

*Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s788(10), for an Address to Her Majesty from that House praying that the Order be made.*

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DRAFT STATUTORY INSTRUMENTS

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**1998 No.**

**INCOME TAX**

**The Double Taxation Relief (Taxes  
on Income) (Ireland) Order 1998**

Made - - - - 1998

At the Court at Buckingham Palace, the            day of            1998  
Present,  
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(1), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of the said Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Ireland) Order 1998.
2. It is hereby declared—
  - (a) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976(2), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) (No. 2) Order 1976(3) and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1995(4), have been made with the Government of Ireland with a view to affording relief from double taxation in relation to

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(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).  
(2) S.I. 1976/2151.  
(3) S.I. 1976/2152.  
(4) S.I. 1995/764.

income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Ireland; and

- (b) that it is expedient that those arrangements should have effect.

Clerk of the Privy Council

## SCHEDULE

### PROTOCOL

**BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND 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 2ND JUNE 1976, AS AMENDED BY THE PROTOCOLS SIGNED AT DUBLIN ON 28TH OCTOBER 1976 AND AT LONDON ON 7TH NOVEMBER 1994**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland;

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 at Dublin on 2nd June 1976, as amended by the Protocols signed at Dublin on 28th October 1976 and at London on 7th November 1994 (hereinafter referred to as “the Convention”);

Have agreed as follows:

#### *Article I*

Article 5 of the Convention shall be amended as follows:

- (a) sub-paragraph (g) of paragraph (2) shall be deleted and replaced by the following:
  - “(g) an installation or structure used for the exploration of natural resources;
  - (h) a building site or construction or installation project which lasts for more than six months.”
- (b) paragraph (5) shall be deleted and replaced by the following:
  - “(5) A person carrying on activities offshore in a Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that Contracting State shall be deemed to be carrying on a business through a permanent establishment in that Contracting State.”

#### *Article II*

Article 11 of the Convention shall be deleted and replaced by the following:

#### *“Article II*

#### ***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.

- (a) (2) The provisions of paragraph (1) 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.
- (b) In this paragraph the term “superannuation scheme” means:
- (i) in the case of Ireland, a sponsored superannuation scheme within the meaning of section 783(1) of the Taxes Consolidation Act, 1997 or a trust scheme or part of a trust scheme approved under section 784 or section 785 of that Act;
  - (ii) in the case of the United Kingdom, a retirement annuity contract approved under section 620 or section 621 of the Income and Corporation Taxes Act, 1988, a personal pension scheme approved under section 631 of that Act or a relevant superannuation scheme within the meaning of section 645(3) of that Act.
- (3) The term “dividends” for United Kingdom tax purposes includes any item which under the law of the United Kingdom is treated as a distribution and for Irish tax purposes includes any item which under the law of Ireland is treated as a distribution.
- (4) The provisions of paragraphs (1) and (2) 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 case the provisions of Article 8 shall apply.
- (5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.”

### *Article III*

Paragraph (5) of Article 12 of the Convention shall be deleted and replaced by the following:

“(5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.”

### *Article IV*

Article 14 of the Convention shall be deleted and replaced by the following:

#### *“Article 14*

#### ***Capital gains***

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

- (2) Gains derived by a resident of a Contracting State from the alienation of:
- (a) shares, other than shares in which there is substantial and regular trading on a Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or
  - (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in sub-paragraph (a) of this paragraph,

may be taxed in that other State.

(3) 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(4) Except as provided in paragraph (2) of this Article and notwithstanding the provisions of paragraph (3) of this Article, gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

(5) Gains from the alienation of any property other than that referred to 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) The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its law a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the three years immediately preceding the alienation of the property.

(7) For the purposes of this Article the term “immovable property” means immovable property as defined in paragraph (2) of Article 7 of this Convention.”

#### *Article V*

Article 18 of the Convention shall be deleted and replaced by the following:

#### *“Article 18*

##### ***Government service***

- (a) (1) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority, in the discharge of functions of a governmental nature, shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (a) (2) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered

to that State or subdivision or authority, in the discharge of functions of a governmental nature, shall be taxable only in that State.

- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) Paragraphs (1) and (2) of this Article shall respectively apply to salaries, wages and other similar remuneration of an individual employed in an educational institution and to any pension in respect of such employment of an individual formerly so employed, paid directly by, or wholly or mainly from funds provided by, a Contracting State or a political subdivision or a local authority thereof in the same way that they respectively apply to salaries, wages and other similar remuneration and to any pension, paid to an individual in respect of services rendered to that State or subdivision or authority, in the discharge of functions of a governmental nature.

(4) The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.”

#### *Article VI*

Article 20 of the Convention shall be deleted and replaced by the following:

#### *“Article 20*

##### ***Income not expressly mentioned***

(1) 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 or the estates of deceased persons in the course of administration, shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 8 shall apply.

(3) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.”

#### *Article VII*

(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 and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Protocol enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Protocol enters into force;

- (b) in Ireland:

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Protocol enters into force;
- (ii) in respect of corporation tax, for any financial year beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.

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

Done in two originals at London this 4th day of November, 1998.

*Joyce Quin*  
For the Government of the United Kingdom of  
Great Britain and Northern Ireland:

For the Government of Ireland:

*Edward Barrington*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976, as amended by two subsequent Protocols.

The Protocol expands the definition of a permanent establishment to include a building site or construction or installation project which exists for more than six months. The definition of a permanent establishment in connection with offshore activities is clarified (Article 5).

The Protocol removes the entitlement to the payment of tax credits on dividends and provisions rendered unnecessary by changes to UK domestic law (Article 11).

Amendments are made to the Articles dealing with interest and income not expressly mentioned to provide effective provisions against abuse of these Articles (Articles 12 and 20).

Some changes are made to the provisions for capital gains. Gains arising from the disposal of an interest in a partnership or trust whose assets consist principally of immovable property may be taxed in the country in which the property is situated. Taxing rights in respect of gains arising from the disposal of the movable property of a permanent establishment consisting of shares in companies holding immovable property situated in the alienator's country of residence are no longer given exclusively to that country. Gains made by former residents within a 3 year period following their departure may be taxed by the country of former residence (Article 14).

The government service provisions allow for the remuneration and pensions of individuals employed in a publicly funded educational institution to be treated in the same way as an individual who renders services directly to the State (Article 18).

Income not expressly mentioned (excluding income from trusts or estates) will generally be taxed only by the country of which the beneficial owner is a resident except where that beneficial owner has a permanent establishment in the other State and the payment is effectively connected with that permanent establishment (Article 20).

The Protocol will enter into force when both countries have notified each other of the completion of their legislative procedures. It will then take effect in the United Kingdom for any financial year beginning on or after 1st April in respect of corporation tax, and for any year of assessment beginning on or after 6th April in respect of income tax and capital gains tax, in the calendar year next following that in which it enters into force. The date of entry into force will be published in the *London, Edinburgh and Belfast Gazettes*.