

CONVENTION

BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED KINGDOM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

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

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

Have agreed as follows:—

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) The taxes which are the subject of this Convention are:

(a) in Ireland:

- (i) the income tax;
- (ii) the corporation profits tax;
- (iii) the corporation tax; and
- (iv) the capital gains tax;

(b) in the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the petroleum revenue tax; and
- (iv) the capital gains tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

ARTICLE 3

General definitions

(1) In 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 concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term "United Kingdom" includes any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the term "nationals" means:
 - (i) in relation to Ireland, all citizens of Ireland and all legal persons, associations or other entities deriving their status as such from the laws in force in Ireland;
 - (ii) in relation to the United Kingdom, citizens of the United Kingdom and Colonies, British subjects under Section 2 of the British Nationality Act 1948 whose notices given under that Section have been acknowledged before the date of signature of this Convention, British subjects by virtue of Section 13 (1) or Section 16 of the British Nationality Act 1948 or Section 1 of the British Nationality Act 1965, and British protected persons within the meaning of the British Nationality Act 1948; and all legal persons, associations or other entities deriving their status as such from the law in force in the United Kingdom;
- (d) the term "Irish tax" means tax imposed by Ireland being tax to which this Convention applies by virtue of the provisions of Article 2; the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of Article 2;
- (e) the term "tax" means Irish tax or United Kingdom tax, as the context requires;
- (f) the terms "a Contracting State" and "the other Contracting State" mean Ireland or the United Kingdom, as the context requires;
- (g) the term "person" comprises an individual, a company and any other body of persons;

- (h) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (i) 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;
- (j) the term "competent authority" means, in the case of Ireland, the Revenue Commissioners or their authorised representative, and in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative.

(2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Fiscal domicile

- (1) For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State only if he derives income from sources therein. The terms "resident of Ireland" and "resident of the United Kingdom" shall be construed accordingly.
- (2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
 - (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 Contracting 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) of this Article 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 in which the business of the enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, oil well, quarry or other place of extraction of natural resources;
 - (g) an installation or structure used for the exploration of natural resources.
- (3) The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of independent status to whom the provisions of paragraph (6) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

- (5) A person carrying on activities in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in a Contracting State shall be deemed to be carrying on a trade through a permanent establishment in that Contracting State.
- (6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where 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.

ARTICLE 6

Limitation of relief

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 that 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 7

Income from immovable property

- (1) Income from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.
- (2) (a) The term "immovable property" shall, subject to the provisions of sub-paragraph (b) of this paragraph, be defined in accordance with the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" 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, boats and aircraft shall not be regarded as immovable property.
- (3) The provisions of paragraph (1) of this Article 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) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE 8

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) of this Article, 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 at arm's length with the enterprise of which it is a permanent establishment.
- (3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise 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) Nothing in the foregoing provisions of this Article shall affect any of the provisions of the law of a Contracting State relating specifically to the liability to tax of a life assurance company not having its head office in that Contracting State.
- (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) Where profits include items 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 9

Shipping and air transport

A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

ARTICLE 10

Associated enterprises

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.

ARTICLE 11

Dividends

(1) Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other Contracting State. 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 provided the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividends;

(b) in all other cases 15 per cent of the gross amount of the dividends.

(2) However, as long as an individual resident in a Contracting State is entitled to a tax credit in respect of dividends paid by a company resident in that Contracting State, the following provisions of this paragraph shall apply to dividends paid by a company resident in that Contracting State instead of the provisions of paragraph (1) of this Article:

(a)(i) Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other Contracting State.

(ii) Where a resident of a Contracting State is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph tax may also be charged in the other Contracting State and according to the laws of that other Contracting State, 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.

(iii) Except as provided in sub-paragraph (a) (ii) of this paragraph dividends derived from a company which is a resident of a Contracting State and which are beneficially owned by a resident of the other Contracting State shall be exempt from any tax in the first-mentioned Contracting State which is chargeable on dividends.

(b) A resident of a Contracting State who receives dividends from a company which is a resident of the other Contracting State shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in that other Contracting State would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to tax in that other Contracting State.

(c) The provisions of sub-paragraph (b) of this paragraph 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 10 per cent or more of the voting power in the company paying the dividend. For the purposes of this sub-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.

(3) (a) The provisions of paragraph (1) of this Article and the provisions of sub-paragraphs (a) (ii) and (a) (iii) of paragraph (2) of this Article shall not apply to dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State if the competent authority of that other Contracting State certifies that such dividends are not subject to tax in that other Contracting State by reason of provisions in the laws of that other Contracting State which afford relief from taxation to charities and superannuation schemes, as such, being provisions which were in force at the date of signature of this Convention or which, if they have been modified since that date, have been modified only in minor respects so as not to affect their general character. Such dividends shall be exempt from any tax in the first-mentioned Contracting State which is chargeable on dividends.

(b) In this paragraph the term "superannuation scheme" means:

(i) in the case of Ireland, a sponsored superannuation scheme within the meaning of Section 235 (9) of the Income Tax Act, 1967, or a trust scheme or part of a trust scheme approved under Section 235 or Section 235A of that Act;

(ii) in the case of the United Kingdom, a sponsored superannuation scheme within the meaning of Section 226 (11) of the Income and Corporation Taxes Act, 1970, or a trust scheme or part of a trust scheme approved under Section 226 or Section 226A of that Act.

(4) The term "dividends" for Irish tax purposes includes any item which under the law of Ireland is treated as a distribution and for United Kingdom tax purposes includes any item which under the law of the United Kingdom is treated as a distribution.

(5) (a) If the beneficial owner of a dividend, being a resident of one of the Contracting States, owns 10 per cent or more of the class of shares in respect of which the dividend is paid then paragraphs (1), (2) and (3) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question.

(b) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if:

(i) the recipient of the dividend is exempt from tax thereon in the United Kingdom;
and

(ii) the dividend is paid in such circumstances that, if the recipient were a resident of Ireland exempt from Irish tax, the exemption would be limited or removed.

(c) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if:

(i) the recipient of the dividend is exempt from tax thereon in Ireland; and

(ii) the dividend is paid in such circumstances that, if the recipient were a resident of the United Kingdom exempt from United Kingdom tax, the exemption would be limited or removed.

(d) The foregoing provisions of this paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purposes of securing the benefit of this Article.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply where the beneficial owner of the dividends, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with a business carried on through that permanent establishment. In such a case the provisions of Article 8 shall apply.

(7) Where a company which is a resident of one of the Contracting States derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or 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 Contracting State.

ARTICLE 12

Interest

- (1) Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.
- (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 11.
- (3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.
- (4) Where, owing to 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 exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.
- (5) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 13

Royalties

- (1) Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.
- (2) 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.
- (3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.
- (4) Where, owing to 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 exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14

Capital gains

- (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) of this Article may be taxed in the Contracting State of which the alienator is a resident, because the relevant immovable property is situated in that State, the said gains shall be taxable only in that State.
- (4) Except as provided in paragraph (2) of this Article and notwithstanding the provisions of paragraph (3) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.
- (5) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2), (3) and (4) of this Article 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 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 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 7.

ARTICLE 15

Employments

- (1) Subject to the provisions of Articles 17 and 18, 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) of this Article, 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; 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) In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to "employer" were references to the company.

ARTICLE 16

Artistes and athletes

- (1) Notwithstanding the provisions of Article 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.
- (2) Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person that income may, notwithstanding the provisions of Articles 8 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

ARTICLE 17

Pensions

- (1) Subject to the provisions of paragraphs (1) and (2) of Article 18, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State 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 18

Governmental functions

- (1) Remuneration or pensions paid by, or out of funds created by, Ireland or a local authority thereof to any individual in respect of services rendered to the Government of Ireland or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Ireland unless the individual is a United Kingdom national without also being a national of Ireland.
- (2) Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a national of Ireland without also being a United Kingdom national.
- (3) The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 19

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 purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 20

Income not expressly mentioned

Items of income of a resident of a Contracting State, wherever arising, being income of a class or from sources not expressly mentioned in the foregoing Articles of this Convention, other than income paid out of trusts, shall be taxable only in that State.

ARTICLE 21

Elimination of double taxation

- (1) 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) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom (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 United Kingdom tax is computed.
 - (b) In the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Ireland and which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any United Kingdom tax creditable under the provisions of sub-paragraph (a) of this paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.
- (2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—
 - (a) Irish tax payable under the laws of Ireland and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Ireland (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 United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Irish tax is computed.
 - (b) In the case of a dividend paid by a company which is a resident of Ireland to a company which is a resident of the United Kingdom and which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Irish tax creditable under the provisions of sub-paragraph (a) of this paragraph) the Irish tax payable by the company in respect of the profits out of which such dividend is paid.

- (3) For the purposes of paragraphs (1) and (2) of this Article profits, income and capital gains owned 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 arise from sources in that other Contracting State.
- (4) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.

ARTICLE 22

Personal allowances

- (1) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Irish tax as citizens of Ireland not resident in Ireland.
- (2) Individuals who are residents of Ireland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

ARTICLE 23

Non-discrimination

- (1) The 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.
- (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.
- (3) 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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
- (4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.
- (5) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to a company which is a resident of the other Contracting State a greater relief from income tax chargeable on dividends received from a company which is a resident of the first-mentioned Contracting State than the relief to which the first-mentioned company may be entitled under the provisions of Article 11 of this Convention.
- (6) In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 24

Mutual agreement procedure

- (1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.
- (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 an appropriate 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 not in accordance with the 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 the 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 25

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 other than persons (including a Court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, 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 the competent authority of either Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in either 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 trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 26

Diplomatic and consular officials

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

ARTICLE 27

Territorial extension

- (1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations either Contracting State is responsible and which imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in Notes to be exchanged through diplomatic channels.
- (2) Unless otherwise agreed by both Contracting States, the termination of this Convention shall terminate the application of this Convention to any territory to which it has been extended under the provisions of this Article.

ARTICLE 28

Entry into force

(1) This Convention shall enter into force on the exchange of Notes confirming that the necessary steps have been taken to give it the force of law in Ireland and the United Kingdom, and shall thereupon have effect:

(a) in Ireland:

- (i) as respects income tax other than income tax on salaries, wages, remuneration and pensions to which Articles 15 and 18 apply, for any year of assessment beginning on or after 6 April 1976;
- (ii) as respects income tax on salaries, wages, remuneration and pensions to which Articles 15 and 18 apply, for any year of assessment beginning on or after 6 April 1977;
- (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 1976. Provided that a person shall not be chargeable to capital gains tax in Ireland for a year of assessment commencing on or after 6 April 1974 and ending on or before 5 April 1976 for which he would have been regarded as a resident of the United Kingdom under the provisions of Article 4 of this Convention, if this Convention had applied for that year.

(b) in the United Kingdom:

- (i) as respects income tax other than income tax on salaries, wages, remuneration and pensions to which Articles 15 and 18 apply, for any year of assessment beginning on or after 6 April 1976;
- (ii) as respects income tax on salaries, wages, remuneration and pensions to which Articles 15 and 18 apply, for any year of assessment beginning on or after 6 April 1977;
- (iii) as respects corporation tax, for any financial year beginning on or after 1 April 1976;
- (iv) as respects petroleum revenue tax, for any chargeable period beginning on or after 1 January 1976;
- (v) as respects capital gains tax, for any year of assessment beginning on or after 6 April 1976. Provided that a person shall not be chargeable to capital gains tax in the United Kingdom for a year of assessment commencing on or

after 6 April 1974 and ending on or before 5 April 1976 for which he would have been regarded as a resident of Ireland under the provisions of Article 4 of this Convention, if this Convention had applied for that year.

- (2) Except as provided in paragraph (3) of this Article, the existing Agreements shall terminate upon the entry into force of this Convention as provided in paragraph (1) of this Article and thereupon cease to be effective as respects taxes to which, in accordance with paragraph (1), the present Convention applies.
- (3) The existing income tax Agreement shall continue to have effect for any year of assessment ending on or before 5 April 1977 as respects income tax on salaries, wages, remuneration and pensions to which Articles 15 and 18 of this Convention apply. Provided that for the purposes of sub-paragraphs (c) and (d) of paragraph (1) of Article 2 of the said Agreement any relief granted under the provisions of Articles 11 and 21 of this Convention shall be deemed to be relief granted under the provisions of Section 27 of the Finance Act, 1920, as amended by the said Article 2.
- (4) (a) In this Article the term "the existing income tax Agreement" means the Agreement made on the 14th April, 1926, between the British Government and the Government of the Irish Free State in respect of Double Income Tax; as amended by:
- (i) the Agreement made on the 25th day of April, 1928, between the British Government and the Government of the Irish Free State amending the Agreement made on the 14th day of April, 1926, between the said Governments in respect of Double Income Tax;
 - (ii) the Agreement between the Irish Government and the United Kingdom Government amending the Agreement of 1926 (as amended by the Agreement of 1928) in respect of Double Income Tax dated 21st July, 1947;
 - (iii) the Agreement between the Government of Ireland and the Government of the United Kingdom with respect to certain exemptions from tax dated 4th April, 1959;
 - (iv) the Agreement between the Government of Ireland and the Government of the United Kingdom with respect to certain exemptions from tax dated 23rd June, 1960;
 - (v) the Agreement between the Government of Ireland and the Government of the United Kingdom with respect to certain exemptions from tax dated 2nd May, 1973; and
 - (vi) the Agreement between the Government of Ireland and the Government of the United Kingdom with respect to certain exemptions from tax dated 3rd June, 1975.

(b) In this Article, the term "the existing Agreements" means:

- (i) the existing income tax Agreement: and

(ii) the Agreement between the Government of the Republic of Ireland and the United Kingdom Government for the Reciprocal Relief of Double Taxation in respect of Irish Corporation Profits Tax and United Kingdom Profits Tax signed on 18th May, 1949 as amended by the Protocol between the Government of Ireland and the Government of the United Kingdom amending the said Agreement, signed on 2nd May, 1973.

ARTICLE 29

Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1978. In such event, the Convention shall cease to have effect:

(a) in Ireland:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;

(ii) as respects corporation tax, for any financial year beginning on or after 1 January in the calendar year next following that in which the notice is given;

(b) in the United Kingdom:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;

(ii) as respects corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;

(iii) as respects petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given.

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

Done in two originals at Dublin this 2nd day of June 1976.

For the Government of Ireland:

For the Government of the United Kingdom:

GARRET FITZGERALD

ARTHUR GALSWORTHY

**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
ON 2 JUNE 1976.**

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

Desiring to conclude a Protocol 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 on 2 June 1976 (hereinafter referred to as "the Convention");

Have agreed as follows:—

Article I

The following sub-paragraph shall be substituted for sub-paragraph (a) of paragraph (3) of Article 11 of the Convention:

"(3) (a) The provisions of paragraph (1) of this Article and the provisions of sub-paragraphs (a) (ii) and (a) (iii) of paragraph (2) of this Article shall not apply to dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State if the competent authority of that other Contracting State certifies that such dividends are not subject to tax in that other Contracting State by reason of provisions in the laws of that other Contracting State which afford relief from taxation to charities and superannuation schemes, as such, or to insurance companies in respect of their pension business, being provisions which were in force at the date of signature of this Convention or which, if they have been modified since that date, have been modified only in minor respects so as not to affect their general character. Such dividends shall be exempt from any tax in the first-mentioned Contracting State which is chargeable on dividends."

Article II

The following new Article shall be inserted immediately after Article 14 of the Convention:

"ARTICLE 14a

Charities and superannuation schemes: additional provisions

- (1) Notwithstanding the provisions of Articles 7 and 14 income derived by a resident of one Contracting State from immovable property situated in the other Contracting State, and capital gains derived by such a resident from the alienation of such property or of related movable property, shall be exempt in that other Contracting State from taxes which are the subject of this Convention by virtue of paragraph (1) of Article 2 if the competent authority of the first-mentioned Contracting State certifies that the said income or capital gains are not subject to such taxes in that State by reason of provisions in the laws of that State which afford relief from taxation to charities and superannuation schemes, as such, or to insurance companies in respect of their pension business, being provisions which were in force at the date of signature of this Convention or which, if they have been modified since that date, have been modified only in minor respects so as not to affect their general character.
- (2) For the purposes of this Article:
 - (a) the term "related movable property" means movable property the gains from the alienation of which may, under the provisions of paragraphs (2) and (3) of Article 14, be taxed in the Contracting State in which specified immovable property is situated;
 - (b) the term "superannuation scheme" means a superannuation scheme as defined in sub-paragraph (b) of paragraph (3) of Article 11;
 - (c) the term "immovable property" means immovable property as defined in paragraph (2) of Article 7."

Article III

This Protocol, which shall form an integral part of the Convention, shall enter into force on the exchange of Notes confirming that the necessary steps have been taken to give it the force of law in Ireland and the United Kingdom, and shall thereupon have effect in accordance with Article 28 of the Convention.

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

Done in two originals at Dublin this 28th day of October 1976.

For the Government of Ireland:

For the Government of the United Kingdom:

GARRET FITZGERALD

J. K. HICKMAN

EXPLANATORY NOTE.

This Order gives the force of law to the Convention with the United Kingdom and the Protocol amending the Convention both of which are set out in the Schedule. The Convention and Protocol replace Agreements made in 1926 and 1949, and amending Agreements. The effect of the Convention and Protocol is summarised below.

There are provisions under which certain business profits not arising through a permanent establishment, shipping and air transport profits, interest, royalties, pensions (other than Government pensions) and earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of residence of the taxpayer. Government salaries and pensions are normally to be taxed by the paying Government only.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of residence of the taxpayer for the tax payable in the country of origin of the income.

It is provided that where a company which is a resident of one of the countries pays a dividend to a resident of the other country (other than a company which controls 10 per cent or more of the voting power in the paying company) the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the country of which the paying company is a resident would be entitled had he received that dividend. Income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit may be charged in the country of source of the dividend unless the dividend is exempt from tax in the other country by reason of tax reliefs accorded by that other country to charities, superannuation schemes and insurance companies in respect of their pension business. Where the dividend is so exempt the source country may not impose any income tax on the aggregate of the dividend and the tax credit.

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.

There are provisions giving charities, superannuation schemes and the pension business of insurance companies reciprocal exemptions from the taxes listed in Article 2 (1) of the Convention on income from immovable property and on capital gains arising from the disposal of immovable property or related movable property.

Each country is to treat residents of the other country, in the matter of personal allowances and reliefs for tax purposes, in the same way as it treats its own non-resident citizens or subjects.

Provision is made for safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, for consultation between the taxing authorities of the two countries 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 those authorities as is necessary for the carrying out of the Convention.

The Convention is, in general, to have effect in the State as respects income tax and capital gains tax for the year of assessment 1976-77 and subsequent years and as respects corporation tax for the financial year 1974 [as defined in section 1 (5) of the Corporation Tax Act, 1976 (No. 7 of 1976)] and subsequent financial years. There are transitional provisions relating to income tax on remuneration from employments and Government pensions and to capital gains tax.