PROTOCOL

AMENDING THE CONVENTION BETWEEN IRELAND AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT DUBLIN ON 8 NOVEMBER 1966, AS AMENDED BY THE PROTOCOL SIGNED AT DUBLIN ON 24 OCTOBER 1980

THE GOVERNMENT OF IRELAND

AND

THE SWISS FEDERAL COUNCIL

Desiring to conclude a Protocol to amend the Convention between Ireland and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, signed at Dublin on 8 November 1966, as amended by the Protocol signed at Dublin on 24 October 1980 (hereinafter referred to as the "Convention"),

Have agreed as follows:

ARTICLE I

The existing paragraph of Article 8 (Associated Enterprises) of the Convention shall be numbered paragraph 1 and the following new paragraph 2 shall be added:

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

ARTICLE II

Article 9 (Dividends) of the Convention shall be deleted and replaced by the following provisions:

"ARTICLE 9

Dividends

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

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

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is

a) a company (other than a partnership) which is a resident of the other Contracting State which holds directly at least 10 per cent of the capital in the company paying the dividends; or

b) a pension scheme; or

c) the central bank of the other Contracting State.

4. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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

6. The provisions of paragraphs 1, 2 and 3 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 base. In such case the provisions of Article 6 or Article 13, as the case may be, shall apply.

7. 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 III

The references to "subparagraph b) of paragraph 1 of Article 9" in paragraph 3 of Article 22 (Elimination of Double Taxation) shall be replaced by "paragraph 2 of Article 9".

ARTICLE IV

1.   The reference to "paragraph 6 of Article 9" in paragraph 3A of Article 24 (Non-discrimination) shall be replaced by "paragraph 5 of Article 9".

2.   Paragraph 5 of Article 24 shall be deleted and replaced by the following provisions:

> "5. The provisions of this Article 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."

ARTICLE V

1.   The following new Article 26 shall be inserted immediately after Article 25 of the Convention:

"ARTICLE 26

Exchange of Information

1.   The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2.   Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1 or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

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

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

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

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

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws."

2. The Articles 26, 27 and 28 of the Convention shall become Articles 27, 28 and 29.

ARTICLE VI

A Protocol is added to the Convention with the following provisions:

"PROTOCOL

Ireland

and

The Swiss Confederation

Have agreed at the signing of the Protocol between Ireland and the Swiss Confederation amending the Convention for the avoidance of double taxation with respect to taxes on income and capital, signed at Dublin on 8 November 1966, as amended by the Protocol signed at Dublin on 24 October 1980, upon the following provisions, which shall form an integral part of the Convention.

1. Regarding paragraph 1 of Article 3A

   a) It is understood that the term "resident of a Contracting State" includes in particular:

   (i) that State or a political subdivision or local authority thereof, including any institution, fund or agency wholly owned by that State, subdivision or authority;

   (ii) a pension scheme established in that State; and

   (iii) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, sporting, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

   b) It is likewise understood that a Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits.

2. Regarding subparagraph b) of paragraph 3 of Article 9

It is understood that the term "pension scheme" includes the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of this Protocol:

   a) in Ireland,

   (i) the National Pension Reserve Fund;

   (ii) any pension schemes covered by Part 30 of the Taxes Consolidation Act 1997;

   b) in Switzerland, any pension schemes covered by

(i) the Federal Act on old age and survivors' insurance of 20 December 1946;

(ii) the Federal Act on disabled persons' insurance of 19 June 1959;

(iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006;

(iv) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer occupational pension plans; and

(v) the forms of individual recognised pension schemes comparable with the occupational pension plans, in accordance with article 82 of the Federal Act on old age, survivors' and dis- abled persons' insurance payable in respect of employment or self-employment of 25 June 1982.

3.   Regarding paragraph 4 of Article 12

Where

a) an individual domiciled in Ireland ceases to be a resident in Ireland,

b) disposes of property acquired prior to the first day of the year in which he ceased to be resident in Ireland as mentioned in subparagraph a) above, and

c) then becomes resident again in Ireland within 5 years of ceasing to be so resident,

the provisions of paragraph 4 shall not affect the right of Ireland to tax the individual according to its law by reference to that disposal but the amount of the tax charged shall not exceed the amount of tax that would be charged on the amount of any gain arising on a deemed disposal by the individual of that property at market value on the day immediately before the first day of the year in which he ceased to be resident in Ireland as mentioned in subparagraph a) above.

4.   Regarding Article 25

It is understood that, if at any time after the date of signature of this Protocol, Ireland agrees to include a provision on arbitration in any of its double taxation conventions, the Government of Ireland shall immediately inform the Swiss Federal Council and the competent authorities of both States shall, without delay, enter into negotiations with a view to include in the present Convention a provision on arbitration taking account of paragraph 5 of Article 25 of the OECD Model Tax Convention.

5.   Regarding Article 26

a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.

b) It is understood that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

c) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 26:

(i) the identity of the person(*s*) under examination or investigation;

(ii) the period of time for which the information is requested;

(iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

(iv) the tax purpose for which the information is sought;

(v) to the extent known, the name and the address of any person believed to be in possession of the requested information.

While this subparagraph contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) nevertheless need to be interpreted in order not to frustrate effective exchange of information.

d) It is understood that Article 26 of the Convention does not require the Contracting States to exchange information on an automatic or a spontaneous basis.

e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process."

ARTICLE VII

1.   This Protocol shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2.   This Protocol shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

> *a)* in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following the entry into force of this Protocol;

> *b)* in respect to Article 26 of the Convention, to information that relates to taxation years or business years beginning on or after the first day of January of the calendar year next following the entry into force of this Protocol;

> *c)* for all other matters, for taxation years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

In witness whereof, the undersigned, duly authorised to that effect, have signed this Protocol.

Done in duplicate at Dublin, this 26th day of January 2012, in the French and English languages, each version being equally authentic.

For the Government of the Council: Ireland:

Brian Hayes

For the Swiss Federal

Beat Loeliger