

No. 30717

**FINLAND
and
IRELAND**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains (with exchange of notes). Signed at Dublin on 27 March 1992

Authentic texts: Finnish and English.

Authentic text of the Exchange of notes: English.

Registered by Finland on 24 February 1994.

**FINLANDE
et
IRLANDE**

Accord tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôt sur le revenu et de gains en capital (avec échange de notes). Signé à Dublin le 27 mars 1992

Textes authentiques : finnois et anglais.

Texte authentique de l'Échange de notes : anglais.

Enregistré par la Finlande le 24 février 1994.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Republic of Finland and the Government of Ireland,

Desiring to conclude an Agreement 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 Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes Covered

1. The existing taxes to which this Agreement shall apply are:

a) in Finland:

- (i) the state income tax;
- (ii) the communal tax;
- (iii) the church tax; and
- (iv) the tax withheld at source from non-residents' income,

(hereinafter referred to as "Finnish tax");

b) in Ireland:

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

(hereinafter referred to as "Irish tax").

2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

a) the term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;

b) 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 subsoil and their natural resources may be exercised;

c) the terms "Contracting State", "one of the Contracting States" and "the other Contracting State" mean Finland or Ireland, as the context requires; and the term "Contracting States" means Finland and Ireland;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) 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;

g) the term "national" means:

¹ Came into force on 26 December 1993, i.e., 30 days after the date of receipt of the last of the notifications (of 26 November 1993) by which the Contracting Parties had informed each other of the completion of the constitutional requirements, in accordance with article 29 (2).

(i) in relation to Finland, any individual possessing the nationality of Finland and any legal person, partnership and association deriving its status as such from the laws in force in Finland;

(ii) in relation to Ireland, any citizen of Ireland and any legal person, association or other entity deriving its status as such from the laws in force in Ireland;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "tax" means Finnish tax or Irish tax, as the context requires;

j) the term "competent authority" means:

(i) in Finland, the Ministry of Finance or its authorised representative;

(ii) in Ireland, the Revenue Commissioners or their authorised representative.

2. In this Agreement the terms "Finnish tax" and "Irish tax" do not include any penalty or interest imposed under the laws of a Contracting State concerning the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies by virtue of Article 2.

Article 4

Residence

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, the term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the 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 State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both 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 or of neither of them:

a) it shall be deemed to be a resident of Ireland if its place of effective management is situated in Ireland, or

b) it shall be deemed to be a resident of Finland if its place of effective management is situated in Finland or if it is incorporated in Finland and its place of effective management is not situated in Ireland.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

g) an installation or structure used for the exploration or exploitation of natural resources.

3. A building site, or a construction, installation or assembly project constitutes a permanent establishment only if it lasts more than twelve months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State.

Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not 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 of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1, 2, 3 and 4 of this Article, where a person — other than an agent of an independent status to whom paragraph 7 of this Article applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. 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, provided that such persons are acting in the ordinary course of their business.

8. 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 Agreement, income or gains is or are wholly or partly relieved from tax in a Contracting State and, under the laws in force in the other Contracting State, an individual, in respect of the said income or gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other State, and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income or gains as is remitted to or received in that other State.

Article 7

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. a) The term "immovable property" shall, subject to the provisions of sub-paragraphs b) and c) of this paragraph, have the meaning which it has under 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, oil or gas wells, quarries, sources and other natural resources.

c) Ships 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. 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 independent personal 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 wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses (including executive and general administrative expenses) which are incurred for the purposes of the permanent establishment, whether so incurred in the Contracting State in which the permanent establishment is situated or elsewhere, and which would be so allowed if the permanent establishment were an independent entity which had incurred those expenses.

4. 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.

5. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. 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 State.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of

those Articles shall not be affected by the provisions of this Article.

Article 9

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived by a lessor from the rental on a bareboat basis of ships or aircraft if such ships or aircraft are operated in international traffic or if such rental profits are incidental to the profits mentioned in paragraph 1 of this Article.

3. Notwithstanding the provisions of Article 8, profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, except where such containers are used for the transport of goods or merchandise solely between places within the other Contracting State.

4. The provisions of this Article shall also apply to profits from the participation in a pool, a joint business, or an international operating agency.

Article 10

Associated Enterprises

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise

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

Article 11

Dividends

1. a) (i) Dividends derived from a company which is a resident of Finland by a resident of Ireland may be taxed in Ireland.

(ii) Where, under sub-paragraph b) of this paragraph, a resident of Ireland is entitled to a tax credit in respect of such a dividend, tax may also be charged in Finland and according to the laws of Finland on the aggregate of the amount 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 Finland and which are beneficially owned by a resident of Ireland shall be exempt from any tax which is chargeable in Finland on dividends.

b) A resident of Ireland who receives dividends from a company which is a resident of Finland 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 a tax credit in respect thereof equal to one-half of the tax credit to which an individual resident in Finland would have been entitled had he received those dividends, and to the payment of any excess of that tax credit by Finland over any tax chargeable in accordance with the provisions of sub-paragraph a) (ii) of this paragraph on those dividends.

c) The provisions of sub-paragraph b) of this paragraph shall not apply where the beneficial owner of the dividend (being a company) is, or is associated with, 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 from which the dividend is derived. 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.

2. a) (i) Dividends derived from a company which is a resident of Ireland by a resident of Finland may be taxed in Finland.

(ii) Where, under sub-paragraph b) of this paragraph, a resident of Finland is entitled to a tax credit in respect of such a dividend, tax may also be charged in Ireland and according to the laws of Ireland on the aggregate of the amount 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 Ireland and which are beneficially owned by a resident of Finland shall be exempt from any tax which is chargeable in Ireland on dividends.

b) A resident of Finland who receives dividends from a company which is a resident of Ireland 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 Ireland would have been entitled had he received those dividends, and to the payment of any excess of that tax credit by Ireland over any tax chargeable in accordance with the provisions of sub-paragraph a) (ii) of this paragraph on those dividends.

c) The provisions of sub-paragraph b) of this paragraph shall not apply where the beneficial owner of the dividend (being a company) is, or is associated with, 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 from which the dividend is derived. 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. The preceding paragraphs shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, and includes any income or distribution assimilated to income from shares under the taxation laws of the Contracting State of which the company paying the dividends or income or making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. a) If the beneficial owner of a dividend, being a resident of a Contracting State, owns 10 per cent or more of the class of shares of a company in respect of which the dividend is paid, then the provisions of paragraph 1 or 2 of this Article, as appropriate, 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 twelve 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 paragraph 1 or 2 of this Article, as appropriate, shall not apply if:

(i) the beneficial owner of the dividend being a resident of a Contracting State is exempt from tax thereon in that Contracting State; and

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

c) This paragraph shall not apply if the beneficial owner of the dividend shows that the relevant shares were acquired for bona fide

commercial reasons and not primarily for the purposes of securing the benefit of this Article.

Article 12

Interest

1. Interest arising in a Contracting State and derived by a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. The term "interest", as used in this Article, means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, as well as all other income assimilated to income from money lent by the laws of the State in which the income arises but does not include any income which is treated as a dividend 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, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.

4. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and the interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds, for whatever reason, the amount which would have

been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. The provisions of paragraph 1 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 arising in a Contracting State and derived by a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

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 television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, 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, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. The provisions of paragraph 1 of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

Article 14

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 7 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of

a) shares deriving their value or the greater part of their value directly or indirectly from immovable property situated in a Contracting State, or

b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in a Contracting State or of shares referred to in sub-paragraph a) above,

may be taxed in the Contracting State in which such immovable property is situated. In this paragraph the term "shares" does not include shares quoted or listed on a recognised stock exchange.

3. For the purposes of paragraph 2 of this Article the term "a recognised stock exchange" means:

a) the Stock Exchange — Irish;

b) the Helsinki Stock Exchange; and

c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. Gains, other than those dealt with in paragraph 2 of this Article, 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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

5. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers (including trailers, barges and related equipment for the transport of containers) operated in international traffic or movable property pertaining to the operation of such ships, aircraft or containers, shall be taxable only in that State.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists, accountants and veterinary practitioners.

Article 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19, 20 and 21, 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 within any twelve-month period falling wholly or partly within the fiscal year concerned of that other State, 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. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that State.

Article 17

Directors' Fees

Directors' fees and other similar remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18

Entertainers and Sportsmen

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman such as an athlete, footballer, golfer, snooker player, card player or boxer, from his personal activities as such exercised in the other Contracting State whether individually or as a member of a group, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 19

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 of this Article, and subject to the provisions of paragraph 2 of Article 20, pensions paid and other payments made under the social security legislation of a Contracting State may be taxed in that State.

3. 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 20

Government Service

1. a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual:

(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.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the Contracting State of which the individual is a resident if he is a national of that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 21

Students

Payments which a student, apprentice or business, technical, agricultural or forestry

trainee 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 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 that State, provided that such payments arise from sources outside that State.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement, other than income paid out of trusts, 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 referred to in paragraph 2 of Article 7, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base; in which case the provisions of Article 8 or Article 15, as the case may be, shall apply.

Article 23

Miscellaneous Rules Applicable to Certain Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Agreement where activities (in this Article called "relevant activities") are carried on offshore in connection with the exploration or exploitation of the sea bed and subsoil and their natural resources situated in a Contracting State.

2. An enterprise of a Contracting State which carries on relevant activities in the other Contracting State shall, subject to paragraph 3 of this Article, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

3. Relevant activities which are carried on by an enterprise of a Contracting State in the other Contracting State for a period or periods not exceeding in the aggregate 30 days within any period of twelve months shall not constitute the carrying on of business through a

permanent establishment situated therein. For the purposes of this paragraph:

a) where an enterprise of a Contracting State carrying on relevant activities in the other Contracting State is associated with another enterprise carrying on substantially similar relevant activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;

b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

4. A resident of a Contracting State who carries on relevant activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in that other State. However, income derived by a resident of a Contracting State in respect of such activities performed in the other Contracting State shall not be taxable in that other State if the activities are performed in that other State for a period or periods not exceeding in the aggregate 30 days within any period of twelve months.

5. Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with relevant activities in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State.

Article 24

Elimination of Double Taxation

1. In Finland double taxation shall be eliminated as follows:

a) Where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in Ireland, Finland shall, subject to the provisions of sub-paragraph b) of this paragraph, allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Ireland.

Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Ireland.

b) Dividends paid by a company which is a resident of Ireland to a company which is a resident of Finland and controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.

c) For the purposes of sub-paragraph a) of this paragraph, the term "tax on income paid in Ireland" shall be deemed to include any amount of Irish tax which would have been payable on income under Irish taxation law but for any reduction of Irish tax on that income granted under the provisions of Chapter VI of Part I of the Finance Act, 1980, (as those provisions may be amended from time to time without changing the general principle thereof).

2. Subject to the provisions of the laws 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) Finnish tax payable under the laws of Finland and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Finland (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 Finnish tax is computed.

b) In the case of a dividend paid by a company which is a resident of Finland 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 Finnish tax creditable under the provisions of sub-paragraph a) of this paragraph) Finnish tax payable by the company in respect of the profits out of which such dividend is paid.

c) The amount of Finnish tax which, in accordance with sub-paragraph a) of this paragraph, shall be treated as payable under the laws of Finland and in accordance with this Agreement shall, in relation to income to which the provisions of paragraph 1 of Article 11 apply, be subject to the limitations of that paragraph.

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 Agreement shall

be deemed to be derived from sources in that other Contracting State.

4. Where in accordance with any provisions of this Agreement income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 25

Non-Discrimination

1. 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. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to non-residents of that State any exemptions, allowances, reliefs and reductions for tax purposes which it grants to its residents.

4. Except where the provisions of paragraph 1 of Article 10, paragraph 5 of Article 12, or paragraph 5 of Article 13, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. 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 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 the first-mentioned State are or may be subjected.

Article 26

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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action regarded by such resident as resulting in taxation not in accordance with the provisions of this Agreement.

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 a satisfactory 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 which is not in accordance with the provisions of this Agreement. In the event the competent authorities reach an agreement, taxes shall be imposed, and refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreement. It shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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 this Agreement.

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 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the

information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

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

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

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

Article 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

Entry Into Force

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force thirty days after the date of delivery of the later of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

a) in Finland:

(i) in respect of taxes withheld at source, on income, other than a dividend and tax credit in respect thereof, derived on or after 1 January 1990;

(ii) in respect of tax withheld at source from a dividend and tax credit in respect thereof, on a dividend paid for any accounting period of

the company which makes the distribution ending on or after 1 January 1990;

(iii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1 January 1990;

b) in Ireland:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April 1990;

(ii) as respects corporation tax, for any financial year beginning on or after the first day of January 1990.

3. The Convention between the Government of Finland and the Government of Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, signed at Dublin on 21 April 1969,¹ (hereinafter referred to as "the 1969 Convention"), shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 2 of this Article. The 1969 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provision of this paragraph.

4. Where any provision of the 1969 Convention would have afforded any greater relief from tax than is due under this Agreement, any such provision as aforesaid shall continue to have effect for a period of twelve months from the date on which the provisions of this Agreement would otherwise have effect in accordance with the provisions of paragraph 2 of this Article.

5. The Agreement between the Government of Finland and the Government of Ireland for the avoidance of double taxation on income derived from the business of sea and air transport, signed at Dublin on 15 September 1965,² shall not have effect for any period for which the present Agreement has effect.

Article 30

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which this

¹ United Nations, *Treaty Series*, vol. 753, p. 295.

² *Ibid.*, vol. 654, p. 371.

Agreement enters into force. In such event, this Agreement shall cease to have effect:

a) in Finland:

(i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given;

b) in Ireland:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or

after the sixth day of April next following the date on which the period specified in the said notice of termination expires;

(ii) as respects corporation tax, for any financial year beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Dublin this 27 day of March 1992, in the Finnish and English languages, both texts being equally authentic.

For the Government
of the Republic of Finland:

ULF-ERIK SLOTTE

For the Government
of Ireland:

DAVID ANDREWS T.D.

EXCHANGE OF NOTES

I

*The Foreign Minister of Ireland
to the Ambassador of Finland in Dublin*

Your Excellency,

I have the honour to refer to the Agreement between the Government of Ireland and the Government of the Republic of Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which was signed today and to confirm, on behalf of the Government of Ireland, the following understanding reached between the two Governments:

With reference to paragraphs 1 b) and 2 b) of Article 11 the proportion of one-half of the tax credit available to a resident of Finland to which a resident of Ireland will be entitled under the said paragraph 1 b) has been agreed on the grounds that, currently

a) the Irish system of corporation tax provides for the imputation of one-half of the tax paid by a company by way of a tax credit carried by a dividend paid to a shareholder,

b) the Finnish system of taxing companies provides for the imputation of all of the tax paid by a company by way of a tax credit carried by a dividend paid to a shareholder, and

c) the rates of corporation tax, being in the case of Ireland, 40 per cent and, in the case of Finland, 36 per cent for the year 1992 and subsequent years.

Thus, the giving of one-half of the tax credit to which a resident of Finland would be

entitled to an Irish resident in receipt of a dividend from a company resident in Finland strikes a reasonable balance in these circumstances.

It has been agreed, however, that in the event that the rate of corporation tax or the rate of the tax credit carried by a dividend should change in either Ireland or Finland, the competent authorities of both countries shall notify each other of such changes, shall consider whether the rate of one-half or some other rate is appropriate in the light of the new circumstances and, if the rate of one-half is no longer warranted, the Governments of Finland and Ireland shall re-negotiate paragraphs 1 b) and 2 b) of Article 11.

I have further the honour to request you to be good enough to confirm the foregoing understanding on behalf of the Government of Finland.

I avail myself of this opportunity to extend to you, Your Excellency, the assurance of my highest consideration.

Dublin, 27 March, 1992

DAVID ANDREWS T.D.
Minister for Foreign Affairs

II

*The Ambassador of Finland in Dublin
to the Foreign Minister of Ireland*

Your Excellency,

I have the honour to acknowledge receipt of your Note of today's date which reads as follows:

[*See note I*]

I have further the honour to confirm on behalf of my Government that the foregoing is

also the understanding of the Government of Finland.

I avail myself of this opportunity to extend to you, Your Excellency, the assurance of my highest consideration.

Dublin, 27 March, 1992

ULF-ERIK SLOTTE
Ambassador of Finland