

Double Taxation Relief (Between the Federal Republic Of Nigeria and the Government of Romania) Order 1997

Under section 45(1)

Commencement: 1st January, 1993

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 enactment.

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. 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 Revenue 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. This Order may be cited as the Double Taxation Relief (between the Federal Republic of Nigeria and Romania) Order, 1997 and shall be deemed to have come into force on 1st January, 1993.

SCHEDULE

Section 1

Agreement between the Government of the Federal Republic of Nigeria and the Government of Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains

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” means 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, an 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”, mean respectively an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “international traffic” mean 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 authorized representative; and in the case of Romania, the Minister of Finance or his authorized representative;

The term “territorial administrative units” are used in relation to Romania;
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 interest);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then 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 months within any 12 – months 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 of 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 States 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 merchandises in the first-mentioned State exclusively or almost exclusively on behalf of the enterprise itself and other enterprise 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 States 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 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 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 similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Provided that where that permanent establishment is also selling the goods or merchandise so purchased, irrespective of 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 been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10. Dividends

1. Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the 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 companies shall be regarded as dividends.

Article 11. Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the beneficial owner of the interest is subject to tax 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-claims giving rise to such interest is not on commercial basis.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State of which the company paying the interest is a resident, a permanent establishment or a 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 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 case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.
 7. The provisions of this Article shall not apply if in the opinion of the competent authorities, the right of property giving rise to the interest was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.
 8. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

Article 12. Royalties

1. Royalties derived from a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State from which they are derived and according to the law of that State, but where the beneficial owner of the royalties is subject to tax thereon in the other State, the tax so charged shall not exceed 12.5 per cent of the gross amount of the royalties.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State of which the company paying the royalties is a resident a permanent establishment or a base fixed situated therein, and the right of 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 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 cinematography 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 ship 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 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 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 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 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 pension paid by a Contracting State 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 visiting a Contracting State is or was resident of the other Contracting State and who is temporarily present in the first mentioned State primarily for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization 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 recognized educational institution in that State and who, immediately before that visit was a resident of the other Contracting State shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. During the said period of two years, the other Contracting State shall also exempt him from tax in respect of such remuneration from the first-mentioned State in respect of the teaching or research.
2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for 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 the 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 Romania 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 Romania 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 by for an exemption or deduction of tax granted that year or any part thereof.

Article 24. Non-Discrimination

1. Notwithstanding the provisions of Article 1, nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation 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 favorably 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 results 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 – which he is a national. The case must be presented within five years from the first-mentioned 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 may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26. Exchange of Information

1. The taxation authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or 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 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 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 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 29. Termination

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

In such event the Agreement shall cease to be effective –

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

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

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

Done 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. Engr. 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 authorized 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.

MADE at Abuja this 10th day of October 1997.

Chief (Dr) Anthony A. Ani (MON).
Minister of Finance