



**54<sup>TH</sup> ORDINARY SESSION OF THE AUTHORITY OF HEADS OF STATE AND  
GOVERNMENT OF ECOWAS**

**Abuja, 22<sup>ND</sup> DECEMBER, 2018**

**SUPPLEMENTARY ACT A/SA.6.12/18 ADOPTING COMMUNITY RULES FOR THE  
ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME,  
CAPITAL AND INHERITANCE AND THE PREVENTION OF TAX EVASION AND  
AVOIDANCE WITHIN THE ECOWAS MEMBER STATES**

**THE AUTHORITY OF HEADS OF STATE AND GOVERNMENT**

**MINDFUL** of Articles 7, 8 and 9 of the Revised ECOWAS Treaty as amended establishing the Authority of Heads of State and Government and defining its composition and functions;

**MINDFUL** of Article 3 of the Revised ECOWAS Treaty stating the areas in which the Community should focus its activities in order to achieve its aims and objectives;

**MINDFUL** of Articles 35, 37 and 40 of the Revised ECOWAS Treaty relating to Trade Liberalization, Common External Tariff, import duties and domestic taxes;

**MINDFUL** of the provisions of the new Article 9 of the Revised ECOWAS Treaty as amended by Article 1 of the Supplementary Act A/SA.3/01/10 which defines the legal regime of Acts of the Community;

**MINDFUL** of Article 12 of the Supplementary Act A/SA.1/12/16 of 17<sup>th</sup> December 2016 prescribing areas which require the approval of the Community Parliament in the adoption of Acts in the Community;

**BEARING IN MIND** the provisions of Chapter VIII of the Revised ECOWAS Treaty relating to trade liberalization, Common External tariff, duties and import duties;

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**MINDFUL** of Supplementary Protocol A/SP. 1/12/03 amending Article 6 of Protocol A/P. 2/1/03 relating to the application of compensation procedures for loss of revenue incurred by ECOWAS Member States as a result of the trade liberalization scheme;

**CONVINCED** that a common fiscal framework promotes economic activities and strengthens economic relations between economic operators of Member States;

**CONSIDERING** the lack of a general agreement on cooperation and assistance in matters of taxation among Member States;

**BEARING IN MIND ALSO** the provisions of Article 40 of the Revised ECOWAS Treaty in which Member States undertake to eliminate double taxation with respect to taxes on income, capital and inheritance without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including treaty shopping arrangements aimed at obtaining reliefs provided in this Supplementary Act for the indirect benefit of residents of non-Member States), and to facilitate cross-border trade;

**DESIROUS** of establishing a Supplementary Act to avoid double taxation and rules on mutual assistance to combat tax avoidance and tax evasion to further develop their economic relationship and to enhance their co-operation in tax matters among Member States;

**UPON THE ADVICE** of the 61<sup>st</sup> meeting of the Technical Committee on Trade, Customs and Free Movement, held in Lome, Togo on 18<sup>th</sup> October, 2018.

**UPON THE ADVICE** of the 4<sup>th</sup> meeting of the ECOWAS Ministers of Finance on 2 November 2018 in Abuja

**MINDFUL** of the opinion given by the Community Parliament;

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**UPON THE RECOMMENDATION** of the 81<sup>st</sup> Session of the Council of Ministers held in Abuja on 15 December;

**HEREBY AGREE AS FOLLOWS:**

**CHAPTER I**  
**TERMS AND EXPRESSIONS IN THE SUPPLEMENTARY ACT**

**ARTICLE 1**  
**DEFINITIONS**

For the purposes of this Supplementary Act, unless the context otherwise requires:

- a) The term "ECOWAS" means the Economic Community of West African States referred to under Article 2 of the Revised Treaty of 24<sup>th</sup> July, 1993;
- b) the terms "Member States", "another Member State" and "the other Member States" mean one or more Member States of ECOWAS, depending on the context;
- c) the term "territory of a country" means the territory of each Member State, including, for coastal countries the territorial sea, areas adjacent to territorial waters as well as the exclusive economic zone and the continental shelf on which this country exercises its sovereignty in accordance with international law and national legislations for the purpose of exploring and exploiting natural, biological and mineral resources available in sea water, soil and sub-soil of the said country, as well as the territorial airspace;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Member State" and "enterprise of the other Member State" mean respectively any business carried on by a resident of a Member State and any business carried on by a resident of the other Member State;



- g) the term "international traffic" means any transport by a ship, aircraft, boat, rail or road transport vehicle and any other means of transport operated by an enterprise of a Member State, except when the means of transport is operated solely between places in the Member States;
- h) the term "competent authority" means Ministers responsible for Finance of Member States or the duly authorized representative of Member States;
- i) the term "national" means:
  - i. any individual possessing the citizenship of a Member State; and
  - ii. any legal person, partnership or association deriving its status as such from the laws in force in a Member State;
- j) the term "tax" means taxes of Member States as listed in the Annex to this Supplementary Act as the context requires;
- k) the term "Commission" means the Commission established by Article 17 of the revised ECOWAS Treaty and amended by Supplementary Protocol A/SP1/06/06 of 14 June 2006.
- l) The term "Treaty" means the Revised Treaty of the Economic Community of West African States of 24<sup>th</sup> July, 1993 and its subsequent amendments;

## ARTICLE 2

### TERMS AND EXPRESSIONS NOT DEFINED

1. In the application of this Supplementary Act by a Member State, any term, expression or concept not defined therein shall have the meaning which it has under the laws of that Member State in respect of the taxes to which the Supplementary Act applies except if:
  - a) the context requires a different interpretation;
  - b) their meaning is mutually agreed between the competent authorities, in accordance with the provisions of Article 38 (Mutual Agreement Procedure);
2. For the purposes of paragraph 1 of this Article, the meaning attributed by the tax laws of the Member State concerned to the term or concept not defined in this Supplementary Act takes precedence over the meaning attributed by other laws of that Member State.



## **CHAPTER II**

### **SCOPE OF THE SUPPLEMENTARY ACT**

#### **ARTICLE 3**

##### **OBJECT**

The aim of this Supplementary Act is to establish among the Member States of the Economic Community of West African States (ECOWAS) rules for the elimination of double taxation with respect to taxes on income, capital and inheritance without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including treaty shopping arrangements aimed at obtaining reliefs provided in this Supplementary Act for the indirect benefit of residents of non-Member States).

#### **ARTICLE 4**

##### **PERSONS COVERED**

1. This Supplementary Act shall apply to persons who are resident of one or more ECOWAS Member States.
2. For the purposes of this Supplementary Act, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of any Member State shall be considered to be income of a resident of a Member State but only to the extent that the income is treated, for purposes of taxation by that Member State, as the income of a resident of that Member State.
3. This Supplementary Act shall not affect the taxation, by a Member State, of its residents except with respect to the benefits granted under the provisions of the Supplementary Act.

#### **ARTICLE 5**

##### **TAXES COVERED**

1. This Supplementary Act shall apply to taxes on income, capital and inheritance imposed on behalf of any of the Member States or of their 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 or remuneration paid by enterprises, as well as taxes on capital appreciation.



3. There shall be regarded as taxes on inheritance, taxes levied following death in the form of taxes on the property to be inherited, taxes on the share of heirs, transfer fees and taxes on donations by reason of death.
4. The existing taxes to which this Supplementary Act shall apply in each of the Member States are listed in the Annex to this Supplementary Act, of which it is an integral part.
5. This Supplementary Act shall apply also to any identical or substantially similar taxes that are imposed after the date of the entry into force of this Supplementary Act in addition to, or in place of existing taxes.
6. The competent authorities of the Member States shall communicate to the Commission of any significant changes that have been made in their respective taxation laws. The Commission shall take appropriate measures required by these amendments, when the need arises.

## **ARTICLE 6**

### **RESIDENT**

1. For the purposes of this Supplementary Act, the term "resident of a Member State" means any person who, under the laws of that Member State, is liable to tax therein by reason of that person's domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that Member State and any political subdivision or local authority thereof.
2. This term, however, does not include any person who is liable to tax in that Member State in respect only of income from sources in that Member State or capital situated therein.
3. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one Member State, then his status shall be determined in accordance with the following rules:
  - a) he shall be deemed to be a resident only of the Member State in which he has a permanent home available to him. If he has a permanent home available to him in more than one Member State, he shall be deemed to be a resident of the Member State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the Member State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any



of the Member States, he shall be deemed to be a resident only of the Member State in which he has a habitual abode;

c) if he has a habitual abode in more than one Member State or none 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 more than one Member State or of none of them, the competent authorities of the Member States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of more than one Member State, the competent authorities of the Member States for which he is a resident shall endeavour to determine by mutual agreement the Member State of which such person shall be deemed to be a resident for the purposes of this Supplementary Act, having regard to its management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such mutual agreement, such person shall not be entitled to any relief or exemption from tax provided by this Supplementary Act except to the extent and in such manner as may be agreed upon by the competent authorities of those Member States.

## ARTICLE 7

### PERMANENT ESTABLISHMENT

1. For the purposes of this Supplementary Act, 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" shall include:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop;
  - f) a warehouse, in relation to a person providing storage facilities for others;
  - g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and an installation or structure used for the exploration and exploitation of natural resources.

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3. The term "permanent establishment" likewise encompasses:

- a) a building site or construction, installation or assembly project, or supervisory activities in connection therewith, but only if the site, project or activity lasts more than six months within any 12-month period.
- b) the furnishing of services, including consultancy services, by an enterprise of a Member State through employees or other personnel engaged by the enterprise for such purpose, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than six months within any 12-month period commencing or ending in the fiscal year concerned.

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 or display of goods or merchandise belonging to the enterprise unless the use of the facilities for storage or display of goods or merchandise constitutes an essential part of the sale/distribution business of the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display unless the maintenance of stock of goods or merchandise constitutes an essential part of the sale/distribution business of the enterprise;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise unless the maintenance of stock of goods or merchandise constitutes an essential part of the business of the first mentioned enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise unless the maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information constitutes an essential part of the business of the enterprise;



- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and
  - 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 however, where the maintenance of a fixed place of business for any of the aforementioned activities constitutes an essential part of the business of the enterprise, the activities will not be regarded as having a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Member State on behalf of an enterprise, that enterprise shall be deemed to have a permanent establishment in that Member State in respect of any activities which that person undertakes for the enterprise, if such a person:
- a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
    - i. in the name of the enterprise, or
    - ii. for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
    - iii. for the provision of services by that enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - b) the person does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that Member State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Member State shall, except in regard to re-insurance, be deemed to have a permanent establishment in another Member State if it collects premiums in the territory of that other Member State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

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7. An enterprise shall not be deemed to have a permanent establishment in a Member State merely because it carries on business in that Member State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
8. The fact that a company which is a resident of a Member State controls or is controlled by a company which is a resident of another Member State, or which carries on business in that other Member 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 8 INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Member State from immovable property, including income from agriculture or forestry, situated in another Member State may be taxed in that other Member State.
2. The term "immovable property" shall have the meaning which it has under the law of the Member 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, including oil, gas and quarries. Ships, boats, aircraft, rail and road transport vehicles used in international traffic 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 9**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Member State shall be taxable only in that Member State unless the enterprise carries on business in another Member 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 Member State but only so much of them as are attributable to:
  - a) that permanent establishment;
  - b) sales in that other Member State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
  - c) other industrial or business activities carried on in that other Member State of the same or similar kind as those effected through that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Member State carries on business in another Member State through a permanent establishment situated therein, there shall in that other Member 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 permanent establishment including executive and general administrative expenses so incurred, whether in the Member State in which the permanent establishment is situated or elsewhere, which are allowed under the provisions of the domestic law of the Member State in which the permanent establishment is situated. However,
  - a) 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

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other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

- b) no account shall be taken, in determining the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far as it has been customary in a Member 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 Member 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. 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Supplementary Act, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 10**

### **INTERNATIONAL TRAFFIC**

1. Profits derived by an enterprise of a Member State from the operation of ships, aircraft, boats, rail or road transport vehicles and any other means of transport in international traffic shall be taxable only in that Member State.



2. 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 11

### ASSOCIATED ENTERPRISES

1. Where:
  - a) an enterprise of a Member State participates directly or indirectly in the management, control or capital of an enterprise of another Member State; or
  - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Member State and an enterprise of another Member 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 Member State includes in the profits of an enterprise of that Member State - and taxes accordingly - profits on which an enterprise of another Member State has been charged to tax in that other Member State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Member State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Member 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 made to the other provisions of this Supplementary Act and the competent authorities of the Member States shall, if necessary, consult each other.
3. The provisions of paragraph 2 shall not apply where after judicial, administrative or other legal proceedings, a final decision states that due to actions leading to an adjustment of profits, one of the enterprises in question is liable to a penalty for fraud, gross negligence or deliberate default.



## ARTICLE 12 DIVIDENDS

1. Dividends paid by a company which is a resident of a Member State to a resident of another Member State may be taxed in that other Member State.
2. However, dividends paid by a company which is a resident of a Member State may also be taxed in that Member State according to the laws of that Member State, but if the beneficial owner of the dividends is a resident of another Member State and is subject to tax on the dividends in that other Member State, the tax so charged in that Member State shall not exceed 10% of the amount of gross dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or income from 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 Member 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 Member State, carries on business in another Member State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Member 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 9 or Article 18, as the case may be, shall apply.
5. Where a company which is a resident of a Member State derives profits or income from another Member State, that other Member State may not:
  - a) impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other Member State or in so far 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 Member State, nor
  - b) 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 Member State.



### ARTICLE 13 INTEREST

1. Interest arising in a Member State and paid to a resident of another Member State may be taxed in that other Member State.
2. However, such interest may also be taxed in the Member State in which it arises and according to the laws of that Member State, but if the beneficial owner of the interest is a resident of another Member State and is subject to tax on the interest in that other Member State, the tax so charged in the Member State in which it arises shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Member States shall by mutual agreement settle the mode of application of this limitation.
3. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
4. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be exempt from tax in the Member State where the interest arises if the recipient of the interest is the beneficial owner and if the:
  - a) payer or the recipient of the interest is the Government of the Member State itself, a public body, a political subdivision or local authority thereof or the central bank of a Member State; or
  - b) interest is paid in connection with a loan granted, approved, guaranteed or insured by the Government or the central bank of a Member State.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Member State, carries on business in another Member State in which the interest arises, through a permanent establishment situated therein, or performs in that other Member 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 9 or Article 18, as the case may be, shall apply.

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6. Interest shall be deemed to arise in a Member State when the payer is a resident of that Member State. Where, however, the person paying the interest, whether he is a resident of a Member State or not, has in another Member 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 Member 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 Member State, due regard being made to the other provisions of this Supplementary Act.

#### **ARTICLE 14**

#### **ROYALTIES**

1. Royalties arising in a Member State and paid to a resident of another Member State may be taxed in that other Member State.
2. However, such royalties may also be taxed in the Member State in which they arise and according to the laws of that Member State, but if the beneficial owner of the royalties is a resident of another Member State and is subject to tax on the royalties in that other Member State, the tax so charged in the Member State in which it arises shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Member States shall by mutual agreement settle the mode of application of this paragraph.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television broadcasting, any software, 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 shall not apply if the beneficial owner of the royalties, being a resident of a Member State, carries on business in another



Member State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Member 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 9 or Article 18, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Member State when the payer is a resident of that Member State. Where, however, the person paying the royalties, whether he is a resident of a Member State or not, has in another Member 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 Member 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 Member State, due regard being made to the other provisions of this Supplementary Act.

## ARTICLE 15

### TECHNICAL SERVICE FEES

1. Technical service fees arising in a Member State and paid to a resident of another Member State may be taxed in that other Member State.
2. However, such technical service fees may also be taxed in the Member State in which they arise, and according to the laws of that Member State, but if the beneficial owner of the technical service fees is a resident of another Member State and is subject to tax on the technical service fees in that other Member State, the tax so charged in the Member State in which it arises shall not exceed 5 per cent of the gross amount of the technical service fees in the case of an individual; and not exceeding 10 per cent in the case of a company. The competent authorities of the Member States shall by mutual agreement settle the mode of application of this paragraph.

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3. The term "technical service fees" as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:
  - a) to an employee of the person making the payment;
  - b) for teaching in an educational institution or for teaching by an educational institution; or
  - c) by an individual for services for the personal use of an individual.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical service fees, being a resident of a Member State, carries on business in another Member State in which the technical service fees arise through a permanent establishment situated therein, or performs in that other Member State independent personal services from a fixed base situated therein, and the obligation in respect of which the technical service fees are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 9 or Article 18, as the case may be, shall apply.
5. Technical service fees shall be deemed to arise in a Member State when the payer is that Member State itself, a political subdivision, a local authority or another resident of that Member State. Where, however, the person paying the technical service fees, whether he is a resident of a Member State or not, has in another Member State a permanent establishment or a fixed base in connection with which the obligation to pay the technical service fees was incurred, and where such technical service fees are borne by such permanent establishment or fixed base, then such technical service fees shall be deemed to arise in the Member 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 both of them and some other person, the amount of the technical service fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Member State, due regard being made to the other provisions of this Supplementary Act.

## **ARTICLE 16**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Member State from the alienation of immovable property referred to in Article 8 and situated in another Member State may be taxed in that other Member State.



2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Member State has in another Member State or of movable property pertaining to a fixed base available to a resident of a Member State in another Member 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 Member State.
3. Gains derived by an enterprise of a Member State from the alienation of ships, aircraft, boats, rail and road transport vehicles and any other means of transport, operated in international traffic or movable property pertaining to the operation of such means of transport shall be taxable only in that Member State.
4. Gains derived by a resident of a Member State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in another Member State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 8, situated in that other Member State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Member State of which the alienator is a resident.

#### **ARTICLE 17**

#### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 19, 21, 22 and 23, salaries, wages and other similar remuneration derived by a resident of a Member State in respect of an employment shall be taxable only in that Member State unless the employment is exercised in another Member State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Member State or those other Member States.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Member State in respect of an employment exercised in another Member State shall be taxable only in the first-mentioned Member State if the:
  - a) recipient is present in the other Member State for a period or periods amounting to or not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and



- b) remuneration is paid by, or on behalf of an employer who is not a resident of the other Member States; and
  - c) remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Member States.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Member State in respect of an employment, as a member of the regular complement of a ship, an aircraft, a boat, a rail, road transport vehicle or any other means of transport that is exercised aboard a ship, an aircraft, a boat, a rail or road transport vehicle operated in international traffic, other than aboard a ship, an aircraft, a boat, a rail, road transport vehicle or any other means of transport operated solely within another Member State, shall be taxable only in the first-mentioned State.

## **ARTICLE 18**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Member State in respect of professional services or other activities of an independent character shall be taxable only in that Member State, unless:
- a) he has a fixed base regularly available to him in another Member State for the purpose of performing his activities; in that case, only so much of the income as is attributable to those activities may be taxed in that other Member State; or
  - b) his stay in another Member State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Member State may be taxed in that other Member State.
2. The term "professional services" includes especially independent scientific, literary, artistic, vocational, educational, or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, auctioneers and accountants.



## **ARTICLE 19**

### **DIRECTORS' FEES**

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

## **ARTICLE 20**

### **ARTISTES AND SPORTS PERSONS**

1. Notwithstanding the provisions of Articles 9, 17 and 18, income derived by a resident of a Member State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in another Member State, may be taxed in that other Member State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 9, 17 and 18, be taxed in the Member State in which the activities of the entertainer or sportsperson are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities, referred to in paragraph 1, performed under a cultural or sports agreement or arrangement between the Member States shall not be taxed in the Member State in which the activities are exercised if the visit to that Member State is wholly or substantially supported by funds of any of the Member States, their local authorities or public institutions thereof.

## **ARTICLE 21**

### **PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 22, pensions and other similar payments, annuities and social security payments arising in a Member State and paid in consideration of past employment to a resident of another Member State, shall be taxable only in that Member State.



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 22**

### **GOVERNMENT SERVICE**

1. a) Salaries, wages, and other similar remunerations, other than a pension or social security payment, paid by a Member State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that Member State or subdivision, authority or body shall be taxable only in that Member State.  
  
b) However, such salaries, wages and other similar remunerations shall be taxable only in the other Member State if the services are rendered in that other Member State and the individual is a resident of that other Member State who:
  - i. is a national of that other Member State; or
  - ii. did not become a resident of that other Member State solely for the purpose of rendering the services.
2. The provisions of Articles 17, 19, 20 and 21 shall apply to salaries, wages and other similar remunerations, and to pensions, in respect of services rendered in connection with a business carried on by a Member State, or a political subdivision, local authority or statutory body thereof.

## **ARTICLE 23**

### **MISCELLANEOUS RULES APPLICABLE TO EXPLORATION AND EXPLOITATION ACTIVITIES**

1. The provisions of this Article shall apply notwithstanding any other provision of this Supplementary Act where activities are carried on in connection with the exploration or exploitation of natural resources in the subsoil or the sea bed (in this Article called "activities") of Member States.
2. An enterprise of a Member State which carries on such activities in another Member State shall, subject to paragraph 3 of this Article, be deemed to be carrying on business in that other Member State through a permanent establishment situated therein.



3. Such activities which are carried on by an enterprise of a Member State in another Member State for a period or periods exceeding in the aggregate 30 days within any period of 12- months shall constitute the carrying on of business through a permanent establishment situated therein. For the purposes of this paragraph:
  - a. where an enterprise of a Member State carrying on such activities in another Member State is associated with another enterprise carrying on substantially similar activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;
  - b. an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.
4. Salaries, wages and similar remunerations derived by a resident of a Member State in respect of an employment connected with such activities in another Member State may, to the extent that the duties are performed in that other Member State, be taxed in that other Member State.
5. Gains derived by a resident of a Member State from the alienation of:
  - a. exploration or exploitation rights; or
  - b. shares (or comparable instruments) deriving their value or the greater part of their value directly or indirectly from such rights situated in another Member State, may be taxed in that other Member State.
6. In this Article "exploration or exploitation rights" mean rights to assets to be produced by the exploration or exploitation of natural resources in the subsoil or the sea bed of a Member State, including rights to interests in the assets or to the benefits of those assets.

## **ARTICLE 24**

### **PROFESSORS AND RESEARCHERS**

1. Notwithstanding the provisions of Article 17, an individual who makes a temporary visit to one of the Member States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other recognised educational institution in that Member State and who is, or immediately before such visit was, a resident of another Member State shall, in respect of

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remuneration for such teaching or research, not be taxed in the first-mentioned Member State, provided that such remuneration is derived by him from outside that Member State.

2. The provisions of 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 or for the purpose of business profit.

#### **ARTICLE 25**

#### **STUDENTS, TRAINEES AND APPRENTICES**

1. A student or business trainee or apprentice who is present in a Member State solely for the purpose of the student's or business trainee's or apprentice's education or training and who is, or immediately before so present was, a resident of another Member State, shall not be taxed in the first-mentioned Member State on payments received from outside that first-mentioned Member State for the purposes of the student's or business trainee's or apprentice's maintenance, education or training.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student, business trainee or apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Member State which he is visiting.

#### **ARTICLE 26**

#### **OTHER INCOME**

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Member State, wherever arising, not dealt with in the foregoing Articles of this Supplementary Act shall be taxable only in that Member 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 8, if the recipient of such income, being a resident of a Member State, carries on business in another Member State through a permanent establishment situated therein, or performs in that other Member 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 a case, the provisions of Article 9 or Article 18, as the case may be, shall apply.

#### **CHAPTER IV INHERITANCE TAX**

##### **ARTICLE 27 TAXES CONCERNED**

1. This Article applies to inheritance taxes imposed on behalf of each Member State.
2. There shall be considered as inheritance taxes, taxes imposed as a result of death, as estate tax, taxes on shares of heirs, transfer rights, or gift taxes due to death.
3. The existing taxes to which this Article shall apply in each Member State are listed in the Annex of this Supplementary Act.

##### **ARTICLE 28 IMMOVABLE PROPERTY**

Immovable property including accessories is only subject to inheritance tax in the Member State in which they are located; livestock or dead stock used in agriculture or forestry shall be taxable only in the Member State where the holding is located.

##### **ARTICLE 29 MOVABLE PROPERTY**

Tangible or intangible property left by a deceased person who at the time of death was domiciled in a Member State and, invested in a commercial, industrial or small business of any kind are subject to inheritance tax based on the rules below:

- a) if the company has a permanent establishment in only one Member State, the property shall be taxable only in that Member State; the same shall apply even where the company expands its operations to the territory of the other Member States without maintaining a permanent establishment;
- b) if the company has a permanent establishment in several Member States, the property shall be taxable in each Member State in so far as they are



attributed to a permanent establishment located in the territory of each of them. However, the provisions of this Article shall not apply to investments made by the deceased in companies with share capital, stock companies, limited liability companies, cooperative societies, civil societies subject to the taxation of capital companies, or in the form of sponsorship under companies established as limited partnerships.

#### **ARTICLE 30**

#### **MOVABLE PROPERTY USED FOR THE PERFORMANCE OF INDEPENDENT PERSONAL SERVICES**

Tangible or intangible movable property connected to permanent facilities and assigned to the performance of independent personal services in one of the Member States are only subject to inheritance tax in the Member State where these facilities are located.

#### **ARTICLE 31**

#### **OTHER MOVABLE PROPERTY**

Tangible personal property including household furniture, clothes and household goods as well as art, objects and collections other than the property included in Articles 29 and 30 above, shall be taxable only in the Member State where they actually are, at the date of death. However, ships and aircraft shall be taxable only in the Member State where they were registered.

#### **ARTICLE 32**

#### **OTHER INHERITED PROPERTY**

The assets of the estate to which Articles 28 and 31 of this Supplementary Act does not apply shall be subject to inheritance tax only in the Member State where the deceased was domiciled at the time of death.

#### **ARTICLE 33**

#### **CORPORATE DEBT**

1. Debts of Corporate entities referred to in Articles 29 and 30 above are charged against the property of those companies. If the company has, as the case may be, a permanent establishment or permanent facility in several Member States, the debts shall be charged against the property of the establishment or facility on which they depend.



2. Debts secured either by real estate or real property, or by ships or aircraft referred to in Article 31 above, or by movable property used for the performance of independent personal services under the conditions laid down in Article 30 above, or by property assigned to a company of the nature referred to in Article 29 above, are charged against such properties. If the same debt is secured by property located in several Member States, the allocation is done on the property located in each Member State in proportion to the taxable value of such property.

This provision shall not apply to debts referred to in paragraph 1 since these debts are not covered by the allocation provided for in that paragraph.

3. Debts not provided for in paragraphs 1 and 2 of this Article shall be charged on the properties covered by the provisions of Article 32 of this Supplementary Act.
4. If the procedure provided for in the three preceding paragraphs leaves an outstanding balance in a Member State, the balance is deducted from other property subject to inheritance tax in this same Member State. If there is no property subject to tax in that Member State or if the deduction still leaves an outstanding balance, this balance is allocated proportionally over the property subject to tax in the other Member States.

## **CHAPTER V**

### **ELIMINATING DOUBLE TAXATION**

#### **ARTICLE 34**

#### **ELIMINATION OF DOUBLE TAXATION**

Double taxation shall be eliminated as follows:

1. Where a resident of a Member State derives income from another Member State, which in accordance with the provisions of this Supplementary Act, may be taxed in that other Member State, the first-mentioned Member State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other Member State.
2. Where a resident of a Member State owns capital in another Member State, which in accordance with the provisions of this Supplementary Act, may be taxed in that other Member State, the first-mentioned Member State shall allow as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other Member State.



3. Where a resident of a Member State inherits property in another Member State, which in accordance with the provisions of this Supplementary Act, may be taxed in that other Member State, the first-mentioned Member State shall allow as a deduction from the tax on inheritance of that resident, an amount equal to the inheritance tax paid in that other Member State.
4. The deduction to be allowed under paragraph 1, 2 or 3 of this Article shall not, in either case, exceed that part of the income tax, capital tax or inheritance tax as computed before the deduction is given, which is attributable, as the case may be, to the income, the capital or the inheritance which may be taxed in that Member State.
5. Where, in accordance with any provision of this Supplementary Act, income derived, capital owned or property inherited by a resident of a Member State is exempted from tax in another Member State, that Member State may nevertheless, in calculating the amount of tax on the remaining income, capital or inheritance of such resident, take into account the income, capital or inheritance exempted.

## **CHAPTER VI**

### **SPECIAL PROVISIONS**

#### **ARTICLE 35**

#### **NON-DISCRIMINATION**

1. Nationals of a Member State shall not be subjected in another Member State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Member State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 3, also apply to persons who are not residents of any of the Member States.
2. The taxation of a permanent establishment which an enterprise of a Member State has in another Member State shall not be less favourably levied in that other Member State than the taxation levied on enterprises of that other Member State carrying on the same activities.
3. Enterprises of a Member State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of another Member State, shall not be subjected in the first-mentioned Member 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 that first-mentioned Member State are or may be subjected.



4. Nothing in this Article shall be construed as obliging a Member State to grant to residents of another Member 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.
5. Except where the provisions of Article 11, paragraph 6 of Article 13, paragraph 6 of Article 14 or paragraph 6 of Article 15 apply, interest, royalties, technical service fees and other disbursements paid by an enterprise of a Member State to a resident of another Member 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 Member State. Similarly, any debts of an enterprise of a Member State to a resident of another Member 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 Member State.
6. In this Article the term "taxation" means taxes which are the subject of this Supplementary Act.

## **ARTICLE 36**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of any of the Member States results or will result for that person in taxation not in accordance with the provisions of this Supplementary Act, that person may, irrespective of the remedies provided by the domestic law of those Member States, present a case to any of the competent authorities of the Member States concerned by that action. 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 this Supplementary Act.
2. The competent authority of that Member State shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Member State, with a view to the avoidance of taxation which is not in accordance with this Supplementary Act. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Member States.
3. The competent authorities of the Member States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Supplementary Act. They may also consult together for the elimination of double taxation in cases not provided for in this Supplementary Act.



4. The competent authorities of the Member States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of paragraphs 2 and 3 of this Article.

## ARTICLE 37

### EXCHANGE OF INFORMATION

1. The competent authorities of the Member States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Supplementary Act or to the administration or enforcement of the domestic laws of the Member States concerning taxes of every kind and description imposed on behalf of the Member States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Supplementary Act. The exchange of information is not restricted by Articles 4 and 5.
2. Any information received under paragraph 1 by a Member State shall be treated as secret in the same manner as information obtained under the domestic laws of that Member State and shall be disclosed only to persons or authorities (including courts or administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Supplementary Act. 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 Member State may be used for other purposes, when such information may be used for such other purposes under the laws of both Member States and the competent authority of the supplying Member State authorizes such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Member State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that Member State or of another Member State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that Member State or of another Member State; and



- 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 Member State in accordance with this Article, the other Member State shall use its information gathering measures to obtain the requested information, even though that other Member 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 Member 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 Member 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 38**

#### **ASSISTANCE IN THE COLLECTION OF TAXES**

1. Member States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 4 and 5. The competent authorities of the Member States may by mutual agreement settle the mode of application of this Article.
2. When a revenue claim of a Member State is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, that revenue claim shall, at the request of the competent authority of that Member State, be accepted for purposes of collection by the competent authority of another Member State. That revenue claim shall be collected by that other Member 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 Member State.
3. When a revenue claim of a Member State is a claim in respect of which that Member State may, under its laws, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that Member State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Member State. That other



Member 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 Member State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Member State or is owed by a person who has a right to prevent its collection.

4. Notwithstanding the provisions of paragraphs 2 and 3, a revenue claim accepted by a Member State for purposes of paragraph 2 or 3 shall not, in that Member State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Member State by reason of its nature as such. In addition, a revenue claim accepted by a Member State for the purposes of paragraph 2 or 3 shall not, in that Member State, have any priority applicable to that revenue claim under the laws of the other Member State.
5. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Member State shall not be brought before the courts or administrative bodies of another Member State.
6. Where, at any time after a request has been made by a Member State under paragraph 2 or 3 and before the other Member States have collected and remitted the relevant revenue claim to the first-mentioned Member State, the relevant revenue claim ceases to be:
  - a) in the case of a request under paragraph 2, a revenue claim of the first-mentioned Member State that is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, or
  - b) in the case of a request under paragraph 3, a revenue claim of the first-mentioned Member State in respect of which that Member State may, under its laws, take measures of conservancy with a view to ensuring its collection,

the competent authority of the first-mentioned Member State shall promptly notify the competent authority of the other Member State of that fact and, at the option of the other Member States, the first-mentioned Member State shall either suspend or withdraw its request.

7. In no case shall the provisions of this Article be construed so as to impose on a Member State the obligation to:

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- a) carry out administrative measures at variance with the laws and administrative practice of that Member State or of another Member State;
  - b) carry out measures which would be contrary to public policy (*ordre public*);
  - c) provide assistance if the other Member States have not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
  - d) provide assistance in those cases where the administrative burden for that Member State is clearly disproportionate to the benefit to be derived by the other Member States.
8. 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 any Member State, or of its political subdivision or local authority, insofar as the taxation thereunder is not contrary to this Supplementary Act or any other instrument to which the Member States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

#### **ARTICLE 39**

#### **DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

Nothing in this Supplementary Act 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.

#### **ARTICLE 40**

#### **ENTITLEMENT TO BENEFITS**

Notwithstanding the provisions of this Supplementary Act, a benefit therein shall not be granted in respect of an item of income, capital or inheritance if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Supplementary Act.



## **CHAPTER VII**

### **FINAL PROVISIONS**

#### **ARTICLE 41**

#### **DELEGATION OF POWERS**

The Council of Ministers shall take the necessary steps on behalf of the Commission and other measures for the application of the Supplementary Act.

#### **ARTICLE 42**

#### **PUBLICATION**

This Supplementary Act shall be published in the Official Journal of the Community by the Commission within thirty (30) days upon its signature by the Chairman of the Authority of Heads of State and Government. It shall also be published by each Member State in its National Gazette within thirty (30) days after notification by the Commission.

#### **ARTICLE 43**

#### **ENTRY INTO FORCE**

1. This Supplementary Act shall enter into force upon publication. Consequently, Member States and the Institutions of ECOWAS undertake to commence the implementation of its provisions on its entry into force as indicated in paragraph 2 of this Article.
2. The provisions of the Supplementary Act shall have effect in the Member States with respect to:
  - a) taxes withheld at the source on income received or derived from 1st January of the year following that of entry into force of this Supplementary Act;
  - b) other taxes on income and capital, for any tax year or taxable period from 1st January of the year following that of its entry into force;
  - c) the inheritance tax on the estates of people whose death will occur from and including the day of entry into force of this Supplementary Act;

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3. This Supplementary Act shall be annexed to the Revised ECOWAS Treaty of which it shall form an integral part.

#### **ARTICLE 44**

##### **AMENDMENT AND REVISION**

1. Any Member State may submit proposals for the amendment or revision of this Supplementary Act to the Commission.
2. All proposals submitted to the President of the Commission shall be forwarded to the Member States not later than thirty (30) days after their receipt. The Authority of Heads of State and Government shall consider proposals for amendment or revision at the expiration of a period of three (3) months granted to Member States.
3. The amendments or revisions shall be adopted by the Authority of Heads of State and Government. The adopted amendments and revisions shall enter into force upon their publication as indicated in Article 42 of this Supplementary Act.

#### **ARTICLE 45**

##### **DEPOSITARY AUTHORITY**

This Supplementary Act shall be deposited with the Commission, which shall transmit certified copies of this Act to all Member States and shall register this Act with the African Union, the United Nations Organizations and such other organizations as Council may determine.

**IN FAITH WHEREOF, WE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS SUPPLEMENTARY ACT.**

**DONE AT ABUJA THIS 22 DECEMBER 2018**

**IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES, ALL THREE (3) TEXTS BEING EQUALLY AUTHENTIC**



## ANNEX I: LIST OF TAXES

#	MEMBER STATES	LIST OF TAXES
1	<b>BENIN</b>	i. Corporate Income Tax;
		ii. Personal Income Tax <ul style="list-style-type: none"> <li>a. Tax on Business, commercial and agricultural profits;</li> <li>b. Capital Gains;</li> <li>c. Tax on non-commercial professional earnings;</li> <li>d. Wages and Salaries;</li> <li>e. Movable Capital Incomes;</li> <li>f. Securities Incomes;</li> <li>g. Receivables, deposits and bonds Incomes ;</li> <li>h. Land/Property Income.</li> </ul>
		iii. Special withholding tax on games of chance incomes;
		iv. Inheritance Rights.
2	<b>BURKINA FASO</b>	i. Corporate Tax ;
		ii. Tax on Business, commercial and agricultural profits;
		iii. Tax on non-commercial professional earnings;
		iv. Single Wages and Salaries Tax;
		v. Withholding Taxes on betting gains and other games of chance;
		vi. Equity Income Tax;
		vii. Land Incomes Tax;
		viii. Capital gains tax;
		ix. Specific mining securities transfer incomes tax ;
		x. Specific corporate securities transfer incomes tax ;
		xi. Inheritance Rights/Tax.
3	<b>CAPE VERDE</b>	i. Personal Incomes Tax;
		ii. Legal person Incomes Tax ;
		iii. Legal persons Incomes Additional Taxes.

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4	<b>COTE D'IVOIRE</b>	<ul style="list-style-type: none"> <li>i. Tax on Business, commercial and agricultural profits;</li> <li>ii. Tax on Non-commercial earning;</li> <li>iii. Taxes on wages, salaries, pensions and annuities ;</li> <li>iv. Tax on Income from Securities;</li> <li>v. Receivable Income Tax ;</li> <li>vi. Land Income Tax ;</li> <li>vii. Land Heritage Tax ;</li> <li>viii. General Income Tax.</li> </ul>
5	<b>THE GAMBIA</b>	<ul style="list-style-type: none"> <li>i. Corporate Income Tax <ul style="list-style-type: none"> <li>a. Business profits</li> <li>b. Dividend income</li> <li>c. Interest income</li> <li>d. Rental income</li> <li>e. Royalties Income</li> </ul> </li> <li>ii. Personal Tax <ul style="list-style-type: none"> <li>a. Business profits</li> <li>b. Dividend income</li> <li>c. Interest income</li> <li>d. Rental income</li> <li>e. Royalties Income</li> <li>f. Employment income</li> </ul> </li> <li>iii. Capital Gains;</li> <li>iv. Property Tax.</li> </ul>
6	<b>GHANA</b>	Income Tax.
7	<b>GUINEA BISSAU</b>	<ul style="list-style-type: none"> <li>i. Industrial Contribution: <ul style="list-style-type: none"> <li>- Group A</li> <li>- Group B</li> <li>- Cashew</li> <li>- Transport</li> </ul> </li> <li>ii. Land/Property Tax: <ul style="list-style-type: none"> <li>- Urban</li> <li>- Rustic</li> </ul> </li> </ul>

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		<div>iii. Professional/Business Tax: - Public - Private</div> <div>iv. Complementary Charge;</div> <div>v. Capital Tax ;</div> <div>vi. Land /Property Tax: - SISA - Inheritance and Donation - Transactions.</div>
8	<b>GUINEA CONAKRY</b>	<div>i. Taxes on Wages and Salaries (RTS, VF et TA);</div> <div>ii. Tax on Business and Commercial profits (BIC);</div> <div>iii. Tax on agricultural profits (BA);</div> <div>iv. Non-professional Incomes Tax ;</div> <div>v. Equity Income Tax; (RCM);</div> <div>vi. Corporate Tax (IS);</div> <div>vii. Minimum Tax Rate (IMF);</div> <div>viii. Unearned Incomes Tax ;</div> <div>ix. Flat Levies on local purchase of goods and services and to import;</div> <div>x. Single Land Contribution. (CFU);</div> <div>xi. Registration and Stamp Duties.</div>
9	<b>LIBERIA</b>	<div>i. Corporate Income Tax;</div> <div>ii. Personal Income Tax;</div> <div>iii. Capital Gains Tax;</div> <div>iv. Withholding Taxes on Interest;</div> <div>v. Withholding Taxes on Dividend;</div>

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- vi. Real Property Tax;
- vii. Inheritance Tax;
- viii. Tax on game of chance.

10 **MALI**

- i. Wages and Salaries Tax;
- ii. Securities Income Taxes;
- iii. Tax on Receivable and Deposits revenue;
- iv. Business and commercial profit Tax ;
- v. Corporate Tax ;
- vi. Land Income Tax ;
- vii. Tax on Agricultural Profits;
- viii. Real estate valuation Specific Tax;
- ix. Transfer capital gain on mining securities;
- x. Tax on Transfer capital gain performed by the private ;
- xi. Registration ;
- xii. Stamp duty.

11 **NIGER**

- i. Income Tax (ISB);
- ii. Tax on Wages and Salaries (ITS);
- iii. Equity Income Tax (IR CM);
- iv. Property/Land Tax;
- v. Real estate valuation tax;
- vi. Death Transfer Tax.

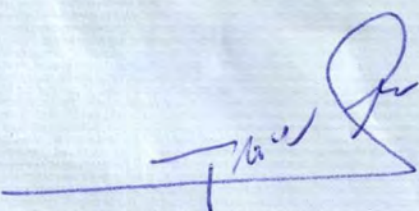
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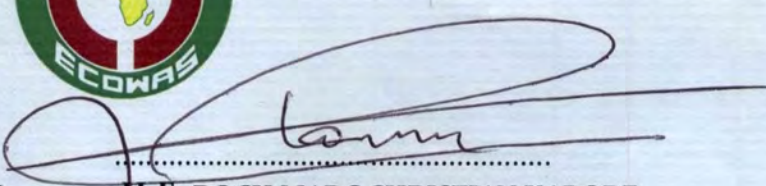


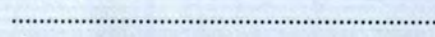
12	<b>NIGERIA</b>	<ul style="list-style-type: none"> <li>i. Personal Income Tax;</li> <li>ii. Companies Income Tax;</li> <li>iii. Petroleum Profits Tax;</li> <li>iv. Capital Gains Tax;</li> <li>v. Tertiary Education Tax;</li> <li>vi. National Information Technology Development Levy (hereinafter referred to as "Nigerian tax").</li> </ul>
13	<b>SENEGAL</b>	<ul style="list-style-type: none"> <li>i. Corporate Tax (IS) ;</li> <li>ii. Personal Income Tax (IRPP) ;</li> <li>iii. Minimum Tax Rate (IMF) ;</li> <li>iv. Flat rate contribution by Employer ;</li> <li>v. Land\Property Tax ;</li> <li>vi. Death Transfer Tax.</li> </ul>
14	<b>SIERRA LEONE</b>	<ul style="list-style-type: none"> <li>i. Corporate Income Tax;</li> <li>ii. Personal Income Tax (sole proprietor and partnerships);</li> <li>iii. Employment income including withholding taxes;</li> <li>iv. Capital Gain Tax;</li> <li>v. Inheritance tax.</li> </ul>
15	<b>TOGO</b>	<ul style="list-style-type: none"> <li>i. Personal Income Tax (IRPP);</li> <li>ii. Corporate Tax (IS);</li> <li>iii. Minimum Tax Rate (IMF);</li> <li>iv. Inheritance Tax/Right;</li> <li>v. Registration and stamp duty;</li> <li>vi. Property tax.</li> </ul>

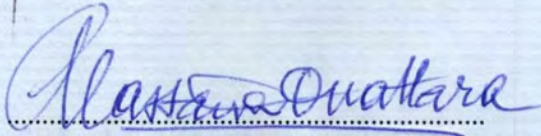
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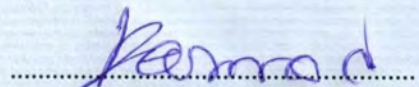


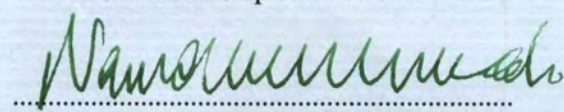
  
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President of the Republic of Benin

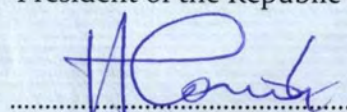
  
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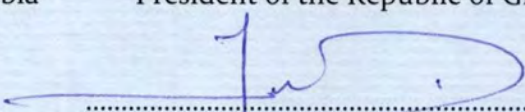
  
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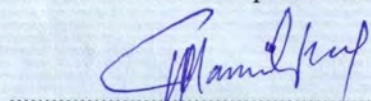
  
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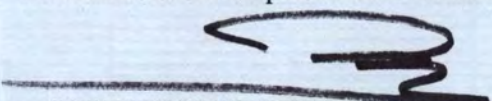
  
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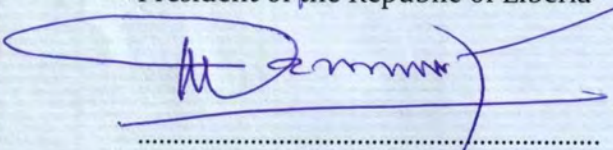
  
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President of the Republic of Ghana


  
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**H.E. ALPHA CONDE**  
President of the Republic of Guinea

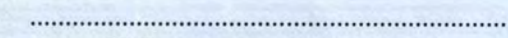
  
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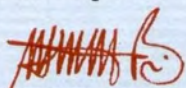
  
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**H.E. GEORGE MANNEH WEAH**  
President of the Republic of Liberia

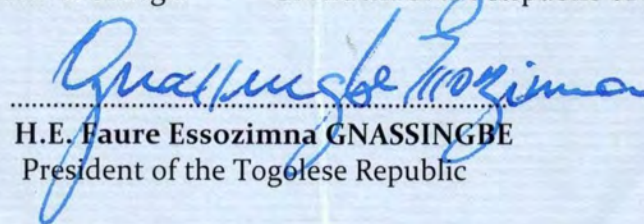
  
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President of the Republic of Mali

  
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**H.E. ISSOUFOU MAHAMADOU**  
President of the Republic of Niger

  
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**H.E. MUHAMMADU BUHARI**  
President, Commander-in Chief of the Armed  
Forces of the Federal Republic of Nigeria

  
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**H.E. MACKY SALL**  
President of the Republic of Senegal

  
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**H.E. JULIUS MAADA BIO**  
President of the Republic of Sierra Leone

  
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**H.E. Faure Essozimna GNASSINGBE**  
President of the Togolese Republic