

No. 33069

**IRELAND
and
DENMARK**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol and exchanges of notes). Signed at Dublin on 26 March 1993

Authentic text: English.

Registered by Ireland on 26 August 1996.

**IRLANDE
et
DANEMARK**

Convention visant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole et échanges de notes). Signée à Dublin le 26 mars 1993

Texte authentique : anglais.

Enregistrée par l'Irlande le 26 août 1996.

CONVENTION¹ BETWEEN THE GOVERNMENT OF IRELAND
AND THE GOVERNMENT OF THE KINGDOM OF DENMARK
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PRE-
VENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME

The Government of Ireland and the Government of the Kingdom of Denmark desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows:

Article 1

Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including

¹ Came into force on 8 October 1993 by notification, in accordance with article 29.

taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) In the case of Denmark:

- (i) the income tax to the State (indkomstskatten til staten);
- (ii) the municipal income tax (den kommunale indkomstskat);
- (iii) the income tax to the county municipalities (den amtskommunale indkomstskat);
- (iv) the special income tax (den saerlige indkomstskat);
- (v) the church tax (kirkeskatten);
- (vi) the tax on dividends (udbytteskatten);
- (vii) the tax on interest (renteskatten);
- (viii) the tax on royalties (royaltyskatten); and
- (ix) taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinteskatteloven);

(hereinafter referred to as "Danish tax").

b) In the case of Ireland:

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

(hereinafter referred to as "Irish tax").

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

Article 3

General Definitions

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

- a) The term "Denmark" includes any area outside the territorial waters of Denmark which, in accordance with international law, has been or may hereafter be designated under the laws of Denmark as an area of the Continental Shelf or its superjacent waters within which the rights of Denmark with respect to the sea, sea-bed and subsoil and their natural resources may be exercised; the term does not comprise the Faroe Islands and Greenland;
- 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 as an area of the Continental Shelf or its superjacent waters within which the rights of Ireland with respect to the sea, 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 Denmark or Ireland, as the context requires; and the term "Contracting States" means Denmark 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 "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "a national" means:
- (i) 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;
 - (ii) in relation to Denmark, any individual possessing the nationality of Denmark and any legal person or association deriving its status as such from the laws in force in Denmark;
- i) the term "competent authority" means:
- (i) in Denmark: the Minister for Taxation or his authorised representative;
 - (ii) in Ireland: the Revenue Commissioners or their authorised representative.

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

Article 4

Resident

1. For the purposes of this Convention, 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. But this 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 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- 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 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 Denmark if its place of effective management is situated in Denmark or if it is incorporated in Denmark and its place of effective management is not situated in Ireland.

Article 5

Permanent Establishment

1. For the purposes of this Convention, 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, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. 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 subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 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 4 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.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

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. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

4. The provisions of paragraphs 1 and 3 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 7

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, 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 which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, 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.

7. Where profits include items of income or gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping, Air Transport and Containers

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. 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 the Contracting State in which the place of effective management of that enterprise is situated except insofar as those containers, trailers, barges and related equipment are used for transport solely between places within the other Contracting State.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

5. The provisions of paragraphs 1 and 4 shall apply to profits derived by the joint Danish, Norwegian and Swedish air transport

consortium Scandinavian Airlines System (SAS), but only to such proportion of the profits as corresponds to the participation in that consortium held by Det Danske Luftfartsselskab (DDL), the Danish partner of the Scandinavian Airlines System (SAS).

Article 9

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 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 the tax charged therein

on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

1. a) Dividends paid by a company which is a resident of Denmark to a resident of Ireland may be taxed in Ireland;
- b) Where the dividends are beneficially owned by a company (other than a partnership) which holds directly less than 25 per cent of the capital of the company paying the dividends, or by an individual, tax may also be charged in Denmark and according to the laws of Denmark on the gross amount of the dividends at a rate not exceeding 15 per cent;
- c) Except as provided in subparagraph b) of this paragraph, dividends paid by a company which is a resident of Denmark and which are beneficially owned by a resident of Ireland shall be exempt from any tax in Denmark which is chargeable on dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

2. a) Dividends paid by a company which is a resident of Ireland to a resident of Denmark may be taxed in Denmark;

- b) Where, under paragraph 3 of this Article, a resident of Denmark is entitled to a tax credit in respect of such dividend, tax may also be charged in Ireland and according to the laws of Ireland on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent;
- c) Except as provided in subparagraph b) of this paragraph, dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of Denmark shall be exempt from any tax in Ireland which is chargeable on dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Denmark who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph 4 of this Article and provided the resident of Denmark 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 that individual 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 paragraph 2 b) on those dividends.

4. The provisions of paragraph 3 shall not apply where the beneficial owner of the dividends (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 25 per cent or more of the voting power in the company from which the dividend is received. For the purposes of this 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.

5. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 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 State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. 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 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 11

Interest

1. Interest arising in a Contracting State and paid to 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, including premiums and prizes attaching to such securities, bonds or debentures, but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 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 7 or Article 14, as the case may be, shall apply.

4. 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 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 Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to 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 cinematographic films, 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 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 7 or Article 14, as the case may be, shall apply.

4. 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 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 Convention.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and

situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares, rights or an interest in a company, in any other legal person or in a partnership, the assets of which consist principally of, or of rights in, immovable property situated in a Contracting State or of shares in a company the assets of which consist principally of, or of rights in, such immovable property situated in a Contracting State may be taxed in the State in which the immovable property is situated where, under the laws of that State, such gains are subject to the same taxation rules as gains from the alienation of immovable property.

3. 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.

4. Gains 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 the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods and merchandise shall be taxable only in the Contracting State in which the place of effective management of that enterprise is situated except insofar as those containers, trailers, barges and related equipment are used for transport solely between places within the other Contracting State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

7. The provisions of paragraph 4 shall apply to gains derived by the joint Danish, Norwegian and Swedish air transport consortium Scandinavian Airlines System (SAS), but only to such proportion of the gains as corresponds to the participation in that consortium held by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

8. In the case of an individual who is a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 6 shall not affect the right of the first-mentioned Contracting State under its national law to tax the individual in respect of capital gains on shares, up to the change of residence of the individual.

Article 14

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, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State, and
- d) the employment is not a case of hiring out of labour.

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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Denmark.

Article 16

Directors' Fees

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

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such, accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or athletes if the visit to that State is substantially supported by public funds of the other Contracting State or a political subdivision or a local authority thereof.

Article 18

Pensions, Annuities and Similar Payments

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

2. Payments received by an individual being a resident of a Contracting State from a statutory social insurance scheme or under the social security legislation of the other Contracting State may be taxed in that other State.

3. Notwithstanding the provisions of paragraph 1, in the case of an individual who was a resident of one Contracting State and has become a resident of the other Contracting State, pensions, annuities and other similar remuneration accruing to such individual from the first-mentioned State may be taxed in that State under its national laws unless such individual is a national of the other Contracting State without also being a national of the first-mentioned Contracting State.

4. The term "annuities" means stated sums payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make payments in return for adequate and full consideration in money or money's worth.

Article 19

Government Service

1. a) 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 shall be taxable only in that State.

- b) However, such 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.

2. a) 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 shall be taxable only in that State.

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

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and 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 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned 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 21

Other Income

1. Items of income of a resident of a Contracting State wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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, 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 such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22

Activities in connection with Preliminary Surveys, Exploration or Extraction of Hydrocarbons.

1. Notwithstanding the provisions of Article 5 and Article 14, a person who is a resident of one of the Contracting States and carries on activities in connection with preliminary surveys, exploration or extraction of hydrocarbons situated in the other Contracting State shall be deemed to be carrying on in respect of those activities a business in that other Contracting State through a permanent establishment or fixed base situated therein.

2. Notwithstanding the provisions of paragraph 1, drilling rig activities carried on off-shore shall constitute a permanent establishment only if the activities are carried on for a period or periods exceeding 365 days in aggregate in any 18-month period. However, for the purpose of this paragraph, activities carried on by an enterprise related to another enterprise within the meaning of Article 9 shall be regarded as carried on by the enterprise to which it is related if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

3. Notwithstanding the provisions of paragraph 1, profits derived by an enterprise of a Contracting State from the transportation by ship or aircraft of supplies or personnel to a location where off-shore activities in connection with preliminary surveys, exploration or extraction of hydrocarbons are being carried on in the other Contracting State or from the operation of tugboats and similar vessels in connection with such activities, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of labour or personal services rendered aboard a ship or aircraft covered by paragraph 3 shall be taxed in accordance with paragraph 3 of Article 15.

5. Notwithstanding the provisions of Article 13, a capital gain on drilling rigs used for activities mentioned in paragraph 2 which is deemed to be derived by a resident of a Contracting State when the rig activities cease to be subject to tax in the other Contracting State shall be exempt from tax in that other State. For the purpose of this paragraph, the term "capital gain" means the amount by which the market value at the moment of transfer exceeds the residual value at that moment, as increased by any depreciation taken.

Article 23

Methods for Elimination of Double Taxation

Double taxation shall be avoided as follows:

1. In the case of Denmark:

- a) Subject to the provisions of subparagraphs b) and c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Ireland, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Ireland;

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

- b) Subject to the provisions of subparagraph a) of paragraph 6 of this Article, dividends paid by a company which is a resident of Ireland to a company which is a resident of Denmark and owns at least 25 per cent of the share capital of the company paying the dividends shall be exempt from tax in Denmark.
- c) Where a resident of Denmark derives income which, in accordance with the provisions of this Convention shall be taxable only in Ireland or may be taxed in Ireland in accordance with Article 15, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax, which is attributable to the income derived from Ireland.
- d) In the case of a dividend paid by a company which is a resident of Ireland to a company which is a resident of Denmark and which owns at least 25 per cent of the share capital of the company paying the dividend, if the dividend

is not exempt from Danish tax in accordance with subparagraph b), the credit for the purposes of subparagraph a) of this paragraph shall take into account the Irish tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid.

2. In the case of Ireland, 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 thereof):

- a) Danish tax payable under the laws of Denmark and in accordance with the Convention, whether directly or by deduction, on profits, income or gains from sources within Denmark (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 gains by reference to which Danish tax is computed.
- b) In the case of a dividend paid by a company which is a resident of Denmark to a company which is a resident of Ireland and which controls directly or indirectly 25 per cent or more of the share capital in the company paying the dividend, the credit shall take into account (in addition to the Danish tax, if any, creditable under the provisions of subparagraph a) of this paragraph) Danish tax payable by the company in respect of the profits out of which such dividend is paid.
- c) For the purposes of this paragraph, profits, income and capital gains owned by a resident of Ireland which may be taxed in Denmark shall be deemed to be derived from sources in Denmark.
- d) Where in accordance with any provision of the Convention income derived by a resident of Ireland is exempt from tax in that State, Ireland may nevertheless, in

calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. Where in accordance with the laws of a Contracting State a reduction of tax on the profits (hereafter in this Article referred to as "tax relieved profits") of an enterprise is granted for a temporary period for the purposes of encouraging economic development in that State, the reference in subparagraph a) of paragraph 1 of this Article to "income tax paid" or in subparagraphs a) or b) of paragraph 2 of this Article to "tax payable", as the case may be, shall be deemed as respects any year or accounting period in which such a reduction takes place to include any amount of tax which would have been payable on the profits of an enterprise in that year or accounting period but for the reduction.

4. Where shares the capital gain on which has been taxed in accordance with paragraph 8 of Article 13 are subsequently alienated and the gains from such shares are taxed in the State of residence of the alienator in accordance with paragraph 6 of Article 13 that State shall allow as a deduction from the tax on the gain, an amount equal to the income tax which was paid in the other Contracting State.

Such deduction shall not, however, exceed that part of the income tax before the deduction is given which is attributable to the gain which was taxed in the other Contracting State in accordance with paragraph 8 of Article 13.

5. Where, under any provision of this Convention, 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 Convention 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.

6. Notwithstanding the foregoing provisions of this Article:

a) In the case of tax relieved profits, subparagraph b) of paragraph 1 and paragraph 3 of this Article shall apply only to profits, or to dividends paid out of such profits, being profits from manufacturing or selling goods or merchandise or rendering services, other than financial services, unless the competent authorities, having consulted each other, agree that they shall apply to profits and dividends from certain financial services,

and

b) paragraph 3 of this Article and subparagraph a) of this paragraph shall apply to 1 January 2000 only. However, by exchange of notes given through diplomatic channels, the period of application may be extended to such date and subject to such modifications and amendments as the competent authorities, having consulted each other, may agree.

Article 24

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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be

construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, 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.

4. 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.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person 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 Convention, 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 24, 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 resulting in taxation not in accordance with the provisions of the Convention.

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 Convention. Any agreement reached 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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the

Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State 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 the Convention. 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 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 27

Diplomatic Agents and Consular Officers

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

Article 28

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modifications to any part of the territory of the Contracting States which is specifically excluded from the application of the Convention or to any State or territory for whose international relations Denmark is responsible, and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 30 shall also terminate, in the manner provided for in that Article, the application of the Convention to any part of the territory of the Contracting States or to any State or territory to which it has been extended under this Article.

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 Convention have been complied with.

2. The Convention shall enter into force on the date of receipt of the later of these notifications and shall thereupon have effect:

a) in Denmark:

in respect of taxes on income relating to the income year beginning on or after the first day of January next following that in which the Convention enters into force and subsequent income years;

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 this Convention enters into force;

ii) as respects corporation tax, for any financial year beginning on or after the first day of January in the year next following the year in which this Convention enters into force.

c) notwithstanding subparagraphs a) and b), in both countries:

in respect of taxes on dividends paid on or after a day which is thirty days after the date on which the Convention enters into force.

3. The Convention between the Royal Danish Government 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 Copenhagen on 4 February, 1964,¹ (hereinafter referred to as "the 1964 Convention"), shall cease to have effect from the dates on which this Convention becomes effective in accordance with paragraph 2.

4. The Agreement, dated the 18th October, 1954, between the Government of Ireland and the Royal Danish Government for the avoidance of double taxation on income derived from the business of sea and air transport² shall not have effect for any period for which this Convention has effect.

¹ United Nations, *Treaty Series*, vol. 525, p. 233.

² *Ibid.*, vol. 218, p. 295.

Article 30

Termination

This Convention shall remain in force indefinitely but either of the Contracting States may on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, the Convention shall cease to have effect:

a) in Denmark:

in respect of taxes on income relating to the income year next following that in which the notice is given and subsequent income years;

b) in Ireland:

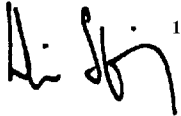
i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April next following the date on which the period specified in the said notice of termination expires;

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 by their respective Governments, have signed this Convention.

DONE in duplicate at Dublin this 26 day of March, 1993, in the English language.

For the Government
of Ireland:

Handwritten signature of Dick Spring, with a small superscript '1' to the right.

For the Government
of the Kingdom of Denmark:

Handwritten signature of C. U. Haxthausen, with a small superscript '2' to the right.

¹ Dick Spring.

² C. U. Haxthausen.

Protocol

At the moment of signing the Convention between the Government of Ireland and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With reference to paragraph 2 of Article 6, it is understood that the term "immovable property" also includes:
 - i) any option or similar right in respect of any property which, under the provisions of that paragraph, is immovable property,
 - ii) rights to explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources.

2. Where under the laws of a Contracting State an amount is treated as a dividend or as interest, as the case may be, but that amount would not be so treated under the laws of the other Contracting State, nothing in paragraph 5 of Article 10, paragraph 2 of Article 11 or paragraphs 1 and 2 of Article 23 shall require that other Contracting State to apply the same treatment as in the first-mentioned Contracting State. However the competent authorities shall endeavour by such means, if any, as seems appropriate to them, including the acceptance by both States of the same treatment of the amount in question, to avoid any double taxation. The mutual agreement procedures shall apply for this purpose.

3. With reference to paragraph 2 of Article 13, it is understood, that the word "principally" shall be construed as referring to shares deriving at least 50 per cent of their value directly or indirectly from immovable property situated in a Contracting State.

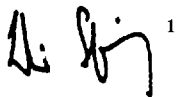
4. With reference to subparagraph d) of paragraph 2 of Article 15, employees resident in a Contracting State shall be deemed to be hired out if they are placed at another person's disposal by a person (the employment agent) to carry out work in the business of such other person (the principal), situated in another Contracting State, provided that the principal is resident or has a permanent establishment in that other State, and that the employment agent has no responsibility and does not bear any risk in respect of the result of the work.

5. With reference to subparagraph a) of paragraph 6 of Article 23 it is understood, that the paragraph may apply to the profits from genuine banking and insurance business including income and dividends from investments held for the purposes of such a business.


IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Dublin this 26 day of March, 1993, in the English language.

For the Government
of Ireland:

A handwritten signature in black ink, appearing to be 'D. Spring', followed by a superscripted number '1'.

For the Government
of the Kingdom of Denmark:

A handwritten signature in black ink, appearing to be 'C. U. Haxthausen', followed by a superscripted number '2'.

¹ Dick Spring.

² C. U. Haxthausen.

EXCHANGE OF NOTES

I a

OIFIG AN TÁNAISTE AGUS AN AIRE GNÓTHAÍ EACHTRACHA
OFFICE OF THE TÁNAISTE AND MINISTER FOR FOREIGN AFFAIRS

BAILE ÁTHA CLIATH 2
DUBLIN 2

26 March, 1993

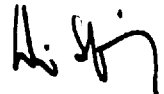
Your Excellency,

I have the honour to refer to the Convention signed today between the Government of Ireland and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to inform you on behalf of the Government of Ireland of the following:

In the course of the negotiations leading to the conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance to the taxpayers of our two countries in interpreting subparagraph a) of paragraph 6 of Article 23 (Methods for Elimination of Double Taxation) insofar as it relates to financial services activities. This memorandum of understanding, attached to this Note, represents the views of the Government of Ireland with respect to subparagraph a) of paragraph 6 of Article 23 insofar as it relates to financial services activities.

If your Government shares the above mentioned understanding I propose that this Note and your affirmative answer will indicate that our Governments share a common understanding of the role of the memorandum of understanding relating to subparagraph a) of paragraph 6 of Article 23. This agreement shall enter into force on the same date as the entry into force of the said Convention.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.



DICK SPRING T.D.
Tánaiste and Minister for Foreign Affairs

H. E. Mr. C. U. Haxthausen
Ambassador Extraordinary and Plenipotentiary
of the Kingdom of Denmark

MEMORANDUM OF UNDERSTANDING

As respects subparagraph a) of paragraph 6 of Article 23, at the time of entering into force of this Convention the competent authorities, having consulted each other, have agreed that

- the purpose of the consultation process referred to in that subparagraph in relation to financial services is to prevent financial services based schemes whose sole or chief purpose is the general avoidance of taxation from gaining access to the benefits of subparagraph b) of paragraph 1 and paragraph 3 and both competent authorities avow and affirm that there is no desire or intent to prevent genuine commercially based financial services projects from gaining access to those benefits and it is avowed and affirmed that such projects will gain such access,
- they shall devise a set of procedures to ensure that the consultation process shall be carried out without undue delay, so that the acceptance or rejection of a project will be communicated to the promoters as quickly as possible. A resident of either country may seek the assistance of either of the competent authorities if the resident is of the opinion that the other competent authority is causing undue delay in carrying out its part of the consultation process, and
- the competent authorities may enter into agreement from time to time that certain clearly defined types of financial services are acceptable to both competent authorities and may agree that such financial services shall be entitled to the aforementioned benefits without the need to go through the consultation process. It is further agreed that the substance of such agreements may be made public by either or both competent authorities.

II a

ROYAL DANISH EMBASSY

Dublin 26 March, 1993

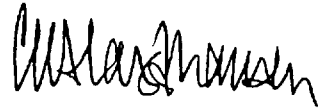
Dear Tánaiste,

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

[See note I a]

I have the honour to inform you that my Government agrees to the above.

I avail myself of this opportunity to renew to you, Tánaiste, the assurance of my highest consideration.



C. U. HAXTHAUSEN

Mr. Dick Spring T.D.
Tánaiste and Minsiter for Foreign Affairs
Dublin

[Annex as under note I]

I b

ROYAL DANISH EMBASSY

Dublin 26 March, 1993

Dear Tanaiste,

With reference to the Convention between the Government of Ireland and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed today, I have the honour to state that it is the understanding of the Government of the Kingdom of Denmark that the Convention shall be without prejudice to the question of the overlapping continental shelf claims made by the Government of Ireland and the Government of the Kingdom of Denmark, respectively.

If your Government shares the above mentioned understanding I propose that this note and your affirmative answer constitute an agreement between our two countries to that effect. This agreement shall enter into force on the same date as the entry into force of the said Convention.

Please accept, Tánaiste, the assurances of my highest consideration.



C. U. HAXTHAUSEN

Mr. Dick Spring T.D.
Tánaiste and Minister for Foreign Affairs
Dublin

II b

OIFIG AN TÁNAISTE AGUS AN AIRE GNÓTHAÍ EACHTRACHA
OFFICE OF THE TÁNAISTE AND MINISTER FOR FOREIGN AFFAIRS

BAILE ÁTHA CLIATH 2
DUBLIN 2

26 March, 1993

Your Excellency,

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

[*See note I b*]

In response I have the honour to state that the Government of Ireland accepts the proposal of the Government of the Kingdom of Denmark and agrees that Your Excellency's Note and the present Note constitute an agreement between our two Governments to that effect.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DICK SPRING, T.D.
Tánaiste and Minister for Foreign Affairs

H. E. Mr. C. U. Haxthausen
Ambassador Extraordinary and Plenipotentiary
of the Kingdom of Denmark
