



**THE DOUBLE TAXATION RELIEF (IRELAND)
ORDER 1988**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 15th day of August 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 294 of the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title—This order may be cited as the Double Taxation Relief (Ireland) Order 1988.

2. Giving effect to Convention—It is hereby declared that the arrangements that have been made with the Government of Ireland with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Income Tax Act 1976 and the income tax, the corporation tax and the capital gains tax imposed by the Government of Ireland, shall, in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the Convention.

SCHEDULE

**CONVENTION BETWEEN
THE GOVERNMENT OF NEW ZEALAND
AND
THE GOVERNMENT OF IRELAND
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

The Government of New Zealand and the Government of Ireland;
Desiring to conclude a Convention for the avoidance of double taxation
and the prevention of fiscal evasion with respect to taxes on income and
capital gains;

Have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

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

(a) in the case of New Zealand:

- (i) the income tax; and
- (ii) the excess retention tax;

(hereinafter referred to as "New Zealand 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").

2. Notwithstanding the provisions of paragraph 1 of this Article, the
terms "New Zealand tax" and "Irish tax" do not include any amount
which represents a penalty or interest imposed under the law of either
Contracting State relating to the taxes to which this Convention applies.

3. The Convention shall apply also to any identical or substantially
similar taxes which are imposed by either Contracting State 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 any significant 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 "New Zealand" means the territory of New Zealand but
does not include Tokelau or the Associated Self Governing States
of the Cook Islands and Niue; it also includes any area beyond
the territorial sea which by New Zealand legislation and in
accordance with international law has been, or may hereafter be,

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- designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
- (b) the term “Ireland” includes any area outside the territorial waters of Ireland which in accordance with international law has been or may hereafter be designated, under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea bed and subsoil and their natural resources may be exercised;
- (c) the terms “a Contracting State”, “one of the Contracting States” and “the other Contracting State” mean New Zealand or Ireland, as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “national” means:
- (i) in relation to New Zealand, any individual who is a New Zealand citizen and any legal person or other entity deriving its status as such from the law in force in New Zealand;
 - (ii) in relation to Ireland, any citizen of Ireland and any legal person, association or other entity deriving its status as such from the law in force in Ireland;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term “tax” means New Zealand tax or Irish tax, as the context requires;
- (j) the term “competent authority” means:
- (i) in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;
 - (ii) in the case of 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 law of that State relating to the taxes to which the Convention applies.

ARTICLE 4

RESIDENCE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that Contracting 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.

SCHEDULE—*continued*

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 solely of the State in which its place of effective management is situated.

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;
- (f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources, and
- (g) an installation or structure used for the exploration or exploitation of natural resources.

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

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

5. 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;

SCHEDULE—*continued*

- (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) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

7. An enterprise 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.

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

ARTICLE 6

EXPLORATION AND EXPLOITATION ACTIVITIES

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

2. An enterprise of a Contracting State which carries on specified activities in the other Contracting State shall be deemed to be carrying on business in that other State through a permanent establishment situated therein.

3. An individual who is a resident of a Contracting State and who carries on specified activities in the other Contracting State, which consist of

SCHEDULE—*continued*

professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base regularly available to him in that other State.

4. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment in the other Contracting State may, to the extent that the employment is exercised in connection with specified activities in that other State, be taxed in that other State.

ARTICLE 7

LIMITATION OF RELIEF

Where, under any provision of this Convention, income is wholly or partly relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of the said income, 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 as is remitted to or received in that other State.

ARTICLE 8

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, oil or gas wells, quarries, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

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

4. A lease of land, any other interest in or over land and any right referred to in paragraph 2 of this Article shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries, sources and other natural resources, as the case may be, are situated.

5. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 9

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

SCHEDULE—*continued*

the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses 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, and which are reasonably connected with profits attributable to the permanent establishment.

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

7. Nothing in this Article shall effect any provisions of the law of either Contracting State at any time in force regarding the taxation of any income or profits from the business of any form of insurance.

8. Where profits include items of income 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 10

SHIPPING AND AIR TRANSPORT

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

2. Where profits referred to in paragraph 1 of this Article are derived by an enterprise of a Contracting State from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in that State.

3. Profits of an enterprise of a Contracting State referred to in paragraphs 1 and 2 of this Article from the rental of ships or aircraft or from the use, maintenance, or rental of containers (including trailers,

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barges, and related equipment for the transport of containers) shall be taxable only in that State to the extent that those ships, aircraft or containers are used in international traffic and such profits are incidental to the profits of the enterprise.

ARTICLE 11

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 12

DIVIDENDS

1. Dividends derived from a company which is a resident of New Zealand and which are beneficially owned by a resident of Ireland may be taxed in Ireland. Such dividends may also be taxed in New Zealand but the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

2. (a) Dividends derived from a company which is a resident of Ireland by a resident of New Zealand may be taxed in New Zealand.
- (b) Where a resident of New Zealand is entitled to a tax credit in respect of such a dividend under paragraph 3 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 the dividend and the amount of that tax credit at a rate not exceeding 15 percent.
- (c) Except as aforesaid dividends derived from a company which is a resident of Ireland and which are beneficially owned by a resident of New Zealand shall be exempt from any tax in Ireland which is chargeable on dividends.

SCHEDULE—*continued*

3. (a) A resident of New Zealand who derives dividends from a company which is a resident of Ireland shall, subject to the provisions of subparagraph (b) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled had he derived those dividends, and to the payment of any excess of such credit over his liability to Irish tax. Any such credit may be treated for the purposes of New Zealand tax as assessable income from sources in Ireland.

(b) The provisions of subparagraph (a) of this paragraph shall not apply where the beneficial owner of the dividend (being a company) is, or is associated with, a company which either alone or together with one or more associated companies controls directly or indirectly 10 percent or more of the voting power in the company from which the dividend is derived. For the purposes of this subparagraph 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. The term "dividends" as used in this Article includes any item which, under the taxation law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

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 provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other 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 9 (Business Profits) or Article 16 (Independent Personal Services), 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 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 that other State.

8. (a) If the beneficial owner of a dividend, being a resident of a Contracting State, owns 10 percent or more of the class of shares of a company in respect of which the dividend is paid, then paragraphs 1, 2 and 3 of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other

SCHEDULE—*continued*

income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term “relevant date” means the date on which the beneficial owner of the dividend became the owner of 10 percent or more of the class of shares in question.

- (b) Paragraphs 1, 2 and 3 of this Article shall not apply if:
- (i) the recipient of the dividend being a resident of a Contracting State is exempt from tax thereon in that State; and
 - (ii) the dividend is paid in such circumstances that, if the recipient were a resident of the other Contracting State and exempt from tax thereon in that other State, the exemption would be limited or removed.
- (c) This paragraph shall not apply if the beneficial owner of the dividend shows, or either of the competent authorities considers, that the shares were acquired for bona fide commercial reasons and not primarily for the purposes of securing the benefit of this Article.

ARTICLE 13

INTEREST

1. Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. 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 as well as all other income assimilated to income from money lent by the law of the State in which the income arises but does not include any income which is treated as a dividend under Article 12 (Dividends). Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 9 (Business Profits) or Article 16 (Independent Personal Services), as the case may be, shall apply.

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

SCHEDULE—*continued*

interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. 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 paid, having regard to the debt-claim for which it is paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of paragraph 2 of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 14

ROYALTIES

1. Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 9 (Business Profits) or Article 16 (Independent Personal Services), as the case may be, shall apply.

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

SCHEDULE—*continued*

shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

7. The provisions of paragraph 2 of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 15

ALIENATION OF PROPERTY

1. Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 8 (Income from Immovable Property) and situated in the other Contracting State may be taxed in that other State.

2. Income or gains from the alienation of:

- (a) shares deriving their value or the greater part of their value directly or indirectly from immovable property situated in a Contracting State; or
- (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in a Contracting State or of shares referred to in subparagraph (a) above;

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

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

- (a) the Stock Exchange—Irish;
- (b) the New Zealand Stock Exchange; and
- (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. Income or 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 independent personal 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 that other State. Provided that if such movable property consists of shares or an interest in a partnership or trust the gains from the alienation of which may under paragraph 2 of this Article be taxed in the Contracting State of which the alienator is a resident, because the relevant immovable property is situated in that State, the said gains shall be taxable only in that State.

SCHEDULE—*continued*

5. Except as provided in paragraph 2 of this Article and notwithstanding the provisions of paragraph 4 of this Article, income or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

6. Income or gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident. Provided that where under the law of that Contracting State an individual, in respect of such gains, is subject to tax thereon by reference only to the amount thereof which is received in that Contracting State, the foregoing provisions of this paragraph shall not operate in relation to so much of such gains as is not received in that Contracting State.

7. The provisions of paragraph 6 of this Article shall not affect the right of a Contracting State to levy, according to its law, a tax on income or gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the ten years immediately preceding the alienation of the property.

8. For the purposes of this Article the term “gains” means, in the case of Ireland, chargeable gains as defined in the taxation law of Ireland.

ARTICLE 16

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is 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. However, such income may also be taxed in the other Contracting State if:

(a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any period of twelve consecutive months; or

(b) the individual has a fixed base regularly available to him in the other State for the purpose of performing his activities;

but only so much thereof as is attributable to services performed in that other State.

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

ARTICLE 17

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 18 (Directors’ Fees), 19 (Artistes and Athletes), 20 (Pensions and Annuities) and 21 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an

SCHEDULE—*continued*

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 any period of twelve consecutive months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 18

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 19

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 16 (Independent Personal Services) and 17 (Dependent Personal Services), 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, including a footballer, golfer or boxer, 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 9 (Business Profits), 16 (Independent Personal Services) and 17 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

ARTICLE 20

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 21 (Government Service), pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such resident shall be taxable only in that State.

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

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

SCHEDULE—*continued*

ARTICLE 21

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 in the discharge of functions of a governmental nature 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 in the discharge of functions of a governmental nature shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 17 (Dependent Personal Services), 18 (Directors' Fees) and 20 (Pensions and Annuities) 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 22

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 first-mentioned State, provided that such payments arise from sources outside that State.

ARTICLE 23

OTHER INCOME

Items of income of a resident of a Contracting State not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

1. (a) Subject to the provisions of the law of New Zealand from time to time in force relating to the allowance as a credit against New Zealand tax of tax paid in any country other than New Zealand (which shall not affect the general principle hereof), Irish tax computed by reference to income from sources in Ireland and

SCHEDULE—*continued*

paid under the law of Ireland and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in Ireland (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid), shall be allowed as a credit against the New Zealand tax computed by reference to the same income and payable in respect of that income.

- (b) In the event that the Government of New Zealand should impose tax on dividends received by companies which are resident in New Zealand the Contracting States will enter into negotiations in order to establish new provisions concerning the taxation of such dividends derived from sources in Ireland.

2. 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) New Zealand tax payable under the law of New Zealand and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains derived from sources within New Zealand (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 New Zealand tax is computed;

- (b) in the case of a dividend paid by a company which is a resident of New Zealand to a company which is a resident of Ireland and which controls directly or indirectly 10 percent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any New Zealand tax for which credit may be allowed under the provisions of sub paragraph (a) of this paragraph) New Zealand tax payable by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of paragraphs 1 and 2 of this Article, profits, income and capital gains derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to be derived from sources in that other State.

ARTICLE 25

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of Article 11 (Associated Enterprises), paragraph 6 of Article 13 (Interest), or paragraph 6 of Article 14 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a

SCHEDULE—*continued*

Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, 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 enterprises of the first-mentioned State carrying on the same activities, the capital of which is owned or controlled by residents of the first-mentioned State, are or may be subjected.

5. This Article shall not apply to any provision of the taxation law of a Contracting State which:

- (a) is reasonably designed to prevent or defeat the avoidance or evasion of taxes and which is in force on the date of signature of this Convention; or
- (b) is substantially similar in general purpose or intent to any such provision but is enacted after that date;

provided that any such provision (except where that provision is in an international agreement) does not allow for different treatment of residents or nationals of the other Contracting State as compared with the treatment of residents or nationals of any third State.

6. Nothing in this Article shall be construed as preventing a Contracting State from distinguishing in its taxation law between residents and non-residents solely on the basis of their residence and to levy taxes or grant exemption, relief, reduction or allowance for tax purposes accordingly.

7. In this Article the term "taxation" means the taxes to which this Convention applies and the term "taxation law" shall be construed accordingly.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result, or will result, for him in taxation not in accordance with the provisions of this 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. The case must be presented within three years from the first notification of the action giving rise to 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. Notwithstanding any time limits in the domestic law of the Contracting States, the solution so reached may be implemented within a period of six years from the date of presentation of the case by the resident to the relevant competent authority in accordance with paragraph 1 of this Article.

SCHEDULE—*continued*

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 giving effect to the provisions of the Convention.

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 (Personal Scope). 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 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 28

DIPLOMATIC AND CONSULAR OFFICERS

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

ARTICLE 29

ENTRY INTO FORCE

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in New Zealand: for any income year beginning on or after 1 April next following the date on which the Convention enters into force;

SCHEDULE—*continued*

(b) in Ireland:

(i) in respect of 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 Convention enters into force;

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

ARTICLE 30

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, at any time after five years from the date on which the Convention enters into force provided that at least six months prior notice of termination has been given.

In such event, the Convention shall cease to have effect:

(a) in New Zealand: for any income year beginning on or after 1 April next following the date on which the period specified in the said notice of termination expires;

(b) in Ireland:

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

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Convention.

DONE in duplicate at Dublin this 19th day of September 1986 in the English language.

F. D. O'FLYNN

For the Government of
New Zealand

GEORGE BIRMINGHAM

For the Government of
Ireland

C. J. HILL,

Acting for Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order gives effect to a Convention entered into between New Zealand and Ireland on 19 September 1986 to avoid double taxation and fiscal evasion.

The Convention is to come into force on the date of the later of the notifications by each contracting party to the other that the procedures required by its laws for the entry into force of the Convention have been complied with.

The Convention applies in New Zealand in respect of the income year commencing on 1 April next following the date on which the Convention comes into force. It continues in force for at least 5 years but may then be terminated by either country.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 31 August 1988.
This order is administered in the Inland Revenue Department.