AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

AND

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS


Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on Income and Capital Gains

Have agreed as follows:

Article 1
PERSONAL SCOPE

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

Article 2
TAXES COVERED

1. The taxes which are the subject of this Agreement are:
   a) In the case of the Philippines, the income taxes presently imposed by the Government of the Republic of the Philippines (hereinafter referred to as “Philippine tax”).
b) In Nigeria:

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

(hereinafter referred to as “Nigerian tax”).

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

Article 3
GENERAL DEFINITIONS

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

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

b) the term “Nigeria” means the Federal Republic of Nigeria including any area outside the territorial waters of the Federal Republic of Nigeria which in accordance with international law has been or may hereafter be designated, under the laws of the Federal Republic of Nigeria with respect to the sea-bed and subsoil and their natural resources may be exercised;

c) the term “national” means:

(i) in relation to the Philippines;
   (a) any individual possessing the citizenship of the Philippines;
   (b) any legal person, partnership or association created, organized or incorporated under the laws of the Philippines;
(ii) in relation to Nigeria, any citizen of Nigeria and any legal person, partnership, association or other entity deriving its status as such from the laws in force Nigeria;

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

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

f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes under the laws of each Contracting State;
g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

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

i) the term “competent authority” means, in the case of Philippines, the Minister of Finance or his authorised representative; and in the case Nigeria, the Federal Minister of Finance and Economic Development or his authorised representatives.

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

Article 4
FISCAL RESIDENCE

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

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

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States, or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where, by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is incorporated.

Article 5
PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” includes especially:
   a) a place of management;
   b) a branch
   c) an office;
   d) a factory;
   e) a workshop;
   f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
   g) a building site or construction or assembly project which exists for more than three months;
   h) the provision of supervisory activities for more than three months on a building site or construction or assembly project;
   i) installation or the provision of supervisory activities in connection with such installation incidental to the sale of machinery or equipment where the charge payable for such installation exceeds 5 per cent of the sale price of the machinery or equipment free-on-board.

3. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include;
   a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying for the enterprise, any other activity of a preparatory or auxiliary character.

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

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

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

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

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

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

Article 6
INCOME FROM IMMOVABLE PROPERTY

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

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

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

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

Article 7
BUSINESS PROFITS

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

   a) that permanent establishment;

   b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

   c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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 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 and actually provided to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by
way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commissions for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent and actually provided to the head office of the enterprise or any of its other offices.

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

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

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of one of the States from the operation in international traffic of ships or aircraft may be taxed in that State.

2. However, such profits may also be taxed in the other State, but only in so far as the profits are derived from that other State. The tax so charged shall not exceed the lesser of

   a) the rate of 1½ per cent of the gross revenue derived from that other State, or

   b) the lowest rate of Philippine tax applied on such profits derived by an enterprise of a third State.

3. For the purposes of this Article, profits derived from the other State mean profits as determined under its domestic law.

4. The provisions of paragraphs 1, 2 and 3 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where

   a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

**Article 10**

**DIVIDENDS**

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

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

   a) 12 ½ per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 25 per cent of the capital of the paying company;

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

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

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

3. The term “dividends” as used in this Article means income from shares, or other rights not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from
shares by the taxation law of that 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 recipient
of the dividends, being a resident of a Contracting State, carries on business in the
other Contracting State of which the company paying the dividends is a resident,
through a permanent establishment situated therein, or performs in that other State
independent personal services from a fixed base situated therein, and the holding
in respect of which the dividends are paid is effectively connected with such
permanent establishment or fixed base. In such case the provisions of Article 7 or
Article 14 of this Agreement, as the case may be, shall apply.

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

6. Nothing in this Article shall prevent either Contracting State from imposing, apart
from the corporate income tax, a tax on remittances of profits by a branch to its
head office provided that the tax so imposed shall not exceed 15 per cent of the
amount remitted.

Article 11
INTEREST

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

2. However, interest referred to in paragraph 1 of this Article may also be taxed in
the Contracting State in which it arises, and according to the laws of that State, but
the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

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

4. The term “interest” as used in this Article means income from debt claims of
every kind, whether or not secured by mortgage, and whether or not carrying a
right to participate in the debtor’s profits, in particular, income from government
securities and income from bonds and debentures, including premiums and prizes
attaching to such securities, bonds or debentures and, as well as income
assimilated to income from money lent by the taxation laws of the State in which
the income arises, including interest on deferred payment sales. Penalty charges for late payment shall not 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 recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

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

7. Where, by reason of a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

**Article 12**

**ROYALTIES**

1. Royalties arising in Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if such resident is the beneficial owner of the royalties.

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

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films and tapes for television or radio 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, and include payments of any kind in respect
of motion picture films and works on films or video-tapes for use in connection with television or tapes for the use of radio broadcasting.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or 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 State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the recipient 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 be agreed upon between the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13
GAINS FROM THE ALIENATION OF PROPERTY

1. Gains derived by a resident of a Contracting State from the alienation of immovable property shall be taxed only in the Contracting State in which such property is situated.

2. Gains derived from the alienation of shares of a company shall be taxed only in the Contracting State where the company is a resident.

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

Article 14
INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that
State 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 is attributable to that fixed base.

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

**Article 15**  
**DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

   a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve month period;

   b) the remuneration is paid by, or on behalf of a person 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 from an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in the other Contracting State of which the enterprise deriving the profits from the operation of ships or aircraft is a resident.

**Article 16**  
**DIRECTORS’ FEES**

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

2. If the remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, it may be taxed in accordance with the provisions of Article 15.
Article 17
ARTISTES AND ATHLETES

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

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

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

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

Article 18
GOVERNMENT SERVICE

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

b) Such remuneration shall however be taxable only in that 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 of that other State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political sub-division or a local authority thereof for the purpose of profits.
Article 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 resident shall be taxable only in the State where such income is derived.

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

Article 20
STUDENTS AND TRAINEES

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

   a) all remittances from abroad for purposes of his maintenance or education

   b) in the case of a student, any remuneration earned with a view to supplementing the resources available to him for such purpose for an aggregate period of not more than five years from the date of his first arrival; and

   c) in the case of business apprentice, any remuneration earned for an aggregate period of not more than two years from the date of his first arrival, provided that such services are in connection with his training or are incidental thereto.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance program entered into by the governments of the Contracting State shall, for a period not exceeding two years from the date of his first arrival, 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 21
TEACHERS AND RESEARCHERS

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

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

Article 22
OTHER INCOME

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State where the income arises.

Article 23
ELIMINATION OF DOUBLE TAXATION

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

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

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

b) In the case of a dividend paid by a company which is a resident of the Philippines to a company which is a resident in Nigeria and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into (in addition to any Philippine tax for which credit shall take into account (in addition to any Philippine tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Philippine tax payable by the company in respect of the profits out of which such dividend is paid.
3. If a resident of one of the States derives gains which may be taxed in the other State in accordance with Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State of the said gains.

4. Taxes which have been relieved or reduced in a Contracting State by virtue of special incentive laws for the promotion of economic development or by virtue of the provisions of this Agreement shall be allowed as tax credit in the other Contracting State in an amount equal to the tax which would have been appropriate to the income involved if no such relief or reduction had been allowed.

**Article 24**

**NON-DISCRIMINATION**

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

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

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

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

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

6. In this Article, the term “taxation” means taxes, which are the subject of this Agreement.
Article 25
MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

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

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

Article 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. 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 taxes covered by the Agreement. Such person or authorities shall use the information only for such purposes.

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

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting States the obligation:
a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any business or official secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27
EFFECT OF DIPLOMATIC AND CONSULAR OFFICIALS

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 the diplomatic, consular or permanents mission of a contracting State which is situated in the other Contracting State and who is subject to tax in that State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

Article 28
MISCELLANEOUS RULES

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

Article 29
ENTRY INTO FORCE

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

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

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

Article 30
TERMINATION

This Agreement shall continue in force until terminated. Either Contracting State 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, being duly authorized thereto, have signed this Agreement.

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

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES
(Sgd.) ROBERTO F. DE OCAMPO

FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF NIGERIA
(Sgd.) ANTHONY A. ANI