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**AVOIDANCE OF DOUBLE TAXATION AGREEMENT
BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND
THE KINGDOM OF SPAIN (DOMESTICATION
AND ENFORCEMENT) ACT, 2017**



ARRANGEMENT OF SECTIONS

Section :

1. Domestication and enforcement of the Agreement between the Federal Republic of Nigeria and the Kingdom of Spain on the avoidance of Double Taxation and prevention of Fiscal Evasion.
2. Effective application of the Agreement on the domestic laws.
3. Citation.

SCHEDULE

A 508 **2021 No. 16** *Avoidance of Double Taxation Agreement between the Federal
Republic of Nigeria and the Kingdom of Spain
(Domestication and Enforcement) Act, 2017*

**AVOIDANCE OF DOUBLE TAXATION AGREEMENT
BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND
THE KINGDOM OF SPAIN (DOMESTICATION
AND ENFORCEMENT) ACT, 2017**

ACT No. 16

AN ACT TO DOMESTICATE AND ENFORCE IN NIGERIA THE AVOIDANCE OF DOUBLE
TAXATION BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SPAIN ;
AND FOR RELATED MATTERS.

[24th Day of January, 2018]

ENACTED by the National Assembly of the Federal Republic of Nigeria—

1. As from the commencement of this Act, the provisions of the Agreement between the Federal Republic of Nigeria and the Kingdom of Spain on the Avoidance of Double Taxation and Prevention of Fiscal Evasion (in this Act referred to as “the Agreement”) set out in the First Schedule to this Act, shall—

- (a) have the force of law ;
- (b) be given full recognition and effect ; and
- (c) be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

2. The Agreement shall include the provisions of the Protocol set out in the Second Schedule to this Act for the effective application of the domestic laws in Nigeria and the laws of the Kingdom of Spain concerning taxes covered by the Agreement, particularly provisions on the prevention of fiscal evasion with respect to those taxes.

3. This Act may be cited as the Agreement on the Avoidance of Double Taxation between the Federal Republic of Nigeria and the Kingdom of Spain (Domestication and Enforcement) Act, 2017.

Domestication and enforcement of the Agreement between the Federal Republic of Nigeria and the Kingdom of Spain on the avoidance of Double Taxation and prevention of Fiscal Evasion.
First Schedule.

Effective application of the agreement on the domestic laws.
Second Schedule.

Citation.

SCHEDULES

FIRST SCHEDULE

Section 1

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

The Kingdom of Spain and the Federal Republic of Nigeria, desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, have agreed as follows—

CHAPTER I

SCOPE OF THE AGREEMENT

ARTICLE 1

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular—

(a) in Spain—

(i) the income tax on individuals ;

(ii) the corporation tax ;

(iii) the income tax on non-residents;

(iv) the capital Tax ; and

(v) local taxes on income and on capital (hereinafter referred to as “Spanish Tax”).

(b) in Nigeria—

- (i) the Personal Income Tax ;
- (ii) the Companies Income Tax ;
- (iii) the Petroleum Profits “Tax ;
- (iv) the Capital Gains Tax ;
- (v) the Education Tax ; and
- (vi) other taxes on income and capital (hereinafter referred to as “Nigerian Tax”).

4. The 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 Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 4

RESIDENT

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, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows—

(a) he shall be deemed to be a resident only 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 only 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 only 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 only 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

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 ; and

(f) a mine, an oil or gas well, a quarry or any other place of exploitation of natural resources.

3. The term permanent establishment also encompasses—

(a) any place relating to the exploration of natural resources, provided such activities exist for a period or periods aggregating more than two months within any twelve-month period.

(b) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months, or where such project or activity being incidental to the sale of machinery or equipment continues for a period not exceeding six months and the charges payable for the project or activities exceeds 10 per cent of the sale price of the machinery or equipment free-on-board.

(c) the furnishing of services, including technical, management or consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue for the same project within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

(d) 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.

4. 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 on, for the enterprise, any other activity of a preparatory or auxiliary character ;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in a Contracting State 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 conditions are made or imposed between that enterprise and the agent in their commercial or financial relations which differ from those which would have been made between independent persons, he will not be considered an agent of an independent status within the meaning of this paragraph.

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.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

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

2. 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 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 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

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

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 that permanent establishment. However, when an enterprise of a Contracting State has a permanent establishment in the other Contracting State, and obtains

profits directly through outlets other than the permanent establishment, from sales in that other State of the same goods and merchandise as those sold through that permanent establishment, or from the same business activities as those effected through that permanent establishment, such profits should be attributed to the permanent establishment.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions "expenses which are 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.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. However, if such operation in international traffic is carried on by an enterprise of only one of the Contracting States, paragraph 1 will not be applicable, in such a case, the tax charged shall not exceed one percent of the earnings of the enterprise derived from the other Contracting State.

For the purpose of this paragraph, “earnings” means total income arising from the carriage of passenger, mails, livestock or goods loaded or shipped in the other State, less refunds and payment of wages and salaries of ground staff with respect to such operations in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraph 1 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 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 State has been charged to tax in that other Contracting State and that other State agrees that 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 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed—

(a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends in all other cases.
This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner 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 or 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 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, 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 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. Notwithstanding any other provision of this Agreement, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, this other Contracting State may tax any remittances or deemed remittances of profits transferred by the permanent establishment to the company which is a resident of the first-mentioned Contracting State, but the tax so charged shall not exceed 7.5 per cent of the gross amount.

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 a resident of the other Contracting State, the tax so charged shall not exceed 7.5 percent of the gross amount of 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 taxable only in that other State if the recipient is the beneficial owner of the interest and such interest is derived by the Government of the other Contracting State or a political subdivision or a local authority or any agency or instrumentality of that Government or local authority, the Central Bank or other banks wholly owned by the other Contracting State.

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, as well as all other income assimilated to income from money lent by the taxation laws of the State in which the income arises. 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 shall not apply if the beneficial owner of the interests, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be, shall apply.

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

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 Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed—

(a) in the case of companies, 7.5 percent of the gross amount of the royalties.

(b) in all other cases, 3.75 percent 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 cinematographic films, or films, tapes and other means of image or sound reproduction, and for the use or the right to use of computer software, 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 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 cases, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting 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 a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting 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 Contracting State.

3. Gains 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 taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1,2,3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is 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 that 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 Article 16; 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned ;

(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 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 Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

DIRECTORS' FEES

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

ARTICLE 17

ARTISTES AND SPORTPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportspersons, 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 a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activities of the entertainer or sportsperson are exercised provided that these activities are supported from public funds of that State or of the other Contracting State or the activities are exercised under a cultural agreement or within the framework of a cultural or sports exchange programme approved by both Contracting States.

ARTICLE 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19

GOVERNMENT SERVICE

1.—(a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who—

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.—(a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

STUDENTS AND TRAINEES

Payments which a student or business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

TEACHERS AND RESEARCHERS

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

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

ARTICLE 22

OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

CHAPTER IV

TAXATION OF CAPITAL

ARTICLE 23

CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other Contracting State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated following either the provisions of the internal legislation of the Contracting States or the following provisions in accordance with the internal legislation of the Contracting States—

- (a) Where a resident of a Contracting State derives income or owns elements of capital which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow—

- as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the other Contracting State ;
- as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the other Contracting State on the elements of capital ;
- the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of each of the Contracting States.

Such deduction shall not,- however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the same elements of capital which may be taxed in the other Contracting State.

(b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, that State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

CHAPTER VI

SPECIAL PROVISIONS

ARTICLE 25

NON-DISCRIMINATION

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status-or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State 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 26

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 or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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. They may also consult together for the elimination of double taxation in cases not provided for in 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the law of the requesting State.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation—

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State ;

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

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the 'requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by 'a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 28

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim

shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation—

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State ;

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice ;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

CHAPTER VII

FINAL PROVISIONS

ARTICLE 30

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other, through diplomatic channels that the internal procedures required by each Contracting State for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force after the period of three months following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect—

(i) regarding taxes periodically assessed, in respect of taxes on income relating to any taxable year beginning on or after the date on which the Agreement enters into force ; and

(ii) regarding all other cases, the date on which the Agreement enters into force.

SECOND SCHEDULE

Section 2

PROTOCOL

At the moment of signing the Agreement between the Kingdom of Spain and Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Texas on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement.

I. Ad.

1. The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax agreements) may be applied to the treatment of such abuses. In the case of Spain, abuses of law include situations covered by Article 15 of the General Tax Code (Ley General Tributaria Law 58/2003, 17th December) or any other similar provision in any tax law in force or to be enacted.

2. It is understood that the benefits under the Agreement shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting States or items of capital situated therein.

3. The Agreement does not prevent Contracting States to apply domestic Controlled Foreign Company rules.

4. The provisions of the Agreement shall not apply if the right giving rise to the income or capital was created or assigned mainly for the purpose of taking advantage of the Agreement and not bona fide commercial reasons.

II. Ad.

When a resident in Nigeria owns capital in Spain, the provisions of the Agreement concerning taxes on capital shall only apply as long as this resident is liable to taxation on the capital in Nigeria.

III. Ad.—(to Articles 10, 11 and 12)

It is agreed that if any agreement or convention between Nigeria and a member State of the Organisation for Economic Cooperation and Development (OECD) provides that Nigeria shall exempt from tax dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) arising in Nigeria, or limit the tax charged in Nigeria on such dividends, interest or royalties (either generally or in respect of specific categories of dividends, interest or royalties) to rate lower than that provided for in paragraph 2 Article 10, paragraph 2 of the Article II or paragraph 2 of

Article 12 of the Agreement, such exemption or lower rate shall automatically apply to dividends, interest or royalties arising in Nigeria and beneficially owned by a resident of Spain under the same conditions as if such exemption or lower rate had been specified in those paragraphs.

IV. AD.—LIMITATION OF BENEFITS

If according to the provisions of Articles 6 to 23, the right of any Contracting States to tax income is limited, and according to the internal tax laws of the other Contracting States such income is regarded as income from foreign sources, or paid abroad, and therefore exempted from tax, the other Contracting State may tax such income as if the Agreement does not exist.

Should the income be remitted to Nigeria (the Contracting State of residence of the payee) within the term of four years since the date it was paid, upon prior petition by the taxpayer the mechanisms to avoid double taxation provided for in the Agreement could be applied.

Should the income be remitted to Spain (the Contracting State of residence of the payer) within the term of six years since the date it was paid, upon prior petition by the taxpayer the mechanisms to avoid double taxation provided for in the Agreement could be applied.

In witness whereof the undersigned, duly authorised thereto, have signed this protocol.

DONE in duplicate in Abuja on the 23rd day of June, 2009, in the Spanish and English languages, both texts being equally authentic. In case of any divergence of interpretation it shall be resolved in accordance with the English text.

I certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
27th Day of December, 2017.

A 534 **2021 No. 16** *Avoidance of Double Taxation Agreement between the Federal
Republic of Nigeria and the Kingdom of Spain
(Domestication and Enforcement) Act, 2017*

EXPLANATORY MEMORANDUM

This Act domesticates and enforces in Nigeria the Agreement on the Avoidance of Double Taxation between the Federal Republic of Nigeria and the Kingdom of Spain.

**SCHEDULE TO THE AVOIDANCE OF DOUBLE TAXATION AGREEMENT BETWEEN THE
FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SPAIN
(DOMESTICATION AND ENFORCEMENT) ACT, 2017**

(1) <i>Short Title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of the Contents of the Bill</i>	(4) <i>Date Passed by the Senate</i>	(5) <i>Date Passed by the House of Representatives</i>
Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Spain (Domestication and Enforcement) Act, 2017.	An Act to domesticate and enforce in Nigeria the Avoidance of Double Taxation between the Federal Republic of Nigeria and the Kingdom of Spain ; and for related matters.	This Act is to domesticate and enforces in Nigeria the agreement on the Avoidance of Double Taxation between the Federal Republic of Nigeria and the Kingdom of Spain.	13th July, 2017.	23rd November, 2016.

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

I ASSENT



MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
 27th Day of December, 2017.

MUHAMMADU BUHARI, GCFR
President of the Federal Republic of Nigeria
 24th Day of January, 2018.

