rate than that provided for in paragraph 6 or 7 of this Schedule and in making such election it shall specify the amount of such lesser rate.

(2) Where an election has been made under this paragraph, the amount of such lesser rate shall be taken to be the appropriate rate in relation to that allowance for all the purposes of this Schedule.

24. Manner of making allowances and charges

(1) The amount of any charge to be made on a company under the provisions of this Schedule shall be made by making an addition to its assessable profits for the year of assessment for which such charge falls to be made under the provisions of this Schedule:

Provided that where any such charge falls to be made on any company for any year of assessment, whenever necessary by reason of the assessment on that company having become final and conclusive for that year or for other sufficient reason, the Board may make an additional assessment upon such company in respect of the amount of such charge.

(2) Subject to the provisions of this paragraph, the amount of any allowance to be made to a company under the provisions of this Schedule shall be made by making a deduction from the remainder of its assessable profits for the year of assessment for which such allowance falls to be made under the provisions of this Schedule.

(3) For the purposes of this paragraph, any such remainder for a year of assessment shall be ascertained by first giving full effect to the provisions of sub-paragraph (1) of this paragraph and to the provisions of section 31 relating to the deduction of the amount of any loss.

(4) Where full effect cannot be given to any deduction to be made under sub-paragraph (2) of this paragraph for any year of assessment owing to there being no such remainder for that year, or owing to the remainder for that year being less than such deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of ascertaining total profits (of the company entitled to such deduction) under section 31 for the following year, be deemed to be a deduction for that year, in accordance with the provisions of sub-paragraph (2) of this paragraph, and so on for succeeding years.

(5) Where a company is entitled to a deduction under the preceding sub-paragraph, or to a deduction in respect of a balancing allowance, in respect of an asset used in a trade or business carried on by it, for a year of assessment in which that trade or business permanently ceases to be carried on by it and full effect cannot be given to any such deduction for that year owing to there being no such remainder of assessable profits for that year, or owing to the remainder of its assessable profits for that year being less than such deduction, that deduction or the part to which effect has not been given, as the case may be, may, on a claim being made by such company, be given by way of deduction from any remainder of its assessable profits for the preceding year of assessment, and so on for other preceding years, so, however, that no such deduction shall be given by virtue of this sub-paragraph for any year earlier than the fifth year before the first-mentioned year of assessment:

Provided that where any relief is given under this sub-paragraph in respect of any such deduction, the provisions of the preceding sub-paragraph shall cease to have effect in respect of that deduction for any year of assessment subsequent to the year of assessment in which such trade or business ceases.

(6) Where any deduction falls to be given under the provisions of the preceding sub-paragraph for any preceding years of assessment, whenever necessary, by reason of any assessments for those years having become final and conclusive, or for other sufficient reason, the Board, with respect to each such year, may make such repayment or set-off of the tax, or of any part of such tax, paid or charged for any such year as may be appropriate, in lieu of making any such deduction.

(7) In giving effect to the provisions of sub-paragraph (2) of this paragraph, the amount of capital allowances to be deducted from assessable profits in any year of assessment shall not exceed 662/3 per cent of such assessable profits of a company, but any company in the agro-allied industry or which is engaged in the trade or business of manufacturing, shall not be affected by the restriction under this sub-paragraph.

[1991 No. 21.]

(8) In this paragraph—

“company in the agro-allied industry” is a company to which subsection (9) of section 11 of this Act applies.

TABLE I

Initial allowances

[1996 No. 32.]

Qualifying Expenditure in respect of:	Rate per cent
Building Expenditure	15
Industrial Building Expenditure	15
Mining Expenditure	95
Plant Expenditure (excluding Furniture and Fittings	50
Manufacturing Industrial Plant Expenditure	50
Construction Plant Expenditure (excluding Furniture and Fittings)	50
Public Transportation Motor Vehicle	95
Ranching and Plantation Expenditure	30
Plantation Equipment Expenditure	95
Research and Development Expenditure	95
Motor Vehicle Expenditure	50
Agricultural Plant Expenditure	95
Housing Estate Expenditure	50
Furniture and Fitting Expenditure	25

TABLE II

Annual allowances

[1996 No. 32.]

Qualifying Expenditure in respect of:	Rate per cent
Qualifying Agricultural Production	nil
Qualifying Building Expenditure	10
Qualifying Furniture and Fittings	20
Qualifying Industrial Building Expenditure	10
Qualifying Mining Expenditure	nil
Qualifying Plant Expenditure	25
Qualifying Plantation Equipment Expenditure	nil
Qualifying Ranching and Plantation Expenditure	50
Qualifying Housing Estate Expenditure	25
Qualifying Public Transportation (Inter-City) new Mass Transit Coach Expenditure	nil

Qualifying Motor Vehicles – Others	25
Qualifying Research and Development	nil

Third Schedule

TAX EXEMPTION ON CERTAIN INTERESTS

[Section 11 (6).]

TABLE I

Table of tax exemption on interest on foreign loans

Repayment period including Moratorium allowed	Grace period	Tax exemption
Above 7 years	Not less than 2 years	100%
5-7 years	Not less than 18 months	70%
2-4 years	Not less than 12 months	40%
Below 2 years	Nil	Nil

Fourth Schedule

WARRANT AND AUTHORITY TO LEVY BY DISTRESS UNDER THE COMPANIES INCOME TAX ACT

[Section 86.]

To (a)

Name of Company (b)

Amount of tax to be levied by distress (c)

The Federal Board of Inland Revenue, in exercise of powers vested in it by section 86 of the Companies Income Tax Act (Cap. C21) hereby authorises you to collect and recover the sum of

(c) , being arrears of tax due for the years of assessment hereinafter mentioned

from the above named company whose place of business is at (d) ; and for

the recovery thereof the said Board further authorises that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by law required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels, land, premises or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any lands in the use or possession of the said company or of any other person on its behalf or in trust for the company.

And for the purpose of levying such distress you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building or place in the daytime.

2. The particulars of the said arrears of tax are as follows—

Year of assessment No. of Notice of assessment Amount of tax due N: k

(e)

(i)

(ii)

(iii)

Signed for and on behalf of the Federal Board of Inland Revenue at this day of 20

Signature (f)

Chairman

Federal Board of Inland Revenue

NOTES

(a) Insert the name of the officer who is authorised by the Board to execute the warrant of distress.

(b) Insert the name of the company on whose goods, chattels, land, premises or other distrainable things the warrant of distress is to be executed.

(c) Insert the amount of tax outstanding against the company and which amount is to be levied by distress.

(d) Insert the address of the place of business of the company.

(e) Insert the particulars of the arrears of tax to be levied by distress, stating the years of assessment, the numbers of notices of assessment and the amount of tax due in respect of each such year of assessment.

(f) To be signed by the Chairman, Federal Board of Inland Revenue.

Fifth Schedule

FUNDS, BODIES AND INSTITUTIONS IN NIGERIA TO WHICH DONATIONS MAY BE MADE UNDER SECTION 25 OF THIS ACT

[Section 25 (5).]

1. The Boys Brigade of Nigeria.

2. The Boys Scouts of Nigeria.

3. The Christian Council of Nigeria.

4. The Cocoa Research Institute of Nigeria.

5. Any educational institution affiliated under any law with any university in Nigeria, or established under any law in Nigeria and any other educational institution recognised by any Government in Nigeria.

6. The Girl Guides of Nigeria.

7. Any hospital owned by the Government of the Federation or of a State or any University Teaching Hospital or any hospital which is carried on by a society or association otherwise than for the purpose of profits or gains to the individual members of that society or association.

8. The Institute of Medical Laboratory Technology.

9. The National Commission for Rehabilitation.

10. The National Library.

11. The Nigerian Council for Medical Research.

12. The National Science and Technology Development Agency.

13. The Nigerian Institute for International Affairs.

14. The Nigerian Institute for Oil Palm Research.

15. The Nigerian Institute for Trypanosomiasis Research.

16. The Nigerian Museum.

17. The Nigerian Red Cross.

18. A public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the civil war in Nigeria which ended on 15 January, 1970.

19. A public institution or public fund (including the Armed Forces Comfort Fund) established or maintained for the comfort, recreation or welfare of members of the Nigerian Army, Navy or Air Force.

20. A public fund established and maintained exclusively for providing money for the acquisition, construction, maintenance or equipment of a building used or to be used as a school or college by the Government of the Federation or a State or by a public authority or by a society or association which is carried on otherwise than for the purpose of profit or gain to the individual members of that society or association.

21. The National Youth Council of Nigeria.

22. National Sports Commission and its State Associations.

23. The Nigerian Society for the Deaf and Dumb.

24. The Society for the Blind.

25. The Nigerian National Advisory Council for the Blind.

26. Associations or Societies for the Blind in Nigeria.

27. Training Centres and Residential Schools for the Blind in Nigeria.

28. The National Braille Library of Nigeria.

29. The Nigerian Youth Trust.

30. Van Leer Nigerian Educational Trust.

31. Southern Africa Relief Fund.

32. Islamic Education Trust.

33. The Institute of Chartered Accountants of Nigeria Building Fund.

34. Any public fund established or approved by the Government of the Federation or established by any of the State Governments in aid of or for the relief of drought or any other national disaster in any part of the Federation.

Sixth Schedule

WARRANT AND AUTHORITY TO ENTER PREMISES, OFFICES, ETC.,UNDER THE COMPANIES INCOME TAX ACT 1979

[Section 64 (2). 1991 No. 21.]

To (a)

Name of Company (b)

Incorporation or Identification No. (c)

Place of Business (d)

The Federal Board of Inland Revenue, in exercise of powers vested in it by section 64 of the Companies Income Tax Act (Cap. C21) hereby authorises you to enter the premises, office, place of management or residence of the principal officer, office of the agent, factor or representative of the company which company has been suspected by the Board of fraud, wilful default, etc., in connection with the tax imposed under the aforesaid Act; and whose premises, office, place of

management or residence of the principal officer, office of the agent, factor or representative is at

(d) ; and for the carrying out of your assignment, the said Board further

authorises that you, with the aid (if necessary) of your assistants and calling to your assistance a police officer, which assistance the police officer is by law required to give, search and remove (if necessary) such records, books and documents of the company wherever they may be found either in possession of any officer of the company or any other person on its behalf.

For the purpose of your entry into the aforementioned premises, you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building in the daytime.

Signed for and on behalf of the Federal Board of Inland Revenue at this day of 20

Signature (e)

Chairman,

Federal Board of Inland Revenue

NOTE

(a) Insert the name of the officer who is authorised by the Board to execute the warrant of entry.

(b) Insert the name of the company in whose premises the warrant of entry is to be executed.

(c) Insert the identification number of the company in whose premises the warrant of entry is to be executed.

(d) Insert the place of business of the company.

(e) To be signed by the Chairman, Federal Board of Inland Revenue.

[1991 No. 21.]

CHAPTER C21

COMPANIES INCOME TAX ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of the Kingdom of Belgium) Order.

2. Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of the French Republic) Order.

3. Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of Canada) Order.

4. Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of Romania) Order.

5. Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of the Kingdom of the Netherlands) Order.

6. Companies Income Tax (Rates, etc., of Tax Deducted at Source (Withholding Tax)) Regulations.

Double taxation relief (Between the Federal Republic of Nigeria and the government of the kingdom

of Belgium) order

[S.I. 15 of 1997.]

under section 45 (1) Cap. C21, section 38 (1) Cap. P8, section 61 (1) Cap. P13

[1st January, 1990] [Commencement.]

Whereas it is provided by section 45 (1) of the Companies Income Tax Act, section 38 (1) of the Personal Income Tax Act and section 61 (1) of the Petroleum Profits Tax Act that if the Minister of Finance by Order declares that arrangements specified in the Order have been made with the government of any country outside Nigeria with a view to affording relief from double taxation in relation to taxes imposed under the provisions of the Companies Income Tax Act, the Personal Income Tax Act and the Petroleum Profits Tax Act, and any tax of a similar character imposed by the laws of that country and that it is expedient that those arrangements shall have effect notwithstanding anything in those enactments:

[Cap. C21. Cap. P8. Cap. P13.]

And Whereas by an agreement dated 20 November, 1989 between the Government of the Federal Republic of Nigeria and the Government of the Kingdom of Belgium arrangements were made among other things for the avoidance of double taxation:

Now, Therefore, the following Order is hereby made—

1. Double taxation relief, etc.

It is hereby declared—

(a) that the arrangements specified in the agreement set out in the Schedule to this Order shall apply between the Government of the Federal Republic of Nigeria and the Government of the Kingdom of Belgium and those arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum revenue tax or capital gains tax and taxes of a similar character imposed by the laws of the Kingdom of Belgium and the Federal Republic of Nigeria.

(b) that those arrangements include provisions with respect of the exchange of information necessary for carrying out the domestic laws of Nigeria and the laws of the Kingdom of Belgium concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

2. Citation and commencement

This Order may be cited as the Double Taxation Relief (Between the Federal Republic of Nigeria and the Kingdom of Belgium) Order 1997 and shall be deemed to have come into force on 1 January, 1990.

SCHEDULE

[Section 1.]

Agreement between the Government of the Federal Republic of Nigeria and the

Government of the Kingdom of Belgium 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

and

The Government of the Kingdom of Belgium,

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains.

Have 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 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 (impot des personnes phusiques Personen belasting);

(ii) the corporate income tax (impot des societes Vennootschapsbelasting”);

(iii) the income tax on legal entities (impot des personnes “morales” rechts) personenbelasting;

(iv) the special levy assimilated to the individual income tax (cotisation special assimilee a 1 “impot des personnes physiques” met de personenbelasting gelijkgestelde bijzondere heffing),

including the prepayments, the surchages 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, referred to above. The competent authorities of the Contracting States shall notify each other of any substantial 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 Nigeria with respect to the sea bed 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 laws 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 “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 “enterprises 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—

(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 laws of that State concerning the taxes to which this Agreement applies.

ARTICLE 4

Resident

1. For the purpose of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of the 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 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 provision 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 purpose 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 establishment and 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 ten 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 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 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 on the first-mentioned State exclusively or almost exclusively on behalf of the enterprise or other enterprise controlled by it or which have a controlling interest in it.

ARTICLE 6

Income from immovable property

1. Income form 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 deposit, 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 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 carried 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 administrative expenses so incurred, whatever 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 commission, for specific services performed 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 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 exempted 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 per cent 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

Association 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 profit which would, but for those conditions, have not so accrued to one of the enterprise 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 enterprises 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 dividend may also be taxed in the Contracting State of which the company paying other dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident according to the laws of that State, 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. 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 paragraph 1 or 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 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, except insofar as such dividends are paid to a resident of the first-mentioned State or 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 the other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to 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 per cent of the gross amount of the interest.

3. The provisions of paragraph 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 sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the 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 provision 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 take advantage of his 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 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 per cent of the gross amount of the royalties.

3. The provisions of paragraph 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 sub-division, 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 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 their beneficial owner in the absence of such relationship, the provisions of the 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 was 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 to 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 right to use, 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 performance 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 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, 18, 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 enterprises of a Contracting State may be taxed in that State.

ARTICLE 16

Director's fees

1. Director's 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 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 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 a theater, 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 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 the 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 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 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

Student 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 on 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 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 form 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. Item of income of a resident of a Contracting State wherever arising, not dealt with in the foregoing Article of his 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 land arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23

Elimination of double taxation

1. Subjected 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 per cent 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, 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—

(i) dividends taxable in accordance with paragraph 2 of Article 10 and not exempt from Belgium tax under sub-paragraph (c) below;

(ii) interest taxable in accordance with paragraph 2 or 5 of Article 11; and

(iii) royalties taxable in accordance with paragraph 2 or 5 of Article 12,

the fixed proportion of the foreign tax for which the 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 laws, 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 dividend 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 period 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 same 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 no be less favourable 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 requirements 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.

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 Contracting 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 or companies which are residents of the 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 provision of this Article shall notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25

Mutual agreement produced

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 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 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 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 doubts 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 26

Exchange of information

1. The competent authorities of the Contracting State 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 form 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 each notify the 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 letter of the notifications 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 1 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 1 January in the calendar year immediately following that in which the Agreement enters into force;

(b) in Belgium—

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

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

(b) in Belgium—

(i) in respect of taxes due at source, on income credited or payable on or after 1 January in the calendar year immediately following that 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 1 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 duplication at Brussel this Twentieth day of November, 1989, in the English Language:

Mark Eyskens

For the Government of the Kingdom of Belgium:

Joshua Irhoa

For the Government of the Federal Republic of Nigeria.

Double taxation relief (between the Federal Republic of Nigeria and the government of the French Republic) order

[S.I. 16 of 1997.]

under section 45 (1) Cap. C21, section 38 (1) Cap. P8, section 61 (1) Cap. P13

[1st January, 1991]

[Commencement.]

Whereas it is provided by section 45 (1) of the Companies Income tax Act, section 38 (1) of the Personal Income Tax Act and section 61 (1) of the Petroleum Profits Tax Act that if the Minister of Finance by Order declares that arrangements specified in the Order have been made with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to taxes imposed under the provisions of the Companies Income Tax Act, the Personal Income Tax Act and the Petroleum Profits Tax Act, and any tax of a similar character imposed by the laws of that country and that it is expedient that those arrangements shall have effect notwithstanding anything in those enactments:

[Cap. C21. Cap. P8. Cap. P13.]

And Whereas by an agreement dated 27 February, 1990 between the Government of the Federal Republic of Nigeria and the Government of the French Republic arrangements were made among other things for the avoidance of double taxation:

Now Therefore, the following Order is hereby made—

1. Double taxation relief, etc.

It is hereby declared—

(a) that the arrangements specified in the agreement set out in the Schedule to this Order shall apply between the Government of the Federal Republic of Nigeria and the Government of the French Republic and those arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum tax or capital gains tax and taxes of a similar character imposed by the laws of French Republic and the Federal Republic of Nigeria;

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of Nigeria and the laws of the French Republic concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

2. Citation and commencement

This Order may be cited as the Double Taxation Relief (Between the Federal Republic of Nigeria and the French Republic) Order.

SCHEDULE

Agreement between the Federal Republic of Nigeria and the Government of the French

Republic 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

and

The Government of the French Republic,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains have 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 the Agreement are—

(a) in the case of France—

(i) the income tax;

(ii) the corporation tax,

including any withholding tax, prepayment (pre-compte) or advance payment with respect to the aforesaid taxes; (hereinafter referred to as “French 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;

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, subsoil, 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, subsoil, 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 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 or management or any 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 a habitual abode;

(c) if he has a 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 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, the competent authorities of the Contracting States 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, 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 exceeds 10 per cent 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 activities 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 one of the Contracting States merely because it carries on business in that Contracting 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, (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 the Contracting States an authority to conclude contracts on behalf of the enterprise, unless the 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 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 one of the States 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 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 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 one of the Contracting States 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 except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishments. 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 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 per cent of the earning of the enterprise derived from the other Contracting State.

For the purposes 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 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 States 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 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 profit 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 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 be 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 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 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 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

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

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

3. The 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, 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 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 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 States 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 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 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 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 one of the 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-claims giving rise to the interests 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 States and paid a resident of the other Contracting State may be taxed in the 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 per cent 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 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 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 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 21 salaries, wages and other similar remuneration derived by a resident of one of the 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 States 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 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 money's 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 Article 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 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 profits, income or chargeable gains by reference to which French tax is computed;

(b) in case of a 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 per cent of the 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 sub-paragraph (a) of this paragraph) the 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 development in Nigeria, the tax credit shall be equal to the normal tax provided for in paragraph 2 of Articles 10, 11 and 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 Contracting 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 requirement 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 to 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 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 of this Article be construed so as to impose on one of the Contracting 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 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 (order public).

ARTICLE 27

Diplomatic agents and consular officers

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic missions and their personal domestics, of members of consular missions, or of members of permanent missions to international organisations 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 the other State only if he derives income from sources therein, shall 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 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 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, the termination 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 1 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 1 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 the 1st January in the calendar year immediately following that in which the Agreement inters 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 after 31 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 1 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 31 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 authorised thereto, have signed this Agreement.

Done at PARIS this 27th day of February, 1990, in duplicate, in the English and French language, both texts being equally authentic.

French Minister of Finance

For the Government of the French Republic:

Chief Olu Falae

For the Government of the Federal Republic of Nigeria.

Double taxation relief (between the Federal Republic of Nigeria and the government of Canada) order

[S.I. 17 of 1997.]

under section 45 (1) Cap. C21. section 38 (1) Cap. P8. section 61 (1) Cap. P13.

[1st January, 1993]

[Commencement.]

Whereas it is provided by section 34 (1) of the Companies Income Tax Act, section 30 (1) of the Personal Income Tax Act and section 56 (1) of the Petroleum Profits Tax Act that if the Minister of Finance by Order declares that arrangements specified in the Order have been made with the government of any country outside Nigeria with a view to affording relief from double taxation in relation to taxes imposed under the provisions of the Companies Income Tax Act, the Personal Income Tax Act and the Petroleum Profits Tax Act, and any tax of a similar character imposed by the laws of that country and that it is expedient that those arrangements shall have effect notwithstanding anything in those enactments:

[Cap. C21. Cap. P8. Cap. P13.]

And Whereas by an agreement dated 4 August, 1992 between the Government of the Federal Republic of Nigeria and the Government of Canada arrangements were made among other things for the avoidance of double taxation:

Now, Therefore, the following Order is hereby made—

1. Double taxation relief, etc.

It is hereby declared—

(a) that the arrangements specified in the agreement set out in the Schedule to this Order shall apply between the Government of the Federation Republic of Nigeria and the Government of Canada and those arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum revenue tax or capital gains tax and taxes of a similar character imposed by the laws of Canada and the Federal Republic of Nigeria.

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of Nigeria and the laws of Canada concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

2. Citation and commencement

This Order may be cited as the Double Taxation Relief (Between the Federal Republic of Nigeria and Canada) Order 1997 and shall be deemed to have come into force on 1 January, 1993.

SCHEDULE

[Section 1.]

Agreement between the Government of the Federal Republic of Nigeria and the

Government of Canada 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

and

The Government of Canada,

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

Have agreed as follows:

CHAPTER 1

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 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 apply also to any identical or substantially similar taxes which are imposed by either Contacting State after the date of signature of the 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.

CHAPTER II

Definitions

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 sea bed 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 sea bed 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 term “Contracting State” and “the other Contracting State” means Nigeria or Canada as the context requires;

(e) the term “person” includes and individual, an estate, a trust, a company, a partnership and any other body of persons;

(f) the terms “company” means and body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term “society” also means a corporation within the meaning of Canadian law;

(g) the terms “enterprise of Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident 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 case of Nigeria, the Federal Minister of Finance and Economic Development or his authorised representative; and in the case of Canada, the Minister of National Revenue or his authorised representative.

2. As regards the application of the 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

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 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 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 stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of 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 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 a resident of a Contracting State, other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply and acting in that 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 the 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 State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

Taxation of income

ARTICLE 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. 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 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 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 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 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 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 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 exceed 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 paragraphs 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 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.

3. A Contracting State shall not change the profits of an enterprises 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 paragraph 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 the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed—

(a) 121/2 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 items (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 dividends 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 if 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 such other State.

6. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing on the earnings of a Contracting 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 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 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 if 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 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, or 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.

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 cinematography films and 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, of 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 of 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 laws.

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. 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 periods 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 14 and 15, income derived by a resident of a Contracting of the 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 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 organisation 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 also 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 veterans’ 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 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 of 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

1. 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 recognised 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 shall 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 benefit of a specific person or persons.

ARTICLE 22

Other income

1. 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.

CHAPTER IV

Elimination of double taxation

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 or 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 and 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 a 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 1997,

(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 respect so as not to affect its general character.

(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 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 form, 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.

CHAPTER V

Special provisions

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 granted 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 giving 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 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 (order 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 States 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 thereof.

ARTICLE 28

Entry into force

1. Each of the Contracting State 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 1 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 1 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 1 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 1 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 1 January of the next following calendar year;

(b) in Nigeria—

(i) in respect of other Canadian tax for taxation year beginning 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 1 January of the next following calendar year.

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

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

For the Government of the Federal Republic of Nigeria:

Alhaji Abubakar Ahmad

For the Government of Canada:

Mr. E.N.C. Hare.

Canadian High Commissioner to Nigeria.

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 prevention of fiscal evasion with respect to taxes on income and on capital gains, the undersigned have agreed on the following provision 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 passenger 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 3, 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 the 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 authorised to that effect, have signed this Protocol.

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

For the Government of Canada:

Mr. E.N.C. Hare.

Canadian High Commissioner to Nigeria

For the Government of the Federal Republic of Nigeria:

Alhaji Abubakar Ahmad

Double taxation relief (between the Federal Republic of Nigeria and the government of Romania) order

[S.I. 18 of 1997.]

under section 45 (1) Cap. C21, section 38 (1) Cap. P8, section 61 (1) Cap. P13

[1st January, 1993]

[Commencement.]

Whereas it is provided by section 45 (1) of the Companies Income tax Act, section 38 (1) of the Personal Income Tax Act and section 61 (1) of the Petroleum Profits Tax Act that if the Minister of Finance by Order declares that arrangements specified in the Order have been made with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to taxes imposed under the provisions of the Companies Income Tax Act, the Personal Income Tax Act and the Petroleum Profits Tax Act, and any tax of a similar character imposed by the laws of that country and that it is expedient that those arrangements shall have effect notwithstanding anything in those enactments:

[Cap. C21. Cap. P8. Cap. P13.]

And Whereas by an agreement dated 21st July, 1992 between the Government of the Federal Republic of Nigeria and the Government of Romania arrangements were made among other things for the avoidance of double taxation:

Now Therefore, the following Order is hereby made—

1. Double taxation relief, etc.

It is hereby declared—

(a) that the arrangements specified in the agreement set out in the Schedule to this Order shall apply between the Government of the Federal Republic of Nigeria and the Government of Romania and those arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum tax or capital gains tax and taxes of a similar character imposed by the laws of Romania and the Federal Republic of Nigeria;

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of Nigeria and the laws of Romania concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

2. Citation

This Order may be cited as the Double Taxation Relief (Between the Federal Republic of Nigeria and Romania) Order.

SCHEDULE

[Section 1.]

Agreement between the Federal Republic of Nigeria and the Kingdom of Romania

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

and

The Government of Romania,

Desiring to promote and strengthen the economic relations between the two countries have decided to conclude an Agreement for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and Capital Gains,

For this purpose, they have agreed upon as follows:

Scope of the agreement

ARTICLE 1

Personal scope

This Agreement shall apply to persons who are residents of one or both 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 of 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 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 term "enterprise of a Contracting State" and "enterprise of the other Contracting State", means respectively 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;

(j) the term “territorial administrative unit” are used in relation to Romania;

(k) the term “political sub-division” 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 incorporation or management or any 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 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 a 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 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 month within any twelve 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 enterprise;

(b) the maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a 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 activities of a preparatory or auxiliary character;

(e) the maintenance of 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 Government 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 one of the Contracting States 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 establishments 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 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 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 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 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 one 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 States 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 profit 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 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 States 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 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 if 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.

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 such 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 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 purposes of this paragraph, profits distributed by joint company 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 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 thereon 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-claim 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 base fixed 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 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 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 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 the 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 base fixed 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 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 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.

6. The provisions of this Article shall not apply if, in the opinion of the competent authorities, the right of 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 of 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 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 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 Sate 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 periods 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 activities are not carried out for the purpose of profits.

ARTICLE 18

Government service

1. (a) Remuneration other than pensions paid by a Contracting of the State, an administrative territorial unit, political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State, and administrative territorial unit, 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 this 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 making a visit to 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 that 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

1. 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 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 exception 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 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 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 residents.

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 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 my 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 a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third 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—

(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 1 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 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 29

Termination

The 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 1 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 1 January in the calendar year immediately following that in which the notice of termination is given.

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

Done at Abuja, 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.

For the Government of the Federal Republic of Nigeria:

Alhaji Ahmad Abubakar.

For the Government of Romania:

Dr. Engrs. Gheorghe Colt.

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 authorised thereto, by their respective Governments have signed this Protocol.

Done at Abuja, this 21st day of July, 1997.

In duplicate, in the English and Romanian language, 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.

For the Government of the Federal Republic of Nigeria:

Alhaji Ahmad Abubakar.

For the Government of Romania:

Dr. Engr. Gheorghe Colt.

Double taxation relief (between the Federal Republic of Nigeria and the government of the Kingdom of the Netherlands) order

[S.I. 19 of 1997.]

under section 45 (1) Cap. C21, section 38 (1) Cap. P8, section 61 (1) Cap. P13

[1st January, 1994]

[Commencement.]

Whereas it is provided by section 45 (1) of the Companies Income tax Act, section 38 (1) of the Personal Income Tax Act and section 61 (1) of the Petroleum Profits Tax Act that if the Minister of Finance by Order declares that arrangements specified in the Order have been made with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to taxes imposed under the provisions of the Companies Income Tax Act, the Personal Income Tax Act and the Petroleum Profits Tax Act, and any tax of a similar character imposed by the laws of that country and that it is expedient that those arrangements shall have effect notwithstanding anything in those enactments:

[Cap. C21. Cap. P8. Cap. P13.]

And Whereas by an agreement dated 21st July, 1992 between the Government of the Federal Republic of Nigeria and the Government of the Kingdom of the Netherlands arrangements were made among other things for the avoidance of double taxation:

Now Therefore, the following Order is hereby made—

1. Double taxation relief, etc.

It is hereby declared—

(a) that the arrangements specified in the agreement set out in the Schedule to this Order shall apply between the Government of the Federal Republic of Nigeria and the Government of the Kingdom of the Netherlands and those arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum tax or capital gains tax and taxes of a similar character imposed by the laws of Kingdom of the Netherlands and the Federal Republic of Nigeria;

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of Nigeria and the laws of the Kingdom of the Netherlands concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

2. Citation

This Order may be cited as the Double Taxation Relief (Between the Federal Republic of Nigeria and the Kingdom of the Netherlands) Order.

SCHEDULE

[Section 1.]

Agreement between the Federal Republic of Nigeria and the kingdom of the Netherlands 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

and

The Government of the Kingdom of the Netherlands,

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

Have agreed as follows:

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—

(i) the income tax (inkomstebelasting);

(ii) the wages tax (loonbelasting);

(iii) 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 Continental Plat, 1965"),

(iv) the dividend tax (dividend belasting), (hereinafter referred to as "Netherlands tax");

(b) in Nigeria—

(i) the personal income tax;

(ii) the companies income tax;

(iii) the petroleum profits tax;

(iv) 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 subsoil 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 subsoil 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” means 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 States;

(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 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 authorised representative;

2. in Nigeria the Minister of Finance or his authorised 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 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 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 stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of 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 activities 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 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 paragraph 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 the States 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 the 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 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 except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishments. 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 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 profit 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 be 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) 12½ per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

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

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

3. The term "dividends" as used in this Article means income from shares, 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 4 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 12½ per cent 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 those 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 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 State by a resident of the other Contracting State may be taxed in the 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 12½ per cent of the gross amount of the royalties.

3. The term “royalties” 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 cinematography films, of 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 realised in the course of a corporate organisation reorganisation, 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 Articles 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 State 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—

(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. Any pension paid by, or out or 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 organisation 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 this 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 Nigeria 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 mentioned in the said provisions.

However, if the general tax rates under Nigerian laws applicable to the aforementioned 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 or tax payable in a territory outside Nigeria (which shall not affect the general principle hereof)—

(a) Netherlands tax payable under 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 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 per cent 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 disinvestments 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 requirement 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 to 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 (order 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 extension 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 1 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 1 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 1 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 1 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 this 11th day of December, 1991, in duplicate, in the English language.

For the Government of the Federal Republic of Nigeria:

Alhaji Abubakar Alhaji

For the Government of the Kingdom of the Netherlands:

ERIC T. J. KWINT.

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. 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 of the other State from the operation of the 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 per cent of the earnings of the enterprise derived from the other State. For the purposes of the foregoing sentence, the term “earning” 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 transhipments or transfers.

IV. AD ARTICLE 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost-sharing 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 organisation, reorganisation, 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 book value 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 authorised thereto, have signed this Agreement.

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

For the Government of the Federal Republic of Nigeria:

Alhaji Abubakar Alhaji.

For the Government of the Kingdom of the Netherlands:

ERIC T.J. KWINT.

Companies income tax (rates, etc., of tax deducted at source (withholding tax)) regulations

ARRANGEMENT OF REGULATIONS

SCHEDULE

COMPANIES INCOME TAX (RATES, ETC., OF TAX DEDUCTED AT SOURCE (WITHHOLDING TAX)) REGULATIONS

[S.I. 10 of 1997.]

under section 63

[1st January, 1995]

[Commencement.]

1. Rate of tax to be deducted at source

(1) The rate at which a person as defined in paragraph (2) of this regulation shall deduct tax under the Act from a payment made by him for an activity or service listed in Column 1 of the Schedule to these Regulations shall be as set out in Column 2 of the Schedule.

(2) For the purposes of paragraph (1) of this regulation—

"person" includes a body corporate and unincorporate, a Government Ministry, Department and agency, a local government, a statutory body, a public authority and any other institution, organisation, establishment and enterprise which operates as Pay-As-You-Earn scheme.

2. Deduction not to be regarded as extra cost

A deduction made from a payment shall not be regarded as an additional cost of the contract to be included in the contract price but as tax due on the payment.

3. Deduction to be receipted

(1) A person who deducts tax from a payment shall issue a receipt for the tax so deducted and a statement containing the following information, that is—

(a) the name and address and the Federal Inland Revenue Service reference number of the person from whom the tax was deducted;

(b) the nature of activity or service in respect of which the payment was made;

(c) the gross amount paid or payable;

(d) the amount of tax deducted; and

(e) the period to which the payment relates.

(2) Where a company from whom tax is deducted claims tax credit for the tax so deducted it shall submit the receipt issued to him under paragraph (1) of this regulation to the relevant tax authority as evidence of the tax deducted.

4. Remittance of tax

(1) A person who deducts tax from a payment shall, when the payment is credited or paid, which ever is earlier, submit, to the relevant office of the Federal Inland Revenue Service, the evidence of remittance made to the designated branch of the bank zoned to that office, of the tax deducted.

(2) The submission shall be accompanied with a statement containing the following information—

(a) the name, address and Federal Inland Revenue Service reference number of the person from whom the tax was deducted;

(b) the nature of the activity or service in respect of which the payment was made;

(c) the gross amount paid or payable;

(d) the amount of tax deducted; and

(e) period to which the payment relates.

5. Offences

A person required to deduct tax at source under the Act and under these Regulations who fails to do so or having deducted tax fails to pay the tax to the Federal Inland Revenue Service within thirty days from the date the tax was deducted or the time the duty to deduct the tax arose is guilty of an offence and liable on conviction to the penalty set out in section 64 of the Act.

6. Interpretation

In these Regulations, unless the context otherwise requires—

(a) "the Act" means the Companies Income Tax Act; and

[Cap. C21. L.F.N.]

(b) a word or an expression used in these Regulations has the meaning assigned to it in the Act.

7. Citation and commencement

These Regulations may be cited as the Companies Income Tax (Rate, etc., of Tax Deducted at Source (Withholding Tax)) Regulations 1997 and shall be deemed to have come into force on 1 January 1995.

SCHEDULE

[Regulation 1.]

Payments from which tax is to be deducted and rate of tax

Column 1	Column 2
Payments in respect of	Rate at which tax is to be deducted
1. All aspects of building, construction and related activities	5%
2. All types of contracts and agency arrangements, other than sales in the ordinary course of business	5%

[S.I. 44 of 2000.]

Column 1		Column 2
Payments in respect of		Rate at which tax is to be deducted
3.	Consultancy and professional services	10%
4.	Management services	10%
5.	Technical services	10%
6.	Commissions	10%