

**PROTOCOL BETWEEN IRELAND AND THE SWISS CONFEDERATION
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL,
SIGNED AT DUBLIN ON 8 NOVEMBER, 1966.**

The Government of Ireland and the Swiss Federal Council, desiring to conclude a Protocol amending the Convention between the Contracting Parties for the avoidance of double taxation with respect to taxes on income and capital, signed at Dublin on 8 November, 1966 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

1. The following subparagraph shall be substituted for subparagraph (a) of paragraph 1 of Article 2 of the Convention:

"(a) in the case of Ireland:

the income tax, the corporation tax and the capital gains tax (hereinafter referred to as "Irish Tax");"

2. The following paragraph shall be substituted for paragraph 3 of Article 2 of the Convention:

"3. The Convention shall not apply to Federal anticipatory tax withheld at the source on prizes in a lottery."

ARTICLE II

The following subparagraphs shall be substituted for subparagraphs (e) and (f) of paragraph 1 of Article 3 of the Convention:

"(e) 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 sub-soil and their natural resources may be exercised:

(f) the term "Switzerland" means the Swiss Confederation."

ARTICLE III

The following new Article shall be inserted immediately after Article 3 of the Convention:

"Article 3A

RESIDENCE

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 or capital situated therein. In the case of Switzerland, the term includes a partnership created or organised under Swiss law.

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 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 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated."

ARTICLE IV

The following Article shall be substituted for Article 9 of the Convention:

"Article 9

DIVIDENDS

1. (a) Dividends paid by a company which is a resident of Ireland to a resident of Switzerland may be taxed in Switzerland.

(b) Where a resident of Switzerland is entitled to a tax credit in respect of a dividend under paragraph 2 of this Article 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 aforesaid, dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of Switzerland shall be exempt from any tax in Ireland which is chargeable on dividends.

2. A resident of Switzerland who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph 3 of this Article and provided that 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 over his liability to Irish tax.

3. Paragraph 2 of this Article shall not apply where the beneficial owner of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividend. 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.

4. Dividends paid by a company which is a resident of Switzerland to a resident of Ireland may be taxed in Ireland. Such dividends may also be taxed in Switzerland, and according to the laws of Switzerland, but provided that the beneficial owner of the dividends is a resident of Ireland the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

However, as long as paragraph 3 of this Article applies, the rate provided for in subparagraph (a) of this paragraph shall be 10 per cent instead of 5 per cent.

5. The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as any income or distribution assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2 and 4 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 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 6 or Article 13, as the case may be, shall apply.

8. 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.

9. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article."

ARTICLE V

The following Article shall be substituted for Article 12 of the Convention:

"Article 12

CAPITAL GAINS

1. Gains from the alienation of immovable property may be taxed in the Contracting State where such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of Article 21 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.
3. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.
4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.
5. For the purposes of this Article the term "immovable property" means immovable property as defined in paragraph 2 of Article 5."

ARTICLE VI

The following Article shall be substituted for Article 22 of the Convention:

"Article 22

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the law 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) Swiss tax payable under the laws of Switzerland and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Switzerland (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 the Swiss tax is computed;

(b) in the case of a dividend paid by a company which is a resident of Switzerland 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 Swiss tax creditable under the provisions of subparagraph (a) of this paragraph) the Swiss tax payable by the company in respect of the profits out of which such dividend is paid.

2. Where a resident of Switzerland derives income or owns capital which, under the laws of Ireland and in accordance with the provisions of the Convention, may be taxed in Ireland, Switzerland shall, subject to the provisions of paragraphs 3, 4 and 6 of this Article, exempt such income or capital from tax provided, however, that such exemption shall apply to gains referred to in paragraph 3 of Article 12 only if taxation of such gains in Ireland is demonstrated.

3. Where a resident of Switzerland derives dividends which, in accordance with the provisions of subparagraph (b) of paragraph 1 of Article 9, may be taxed in Ireland, Switzerland shall allow, upon request, a relief to that person. The relief may consist of:

(a) a deduction from the Swiss tax on the income of that person of an amount equal to the tax levied in Ireland in accordance with the provisions of subparagraph (b) of paragraph 1 of Article 9, provided that such deduction shall not exceed that part of the Swiss tax, as computed before the deduction is given, which is attributable to the dividends, or

(b) a lump sum reduction of the Swiss tax determined by standardised formulae which have regard to the general principles of the relief referred to in subparagraph (a), or

(c) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in Ireland from the gross amount of the dividends.

Switzerland shall determine the relief applicable and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

4. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Ireland shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

5. For the purposes of the preceding paragraphs 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 the provisions of the Convention shall be deemed to arise from sources in that other State.

6. Where any income or capital is exempted from tax by any provision of the Convention it may nevertheless be taken into account in computing tax on other income or capital or in determining the rate of such tax."

ARTICLE VII

The following new paragraph shall be inserted immediately after paragraph 3 of Article 24 of the Convention:

"3A. Except where the provisions of Article 8, paragraph 6 of Article 9, paragraph 4 of Article 10 or paragraph 4 of Article 11 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State."

ARTICLE VIII

1. This Protocol shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

2. This Protocol shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in Ireland:

(i) as respects income tax, for any year of assessment beginning on or after 6 April, 1976;

(ii) as respects corporation tax, for the financial year 1974 and subsequent financial years;

(iii) as respects capital gains tax, for any year of assessment beginning on or after 6 April, 1974;

(b) in Switzerland:

for any fiscal year beginning on or after 1 January, 1977.

3. Where any greater relief from tax would have been afforded by any provision of the existing Convention than is due under the Convention, as amended by this Protocol, any such provision as aforesaid shall continue to have effect—

(a) in Ireland for any year of assessment or financial year;

(b) in Switzerland for any fiscal year

beginning before 1 January in the calendar year in which this Protocol is signed.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Dublin the 24th day of October 1980, in the English and French languages, each text being equally authentic.

Brian Lenihan

Etienne Serra

For the Government
of Ireland

For the Swiss
Federal Council

GIVEN under the Official Seal of the Government, this 6th day

of March, 1984.

GARRET FITZGERALD,

Taoiseach.

EXPLANATORY NOTE.

This Order gives the force of law to the Protocol with Switzerland which is set out in the Schedule. The Protocol amends the Convention between Ireland and Switzerland for the avoidance of double taxation with respect to taxes on income and capital which was signed on 8 November, 1966.

Article I of the Protocol amends Article 2 of the Convention so as to secure that the taxes covered by the Convention will include corporation tax introduced under the Corporation Tax Act, 1976 , and capital gains tax brought in by the Capital Gains Act, 1975, and that the references to sur-tax and corporation profits tax which are obsolete are deleted.

Article II extends the definition of "Ireland" in Article 3 of the Convention to include designated areas of the Continental Shelf within which rights to the sea bed and sub-soil and their natural resources may be exercised by Ireland.

Article III inserts in the Convention a new Article 3A setting out the basis on which questions of residence are to be decided for the purposes of the Convention and provides rules for determining the country of residence where under the residence criteria of each country there would be a double residence position.

Article IV contains a new article relating to the treatment of dividends to be substituted for Article 9 of the Convention. Where a company which is a resident of Ireland pays a dividend to a resident of Switzerland (other than a company which controls at least 25 per cent of the voting power in the paying company) the recipient is, subject to certain conditions, to be entitled to the tax credit to which an individual resident in Ireland would have been entitled had he received the dividend and to payment of any excess of that tax credit over an income charge not exceeding 15 per cent of the aggregate of the dividend and the tax credit. Dividends received by an Irish resident from a company resident in Switzerland will be subject to Swiss withholding tax of 15 per cent but this rate is reduced to 10 per cent if the recipient is an Irish company controlling, directly or indirectly, at least 25 per cent of the voting power in the company paying the dividend.

Article V contains a new article in relation to capital gains to be substituted for Article 12 of the Convention. Capital gains arising from the alienation of immovable property or of shares of a company the assets of which consists principally of immovable property may be taxed by the country in which the property is situated. Capital gains from the alienation of other property are to be taxed only in the country of residence of the alienator unless they arise from the alienation of assets of a permanent establishment or fixed base in the other country.

Article VI substitutes a new article for Article 22 of the Convention. Broadly, the new provisions secure that where income or capital gains are not otherwise relieved from double taxation under the Convention as amended by the Protocol a measure of double taxation relief is to be granted by the country of residence of the recipient of the income or capital gains. In Ireland relief is to be given by allowing against the Irish tax on Swiss income or capital gains a credit in respect of the Swiss tax which the income or capital gains has borne, including in the case of dividends received by an Irish resident company which controls directly or indirectly 10 per cent or more of the voting power in the Swiss resident company paying the dividends, the Swiss tax payable by the company in respect of the profits out of which the dividends are paid. In Switzerland relief is to be given by exempting from Swiss tax Irish income (except dividends) or capital including capital gains derived from the disposal of shares of the kind referred to in paragraph 3 of the new Article 12 of the Convention (inserted by Article V of the Protocol) where such gains are taxed in Ireland. In the case of Irish dividends which may be charged to Irish income tax on the aggregate of the dividend and the tax credit, relief from Swiss tax in respect of such Irish tax is given by way of deduction, reduction or partial exemption as appropriate. Furthermore, a Swiss resident company which derives dividends from an Irish resident company is to be granted the same relief from Swiss tax on the dividends as would be granted if the paying company were a resident of Switzerland. The effect of these provisions in relation to relief from Swiss tax is that a measure of "matching credit" for Irish tax incentive reliefs in relation to profits and dividends will be provided.

Article VII inserts a new paragraph 3A in Article 24 of the Convention the broad effect of which is to prevent any restriction or prohibition, by reference to the country of residence of the recipient, on the allowance, for the purposes of computing taxable profits, of deductions for interest, royalties and other disbursements.

Article VIII provides that the Protocol is to have effect, in the case of Ireland, from 1976-77 onwards as respects income tax, from the financial year 1974 onwards as respects corporation tax and from 1974-75 onwards as respects capital gains tax. In Switzerland, the Protocol will operate from the fiscal year 1977 onwards. There are transitional provisions to deal with any case where greater relief from tax would be provided under the unamended Convention than would be due under the Convention as amended by the Protocol.