NIGERIA - NETHERLANDS
INCOME TAX TREATY
(1991)

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

Chapter I
Scope of the Agreement

Article 1
Personal scope

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

Article 2
Taxes covered

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

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

(hereinafter referred to as "Netherlands
tax"); (b) in Nigeria:
-- the personal income tax;
-- the companies income tax;
-- the petroleum profits tax;
-- the capital gains tax

(hereinafter referred to as "Nigerian tax").

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

Chapter II
Definitions

Article 3
General definitions

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

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

(i) the term "competent authority" means:
(1) in the Netherlands, the Minister of Finance or his authorized representative;
(2) in Nigeria, the Minister of Finance or his authorized representative.

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

Article 4
Fiscal residence

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

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

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
(d) if he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

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

Article 5
Permanent establishment

1.For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2.The term "permanent establishment" includes especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. (a) Notwithstanding the provisions of paragraphs 1 and 2, the term "permanent establishment" shall include a building site, a construction, assembly or installation project, as well as supervisory activities in connection therewith, the furnishing of services including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if these activities continue for a period of more than three months.
(b) However, in the case of installation activities which are incidental to the sale of machinery by an enterprise in the other State, and the installation activities are necessary to complete the sale of that machinery or equipment, then in such a case, such installation shall not constitute a permanent establishment unless it lasts for more than six months.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

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

6.An enterprise shall not be deemed to have a permanent establishment in one of the States merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7.Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting in one of the States on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
(b) habitually secures orders for the sale of goods or merchandise in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise itself or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

8.Subject to the preceding provisions of this Article, the fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III
Taxation of income

Article 6
Income from immovable property

1.Income derived by a resident of one of the States from immovable property (including income from agriculture or forestry) situated in the other State may be taxed in that other State.

2.The term "immovable property" shall have the meaning which it has under the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of the general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3.The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

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

Article 7
Business profits

1.The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2.Subject to the provisions of paragraph 3 of this Article, where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3.In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4.No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profits on such sales may be attributed to that permanent establishment.

5.In the case of profits from survey, supply, installation or construction activities only so much of them is attributable to a permanent establishment as results from the actual performance of these activities through that permanent establishment. Accordingly, profits from deliveries of goods, whether or not in connection with these activities, to that permanent establishment by the head office, another permanent establishment or a third person shall not be attributed to that permanent establishment. Provided such profits do not accrue in the execution of such survey, supply, installation or construction activities in the other State.

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

Article 8
Shipping and air transport

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

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

3.The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated enterprises

1.Where

(a) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2.Where one of the States includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the States shall if necessary consult each other.

Article 10
Dividends

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

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

(a) 12.5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends;
(b) 15% of the gross amount of the dividends in all other cases.

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

3.The term "dividends" as used in this Article means income from shares, or other rights, not being debtclaims participating in profits as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

5.Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
Interest

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

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

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

4.The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

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

and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7.Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Agreement.

Article 12
Royalties

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

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

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

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Agreement.

Article 13
Capital gains

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of one of the States from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be exempt from tax in the other State.

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

Article 14
Independent personal services

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

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

Article 15
Dependent personal services

1.Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2.Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised in the other State shall be taxable only in the firstmentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year or the year of assessment of that State, and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16
Directors' fees

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

Article 17
Artistes and athletes

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

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

Article 18
Pensions and
annuities

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

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

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

3.The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19
Government service

1. (a) Remuneration, other than a pension, paid by one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.
(b) However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who:
(1) is a national of that State; or
(2) did not become a resident of that State solely for the purpose of rendering the services.

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

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

Article 20
Professors, teachers and researchers

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

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

Article 21
Students

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

(a) all remittances from abroad for the purposes of his maintenance, education or training; and
(b) any remuneration not exceeding U.S. $ 2000 for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

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

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

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

Article 22
Other income

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

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

Chapter IV
Elimination of double taxation

Article 23
Elimination of double taxation

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

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

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

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

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

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

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

(a) Netherlands tax payable under the laws of the Netherlands and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within the Netherlands (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Nigerian tax computed by reference to the same profits, income or chargeable gains by reference to which Netherlands tax is computed.
(b) In the case of a dividend paid by a company which is a resident of the Netherlands to a company which is resident in Nigeria and which controls directly or indirectly at least 10% of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Netherlands tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Netherlands tax payable by the company in respect of the profits out of which such dividend is paid.

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

Chapter V
Special provisions

Article 24
Non-discrimination

1. Notwithstanding the provisions of Article 1, nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of one of the States has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing contained in this Article shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances, reliefs and deductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25
Mutual agreement procedure

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of

the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26
Exchange of information

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

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

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State;
(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State;
(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27
Diplomatic agents and consular officers

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

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

Article 28
Territorial extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications to either or both of the countries Aruba or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall

take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

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

Article 29
Entry into force

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

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

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

Article 30
Termination

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

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

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

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

PROTOCOL

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

I.Ad Article 7

In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment, may be considered attributable to that permanent

establishment. This provision will only be applicable where sales or business activities are effected by an enterprise of one of the States in the other State through other outlets or fixed points than its permanent establishment.

II.Ad Article 7

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

III.Ad Article 8

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

For the purposes of the foregoing sentence, the term "earnings" means income derived by a shipping or air transport enterprise of one of the States from the carriage of passengers, mail, livestock or goods boarded or loaded in the other State, less the refunds and payments of wages and salaries of ground staff and excluding the income derived from the carriage of passengers, mail, livestock or goods which are brought to that other State solely for 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 organization, reorganization, amalgamation, division or similar transaction refer to a transfer of shares within a group of associated enterprises. In that case the shares will be evaluated for the transferee at the 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 authorized thereto, have signed this Protocol.

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