

Double Taxation Treaty between Ireland and Switzerland

Convention between Ireland and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and capital

The Government of Ireland and the Swiss Federal Council, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and capital, have appointed for that purpose as their respective Plenipotentiaries:

The Government of Ireland:

Mr. Frank Aiken, Minister for External Affairs of Ireland

The Swiss Federal Council:

His Excellency Julien Rossat, Ambassador of Switzerland to Ireland

who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

Chapter I Scope Of The Convention

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 taxes to which this Convention shall apply are:
 - a. in the case of Ireland: the income tax, the corporation tax and the capital gains tax (hereinafter referred to as "Irish Tax");^[1]
 - b. in the case of Switzerland: the federal, cantonal and communal taxes
 1. on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income); and

2. on capital (total property, movable and immovable property, business assets, paid-up capital and reserves and other items of capital) (hereinafter referred to as "Swiss tax"); and, to the extent provided for in Article 24, Irish and Swiss taxes of every kind and description.
2. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.
3. The Convention shall not apply to Federal anticipatory tax withheld at the source on prizes in a lottery.[2]
4. If a tax on capital is introduced in Ireland at some future date the Convention shall apply to such tax.
5. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in the respective taxation laws.

Amendments

- [1] Substituted by SI No 76 of 1984 Art I (1), with effect
 - For income tax; from 6 April 1976
 - For corporation tax; from financial year 1974
 - For capital gains tax; from 6 April 1974
- [2] Substituted by SI No 76 of 1984 Art I (2)

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Chapter II Definitions

Article 3

General definitions

1. In this Convention, unless the context otherwise requires:
 - a. the terms "a Contracting State" and "the other Contracting State " mean Ireland or Switzerland, as the context requires;

- b. the term "tax" means Irish tax or Swiss tax, as the context requires;
 - c. the term "person" comprises an individual, a company and any other body of persons;
 - d. the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - 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; [1]
 - f. the term "Switzerland" means the Swiss Confederation. [1]
 - g. the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of Ireland or a person who is a resident of Switzerland, as the context requires;
 - h. 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;
 - i. the term "competent authority" means:
 - 1. in the case of Ireland: the Revenue Commissioners or their authorised representatives.
 - 2. in the case of Switzerland: the Director of the Federal Tax Administration or his authorised representative.
2. Where any Article of the Convention provides (with or without conditions) that income derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned State or entitled to a reduced rate of tax in the other State and, under the law in force in that first-mentioned State, the said income is subject to tax by reference to the amount thereof which is remitted to or received in that State and not by reference to the full amount thereof, then the exemption or reduction in

rate in the other State resulting from such Article shall apply only to so much of the income as is remitted to or received in the first-mentioned State.

3. Where under any provision of the Convention a partnership is entitled to exemption from Irish tax as a resident of Switzerland on any income, such a provision shall not be construed as restricting the right of Ireland to charge any member of the partnership, being a person who is resident in Ireland for the purposes of Irish tax (whether or not he is also resident in Switzerland for the purposes of Swiss tax), to tax on his share of the income of the partnership; but any such income shall be deemed for the purposes of Article 22 to be income from sources within Switzerland.
4. Where under any provision of the Convention a resident of a Contracting State is exempt or entitled to relief from tax of the other Contracting State, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the first-mentioned State.
5. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Amendments

- [1] Substituted by SI No 76 of 1984 Art III

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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 of 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 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. [1]

Amendments

- [1] Substituted by SI No 76 of 1984 Art III

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Article 4

Permanent Establishment

1. For the purposes of this Convention the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The "permanent establishment" shall include especially:
 - a. a place of management;
 - b. a branch;
 - c. an office ;

- d. a factory;
- e. a workshop;
- f. a mine, quarry or other place of extraction of natural resources;
- g. a building site or construction or assembly project which exists for more than twenty-four months.

3. The term "permanent establishment" shall not be deemed to include:

- . the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- a. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- c. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise
- d. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise.

4. A person acting in a Contracting State on behalf of the enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph 5 applies – shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent state, where such person is acting in the ordinary course of his business.

6. 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.

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Chapter III Taxation Of Income

Article 5

Income from immovable property

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

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Article 6

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as

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

2. 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4.
 - a. Nothing in paragraph 2 shall preclude a Contracting State from determining 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, with a privileged allocation (preciput) in favour of the head-office of 10 per cent of such total profits; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
 - b. In the case of an insurance enterprise of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein the profits attributable to such permanent establishment shall be determined by apportioning the total profits of the enterprise according to the ratio of the gross premiums received by the permanent establishment to the total gross premiums received by the enterprise.
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 purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

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Article 7

Shipping and air transport

Profits of an enterprise from the operation of ships or aircraft in international traffic (including any such profits from participation in a pooled air service, in a joint air transport operating organisation or in an international air transport operating agency) shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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Article 8

Associated enterprises

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.

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[*] 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:
 - . 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;
 - a. 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

Amendments

[*] Substituted by SI No 76 of 1984 Art IV

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Article 10

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated, by the taxation law of the State in which the income arises, to income from money lent.
3. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises, a permanent establishment and the debt-claim from which the interest arises is effectively connected with it. In such a case, the provisions of Article 6 shall apply.
4. Where, owing to a special relationship between the payer and the recipient 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 the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.
5. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this Article.

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Article 11

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or video tapes for use in connection

with television, 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.

3. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment and the right or property giving rise to the royalties is effectively connected with it. In such a case, the provisions of Article 6 shall apply.
4. Where, owing to a special relationship between the payer and the recipient 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 the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.
5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article.

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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.

Amendments

[*] Substituted by SI No 76 of 1984 Art V

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Article 13

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, dentists and accountants.

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Article 14

Dependent personal services

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other

Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State,

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
 - b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of enterprise is situated.

Article 15

Directors' fees

Directors' fees and 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.

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Article 16

Artistes and athletes

Notwithstanding the provisions of Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 17

Pensions

Subject to the provisions of Article 18, pensions and other similar remunerations paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 18

Public functions

Remuneration, including pensions, paid by a Contracting State or a political subdivision or a local authority thereof or by an entity created and organised by a special law of such Contracting State, directly or out of a fund, to any individual who is a national of that State in respect of present or past services shall be taxable only in the State where the remuneration originates.

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Article 19

Students

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting 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 other State, provided that such payments are made to him from sources outside that other State.
2. A student of a university, or other recognised educational institution, or an apprentice to a business, in a Contracting State who is employed in the other Contracting State for a period or periods not exceeding a total of 100 days during the fiscal year, the employment being directly related to his studies or training, shall be exempt from tax, in such other Contracting State, on his remuneration from such employment.

Article 20

Income not expressly mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

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Chapter IV Taxation Of Capital

Article 21

1. Capital represented by immovable property, as defined in paragraph 2 of Article 5, may be taxed in the Contracting State in which such property is situated.
2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.
3. Ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

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CHAPTER V Methods For Elimination Of Double Taxation

[*] 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 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
 - a. 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
 - b. 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.

Amendments

[*] Substituted by SI No 76 of 1984 Art VI

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Article 23

Personal allowances for non-residents

1. Individuals who are residents of Switzerland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Irish tax as Irish citizens who are not resident in Ireland.
2. Individuals who are residents of Ireland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swiss tax as Swiss nationals resident in Ireland.

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Article 24

Non-discrimination

1. The 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 term "nationals" means
 - a. in relation to Ireland, all citizens of Ireland and all legal persons, partnerships and associations deriving their status as such from the law in force in Ireland,

- b. in relation to Switzerland, all Swiss citizens and all legal persons, partnerships and associations deriving their status as such from the law in force in Switzerland.
3. 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.
 - . 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.^[1]
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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
5. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents, nor as obliging Ireland to grant to nationals of Switzerland any relief or exemption allowed in accordance with the provisions of the Finance (Profits of Certain Mines) (Temporary Relief from Taxation) Act, 1956 (No. 8 of 1956), as subsequently amended, or of Part II of the Finance (Miscellaneous Provisions) Act, 1956 (No. 47 of 1956), as subsequently amended.
6. In this Article the term "taxation" means taxes of every kind and description.

Amendments

[1] Substituted by SI No 76 of 1984 Art VII

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Article 25

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 this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.
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 an appropriate 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 not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

Diplomatic and consular officials

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.
2. In so far as, on account of fiscal privileges granted to diplomatic or consular officials under the general rules of international law or under the provisions of special international treaties, income or capital is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.
3. For the purposes of the Convention, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State

shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income and capital as are residents of that State.

4. The Convention shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and capital.

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Chapter VII Final Provisions

Article 27

Entry into force

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

2. The Convention 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 (including surtax) for any year of assessment beginning on or after the 6th April, 1965;

ii. as respects corporation profits tax, for any accounting period beginning on or after the 1st April, 1965, and for the unexpired portion of any accounting period current at that date;

b. in Switzerland: for any fiscal year beginning on or after the 1st January, 1965.

3. The Agreement dated 18th June, 1958, between the Government of Ireland and the Swiss Federal Council concerning the taxation of enterprises operating ships or aircraft shall be terminated upon the entry into force of this Convention.

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Article 28

Termination

This Convention shall remain in force indefinitely, but either of the Contracting States may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1971. In such event the Convention shall cease to have effect:

- a. in Ireland:
 - i. as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April in the calendar year next following that in which such notice is given;
 - ii. as respects corporation profits tax for any accounting period beginning on or after the 1st April in the calendar year next following that in which such notice is given and for the unexpired portion of any accounting period current at that date;
- b. in Switzerland: for any fiscal year beginning on or after the 1st January in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed the present Convention and affixed thereto their seals.

DONE in duplicate at Dublin the 8th November 1966 in the French and English languages, each text being equally authentic.

For the Government of Ireland:

Proinsias Mac Aogáin

For the Swiss Federal Council:

Julien Rossat

His Excellency Julien Rossat.

Ambassador Extraordinary and Office of the Minister for

Plenipotentiary of Switzerland, External Affairs

Swiss Embassy, Dublin 2.,

Dublin

8th November, 1966

Excellency,

With reference to the Convention signed today between Ireland and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and capital, I have the honour, on behalf of the Government of Ireland, to confirm that it is understood that both ordinary and extraordinary taxes on income and capital come within the scope of Article 2 of the said Convention.

Accept, Excellency, the renewed assurance of my highest consideration.

Proinsias Mac Aogáin

(A letter in similar terms has been addressed on behalf of the Swiss Federal Council to the Government of Ireland).

GIVEN under the Official Seal of the Government this 14th day of November, 1967.

Seán O Loinsigh,

Taoiseach.

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order gives the force of law to the Convention with Switzerland which is set out in the Schedule.

Under the Convention certain classes of income derived from one country by a resident of the other country are (subject to certain conditions) to be exempt from tax in the former country. These classes are trading profits not arising through a "permanent establishment" [Article 6], shipping and air transport profits [Article 7], interest [Article 10], patent and copyright royalties [Article 11], profits from professional or other independent activities not attributable to a fixed base [Article 13], pensions (other than Government pensions) [Article 17], and certain earnings of temporary residents [Articles 14 and 19]. Government and local authority salaries and pensions are normally to be taxed by the paying Government only [Article 18].

In general dividends paid by Irish companies to Swiss residents are to be exempt from Irish sur-tax; the rate of withholding tax on dividends paid by Swiss companies to Irish residents is not to exceed 10 per cent and, where the resident of Ireland is a company which holds at least 25 per cent of the capital of the Swiss company, the dividends are to be exempt from Swiss tax [Article 9].

Subject to certain exceptions (eg, immovable property) property of an Irish resident situated in Switzerland is to be exempt from the annual taxes on capital imposed in that country [Article 21].

In the matter of personal allowances and reliefs for tax purposes, each country is to treat residents of the other in the same way as its own non-resident nationals [Article 23].

Where, under the Convention, income derived from one country by a person resident in the other may be taken into account for tax purposes in both countries, a measure of double taxation relief is to be granted by the latter country. In Ireland, relief is to be given by allowing against the Irish tax payable on Swiss income, a

credit in respect of the Swiss tax which the income has borne, including in the case of dividends received by an Irish company which controls 50 per cent or more of the voting power of the Swiss company paying the dividends, an appropriate proportion of the Swiss tax on the profits out of which the dividends are paid. In Switzerland, relief is to be given by exemption of Irish income (except dividends) or capital from Swiss taxes but in calculating the Swiss tax on the remaining income or capital Switzerland may apply the rate of tax which otherwise would have been applicable. In the case of Irish dividends relief from Swiss taxes is to be given by way of deduction, reduction or partial exemption as appropriate. Furthermore, a Swiss company is to be granted the same reliefs from Swiss taxes on Irish dividends which it would be entitled to in certain circumstances if the dividends had been Swiss dividends and not Irish dividends [Article 22].

As the reliefs from Swiss tax mentioned in the previous paragraph are allowable without regard to the amount of Irish tax paid on the relevant income, the circumstances that profits and dividends which are wholly or partially relieved from Irish tax by reason of the allowance of a tax incentive (eg "exports" relief) which will not debar such profits or dividends from the benefits of the reliefs from Swiss tax.

Provision is made for consultation between the competent authorities of the two countries in order to carry out the provisions of the Convention generally or in specific cases [Article 25].

The convention takes effect for the fiscal year 1965-66 [Article 27].

PROTOCOL (SI No 76 of 1984)

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

Notes

Para (1) substituted SI No 240 of 1967 Art 2 (1) (a) for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Para (2) substituted SI No 240 of 1967 Art 2 (3) for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Article II

Notes

This Article substituted SI No 240 of 1967 Art 3 (e)-(f) for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Article III

Notes

This Article inserted SI No 240 of 1967 Art 3A for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Article IV

Notes

This Article substituted SI No 240 of 1967 Art 9 for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Article V

Notes

This Article substituted SI No 240 of 1967 Art 12 for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Article VI

Notes

This Article substituted SI No 240 of 1967 Art 22 for any year of assessment beginning on or after 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

Article VII

Notes

This Article inserted SI No 240 of 1967 Art 24 (a) for any year of assessment beginning on or after 6 April 1976 for income tax; 1974 or later financial years for corporation tax; any year of assessment beginning on or after 6 April 1974 for capital gains tax.

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

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

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 arising from the alienation of immovable property or of shares of a company the assets of which consist 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.