STATUTORY INSTRUMENTS

S.I. No. 112 of 2006

Double Taxation Relief (Taxes on Income) (Adjustment of Profits of Associated Enterprises) (Accession States) Order 2006

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WHEREAS it is enacted by section 826 (1) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that if the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of income tax, corporation tax in respect of income and chargeable gains and any taxes of a similar character imposed by the laws of the State or by the laws of that territory, and that it is expedient that those arrangements should have the force of law, then, subject to sections 826 and 835 of that Act, the arrangements shall, notwithstanding any enactment, have the force of law:

AND WHEREAS it is further enacted by section 826(6) of the above mentioned Act that where such an order is proposed to be made, a draft thereof shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann:

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them by section 826(1) of the Taxes Consolidation Act 1997 (No. 39 of 1997), hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Adjustment of Profits of Associated Enterprises) (Accession States) Order 2006.

2. It is hereby declared –

(a) that by virtue of the Convention, the text of which, excluding that of Annexes I to IX to the Convention, is set out in the Schedule to this Order, which was entered into by the Governments of the Member States of the European Communities in relation to the accession of Czech Republic, Republic of Estonia, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, Republic of Slovenia, and Slovak Republic ("the Accession States") to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (as amended by the Convention of 21 December 1995 and the Protocol of 25 May 1999), arrangements have been made with the Accession States in relation to affording relief from double taxation in respect of income tax, corporation tax in respect of income and chargeable gains and any taxes of a similar character imposed by the laws of the State or by the laws of each of the Accession States, and

(b) that it is expedient that those arrangements should have the force of law.

SCHEDULE

CONVENTION

ON THE ACCESSION OF THE CZECH REPUBLIC, THE REPUBLIC OF ESTONIA, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA, THE REPUBLIC OF LITHUANIA, THE REPUBLIC OF HUNGARY, THE REPUBLIC OF MALTA, THE REPUBLIC OF POLAND, THE REPUBLIC OF SLOVENIA AND THE SLOVAK REPUBLIC TO THE CONVENTION ON THE ELIMINATION OF DOUBLE TAXATION IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

(2005/C 160/01)

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY,

CONSIDERING that the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in becoming members of the Union, undertook to accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (Arbitration Convention), signed in Brussels on 23 July 1990 and to the Protocol hereto, signed in Brussels on 25 May 1999, HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS,

Jan DE BOCK

Ambassador,

Permanent Representative of Belgium to the European Union

THE PRESIDENT OF THE CZECH REPUBLIC,

Jan KOHOUT

Ambassador,

Permanent Representative of the Czech Republic to the European Union

HER MAJESTY THE QUEEN OF DENMARK,

Claus GRUBE

Ambassador

Permanent Representative of Denmark to the European Union

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

Wilhelm Heinrich SCHÖNFELDER

Ambassador,

Permanent Representative of the Federal Republic of Germany to the European Union

THE PRESIDENT OF THE REPUBLIC OF ESTONIA,

Väino REINART

Ambassador,

Permanent Representative of the Republic of Estonia to the European Union

THE PRESIDENT OF THE HELLENIC REPUBLIC,

Vassilis KASKARELIS

Ambassador,

Permanent Representative of the Hellenic Republic to the European Union

HIS MAJESTY THE KING OF SPAIN,

Carlos BASTARRECHE SAGÜES

Ambassador,

Permanent Representative of Spain to the European Union

THE PRESIDENT OF THE FRENCH REPUBLIC,

Pierre SELLAL

Ambassador,

Permanent Representative of the French Republic to the European Union

THE PRESIDENT OF IRELAND,

Anne ANDERSON

Ambassador,

Permanent Representative of Ireland to the European Union

THE PRESIDENT OF THE ITALIAN REPUBLIC,

Rocco Antonio CANGELOSI

Ambassador,

Permanent Representative of the Italian Republic to the European Union

THE PRESIDENT OF THE REPUBLIC OF CYPRUS,

Nicholas EMILIOU

Ambassador,

Permanent Representative of the Republic of Cyprus to the European Union

THE CABINET OF MINISTERS OF THE REPUBLIC OF LATVIA,

Peteris USTUBS

Ambassador,

Permanent Representative of the Republic of Latvia to the European Union

THE PRESIDENT OF THE REPUBLIC OF LITHUANIA,

Oskaras JUSYS

Ambassador,

Permanent Representative of the Republic of Lithuania to the European Union

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

Martine SCHOMMER

Ambassador,

Permanent Representative of Luxembourg to the European Union

THE PRESIDENT OF THE REPUBLIC OF HUNGARY,

Tibor KISS

Ambassador,

Permanent Representative of the Republic of Hungary to the European Union

THE PRESIDENT OF MALTA,

Richard Cachia CARUANA

Ambassador,

Permanent Representative of Malta to the European Union

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

Tom J.A.M. DE BRUIJN

Ambassador,

Permanent Representative of the Netherlands to the European Union

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

Gregor WOSCHNAGG

Ambassador,

Permanent Representative of the Republic of Austria to the European Union

THE PRESIDENT OF THE REPUBLIC OF POLAND,

Marek GRELA

Ambassador,

Permanent Representative of the Republic of Poland to the European Union

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

Alvaro MENDONÇA E MOURA

Ambassador,

Permanent Representative of the Portuguese Republic to the European Union

THE PRESIDENT OF THE REPUBLIC OF SLOVENIA,

Ciril STOKELJ

Ambassador,

Permanent Representative of the Republic of Slovenia to the European Union

THE PRESIDENT OF THE SLOVAK REPUBLIC,

Miroslav ADAMIS

Ambassador,

Permanent Representative of the Slovak Republic to the European Union

THE PRESIDENT OF THE REPUBLIC OF FINLAND,

Eikka KOSONEN

Ambassador,

Permanent Representative of the Republic of Finland to the European Union

THE GOVERNMENT OF THE KINGDOM OF SWEDEN,

Sven-Olof PETERSSON

Ambassador,

Permanent Representative of Sweden to the European Union

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

John GRANT

Ambassador,

Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the European Union

WHO, meeting within the Committee of Permanent Representatives of the Member States to the European Union and having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

The Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic hereby accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed in Brussels on 23 July 1990, with all the adjustments and amendments made to it by the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed in Brussels on 21 December

1995, and by the Protocol amending the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed in Brussels on 25 May 1999.

Article 2

The Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises is hereby amended as follows:

1. in Article 2(2):

(a) the following subparagraph shall be inserted after subparagraph (a):

‘(b) in the Czech Republic:

– daň z příjmů fyzických osob,

– daň z příjmů právnických osob;’

(b) subparagraph (b) shall become subparagraph (c) and shall be replaced by the following text:

‘(c) in Denmark:

– indkomstskat til staten,

– den kommunale indkomstskat,

– den amtskommunale indkomstskat;’

(c) subparagraph (c) shall become subparagraph (d);

(d) the following subparagraph shall be inserted after subparagraph (d):

'(e) in the Republic of Estonia:

– tulumaks;'

(e) subparagraph (d) shall become subparagraph (f);

(f) subparagraph (e) shall become subparagraph (g) and shall be replaced by the following text:

'(g) in Spain:

– Impuesto sobre la Renta de las Personas Físicas,

– Impuesto sobre Sociedades,

– Impuesto sobre la Renta de no Residentes;'

(g) subparagraph (f) shall become subparagraph (h);

(h) subparagraph (g) shall become subparagraph (i);

(i) subparagraph (h) shall become subparagraph (j) and shall be replaced by the following text:

'(j) in Italy:

– imposta sul reddito delle persone fisiche,

– imposta sul reddito delle società,

– imposta regionale sulle attività produttive;'

(j) the following subparagraphs shall be inserted after subparagraph (j):

'(k) in the Republic of Cyprus:

– Φόρος Εισοδήματος,

– Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας;

(l) in the Republic of Latvia:

– uzņēmumu ienākuma nodoklis,

– iedzīvotāju ienākuma nodoklis;

(m) in the Republic of Lithuania:

– Gyventojų pajamų mokestis,

– Pelno mokestis;'

(k) subparagraph (i) shall become subparagraph (n);

(l) the following subparagraphs shall be inserted after subparagraph (n):

'(o) in the Republic of Hungary:

– személyi jövedelemadó,

– társasági adó,

– osztalékadó;

(p) in the Republic of Malta:

– taxxa fuq l – income';

(m) subparagraph (j) shall become subparagraph (q);

(n) subparagraph (k) shall become subparagraph (r);

(o) the following subparagraph shall be inserted after subparagraph (r):

'(s) in the Republic of Poland:

– podatek dochodowy od osób fizycznych,

– podatek dochodowy od osób prawnych;'

(p) subparagraph (l) shall become subparagraph (t);

(q) the following subparagraphs shall be inserted after subparagraph (t):

'(u) in the Republic of Slovenia:

– dohodnina,

– davek od dobička pravnih oseb;

(v) in the Slovak Republic:

– Daň z príjmov právnických osôb,

– Daň z príjmov fyzických osôb;'

(r) subparagraph (m) shall become subparagraph (w);

(s) subparagraph (n) shall become subparagraph (x) and shall be replaced by the following text:

'(x) in Sweden:

- statlig inkomstskatt,
- kupongskatt,
- kommunal inkomstskatt;'

(t) subparagraph (o) shall become subparagraph (y);

2. the following indents shall be added to Article 3(1):

'– in the Czech Republic:

– Ministr financí or an authorised representative;

– in the Republic of Estonia:

– Rahandusminister or an authorised representative;

– in the Republic of Cyprus:

– Ο Υπουργός Οικονομικών or an authorised representative;

– in the Republic of Latvia:

– Valsts ieņēmumu dienests;

– in the Republic of Lithuania:

– Finansu ministras or an authorised representative;

– in the Republic of Hungary:

– a pénzügyminiszter or an authorised representative;

– in the Republic of Malta:

– il-Ministru responsabbli għall-finanzi or an authorised representative;

– in the Republic of Poland:

– Minister Finansów or an authorised representative;

– in the Republic of Slovenia:

– Ministrstvo za finance or an authorised representative;

– in the Slovak Republic:

– Minister financií or an authorised representative;'

3. in Article 3 (1), the indent:

'– in Italy:

il Ministro delle Finanze or an authorised representative',

shall be replaced by the following:

'– in Italy:

Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative'.

Article 3

The Secretary-General of the Council of the European Union shall transmit to the Governments of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic a certified copy of:

- the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

- the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

  and

- the Protocol amending the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

in the Danish, Dutch, English, French, Finnish, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages.

The text of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, of the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, and of the Protocol amending the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises in the Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovenian and Slovakian languages is set out in Annexes I to IX to this Convention. The texts drawn up in the Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovenian and Slovakian languages shall be authentic under the same conditions as the other texts of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

Article 4

This Convention shall be subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary- General of the Council of the European Union.

Article 5

This Convention shall enter into force, as between the Contracting States which have ratified, accepted or approved it, on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval by these States.

Article 6

The Secretary-General of the Council of the European Union shall notify all signatory States of:

(a) the deposit of each instrument of ratification, acceptance or approval;

(b) the dates of entry into force of this Convention between the States that have ratified, accepted or approved it.

Article 7

This Convention, drawn up in a single original in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovenian, Slovakian, Spanish and Swedish languages, all twenty-one texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Governments of each signatory State.

Hecho en Bruselas, el ocho de diciembre de dos mil cuatro.

V Bruselu dne osmého prosince dva tisíce čtyři.

Udfærdiget i Bruxelles den ottende december to tusind og fire.

Geschehen zu Brüssel am achten Dezember zweitausendundvier.

Kahe tuhande neljanda aasta detsembrikuu kaheksandal päeval Brüsselis.

‘Εγινε στις Βρυξέλλες, στις οκτώ Δεκεμβρίου δύο χιλιάδες τέσσερα.

Done at Brussels on the eighth day of December in the year two thousand and four.

Fait à Bruxelles, le huit décembre deux mille quatre.

Fatto a Bruxelles, addì otto dicembre duemilaquattro.

Briselē, divi tūkstoši ceturtā gada astotajā decembrī.

Priimta du tūkstančiai ketvirtų metų gruodžio aštuntą dieną Briuselyje.

Kelt Brüsszelben, a kettőezer-negyedik év december hó nyolcadik napján.

Magħmul fi Brussell fit-tmien jum ta’ Diċembru tas-sena elfejn u erbgħa.

Gedaan te Brussel, de achtste december tweeduizendvier.

Sporządzono w Brukseli, dnia ósmego grudnia roku dwutysięcznego czwartego.

Feito em Bruxelas, em oito de Dezembro de dois mil e quatro.

V Bruseli ôsmeho decembra dvetisícštyri.

V Bruslju, dne osmega decembra leta dva tisoč štiri.

Tehty Brysselissä kahdeksantena päivänä joulukuuta vuonna kaksituhattaneljä.

Som skedde i Bryssel den åttonde december tjugohundrafyra.

POUR SA MAJESTE LE ROI DES BELGES

VOOR ZIJNE MAJESTEIT DE KONING DER BELGEN

FÜR SEINE MAJESTÄT DER KÖNIG DER BELGIER

Jan De Bock

ZA PREZIDENTA ČESKÉ REPUBLIKY

Jan Kohout

FOR HENDES MAJESTÆT DANMARKS DRONNING

Claus Grube

FÜR DEN PRÄSIDENTEN DER BUNDESREPUBLIK DEUTSCHLAND

Wilhelm Heinrich Schönfelder

EESTI VABARIIGI PRESIDENDI NIMEL

Väino Reinart

ΓΙΑ ΤΟΝ ΠΡΟΕΔΡΟ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Vassilis Kaskarelis

POR SU MAJESTAD EL REY DE ESPAÑA

Carlos Bastarreche Sagües

POUR LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE

Pierre Sellal

THAR CEANN UACHTARÁN NA hÉIREANN

FOR THE PRESIDENT OF IRELAND

Anne Anderson

PER IL PRESIDENTE DELLA REPUBBLICA ITALIANA

Rocco Antonio Cangelosi

ΓΙΑ ΤΟΝ ΠΡΟΕΔΡΟ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Nicholas Emiliou

LATVIJAS REPUBLIKAS MINISTRU KABINETA VĀRDĀ

Peteris Ustubs

LIETUVOS RESPUBLIKOS PREZIDENTO VARDU

Oskaras Jusys

POUR SON ALTESSE ROYALE LE GRAND-DUC DE LUXEMBOURG

Martine Schommer

A MAGYAR KÖZTÁRSASÁG ELNÖKE RÉSZÉRŐL

Tibor Kiss

GĦALL-PRESIDENT TA' MALTA

Richard Cachia Caruana

VOOR HARE MAJESTEIT DE KONINGIN DER NEDERLANDEN

Tom J.A.M. De Bruijn

FÜR DEN BUNDESPRÄSIDENTEN DER REPUBLIK ÖSTERREICH

Gregor Woschnagg

ZA PREZYDENTA RZECZYPOSLITEJ POLSKIEJ

Marek Grela

PELO PRESIDENTE DA REPÚBLICA PORTUGUESA

Alvaro Mendonça E Moura

ZA PREDSEDNIKA REPUBLIKE SLOVENIJE

Ciril Stokelj

ZA PREZIDENTA SLOVENSKEJ REPUBLIKY

Miroslav Adamis

SUOMEN TASAVALLAN PRESIDENTIN PUOLESTA

FÖR REPUBLIKEN FINLANDS PRESIDENT

Eikka Kosonen

FÖR KONUNGARIKET SVERIGES REGERING

Sven-Olof Petersson

FOR HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

John Grant

MINUTES OF THE SIGNING OF THE CONVENTION

on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

The Plenipotentiaries of the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have, on 8 December 2004 in Brussels, signed the Convention on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

On this occasion they have taken note of the following unilateral Declarations:

I. Declaration on Article 7 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

Declaration by Belgium, the Czech Republic, Latvia, Hungary, Poland, Portugal, Slovakia and Slovenia on Article 7 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

Belgium, the Czech Republic, Latvia, Hungary, Poland, Portugal, Slovakia and Slovenia declare that they will apply Article 7(3).

II. Declarations on Article 8 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises:

1. *Declaration by the Republic of Cyprus*

The term 'serious penalty' includes penalties for:

(a) fraudulently or wilfully making or submitting a false statement, return, document or declaration in respect of income or claims to any allowances or deductions;

(b) fraudulently or wilfully submitting false accounts;

(c) refusing, failing or neglecting to submit a tax return;

(d) refusing, failing or neglecting to keep proper records or to make documents and records available for inspection;

(e) aiding, assisting, counselling, inciting or inducing a person to make, deliver or furnish any return, statement, claim, accounts or document, or to keep or prepare any accounts or documents, which is or are materially false.

The legislative provisions governing the abovementioned penalties are included in the Assessment and Collection of Taxes Laws.

2. *Declaration by the Czech Republic*

An infringement of the tax laws punishable by ‘serious penalty’ is constituted by any infringement of the tax laws penalised by detention, criminal or administrative fines. For these purposes, by ‘infringement of the tax law’ is meant:

(a) failing to pay the charged taxes, social insurance taxes, health insurance taxes and fees paid for state policy of employment;

(b) tax or similar payment evasion;

(c) failing in fulfilling notification duty.

3. *Declaration by the Republic of Estonia*

The term ‘serious penalty’ will be interpreted as signifying criminal penalties for tax fraud pursuant to Estonian domestic law (Penal Code).

4. *Declaration by the Hellenic Republic*

The definition of serious penalty, provided by the Hellenic Republic in 1990, is hereby replaced by the following:

The term ‘serious penalties’ includes administrative penalties for serious tax infringements, as well as criminal penalties for offences committed with respect to the tax laws in accordance with the relevant provisions of the Code of Books and Records, of the Income Tax Code, as well as all specific provisions which define the administrative and criminal penalties in tax law.

5. *Declaration by the Republic of Hungary*

The term ‘serious penalty’ means criminal penalties established in relation to criminal tax offences, or tax penalties in relation to tax defaults in excess of HUF 50 million.

6. *Declaration by the Republic of Latvia*

The term ‘serious penalties’ means administrative penalties for serious tax infringements, as well as criminal penalties.

7. *Declaration by the Republic of Lithuania*

The term ‘serious penalties’ includes criminal penalties and administrative penalties such as penalties for lack of good faith and for opposition to tax inspection.

8. *Declaration by the Republic of Malta*

The term ‘serious penalty’ means a penalty, whether administrative or criminal, imposed on a person who wilfully with intent to evade tax or to assist any other person to evade tax:

(a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under the Income Tax Acts, any income which should be included therein;

or

(b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under the Income Tax

Acts;

or

(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Income Tax Acts;

or

(d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records;

or

(e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance.

9. *Declaration by the Kingdom of the Netherlands*

The definition of serious penalty, provided by the Kingdom of the Netherlands in 1990, is hereby replaced by the following:

The term ‘a serious penalty’ means a penalty imposed by a court due to intentionally committing an offence as listed in Article 68(2), or Article 69(1) or (2), of the General Tax Act.

10. *Declaration by the Portuguese Republic*

The definition of serious penalty, provided by the Portuguese Republic in 1990, is hereby replaced by the following:

The term ‘serious penalties’ includes criminal penalties as well as administrative penalties applicable to tax infringements defined by law as serious or committed with intent to defraud.

11. *Declaration by the Republic of Poland*

The term ‘serious penalty’ means penalty of fine, penalty of imprisonment or both of them imposed jointly, or penalty of deprivation of liberty for culpable infringement of tax law provisions by a taxpayer.

12. *Declaration by the Republic of Slovenia*

The concept of ‘serious penalty’ means a penalty for any infringement of tax law.

13. *Declaration by the Slovak Republic*

The term ‘serious penalty’ means the term ‘fine’ for breach of tax liability understood as a charge imposed according to the Tax Administration Act No 511/1992 of Coll. as amended, pertinent tax laws or the Act on Accounting and the term ‘penalty’ means a penalty imposed according to the Criminal Code for the criminal charges committed in relation to breach of the abovementioned laws.

Hecho en Bruselas, el ocho de diciembre de dos mil cuatro.

V Bruselu dne osmého prosince dva tisíce čtyři.

Udfærdiget i Bruxelles den ottende december to tusind og fire.

Geschehen zu Brüssel am achten Dezember zweitausendundvier.

Kahe tuhande neljanda aasta detsembrikuu kaheksandal päeval Brüsselis.

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VOOR ZIJNE MAJESTEIT DE KONING DER BELGEN

FÜR SEINE MAJESTÄT DER KÖNIG DER BELGIER

Jan De Bock

ZA PREZIDENTA ČESKÉ REPUBLIKY

Jan Kohout

FOR HENDES MAJESTÆT DANMARKS DRONNING

Claus Grube

FÜR DEN PRÄSIDENTEN DER BUNDESREPUBLIK DEUTSCHLAND

Wilhelm Heinrich Schönfelder

EESTI VABARIIGI PRESIDENDI NIMEL

Väino Reinart

ΓΙΑ ΤΟΝ ΠΡΟΕΔΡΟ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Vassilis Kaskarelis

POR SU MAJESTAD EL REY DE ESPAÑA

Carlos Bastarreche Sagües

POUR LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE

Pierre Sellal

THAR CEANN UACHTARÁN NA hÉIREANN

FOR THE PRESIDENT OF IRELAND

Anne Anderson

PER IL PRESIDENTE DELLA REPUBBLICA ITALIANA

Rocco Antonio Cangelosi

ΓΙΑ ΤΟΝ ΠΡΟΕΔΡΟ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Nicholas Emiliou

LATVIJAS REPUBLIKAS MINISTRU KABINETA VĀRDĀ

Peteris Ustubs

LIETUVOS RESPUBLIKOS PREZIDENTO VARDU

Oskaras Jusys

POUR SON ALTESSE ROYALE LE GRAND-DUC DE LUXEMBOURG

Martine Schommer

A MAGYAR KÖZTÁRSASÁG ELNÖKE RÉSZÉRŐL

Tibor Kiss

GĦALL-PRESIDENT TA' MALTA

Richard Cachia Caruana

VOOR HARE MAJESTEIT DE KONINGIN DER NEDERLANDEN

Tom J.A.M. De Bruijn

FÜR DEN BUNDESPRÄSIDENTEN DER REPUBLIK ÖSTERREICH

Gregor Woschnagg

ZA PREZYDENTA RZECZYPOSLITEJ POLSKIEJ

Marek Grela

PELO PRESIDENTE DA REPÚBLICA PORTUGUESA

Alvaro Mendonça E Moura

ZA PREDSEDNIKA REPUBLIKE SLOVENIJE

Ciril Stokelj

ZA PREZIDENTA SLOVENSKEJ REPUBLIKY

Miroslav Adamis

SUOMEN TASAVALLAN PRESIDENTIN PUOLESTA

FÖR REPUBLIKEN FINLANDS PRESIDENT

Eikka Kosonen

FÖR KONUNGARIKET SVERIGES REGERING

Sven-Olof Petersson

FOR HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

John Grant

L.S.

Given under the Official Seal of the Government,

this 21st day of February, 2006.

BERTIE AHERN,
Taoiseach.

Explanatory Note:

(*This note is not part of the Instrument and does not purport to be a legal interpretation).*

This Order gives the force of law in Ireland to the admission to the Convention between the Member States of the European Communities on the elimination of double taxation in connection with the adjustment of profits of associated enterprises of the ten newest Member States of the European Community being the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. The original Convention is contained in S.I. No. 88 of 1994. S.I. 41 of 2004 gave effect to an amendment to the original Convention to facilitate the accession of Austria, Finland and Sweden. S.I. 40 of 2004 gave effect to a Protocol extending the Convention for a further five years to 31 December 2004 and then automatically, for further periods of 5 years unless any Member State objected.

The original Convention provides for a mutual agreement procedure between tax authorities where double taxation has occurred. Where this procedure fails to resolve disputes, it provides for referral to an independent Arbitration Commission.

The double taxation referred to is that which might arise when tax authorities adjust for tax purposes the profits declared by enterprises where such profits result from transactions between associated enterprises in different Member States, and these transactions were at a price which differs from those which would normally apply between independent enterprises. The adjustment of profits may result in an increased tax bill for one of the enterprises and double taxation would occur when the tax authorities of the Member State in which the other enterprise is situated do not make a corresponding reduction in the taxable profits of that other enterprise.

The mutual agreement or arbitration procedures applies in such cases. The taxes which are within the scope of the original Convention, as amended, are specified, and the tax authorities in the Member States are also identified in same. If a company considers that there is double taxation, it may present its case to its tax authority within three years of the event. If a tax authority considers the case to be well-founded and cannot resolve it, it is obliged to attempt to resolve it by mutual agreement with the tax authority of the other Member State. If agreement cannot be reached within two years the tax authorities are required to seek from the Arbitration Commission an opinion as to how the tax should be eliminated. If the two tax authorities do not agree on a resolution of the case within six months of receipt of the Commission's opinion they are obliged to accept the opinion of the Commission. The Commission is empowered to request information from the undertakings and from the tax authorities. Safeguards with regard to confidentiality and secrecy are provided.

The present Convention which admits the 10 new Member States will become operative on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval by these States, but no earlier than the date of entry into force of the Protocol amending the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.