# PROTOCOL

## AMENDING THE CONVENTION BETWEEN IRELAND AND SWEDEN

## FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED IN STOCKHOLM ON 8 OCTOBER 1986

The Government of Ireland and the Government of Sweden;

Desiring to conclude a Protocol to amend the Convention between Ireland and Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed in Stockholm on 8 October 1986 (hereinafter referred to as "the Convention");

Have agreed as follows:

# ARTICLE 1

Subparagraph (b) of paragraph (1) of Article 2 of the Convention shall be deleted and replaced by the following:

"(b) in Sweden:

(i) the State income tax (den statliga inkomstskatten), including the sailors' tax (sjomansskatten) and the coupon tax (kupongskatten);

(ii) the special income tax on non-residents (sarskild inkomstskatt for utomlands bosatta);

(iii) the special income tax on non-resident artistes and athletes (sarskild inkomstskatt for utomlands bosatta artister m.fl.); and

(iv) the communal income tax (den kommunala inkomstskatten);

(hereinafter referred to as “Swedish tax”).”

# ARTICLE 2

(1) Paragraph (3) of Article 24 of the Convention shall be deleted.

(2) Paragraph (4) of Article 24 of the Convention shall be deleted and replaced by the following:

"(3) Notwithstanding the provisions of paragraph (2) of this Article, dividends paid by a company which is a resident of Ireland to a company which is a resident of Sweden shall be exempt from Swedish tax to the extent that the dividends would have been exempt from Swedish tax if both companies had been Swedish companies. This provision however is only applicable if:

(a) the profits out of which the dividends are paid have been subjected to the normal corporate tax in Ireland or a tax comparable to the Swedish corporate tax in Ireland or elsewhere; or

(b) the dividends paid by the company which is a resident of Ireland consist wholly or almost wholly of dividends which that company has received in respect of shares held by it in a company which is a resident in a third state and which would have been exempt from Swedish tax if the shares in respect of which they are paid had been held directly by the company which is a resident of Sweden."

(3) Paragraph (5) of Article 24 shall be re-numbered paragraph (4) and amended by the deletion of the following:

"or shall be exempt from Swedish tax in accordance with paragraph (3) of this Article".

(4) Paragraphs (6) and (7) of Article 24 shall be re-numbered paragraphs (5) and (6), respectively.

(5) Subparagraph (a) of paragraph (8) of Article 24 shall be re-numbered paragraph (7), the reference to paragraph (4) in that subparagraph shall be amended to paragraph (3) and subparagraphs (b) and (c) of paragraph (8) shall be deleted.

(6) The following paragraph shall be inserted after paragraph 7:

"(8) (a) Where 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) the profits of a company were relieved from Irish tax, then—

(i) for the purposes of paragraph (2), in the case of income which may be taxed in Ireland in accordance with the provisions of Article 8, the reference in that paragraph to "an amount equal to the Irish tax paid in respect of such income" shall have effect as if the Irish tax paid were an amount equal to one half of the Swedish tax payable on that income,

(ii) for the purposes of paragraph (3), the reference to "the normal corporate tax in Ireland" shall be deemed to include the tax chargeable under those provisions,

(iii) for the purposes of paragraph (7), if the recipient of a dividend out of those profits, if he were a resident of Ireland, would be entitled to a reduced tax credit in respect of the dividend, the amount to be allowed as a deduction under that paragraph shall be deemed to be an amount arrived at by applying to the gross aggregate amount referred to in that paragraph a rate per cent equal to three- fifths of the Swedish tax rate applicable to that gross aggregate amount.

(b) Notwithstanding anything in subparagraph (a), where the profits of a company relieved from Irish tax under the provisions referred to in that subparagraph are profits from the carrying on by that company of financial services activities, this paragraph shall not apply to such profits, or to any dividends paid out of such profits, unless the competent authorities, having consulted each other, agree that the activities are such that this paragraph shall apply to profits from those activities and to any dividends paid out of those profits.

(c) The paragraph shall not have effect in relation to profits arising after 31 December, 2000, or to dividends paid out of such profits.

Provided that the competent authorities may, at the request of either competent authority (made not later than 30 June, 1997), review the scope and application of this paragraph and, if it appears to either or both of them—

(i) that the paragraph should be renegotiated, such renegotiation shall be entered into immediately, or

(ii) that the date (31 December, 2000) should be changed, the date shall be changed to such date (not being earlier than 31 December, 1997) as may be agreed by the exchange of written notice through diplomatic channels."

## ARTICLE 3

(1) Each of the Contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Protocol.

(2) This Protocol shall enter into force immediately after the expiration of thirty days following the date of the later of these notifications and shall thereupon have effect.

## ARTICLE 4

Notwithstanding the preceding Articles of this Protocol, income and dividends accruing to a resident of Sweden out of profits which are derived before the entry into force of this Protocol by a company resident in Ireland or by a permanent establishment in Ireland of that resident of Sweden will, up to and including 31 December, 1994, be entitled to the same exemptions and reliefs to which they would have been entitled under the Convention between Ireland and Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed in Stockholm on 8 October, 1986, if this Protocol had not entered into force.

However, the provisions of this Article shall not apply where the profits of the company resident in Ireland or of the permanent establishment in Ireland are profits from the carrying on by that company or permanent establishment of a financial services activity in Ireland, unless the competent authorities agree that subparagraph (a) of paragraph (8) of Article 24 of the said Convention, as amended by this Protocol, would, whether or not the company or the permanent establishment has stopped trading, apply if the activities have been carried out after the entry into force of this Protocol to profits from that activity or to dividends paid out of them.

## ARTICLE 5

This Protocol shall cease to have effect at such time as the Convention ceases to have effect in accordance with Article 31 of the Convention.

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

Done at Dublin this 1st day of July, 1993 in duplicate in the English language.

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| For the Government of Ireland: | For the Government of Sweden: |
| Dick Spring | Margareta Hegardt |

# EXPLANATORY NOTE.

This Order gives the force of law in Ireland to the Protocol amending the Convention between Ireland and Sweden set out in the Schedule to the Order.

The Protocol amends the list of Swedish taxes to which the Convention applies.

The Protocol also provides for amendments to the manner in which Sweden provides relief from double taxation while still preserving the benefits of Ireland's tax incentives. Under the terms of the Protocol Sweden will relieve double taxation by way of an exemption from further taxation where dividends are paid by an Irish company to a Swedish company and where such an exemption would have applied if both companies were resident in Sweden. The effect of this is that a Swedish company with a 25 per cent or more holding in the Irish company paying the dividend will be exempt from Swedish tax on that dividend. For the purposes of this exemption, dividends out of profits taxed at only 10 per cent under the Irish tax incentive regime are to be regarded as dividends paid out of profits taxed at a normal rate in Ireland.

The exemption from Swedish tax for Irish branch profits of a Swedish company has been replaced by a system of credit for the Irish tax paid. However, insofar as the profits of an Irish branch of a Swedish company are subject to taxation under the Irish 10 per cent scheme there is provision for a matching credit against Swedish tax equal to one half of the Swedish tax due on those branch profits.

In the case of portfolio investors in receipt of dividends with reduced tax credits as a result of the Irish incentives matching credit by way of a deduction of 3/5ths of the Swedish tax rate applicable to the aggregate amount of the dividend and the tax credit will be granted.

Profits, or dividends paid out of such profits, of a company carrying on financial services activities which are relieved from Irish tax under the Irish incentive provisions will qualify for the above mentioned relief's only when the competent authorities of the two countries agree that they should. A consultation process and principles for determining that a financial services project is genuine have been agreed pursuant to a Memorandum of Understanding signed by the competent authorities, details of which follow this note.

The Protocol provides that the tax sparing relief's provided by Sweden will apply to 31 December, 2000. There is a provision for this date to be amended by way of negotiation where the necessary steps are taken before 30 June, 1997.

The existing provisions of the Convention will continue to apply until 31 December, 1994 for income and dividends accruing to a resident of Sweden out of profits which are derived before the entry into force of the Protocol. In the case of income from financial services activities, this provision is again subject to the agreement of the competent authorities.

The provisions of the Protocol will enter into force thirty days after the two States have notified each other of the completion of the necessary domestic procedures to give the Protocol the force of law and will be effective from that date.

# APPENDIX

Subparagraph (b) of paragraph 8 of the Convention as inserted by paragraph 6 of Article 2 of the Protocol provides for a consultation process to ascertain if certain financial services activities qualify for the benefit of the relief's set out in Article 24 of the Convention. The competent authorities of both countries have agreed details of a consultation process together with principles for determining that a financial services project is genuine for the purposes of Article 24 and details are set out in the Appendix and Annexes thereto which follow. It should be noted that these documents do not form part of the Protocol.

# MEMORANDUM OF UNDERSTANDING

As respects subparagraph (b) of paragraph 8 of Article 24, at the time of entering into force of this Protocol 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 paragraph 3 and paragraph 8 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,

— to devise a set of procedures to ensure that the consultation process shall be carried out without undue delay, Annex "A", 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,

—to devise a set of principles for the determining that a financial services project is genuine within the terms of the consultation process, Annex "B", and

—that 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.

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|---|---|
| Done in Dublin on | Done in Stockholm on |
| 12 February, 1993 | 1 February, 1993 |
| For the competent | For the competent |
| authority of Ireland | authority of Sweden |
| Mr. Frank Cassells | Mr. Stefan Ersson |

# Annex "A"

**CONSULTATION PROCESS FOR THE APPROVAL OF PROJECTS FOR THE PURPOSES OF THE SWEDEN/IRELAND PROTOCOL**

1. Proposals for a project may be submitted to either competent authority (hereinafter referred to as the "first mentioned authority").

2. It will be the responsibility of the promoters of the project to ensure that all aspects of the project are made known to the competent authorities. This shall include not only the aspects of the project to be carried on in the Contracting State in which the project will be located but any matters which would be of concern to the Revenue authorities of the other Contracting State with regard to the intended activities of the promoters or their investors. Failure to disclose a material fact or any unapproved alteration of a material fact may result in any acceptance of a project being withdrawn, which might result in the loss of certain benefits of the Convention, from such date which may be a date retrospective to the date approval was given, or such later date as the competent authorities shall agree.

3. The first mentioned authority shall examine the project after obtaining such additional information, if any, from the promoters as it deems necessary.

4. The first mentioned authority having examined the project and made a decision as to its acceptability or otherwise shall pass the papers on the project to the other competent authority indicating its decision in relation to the project and the reasons for the decision. The other competent authority shall then examine the project and may request such additional information, if any, from the promoters as it deems necessary. If the other competent authority agrees with the decision of the first mentioned competent authority it shall so communicate that agreement to the first mentioned authority and, accordingly, the project shall be accepted or rejected as the case may be. The promoters shall be so informed by the first mentioned authority. In the case of a rejection the reasons for the rejection shall be communicated to the promoters who may, if they so wish, resubmit the project with the objectionable aspects removed or may make further representations with regard to any of the objectionable points raised by the competent authorities.

5. If there is not agreement, the other competent authority shall indicate to the first mentioned competent authority the reasons why it so disagrees. The first mentioned competent authority may, if it so deems appropriate, attempt to arrive at a reconciliation between the conflicting views of the competent authorities with such assistance from the promoters as shall be deemed appropriate. Alternatively they may refer the matter back to the promoters for amendment or further representation as at 4 above.

6. Both competent authorities pledge themselves to ensuring that the aforementioned consultation procedures shall be implemented with the maximum degree of dispatch consistent with the needs of ensuring that a correct decision is made. In general the competent authorities will strive to give a decision within 4 to 6 weeks.

7. On the basis of the information provided by the promoter of the project, the competent authorities, if requested, will give a non-binding advance indication as to whether the project is likely to be approved or rejected, always subject to confirmation following full investigation.

8. The substance of these consultation procedures may be made public by either or both competent authorities.

# Annex "B"

**PRINCIPLES FOR THE ACCEPTANCE THAT A FINANCIAL SERVICES PROJECT IS GENUINE WITHIN THE TERMS OF THE CONSULTATION PROCESS**

These principles are issued for illustrative purposes only. They do not purport to be exclusive or exhaustive or to have any legal standing and are not binding on either competent authority. Depending on the nature of the project the absence of one or more of the guidelines need not necessarily lead to a rejection of the project although some of the guidelines such as 1 and 2 for example are of greater importance than others and their contravention would lead to the rejection of a project.

1. A genuine commercially viable product package must be visible involving real trading in real assets or the carrying out of other genuine commercial financial services related activities by way of real trading or as an integral part of a larger trading operation.

2. Where the activity involves the raising of a body of funds for a profit making venture or insurance, there must be a clearly demonstrated positive relationship and proportion between the level of funds raised for the project and the use of such funds for the specific venture or the risk to be covered. There must be a reasonable expectation of a commercial arm's length return on the funds. The venture must be carried on as a trade.

3. The method of sourcing of funds (i.e. borrowed or surplus) will be taken into account in assessing the acceptability of a project including cases arising under 1 or 2.

4. The enterprise must either stand alone as a genuine business operation complete with the badges of substance: personnel, offices and appropriate office equipment, marketing, accounts etc. or be carried on in association with another company which possesses those qualities in due measure in relation to the enterprise as would be present if the enterprise were to stand alone. In either case the project must be operating under a specific business plan (see below).

5. The project should have the capacity to be able to demonstrate through a reasonable business plan which contains specific information on the nature of the proposed activities that it has the ability and a specific expansion plan to generate enhanced activity.

6. A genuine business operation can have periods of passive investment in securities or deposits for genuine or exceptional reasons in the course of an active financial services business.

7. A project whose main activity is passive investment in securities or deposits will not be approved.

8. The contents of these principles may be made public by either or both competent authorities.