



STATUTORY INSTRUMENTS.

S.I. No. 17 of 2011



DOUBLE TAXATION RELIEF (TAXES ON INCOME) (HONG KONG
SPECIAL ADMINISTRATIVE REGION) ORDER 2011

(Prn. A11/0107)

DOUBLE TAXATION RELIEF (TAXES ON INCOME) (HONG KONG SPECIAL ADMINISTRATIVE REGION) ORDER 2011

WHEREAS it is enacted by section 826(1) (as amended by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that where the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of income tax, corporation tax in respect of income and chargeable gains, capital gains tax or any taxes of a similar character imposed by the laws of the State or by the laws of that territory and, in the case of taxes of any kind or description imposed by the laws of the State or the laws of that territory, in relation to exchanging information for the purposes of the prevention and detection of tax evasion or granting relief from taxation under the laws of that territory to persons who are resident in the State for the purposes of tax, and that it is expedient that those arrangements should have the force of law, and that the order so made is referred to in Part 1 of Schedule 24A to the Taxes Consolidation Act 1997, then, subject to section 826 of that Act, the arrangements shall, notwithstanding any enactment, have the force of law as if such order were an Act of the Oireachtas on and from the date of the insertion of a reference to the order into Part 1 of Schedule 24A:

AND WHEREAS it is further enacted by section 826(6) of the Taxes Consolidation Act 1997 that where such an order is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann:

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them by section 826(1) (as amended by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Hong Kong Special Administrative Region) Order 2011.
2. It is declared that—
 - (a) the arrangements specified in the Agreement, the text of which is set out in the Schedule, have been made with the Government of the

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 21st January, 2011.

Hong Kong Special Administrative Region of the People's Republic of China in relation to—

- (i) affording relief from double taxation and the prevention of fiscal evasion with respect to taxes on income, and
- (ii) in the case of taxes of any kind or description imposed by the laws of the State or the laws of the Hong Kong Special Administrative Region of the People's Republic of China, exchanging information for the purposes of the prevention and detection of tax evasion and granting relief from taxation under the laws of the Hong Kong Special Administrative Region of the People's Republic of China to persons who are resident in the State for the purposes of tax,

and

- (b) it is expedient that those arrangements should have the force of law.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China;

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

Article 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed by each Contracting Party, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are:

(a) in the case of the Hong Kong Special Administrative Region,

(i) profits tax;

(ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment;

(b) in the case of Ireland,

(i) income tax;

- (ii) income levy;
- (iii) corporation tax; and
- (iv) capital gains tax.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as to any other taxes falling within paragraphs 1 and 2 which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as “Hong Kong Special Administrative Region tax” or “Irish tax”, as the context requires.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) (i) the term “Hong Kong Special Administrative Region” means any territory where the tax laws of the Hong Kong Special Administrative Region apply;
 - (ii) the term “Ireland” includes any area outside the territorial waters of Ireland which has been or may hereafter be designated, under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;
 - (b) the term “business” includes the performance of professional services and of other activities of an independent character;
 - (c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (d) the term “competent authority” means:
 - (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative;
 - (ii) in the case of Ireland, the Revenue Commissioners or their authorised representative;
 - (e) the term “Contracting Party” or “Party” means the Hong Kong Special Administrative Region or Ireland, as the context requires;

- (f) the term “enterprise” applies to the carrying on of any business;
- (g) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party except when the ship or aircraft is operated solely between places in the other Contracting Party;
- (i) the term “national”, in relation to Ireland means:
 - (i) any individual possessing citizenship of Ireland; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in Ireland;
- (j) the term “person” includes an individual, a company, a trust and any other body of persons, and, in the case of the Hong Kong Special Administrative Region, includes a partnership;
- (k) the term “tax” means the Hong Kong Special Administrative Region tax or Irish tax, as the context requires.

2. In this Agreement, the terms “Hong Kong Special Administrative Region tax” and “Irish tax” do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and “additional tax” under Section 82A of the Inland Revenue Ordinance) imposed under the laws of either Contracting Party relating to the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:

- (a) in the case of the Hong Kong Special Administrative Region,

- (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
 - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
 - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being centrally managed and controlled in the Hong Kong Special Administrative Region;
 - (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being centrally managed and controlled in the Hong Kong Special Administrative Region;
- (b) in the case of Ireland, any person who, under the laws of Ireland, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Ireland in respect only of income from sources in Ireland;
 - (c) in the case of either Contracting Party, the Government of that Party.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Party 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 Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
- (c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Ireland);
- (d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Ireland, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Ireland, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party 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, quarries, sources and other

natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the working may take place.

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

5. The provisions of paragraphs 1 and 4 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party 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 Party, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party 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 Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party 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 or, where such an apportionment could not be made on the basis of the information available to that Contracting Party, the profits to be so attributed are to be determined on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8

Shipping and Air Transport

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

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

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:

- (a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including—
 - (i) income derived from the lease of ships or aircraft on a bareboat charter basis where such lease is incidental to the operation of ships or aircraft in international traffic;
 - (ii) income derived from the sale of tickets, and the provision of services, connected with such transport whether for the enterprise itself or for any other enterprise, provided that such sale or provision is incidental to the operation of ships and aircraft in international traffic;
- (b) interest on funds directly connected with the operation of ships or aircraft in international traffic;
- (c) profits from the lease of containers by the enterprise, when such lease is incidental to the operation of ships or aircraft in international traffic.

Article 9

Associated Enterprises

1. Where

- (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

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 Party includes in the profits of an enterprise of that Party — and taxes accordingly — profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party 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 Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party shall be taxable only in that other Party, provided such resident is the beneficial owner of the dividends.

2. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

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

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the

other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party 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 Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident in the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises, and according to the laws in force in that Party, but if the beneficial owner of the interest is a resident in the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting Party of which the recipient is a resident if the beneficial owner of the interest is a resident of that Party and:

- (a) in the case of Ireland is the Government or is:
 - (i) the Central Bank of Ireland;
 - (ii) the National Treasury Management Agency;
 - (iii) the National Pension Reserve Fund;
 - (iv) the National Assets Management Agency; and
 - (v) a statutory body, institution or fund wholly or mainly owned or appointed by the Government of Ireland as may be agreed from time to time between the competent authorities of the Contracting Parties;
- (b) in the case of the Hong Kong Special Administrative Region is the Government or is:

- (i) the Hong Kong Monetary Authority; and
 - (ii) a statutory body, institution or fund wholly or mainly owned or appointed by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;
- (c) is a bank or similar financial institution, or the interest is paid by a bank or similar financial institution;
 - (d) if the interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service;
 - (e) is established in that Party to provide benefits under pension arrangements recognised for tax purposes in that Party.

4. 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

7. 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 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 Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 3 per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

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 and 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 information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party where the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment 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 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 Party, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.
3. Gains derived by an enterprise of a Contracting Party 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 Party.
4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares quoted on a recognised stock exchange.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:
 - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

- (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

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 Party shall be taxable only in that Party.

Article 15

Directors' Fees

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

Article 16

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

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

Article 17

Pensions

1. Pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment under a pension or retirement scheme or fund which is:

- (a) a public scheme which is part of the social security system of a Contracting Party; or
- (b) a scheme or fund to secure retirement benefits which is recognised for tax purposes in a Contracting Party,

shall be taxable only in the Contracting Party referred to in subparagraph (a) or (b) hereof.

2. Pensions and other similar remuneration (including a lump sum payment), other than those referred to in paragraph 1, paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party.

3. This Article is subject to the provisions of paragraph 2 of Article 18.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party in the discharge of functions of a governmental nature shall be taxable only in that Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who,
 - (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and, in the case of Ireland, is a national thereof; or
 - (ii) did not become a resident of that Party solely for the purpose of rendering the services.
2. (a) Pensions and other similar remuneration (including a lump sum payment) paid, or paid out of funds created or contributed to, by the Government of a Contracting Party to an individual in respect of services rendered to that Party in the discharge of functions of a governmental nature shall be taxable only in that Party.
- (b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1, any corresponding pension and other similar remuneration (including a lump sum payment) shall be taxable only in that other Contracting Party.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions and other similar remuneration (including a lump sum payment) in respect of services rendered in connection with a business carried on by the Government of a Contracting Party.

Article 19

Students

Payments which a student who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education receives for the purpose of his maintenance or education shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

Article 20

Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraph 1, alimony or other maintenance payment paid by a resident of a Contracting Party to a resident of the other Contracting Party shall, to the extent it is not allowable as a deduction to the payer in the first-mentioned Party, be taxable only in that Party.

Article 21

Methods for Elimination of Double Taxation

1. Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Irish tax paid under the laws of Ireland and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Ireland, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof),

- (a) Hong Kong Special Administrative Region tax payable under the laws of the Hong Kong Special Administrative Region and in accordance with this Agreement, whether directly or by deduction, on profits, income or gains from sources within the Hong Kong Special Administrative Region, (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or gains by reference to which Hong Kong Special Administrative Region tax is computed;

- (b) in the case of a dividend paid by a company which is a resident of the Hong Kong Special Administrative Region to a company which is a resident of Ireland and which controls directly or indirectly 5 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Hong Kong Special Administrative Region tax creditable under the provisions of subparagraph (a)) Hong Kong Special Administrative Region 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, profits, income and capital gains owned by a resident of a Contracting Party which may be taxed in the other Contracting Party in accordance with this Agreement shall be deemed to be derived from sources in that other Contracting Party.

4. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting Party is exempt from tax in that Party, such Party may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 22

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Ireland, are Irish nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Ireland) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party 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 Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Ireland). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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 Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 24

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the

taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. 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, including the decisions of the Board of Review in the case of the Hong Kong Special Administrative Region, and of the Appeal Commissioners in the case of Ireland. Information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
- (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 Party;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 25

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 26

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall thereupon have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which this Agreement enters into force;

(b) in Ireland:

(i) in respect of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;

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

Article 27

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year. In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which the notice is given;

(b) in Ireland:

(i) in respect of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which the notice is given;

- (ii) in respect of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Dublin this 22 day of June 2010, in the English language.

For the Government of Ireland

**For the Government of the Hong
Kong Special Administrative Region
of the People's Republic of China**

Brian Lenihan

K C Chan

PROTOCOL

At the time of signing the Agreement between the Government of Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the "Agreement"), the two Governments have agreed upon the following provisions which shall form an integral part of the Agreement.

1. With reference to Article 3, paragraph 1(j):

- (a) A partnership in the Hong Kong Special Administrative Region is a taxable entity.
- (b) Nothing in this Agreement shall be construed as preventing Ireland from taxing amounts included in the income of a resident of Ireland with respect to a partnership in which the resident is a partner.

2. With reference to Article 4:

A Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits.

3. With reference to Article 13, paragraph 4:

Ireland confirms that, in accordance with section 584 of the Taxes Consolidation Act 1997 and subject to the provisions of that section, a reorganization or reduction of a company's share capital shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it; but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

4. With reference to Article 13, paragraph 5:

Where

- (a) an individual domiciled in Ireland ceases to be a resident in Ireland,
- (b) disposes of property acquired prior to the first day of the year in which he ceased to be resident in Ireland as mentioned in subparagraph (a) above, and
- (c) then becomes resident again in Ireland within 5 years of ceasing to be so resident,

the provisions of paragraph 5 shall not affect the right of Ireland to tax the individual according to its law by reference to that disposal but the amount of the tax charged shall not exceed the amount of tax

that would be charged on the amount of any gain arising on a deemed disposal by the individual of that property at market value on the day immediately before the first day of the year in which he ceased to be resident in Ireland as mentioned in subparagraph (a) above.

5. With reference to Article 24:

It is understood that this Article does not require the Contracting Parties to exchange information on an automatic or spontaneous basis.

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

DONE in duplicate at Dublin this 22 day of June 2010, in the English language.

For the Government of Ireland

**For the Government of the Hong
Kong Special Administrative Region
of the People's Republic of China**

Brian Lenihan

K C Chan



GIVEN under the Official Seal of the Government,
11 January 2011.

BRIAN COWEN,
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 Agreement between Ireland and Hong Kong for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which is set out in the Schedule to the Order. The effect of the Agreement is summarised below.

This Agreement, which was signed in Dublin on the 22nd June 2010, is comprehensive in scope and is based on the OECD Model Convention.

The taxes covered by the Agreement are, for Ireland, Income Tax, Income Levy, Corporation Tax and Capital Gains Tax; for Hong Kong, Profits Tax, Salaries Tax and Property Tax.

The Agreement provides for the allocation of taxing rights between Ireland and Hong Kong and for the granting of relief from double taxation with regard to items of income and capital gains which, under the laws of Ireland and the laws of Hong Kong, may under the terms of the Agreement be taxed in both countries.

Where both countries continue to have taxing rights, for example in the case of certain interest payments and royalties, business profits arising through a permanent establishment which a person resident in one country has in the other country, or in the case of capital gains arising from the disposal of immovable property, the Agreement provides that the country of residence of the recipient of the income or gain will give relief against its tax on the income or gains for the tax paid in the other country on the same income or gains. Irish direct investors (i.e. Irish companies holding 5% or more of the voting power of the paying company) in receipt of dividends from a Hong Kong company are granted credit for the tax paid by the Hong Kong company on the profits out of which the dividends are paid (known as credit for underlying tax).

Source State taxation of interest and royalties is restricted to 10% and 3% respectively. Exemptions from Source State taxation include interest beneficially owned by the Government and any statutory body, institution or fund wholly or mainly owned or appointed by the Government as may be agreed from time to time between the competent authorities of the Contracting Parties, and in the case of Ireland also includes the Central Bank, the National Treasury Management Agency, the National Pensions Reserve Fund, the National Asset Management Agency and in the case of Hong Kong also includes the Hong Kong Monetary Authority.

The Agreement also provides for safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, for consultation between the competent authorities of the two countries for the purpose of resolving any doubts or difficulties arising as to the interpretation or application of the Agreement and for the exchange of such information between these authorities as is foreseeably relevant for carrying out the provisions of the

Agreement or of the domestic law of either country in relation to the taxes covered by the Agreement.

The Agreement will enter into force when each country notifies the other of the completion of its procedures for bringing the Agreement into force. It will thereupon have effect in both countries for tax periods in the following year.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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