

Double Taxation Treaty between Ireland and Portuguese Republic

Convention between Ireland and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Signed at Dublin on June 1, 1993

The Government of Ireland and the Government of the Portuguese Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to tax on income, have agreed as follows:

Chapter I
Scope of the Convention
Article 1

Personal Scope

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

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are:
 - a. in the case of Ireland:
 - i. the income tax;
 - ii. the corporation tax; and
 - iii. the capital gains tax;
(hereinafter referred to as "Irish tax");
 - b. in the case of Portugal:
 - i. personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);
 - ii. corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC); and
 - iii. local surtax on corporate income tax (Derrama);
(hereinafter referred to as "Portuguese tax").
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Chapter II

Definitions

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a. the term "Ireland" includes 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 as an area within which the rights of Ireland with respect to the sea bed and subsoil and their natural resources may be exercised;
 - b. the term "Portugal" means the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superjacent waters;
 - c. the terms "Contracting State", "one of the Contracting States" and "the other Contracting State" mean Ireland or Portugal, as the context requires; and the term "Contracting States" means Ireland and Portugal;
 - 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 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;
 - g. the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - h. the term "a national" means:
 - i. in relation to Ireland, any citizen of Ireland and any legal person, association or other entity deriving its status as such from the laws in force in Ireland;
 - ii. in relation to Portugal:
 - a. all individuals possessing the nationality of Portugal;
 - b. any legal person, association or other entity deriving its status as such from the laws in force in Portugal;
 - i. the term "competent authority" means:

1. in the case of Ireland, the Revenue Commissioners or their authorised representative;
 2. in the case of Portugal, the Minister of Finance, the Director-General of Taxation (Director-Geral das Contribuições e Impostos) or their authorised representative.
2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

Article 4

Resident

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.
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 Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - b. if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - c. if he has an habitual abode in both Contracting 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 Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a. a place of management;
 - b. a branch;
 - c. an office;
 - d. a factory;
 - e. a workshop; and
 - f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - e. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the 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.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission

agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Chapter III

Taxation of Income

Article 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property shall" have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. The foregoing provisions shall also apply to income from movable property which, under the taxation law of the Contracting State in which the property in question is situated, is assimilated to income from immovable property.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping And Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:
 - a. an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term also includes profits attributed under an arrangement for participation in profits (associação em participação).

3. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed based. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 percent of the gross amount of such interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempted from tax in this State if:
 - a. the debtor of such interest is the Government of that State or a local authority thereof; or
 - b. interest is paid to the Government of the other Contracting State or a local authority thereof or an institution or body (including a financial institution) in connection with any financing granted by them under an agreement between the Governments of the Contracting States.
4. The term "interest", as used in this Article, means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises but does not include any income which is treated as a dividend under Article 10.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and the interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting 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 paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term "royalties", as used in this Article, means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. The term also includes payments in consideration for technical assistance in connection with the use of or the right to use any copyright, goods or information as referred to under this paragraph.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
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 paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of shares of, or other participation in, a company, the assets of which consist principally of, or of rights in, immovable property situated in a Contracting State or of shares of, or other participation in, a company the assets of which consist principally of, or of rights in, such immovable property situated in a Contracting State may be taxed in the State in which the immovable property is situated.
3. Gains, other than those dealt with in paragraph 2, from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.
4. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
5. Gains from the alienation of any property, other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State, that is to say:
 - a. if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - b. if his stay in the other Contracting State is for a period or periods amounting to or exceeding, in the aggregate, 183 days in the fiscal year concerned of that other State.
2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a. the recipient is present in the other State for a period or periods not exceeding, in the aggregate, 183 days in the fiscal year concerned of that other State, and
 - b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of a board of directors or supervisory board (in Portugal, conselho fiscal) or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State, but any remuneration paid by that company to a member of its organs in respect of the exercise of a continuous activity shall be taxable according to the provisions of Article 15.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions and Annuities

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

Government Service

1.
 - a. Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that State.
 - b. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - i. is a national of that State; or
 - ii. did not become a resident of that State solely for the purpose of rendering the services.
2.
 - a. Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b. However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20

Students

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

Article 21

Professors And Teachers

1. Subject to the provisions of Article 19, a professor or teacher who visits one of the Contracting States for a period not exceeding two years for the sole purpose of teaching or carrying out advanced study (including research) at a university, college or other recognised research institute or other establishment for higher education in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that Contracting State for such purpose. An individual shall be entitled to the benefits of this Article only once.
2. The preceding provisions of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV

Methods for Elimination of Double Taxation

Article 23

Elimination Of Double Taxation

1. Subject to the provisions of the laws 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 principal hereof)
 - a. Portuguese tax payable under the laws of Portugal and in accordance with this Convention, whether directly or by deduction, on income from sources within Portugal (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 gains by reference to which Portuguese tax is computed.
 - b. In the case of a dividend paid by a company which is a resident of Portugal to a company which is a resident of Ireland and which holds directly or indirectly 25 per cent or more of the capital in the company paying the dividend, the credit shall take into account (in addition to any Portuguese tax creditable under the provisions of subparagraph (a) of this paragraph) Portuguese tax payable by the company in respect of the profits out of which such dividend is paid.
2. Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Ireland, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Ireland. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Ireland.
3. For the purposes of paragraphs 1 and 2, income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to be derived from sources in that other Contracting State.
4. Where in accordance with any provisions of this Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Chapter V

Special Provisions

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection, which shall include courts, of the taxes which are the subject of the Convention.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:
 - a. to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
 - b. to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c. to supply information which would disclose any trade, business, industrial, commercial or professional secret or process or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27

Diplomatic Agents And Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Chapter VI

Final Provisions

Article 28

Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Lisbon as soon as possible.
2. This Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - a. in Ireland:
 - i. as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April next following the date on which this Convention enters into force;
 - ii. as respects corporation tax, for any financial year beginning on or after the first day of January in the year next following the year in which this Convention enters into force;
 - b. in Portugal:
 - i. in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January in the year next following the year in which this Convention enters into force;
 - ii. in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January in the year next following the year in which this Convention enters into force.

Article 29

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time provided that at least six months prior notice of termination has been given through diplomatic channels.

- a. In such event, this Convention shall cease to have effect:
- b. in Ireland:
 - i. as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April next following the date on which the period specified in the said notice of termination expires;
 - ii. as respects corporation tax, for any financial year beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires;
- c. in Portugal:
 - i. in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January next following the date on which the period specified in the said notice of termination expires;
 - ii. in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires.

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

Done in duplicate at Dublin this 1st day of June 1993 in the English and Portuguese languages, both texts being equally authoritative.

Dick Spring
For the Government of Ireland

José Manuel Durão Barroso
For the Government of the Portuguese Republic

Protocol

At the moment of signing the Convention between Ireland and Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. The term "income" as used in this Convention includes, in particular, capital gains.
2. Notwithstanding the provisions of Article 5, an enterprise of a Contracting State that carries on business of a permanent nature in the other Contracting State through its own employees or any other personnel engaged for such purpose for a period or periods amounting to or exceeding in the aggregate 120 days in any twelve month period shall be deemed to have a permanent establishment in that other State.
3. Notwithstanding the provisions of Article 28, Article 8, paragraph 4 of Article 13 and paragraph 3 of Article 15 shall have effect in both Contracting States with respect to the assessment periods beginning on or after 1 January, 1988.

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

Done in duplicate at Dublin, this 1st day of June 1993, in the English and Portuguese languages, both texts being equally authoritative.

For the Government of Ireland:

Dick Spring

For the Government of the Portuguese Republic:

José Manuel Durão Barroso

Given under the Official Seal of the Government, this 26th day of April, 1994.

Albert Reynolds

Taoiseach.

Explanatory Note

This Order gives the force of law in Ireland to the Convention with the Portuguese Republic set out in the Schedule to the Order.

The Convention provides for the allocation of taxing rights between Ireland and Portugal and for the granting of relief from double taxation with regard to items of income and capital gains which, under the laws of Ireland and the laws of Portugal, may be taxed in both countries.

For example, items such as business profits and gains on movable property not arising through or connected with a permanent establishment in the source country, profits from the operation of ships or aircraft in international traffic and non-government pensions are taxable only in the country of residence of the recipient. On the other hand, remuneration and pensions in respect of services rendered to a government of one of the countries is normally taxable only in that country, i.e. the country of source.

Where both countries continue to have taxing rights, for example, with regard to business profits arising through a permanent establishment which an enterprise of one country has in the other country, or dividends, interest or royalties received in one country from the other country, the Convention provides that the country of residence of the recipient will allow a credit against its own tax for the tax imposed on the same income by the country of source. Thus double taxation is relieved.

Capital gains arising from the disposal of immovable property and of shares linked with immovable property may be taxed by the country in which the property is situated. Capital gains arising from the disposal of other property are normally to be taxed only in the country of residence of the taxpayer unless they arise from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country. Double taxation is relieved by the granting of a credit in the country of residence for tax paid in the country where the property is located.

In the case of dividends flowing from Portugal to Ireland the Convention provides for a reduction of Portuguese withholding tax from 25 per cent to 15 per cent. Dividends paid from Ireland to Portugal are exempt from tax under the current Irish domestic law.

No provision has been made in the Convention on the Portuguese side to allow, when calculating the Portuguese tax due on dividends paid by an Irish company to a Portuguese parent company, credit for the underlying corporation tax paid by the Irish company. Portuguese domestic rules will apply in such cases. On the Irish side, where dividends are paid by a Portuguese company to an Irish parent company (i.e. a company which holds directly or indirectly 25 per cent or more of the capital in the company paying the dividend), credit will be granted when those dividends are being taxed in Ireland for the underlying Portuguese company tax on those dividends.

Provision is made for safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, for consultation between the competent authorities for the purpose of resolving any difficulties or doubts arising as to the interpretation or application of the Convention and for the exchange of such information

between these authorities as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention.

The Convention will become operative -

- in Ireland:
 - i. as respects income and capital gains tax, for any year of assessment beginning on or after the sixth day of April next following the date on which the Convention enters into force;
 - ii. as respects corporation tax, for any financial year beginning on or after the first day of January in the year next following the year in which this Convention enters into force;
- in Portugal:
 - i. in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January in the year next following the year in which this Convention enters into force;
 - ii. in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January in the year next following the year in which this Convention enters into force.