PROTOCOL

BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED KINGDOM AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED AT DUBLIN ON 2 JUNE 1976, AS AMENDED BY THE PROTOCOL SIGNED AT DUBLIN ON 28 OCTOBER 1976

The Government of Ireland and the Government of the United Kingdom;

Desiring to conclude a Protocal to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, signed at Dublin on 2 June 1976, as amended by the Protocol signed at Dublin on 28 October 1976 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

The following new Article shall be inserted immediately after Article 17 of the Convention:

"ARTICLE 17A

PENSION SCHEME CONTRIBUTIONS

(1) Subject to the conditions specified in paragraph (2) of this Article, where an employee ("the employee"), who is a member of a pension scheme which has been approved or is being considered for approval under the legislation of one of the Contracting States, exercises his employment in the other Contracting State:

(a) contributions paid by the employee to that scheme during the period that he exercises his employment in that other State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension scheme which has been approved under the legislation of that State; and

(b) payments made to the scheme by or on behalf of his employer during that period:

(i) shall not be treated as part of the employee's taxable income, and

(ii) shall be allowed as a deduction in computing the profits of his employer,

in that other State.

(2) The conditions specified in this paragraph are that:

(a) the employee is employed in the other Contracting State by the person who was his employer immediately before he began to exercise his employment in that State or by an associated employer of that employer;

(b) the employee was not a resident of that State immediately before he began to exercise his employment there;

(c) at the time that the contributions referred to in paragraph (1) (a) of this Article are paid, or the payments referred to in paragraph (1) (b) of this Article are made, to the scheme the employee has exercised his employment in that State for:

(i) less than ten years where he was a resident of the first-mentioned Contracting State immediately before he began to exercise his employment in the other Contracting State, or

(ii) less than five years in other cases.

(3) For the purposes of this Article:

(a) the term "a pension scheme" means a scheme established in relation to an employment in which the employee participates in order to secure retirement benefits;

(b) employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person; and the term "control", in relation to a body corporate, means the power of a person to secure:

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership."

ARTICLE II

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol.

(2) This Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax, for any year of assessment beginning on or after 6 April 1994:

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1994;

(b) in Ireland:

(i) in respect of income tax, for any year of assessment beginning on or after 6 April 1994;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1994.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in two originals at London this 7th day of November, 1994.

For the Government of Ireland:	For the Government the United Kingdom:
JOSEPH SMALL.	T A L DAUNT.

EXPLANATORY NOTE.

The existing Double Taxation Convention between Ireland and the United Kingdom was signed at Dublin on 2 June, 1976 and amended, prior to being given the force of law in both countries, by way of a Protocol signed at Dublin on 28 October, 1976. Upon exchange of notes confirming that the necessary steps had been taken to give the Convention the force of law in both countries, the Convention came into force and had effect in Ireland as respects income tax, other than income tax on certain salaries, wages, remuneration and pensions for any one year of assessment beginning on or after 6 April, 1976; as respects income tax on certain salaries, wages, remuneration and pensions for any one year of assessment beginning on or after 6 April, 1977; as respects corporation tax for the financial year 1974 and subsequent financial years; and as respects capital gains tax for any year of assessment beginning on or after 6 April, 1976.

It is a feature of many enterprises with subsidiaries or branches abroad that their employees are expected to be willing to work outside their home country from time to time. One of the considerations in such movements is the pension arrangement made for the employees. Employees sent abroad to work will often wish to continue contributing to a pension scheme in their home country during their absence abroad. This is because switching schemes can lead to a loss of rights and benefits and because many practical difficulties can arise from having pension arrangements in a number of countries.

In 1975 the Revenue Commissioners and the United Kingdom Inland Revenue entered into a formal occupational pensions scheme approval arrangement. At the time that this pensions scheme approval arrangement was drawn up, there were no fundamental differences in the rules and regulations governing the approval of occupational pension schemes in both countries. This 1975 arrangement was not affected by the terms of the 1976 Double Taxation Convention as that Convention did not contain provisions applicable to contributions paid to pension schemes.

The reciprocal arrangement operated smoothly until the late 1980s when a number of significant changes were made to the U.K. pensions tax law which were not mirrored in the Irish tax law or tax approval code. The effect of the U.K. changes was that Irish occupational pension schemes could not be given formal approval for tax purposes unless they complied fully with the new U.K. legislative requirements. This meant that Irish schemes would have to undergo significant changes to their trust deeds and rules. Accordingly, the reciprocal agreement has now ceased to have any effective function.

The terms of the Protocol generally accord with revised OECD suggested provisions for dealing with contributions to foreign pension schemes. Broadly, the Protocol provides that an employee

transferred by an employer resident in one of the Contracting States to work for a temporary period in the other Contracting State (at a branch or for a connected company in that other Contracting State) will be in a position to remain a member of an approved scheme in the first Contracting State and that the employee will be protected from a benefit in kind charge in respect of the employer's contributions; the level of tax relief that would apply will be that which would apply if the scheme were approved under the law of the State to which he is transferred. This would mean that, for example, if the employee involved was contributing to an Irish pension scheme and was transferred to the U.K. for a temporary period, the Irish pensions scheme would not have to seek approval in the U.K. for the transferred employee, the scheme would not have to be concerned about the tax approval rules applied in the U.K., benefits could therefore accrue under the scheme within Irish tax approval limits and the employee could get tax relief in the U.K. for his contributions to the Irish scheme. The Protocol is concerned only with employees who are transferred from one country to the other and with migrant employees of an employer in one of the countries who are transferred from a third country to the other country where these transfers are for temporary periods and where the employees have been maintained in membership of their home country pension schemes.

The Protocol will enter into force after both States have notified each other of the completion of the necessary domestic procedures and will be effective in both countries as respects income tax, for any year of assessment beginning on or after 6 April, 1994; and as respects corporation tax, for any financial year beginning on or after 1 April, 1994.

PROVISIONS OF THE PROTOCOL

ARTICLE I

This Article secures that an employee who is a member of an occupational pension scheme which has been tax approved, or is being considered for such approval, in one State and who exercises his or her employment in the other State will be granted tax relief in that other State in respect of contributions to a scheme established in the first-mentioned State. The relief will be given within the legislative limits applying to approved occupational schemes in the State in which he or she is employed and resident. It also secures that contributions made by an employer on behalf of an employee will not be treated as part of the employee's income and that employers will be entitled to a tax deduction in respect of their contributions.

Conditions governing the application of the reliefs, which are self-explanatory, are set out in the Article; these are designed to prevent abuses and to ensure that the Protocol will apply to transferred employees only and not to locally recruited staff.

Time limits in respect of the reliefs are also provided for in this Article. A 10 year limit will apply to the relief where the employee has moved from one of the Contracting States to the other and a 5 year limit will apply in respect of movements from third countries. The 10 year limit is consistent with the pensions approval practice in each of the States; it was considered that a 5 year limit would be appropriate in the case of migrant workers.

The Article defines a "pension scheme" and "associated employers". The definition of a "pension scheme" is required to ensure that the terms of the Protocol are confined to occupational pension schemes and do not apply to retirement annuity contracts or personal pension schemes.

The definition of "associated employer" and "control" are standard definitions for the purposes of company taxation and they are necessary here because the Protocol provisions are intended to cover the situation where an employee will be transferred within a group of closely linked companies, viz. parent and subsidiary companies.

ARTICLE II

This Article sets out the dates on which the Protocol will enter into force. For income tax purposes it will be effective for any year of assessment beginning on or after 6 April, 1994 and for corporation tax purposes for any financial year beginning on or after 1 April, 1994.