

PROTOCOL

BETWEEN IRELAND AND THE REPUBLIC OF AUSTRIA

AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT VIENNA ON 24 MAY, 1966.

Ireland and the Republic of Austria, desiring to conclude a Protocol amending the Convention between the Contracting Parties for the avoidance of double taxation with respect to taxes on income, signed at Vienna on 24 May, 1966 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article I

The following paragraph shall be substituted for paragraph 1 of Article 1 of the Convention:

"1. The taxes to which the Convention shall apply are:

(a) in the case of Austria:

(i) the income tax (Einkommensteuer);

(ii) the corporation tax (Körperschaftsteuer)

(hereinafter referred to as "Austrian tax") and, to the extent provided by Articles 6 and 22, the taxes specifically mentioned in those articles;

(b) in the case of Ireland:

(i) the income tax;

(ii) the income levy;

(iii) the corporation tax; and

(iv) the capital gains tax

(hereinafter referred to as "Irish tax")."

Article II

1. The following paragraph shall be substituted for paragraph 1 of Article 2 of the Convention:

"1. In this Convention, unless the context otherwise requires:

- a. the term "Austria" means the Republic of Austria;
- b. the term "Ireland" includes also any area outside the territorial waters of Ireland which in accordance with international law has been or may hereafter be designated, under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea bed and subsoil and their natural resources may be exercised;
- c. the terms "a Contracting State" and "the other Contracting State" mean the Republic of Austria or Ireland, as the context requires;
- d. the term "tax" means Austrian tax or Irish tax, as the context requires;
- e. the term "person" comprises an individual, a company and any other body of persons;
- f. the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- g. the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h. the term "competent authority" means:
 1. in Austria: the Federal Minister of Finance,
 2. in Ireland: the Revenue Commissioners or their authorized representatives."

2. The following paragraph shall be substituted for paragraph 2 of Article 2 of the Convention:

"2. Where under any provision of this Convention income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in the other Contracting State, and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in that other Contracting State."

Article III

The following new Article shall be inserted immediately after Article 2 of the Convention:

"Article 2A.

1. For the purposes of this Convention, 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 management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State. The terms "resident of Ireland" and "resident of Austria" shall be construed accordingly.
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 of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to 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 of the State in which its place of effective management is situated."

Article IV

1. The full stop at the end of subparagraph (g) of paragraph 2 of Article 3 of the Convention shall be replaced by a semicolon and the following new subparagraph shall be inserted immediately after subparagraph (g):

"(h) an installation used for the exploration of natural resources."

2. The following new paragraph shall be inserted immediately after paragraph 4 of Article 3 of the Convention:

"4A. A person carrying on activities in Ireland in connection with the exploration of the sea bed and subsoil and their natural resources situated in Ireland shall be deemed to be carrying on a trade through a permanent establishment in Ireland."

Article V

The following Article shall be substituted for Article 8 of the Convention:

"Article 8.

1. (a) Dividends paid by a company which is a resident of Ireland to a resident of Austria may be taxed in Austria.

(b) Where a resident of Austria is entitled to a tax credit in respect of a dividend under paragraph 2 tax may also be charged in Ireland and according to the laws of Ireland on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(c) Except as aforesaid, dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of Austria shall be exempt from any tax in Ireland which is chargeable on dividends.
2. A resident of Austria who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph 3 and provided that he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to Irish tax.
3. Paragraph 2 shall not apply where the beneficial owner of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividend. For the purposes of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.
4. Dividends paid by a company which is a resident of Ireland to a company which is a resident of Austria shall, notwithstanding the provisions of subparagraph (a) of paragraph 1, be exempt from Austrian tax. This exemption shall not apply unless in accordance with the laws of Austria the dividends would have been exempt from Austrian tax if the first-mentioned company had been a resident of Austria and not a resident of Ireland.
5. Dividends paid by a company which is a resident of Austria to a resident of Ireland may be taxed in Ireland. Such dividends may also be taxed in Austria, and according to the laws of Austria, but provided that the beneficial owner of the dividends is a resident of Ireland, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
6. The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
7. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights, not being debt-claims, participating

in profits, as well as any income or distribution assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

8. The provisions of paragraphs 1, 2 and 5 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 dividend is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 5 shall apply.
9. Where a company which is 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State."

Article VI

The following paragraph shall be substituted for paragraph 2 of Article 9 of the Convention:

"2. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises but shall not include any income which is treated as a distribution under Article 8."

Article VII

The following Article shall be substituted for Article 11 of the Convention:

"Article 11.

1. Capital gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.
2. Capital gains from the alienation of shares deriving their value or the greater part of their value directly or indirectly from immovable property, other than shares quoted on a stock exchange, may be taxed in the Contracting State in which such immovable property is situated.
3. Capital 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. Provided that if such movable property consists of shares the gains from which under paragraph 2 may be taxed in the Contracting State in which the relevant immovable property is situated, the said gains shall be taxable only in that State.
4. Except as provided in paragraph 2 and notwithstanding the provisions of paragraph 3, capital gains derived from the alienation of ships or aircraft operated in international traffic and 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.
5. Capital gains from the alienation of any property other than those mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident. Provided that where under the law of that Contracting State an individual, in respect of such gains, is subject to tax thereon by reference only to the amount thereof which is remitted to or received in that Contracting State, the foregoing provisions of this paragraph shall not operate in relation to so much of such gains as is not remitted or received in that Contracting State.
6. For the purposes of this Article the term "immovable property" means immovable property as defined in paragraph 2 of Article 4."

Article VIII

The following Article shall be substituted for Article 22 of the Convention:

"Article 22.

1. Where a resident of Austria derives income or capital gains, which in accordance with the provisions of this Convention, may be taxed in Ireland, Austria shall allow as a deduction from Austrian tax an amount equal to the Irish tax payable whether directly or by deduction in respect of such income or capital gains. The deduction shall not, however, exceed that part of the Austrian tax, as computed before the deduction is given, which is appropriate to the income or capital gains which may be taxed in Ireland.
2. Subject to the provisions of the law of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof)—
 - (a) Austrian tax payable under the laws of Austria and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Austria (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or chargeable gains by reference to which the Austrian tax is computed.
 - (b) In the case of a dividend paid by a company which is a resident of Austria to a company which is a resident of Ireland and which controls directly or indirectly 25 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Austrian tax creditable under the provisions of subparagraph (a)) the Austrian tax payable by the company in respect of the profits out of which such dividend is paid.
3. For the purposes of paragraph 2 the expression "Austrian tax" shall include the tax on commercial and industrial enterprises (Gewerbesteuer) insofar as it is computed on a profits basis and the directors' tax (Aufsichtsratsabgabe).
4. For the purposes of paragraphs 1 and 2 income, profits and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the provisions of this Convention shall be deemed to arise from sources in that other Contracting State."

Article IX

1. This Protocol shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible.
2. This Protocol shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and its provisions shall have effect:
 - (a) In Austria:

for any taxable year beginning on or after 1 January, 1976;
 - (b) In Ireland:
 - (i) as respects income tax, for any year of assessment beginning on or after 6 April 1976;
 - (ii) as respects income levy, for any year of assessment beginning on or after 6 April, 1983;
 - (iii) as respects corporation tax, for the financial year 1974 and subsequent financial years;
 - (iv) as respects capital gains tax, for any year of assessment beginning on or after 6 April, 1974.
3. Where any greater relief from tax would have been afforded by any provision of the existing Convention than is due under the Convention, as amended by this Protocol, any such provision as aforesaid shall continue to have effect —
 - (a) In Austria for any taxable year;
 - (b) In Ireland for any year of assessment or financial year beginning before 1 January in the calendar year in which this Protocol is signed.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Dublin the 19th day of June 1987, in the English and German languages, each text being equally authentic.

For

For the

IRELAND:

REPUBLIC OF AUSTRIA:

BRIAN LENIHAN

GERHARD RAINER

GIVEN under the Official Seal of the government this 23rd day of February, 1988.

CHARLES J. HAUGHEY,

Taoiseach.

AUSTRIAN PROTOCOL

EXPLANATORY NOTE

This Order gives the force of law to the Protocol with Austria which is set out in the Schedule. The Protocol amends the Convention between Ireland and Austria for the avoidance of double taxation with respect to taxes on income and capital which was signed on 24 May, 1966.

Article I of the Protocol amends Article 1 of the Convention so as to secure that the taxes covered by the Convention will include corporation tax introduced under the Corporation Tax Act, 1976, capital gains tax brought in by the Capital Gains Tax Act, 1975, and income levy provided for under section 16 of the Finance Act, 1983, and that the references to sur-tax and corporation profits tax which are obsolete are deleted.

Article II extends the definition of "Ireland" in Article 3 of the Convention to include designated areas of the Continental Shelf within which rights to the sea bed and sub-soil and their natural resources may be exercised by Ireland.

Article III inserts in the Convention a new Article 2A setting out the basis on which questions of residence are to be decided for the purposes of the Convention and provides rules for determining the country of residence where under the residence criteria of each country there would be a double residence position.

Article IV provides that for the purpose of the Convention a "permanent establishment" of an enterprise of a Contracting State exists where exploration of natural resources is carried on by that enterprise in the territory of the other Contracting State.

Article V contains a new article relating to the treatment of dividends to be substituted for Article 8 of the Convention. Where a company which is a resident of Ireland pays a dividend to a resident of Austria (other than a company which controls at least 25 per cent of the voting power in the paying company) the recipient is, subject to certain conditions, to be entitled to the tax credit to which an individual resident in Ireland would have been entitled had he received the dividend and to payment of any excess of that tax credit over an income charge not exceeding 15 per cent of the aggregate of the dividend and the tax credit. Dividends received by an Irish resident from a company resident in Austria will be subject to Austrian withholding tax of 10 per cent. Furthermore, an Austrian company which derives dividends from an Irish resident company is to be granted the same relief from Austrian tax on the dividends as would be granted if the paying company were a resident of Austria. The effect of these provisions in relation to relief from Austrian tax is that a measure of "matching credit" for Irish tax incentive relief's in relation to profits and dividends will be provided.

Article VI sets out a revised meaning for the term "interest" as used in the Convention.

Article VII contains a new article in relation to capital gains to be substituted for Article 11 of the Convention. Capital gains arising from the alienation of immovable property or of shares of a company the assets of which consists principally of immovable property may be taxed by the country in which the property is situated. Capital gains from the alienation of other property are to

be taxed only in the country of residence of the alienator unless they arise from the alienation of assets of a permanent establishment or fixed base in the other country.

Article VIII substitutes a new article for Article 22 of the Convention. Broadly, the new provisions secure that where income or capital gains are not otherwise relieved from double taxation under the Convention as amended by the Protocol a measure of double taxation relief by way of a credit is to be granted by the country of residence of the recipient of the income or capital gains. In Ireland relief is to be given by allowing against the Irish tax on Austrian income or capital gains credit in respect of the Austrian tax which the income or capital gains has borne, including in the case of dividends received by an Irish resident company which controls directly or indirectly 25 per cent or more of the voting power in the Austrian resident company paying the dividends, the Austrian tax payable by the company in respect of the profits out of which the dividends are paid.

The Protocol, by reference to the provisions of Article IX, will be effective in Ireland —

- (i) with respect to income tax, for any year of assessment beginning on or after 6 April, 1976;
- (ii) with respect to income levy, for any year of assessment beginning on or after 6 April, 1983;
- (iii) with respect to corporation tax, for the financial year 1974 and subsequent financial years;
- (iv) with respect to capital gains tax for any year of assessment beginning on or after 6 April, 1974.