TAX CONVENTION WITH IRELAND

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1998

TABLE OF ARTICLES

Article 1----------General Scope
Article 2 ----------Taxes Covered
Article 3 ----------General Definitions
Article 4 ----------Residence
Article 5 ----------Permanent Establishment
Article 6 ----------Income from Removable (Real Property)
Article 7 ----------Business Profits
Article 8 ----------Shipping and Air Transport
Article 9 ----------Associated Enterprises
Article 10 ----------Dividends
Article 11 ----------Interest
Article 12 ----------Royalties
Article 13 ----------Capital Gains
Article 14----------Independent Personal Services
Article 15 ----------Dependent Personal Services
Article 16 ----------Directors' Fees
Article 17 ----------Artistes and Sportsmen
Article 18 ----------Pensions, Social Security, Annuities, Alimony and Child Support
Article 19 ----------Government Service
Article 20 ----------Students and Trainees
Article 21 ----------Offshore Exploration and Exploitation Activities
Article 22 ----------Other Income
Article 23 ----------Limitation on Benefits
Article 24 ----------Relief from Double Taxation
Article 25 ----------Non-Discrimination
Article 26 ----------Mutual Agreement Procedure
Article 27 ----------Exchange of Information and Administrative Assistance
Article 28 ----------Diplomatic Agents and Consular Officers
Article 29 ----------Entry into Force
Article 30 ----------Termination
Protocol ----------of 28 July, 1997
Notes of Exchange ----------of 28 July, 1997
Letter of Submittal----------of 19 August, 1997
Letter of Transmittal----------of 24 September, 1997
The "Saving Clause"----------Paragraph 4 of Article 1

FEDEX 1111
Fedex Corp. v. Valtrus Innovations Ltd.
IPR2026-00039

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT DUBLIN ON JULY 28, 1997, TOGETHER WITH A PROTOCOL AND EXCHANGE OF NOTES DONE ON THE SAME DATE

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 19, 1997.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Dublin on July 28, 1997, ("the Convention") together with a Protocol and an exchange of notes done on the same date, which, in each case provides binding interpretations and understandings concerning the application of the Convention.

This Convention will replace the existing Convention Between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with Respect to Taxes on Income signed at Dublin on September 13, 1949. The new Convention maintains many provisions of the existing convention, but it also provides certain additional benefits and updates the text to reflect current tax treaty policies.

This Convention is similar to the tax treaties between the United States and other OECD nations. It provides for maximum rates of tax to be applied to various types of income, protection from double taxation of income, exchange of information, and contains rules making its benefits unavailable to persons that are engaged in treaty shopping.

Like other U.S. tax conventions, this Convention provides rules specifying when income that arises in one of the countries and is attributable to residents of the other country may be taxed by the country

in which the income arises (the "source" country). In most respects, the rates under the new Convention are the same as those in many recent U.S. tax treaties with OECD countries.

The maximum rates of tax that may be imposed on dividend and royalty income are generally the same as in the current U.S.-Ireland treaty. Pursuant to Article 10, dividends from direct investments are subject to tax by the source country at a rate of five percent. The threshold criterion for direct investment has been reduced from 95 percent ownership of the equity of a firm to ten percent consistent with other modern U.S. treaties, in order to facilitate direct investment. Other dividends are generally taxable at 15 percent. Under Article 12, royalties derived and beneficially owned by a resident of a Contracting State are generally taxable only in that State.

As in the current convention, under Article 11 of the proposed Convention, interest arising in one Contracting State and owned by a resident of the other Contracting State is exempt from taxation by the source country. The restrictions on the taxation of royalty and interest income do not apply, however, if the beneficial owner of the income is a resident of one Contracting State who carries on business in the other Contracting State in which the income arises and the income is attributable to a permanent establishment in that State. In that situation, the income is to be considered either business profit or income from independent personal services.

The maximum rates of withholding tax described in the preceding paragraphs are subject to the standard anti-abuse rules for certain classes of investment income found in other U.S. tax treaties and agreements.

The taxation of capital gains, described in Article 13 of the Convention, generally follows the rule of recent U.S. tax treaties as well as the OECD model. Gains on real property are taxable in the country in which the property is located, and gains from the sale of personal property are taxed only in the State of residence of the seller, unless attributable to a permanent establishment or fixed base in the other State.

Article 7 of the new Convention generally follows the standard rules for taxation by one country of the business profits of a resident of the other. The non-residence country's right to tax such profits is generally limited to cases in which the profits are attributable to a permanent establishment located in that country. The present convention grants taxing rights that are in some respects broader and in others narrower than those found in modern treaties.

As do all recent U.S. treaties, this Convention preserves the right of the United States to impose its branch profits tax in addition to the basic corporate tax on a branch's business (Article 7). This tax, which was introduced in 1986, is not addressed under the present treaty. Paragraph 4 of the Protocol also accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent establishment income that is earned during the life of the permanent establishment but is deferred and not received until after the permanent establishment no longer exists.

Consistent with U.S. treaty policy, Article 8 of the new Convention permits only the country of residence to tax profits from international carriage by ships or aircraft and income from the use,

maintenance, or rental of containers used in international traffic. This reciprocal exemption also extends to income from the rental of ships and aircraft if the rental income is incidental to income from the operation of ships and aircraft in international traffic.

Article 21 of the proposed Convention provides special thresholds to determine when income derived in connection with the offshore exploration for, and exploitation of, natural resources may be taxed in the source country. The general rule of Article 21 is that all exploitation activities give rise to a permanent establishment while exploration activities create a permanent establishment only if they continue for a period of 120 days in a twelve-month period. Article 21 also provides that salaries and other remuneration of a resident of one Contracting State derived from an employment in connection with offshore activities carried on through a permanent establishment in the other may be taxed by the other State. Other U.S. treaties with countries bordering on the North Sea (e.g., Norway, the United Kingdom, and the Netherlands) have similar articles dealing with offshore activities.

The taxation of income from the performance of personal services under Articles 14 through 17 of the new Convention is essentially the same as that under other recent U.S. treaties with OECD countries. Unlike many U.S. treaties, however, the new Convention, at Article 18, provides for the deductibility of cross-border contributions by temporary residents of one State to pension plans registered in the other State under limited circumstances.

Article 23 of the new Convention contains significant anti-treaty-shopping rules making its benefits unavailable to persons engaged in treaty-shopping. The current convention contains no such anti-treaty-shopping rules. The Limitation on Benefits of the proposed Convention also eliminates another potential abuse by denying U.S. benefits with respect to income attributable to third-country permanent establishments of Irish corporations that are exempt from tax in Ireland by operation of Irish law (the so-called "triangular cases"). Under the new Convention, full U.S. treaty benefits generally will be granted in these triangular cases only when the U.S. source income is subject to a significant level of tax in Ireland or in the country in which the permanent establishment is located.

The proposed Convention also contains rules necessary for its administration, including rules for the resolution of disputes under the Convention (Article 26) and for exchange of information (Article 27).

The Convention would permit the General Accounting Office and the tax-writing committees of Congress to obtain access to certain tax information exchanged under the Convention for use in their oversight of the administration of U.S. tax laws.

This Convention is subject to ratification. In accordance with Article 29, it will enter into force upon the exchange of instruments of ratification and will have effect for payments made or credited on or after the first day of January following entry into force with respect to taxes withheld by the source country; with respect to other taxes, the Convention will take effect for taxable periods beginning on or after the first day of January following the date on which the Convention enters into force. When the present convention affords a more favorable result for a taxpayer than the proposed Convention, the provisions of the present convention will continue to apply for one additional year. Article 29 (5) also provides that

certain companies that are owned by residents of member states of the European Union or of parties to the North American Free Trade Agreement not be subject to the terms of Article 23 (5) (b) for an additional two years.

The proposed Convention will remain in force indefinitely unless terminated by one of the Contracting States, pursuant to Article 30. That Article provides that, at any time after five years from the date the Convention enters into force, either State may terminate the Convention by giving prior notice through diplomatic channels of six months.

A Protocol and an exchange of notes accompany the Convention and provide binding interpretations and understandings concerning the application of the Convention. The Protocol, which states that it is an integral part of the Convention, elaborates on the meaning of certain terms used in the Convention. The exchange of notes provides further clarification and will constitute an agreement that will enter into force upon entry into force of the Convention.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

MADELEINE ALBRIGHT.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 24, 1997.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Dublin on July 28, 1997, (the "Convention") together with a Protocol and an exchange of notes done on the same date. Also transmitted is the report of the Department of State concerning the Convention.

This Convention, which is similar to tax treaties between the United States and other OECD nations, provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention also provides for resolution of disputes and sets forth rules making its benefits unavailable to residents that are engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Convention, with its Protocol and exchange of notes, and that the Senate give its advice and consent to ratification.

WILLIAM J. CLINTON.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the United States of America and the Government of Ireland, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains have agreed as follows:

ARTICLE 1
General Scope

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. This Convention shall not restrict in any manner any benefit now or hereafter accorded:
a) by the laws of either Contracting State; or
b) by any other agreement between the Contracting States.

3. a) Notwithstanding the provisions of subparagraph 2 b):
i) the provisions or Article 25 (Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute, notwithstanding any other agreement to which both Contracting States may be parties; and
ii) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the non-discrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favoured-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favoured-nation obligation under any other agreement shall apply with respect to that measure.
b) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.

4. Notwithstanding any provision of the Convention, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the

Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

5. The provisions of paragraph 4 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraph 2 of Article 16 (Directors' Fees), paragraphs 1 (b) and 4 of Article 18 (Pensions, Social Security, Annuities, Alimony and Child Support), and Articles 24 (Relief From Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under paragraph 5 of Article 18 (Pensions, Social Security, Annuities, Alimony and Child Support), Articles 19 (Government Service), 20 (Students and Trainees) and 28 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

ARTICLE 2
Taxes Covered

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

a) in the United States: the Federal income taxes imposed by the Internal Revenue Code of 1986 (but excluding the accumulated earnings tax, the personal holding company tax and social security taxes), and the Federal excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as "United States tax"). The Convention shall, however, apply to the Federal excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention which provides exemption from these taxes; and

b) in Ireland: the income tax, the corporation tax and the capital gains tax (hereinafter referred to as "Irish tax").

2. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3
General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "person" includes an individual, an estate, a trust, a partnership, a company and any other body of persons;

b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

c) the terms "enterprise of a Contracting States" 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;

d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State;

e) the term "competent authority" means:

i) in the United States: the Secretary of the Treasury or his delegate; and

ii) in Ireland: the Revenue Commissioners or their authorized representative;

f) the term "United States" means the United States of America, and includes the states thereof and the District at Columbia; such term also includes any area outside the territorial waters of the United States which, in accordance with international law, has been or may hereafter be designated under the laws of the United States concerning the Continental Shelf as an area within which the rights of the United States with respect to the sea bed and subsoil and their natural resources may be exercised; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

g) the term “Ireland” includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be designated under the laws of Ireland concerning the Continental Shelf as an area within which the rights of Ireland with respect to the sea bed and subsoil and their natural resources may be exercised;

h) the terms "the Contracting State", "one of the Contracting States" and "the other Contracting State" mean Ireland or the United States, as the context requires; and the term "Contracting States" means Ireland and the United States;

i) the term "national" in relation to a Contracting State, means any citizen of that State and any legal person, association or other entity deriving its status as such from the laws in force in that State;

j) the term “qualified governmental entity” means:

i) any person that constitutes the Government or a Department of Government of a Contracting State, or a political subdivision or local authority of a Contracting State;

ii) a person that is wholly owned, or the beneficial interest of which is wholly owned, directly or indirectly, by a Contracting State or a political subdivision or local authority of a Contracting State, provided

(A) it is organized under the laws of the Contracting State,

(B) its earnings are credited to its own account and

(C) its assets vest in the Contracting State, political subdivision or local authority upon its dissolution; and

iii) a pension, trust or fund of a person described in subparagraph i) or ii) that is constituted and operated exclusively to administer or provide pension benefits described in Article 19 (Government Service),

provided the income of the entity does not inure to the benefit of a private person and the entity does not carry on commercial activity.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies.

ARTICLE 4
Residence

1. For the purposes of this Convention the term "resident of a Contracting State" means

a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. A United States citizen or an alien lawfully admitted for permanent residence in the United States is a resident of the United States, but only if such person has a substantial presence, permanent home or habitual abode in the United States;

b) a qualified governmental entity of that State;

c) a pension trust and any other organization established in that State and maintained exclusively to administer or provide retirement or employee benefits that is established or sponsored by a person that is otherwise a resident under Article 4 (Residence); and any charitable or other exempt organization, provided that the use of the organization's assets, both currently and upon the dissolution or liquidation of such organization, is limited to the accomplishment of the purposes that serve as the basis for such organization's exemption from income tax;

d) in the case of the United States, a Regulated Investment Company and a Real Estate Investment Trust; in the case of Ireland, a Collective Investment Undertaking; and any similar investment entities agreed upon by the competent authorities of both Contracting States.

2. The term "resident of a Contracting State" does not include any person who is liable to tax in that State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State.

3. Where by reason of the provisions of paragraph l, 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 that 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 does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour by mutual agreement to deem, for purposes of the Convention, the person to be a resident of one Contracting State only.

ARTICLE 5
Permanent Establishment

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

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop; and

f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

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

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 the activities mentioned in subparagraphs 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 which paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 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 State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business as independent agents.

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

ARTICLE 6
Income from Removable (Real Property)

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

2. The term immovable property (real property) shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.

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 independent personal services.

ARTICLE 7
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. Subject to the provisions of paragraph 3, 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 that 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 that are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Notwithstanding paragraph 6 below, insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of this Article, the profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment and shall be determined by the same method of accounting year by year unless there is good and sufficient reason to the contrary.

7. The term “profits” as used in this Article includes income from the performance of personal services by an enterprise and income from the rental of tangible movable property.

8. Where profits include items of income that are dealt with separately in other Articles of the Convention, 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 State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or aircraft are operated in international traffic by the lessee, or if the rental income is incidental to profits from the operation of ships or aircraft in international traffic. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State, shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken in the course of international traffic by the enterprise.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

ARTICLE 9
Associated Enterprises

1. Where:

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations that differ from those that would be made between independent enterprises, then, any profits that, but for those conditions, would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits in

determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10
Dividends

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, except as otherwise provided in this Article, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns at least 10 percent of the voting stock of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. However, as long as an individual resident in Ireland is entitled under Irish law to a tax credit in respect of dividends paid by a company resident in Ireland, the following provisions of this paragraph shall apply to dividends paid by a company resident in Ireland instead of the provisions of paragraphs 1 and 2 of this Article:

a) i) Dividends paid by a company which is a resident of Ireland to a resident of the United States may be taxed in the United States.

ii) Where a resident of the United States is entitled to a tax credit in respect of such a dividend under subparagraph b) of this paragraph, 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 percent.

iii) Except as provided in subparagraph a) ii) of this paragraph, dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of the United States shall be exempt from any tax in Ireland which is chargeable on dividends.

b) A resident of the United States who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of subparagraph c) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled had he received those dividends and to the payment of any excess of that tax credit over his liability to Irish tax. Any such tax credit shall he treated for United States foreign tax credit purposes as a dividend.

c) The provisions of subparagraph b) of this paragraph shall not apply where the beneficial owner of the dividend (being a company) is, or is associated with, a company which either alone or together with one or more associated companies controls directly or indirectly 10 percent or more of the voting power in the company paying the dividend. For the purpose of this subparagraph, two companies shall be deemed to be associated if one is controlled directly or indirectly by the other or both are controlled directly or indirectly by a third company.

4. Subparagraph a) of paragraph 2 shall not apply in the case of dividends paid by a Regulated Investment Company or a Real Estate Investment Trust (REIT). In the case of a REIT, subparagraph b) of paragraph 2 also shall not apply, unless the dividend is beneficially owned by an individual holding a less than 10 percent interest in the REIT.

5. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, and includes any income or distribution treated as income from shares under the taxation laws of the Contracting State of which the company paying the dividends or income or making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 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 dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. A company which is a resident of a Contracting State and which has a permanent establishment in the other Contracting State or which is subject to tax on a net basis in that other State on items of income or gains that may be taxed in that other State under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on:

a) in the case of the United States,

i) the portion of the business profits of the company attributable to the permanent establishment, and

ii) the portion of the income or gains referred to in the preceding sentence which may be subject to tax under Article 6 or 13, which represents the "dividend equivalent amount", as that term is defined under the laws of the United States, as they may be amended from time to time without changing the general principle thereof, and

b) in the case of Ireland,

i) the portion of the business profits of the company attributable to the permanent establishment, and

ii) the portion of the income or gains referred to in the first sentence of this paragraph which may be taxed in Ireland under Article 6 or under Article 13,which in both cases represent an amount that, if those business profits, income or gains arose to a subsidiary company incorporated in Ireland, would be distributed as a dividend.

8. The tax referred to in paragraph 7 may not be imposed at a rate in excess of the rate specified in subparagraph a) of paragraph 2.

ARTICLE 11
Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.

2. 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 debtors profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures, and all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base, situated therein, and the interest is attributable to such permanent establishment or fixed base in such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Interest shall be deemed to arise in a Contracting State when

a) the payer is a resident of that State, or

b) the payer, whether a resident of a Contracting State or not, has in that Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest paid was incurred and such interest is borne by such permanent establishment or fixed base.

5. 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, 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 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 State, due regard being had to the other provisions of this Convention.

4. The excess of the amount deductible by a permanent establishment in the United States of a company which is a resident of Ireland over the interest actually paid by such permanent establishment, as those amounts are determined pursuant to the laws of the United States, shall be treated as interest beneficially owned by a resident of Ireland.

ARTICLE 12
Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.

2. The term "royalties" as used in this Convention means:

a) payments of any kind received as consideration to the use of, or the right to use, any copyright of literature, artistic, or scientific work (including cinematographic films, and audio and video tapes and disks), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience; and

b) gains derived from the alienation of any property described in subparagraph a), provided that such gains are contingent on the productivity, use, or disposition of the property.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. 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, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

5. A State may not impose any tax on royalties paid by a resident of the other State, except insofar as

a) the royalties are paid to a resident of the first-mentioned State;

b) the royalties are attributable to a permanent establishment or a fixed base situated in the first-mentioned State;

c) the contract under which the royalties are paid was concluded in connection with a permanent establishment or a fixed base which the payer has in the first-mentioned State, and such royalties are borne by such permanent establishment or fixed base and are not paid to a resident of the other State; or

d) royalties are paid in respect of intangible property used in the first-mentioned State and not paid to a resident of the other State, but only where the payer has also received a royalty paid by a resident of the first-mentioned State, or borne by a permanent establishment or fixed base situated in that State, in respect of the use of that property in the first-mentioned State and provided that the use of the intangible property in question is not a component part of,

nor directly related to, the active conduct of a trade or business in which the payer is engaged as meant in paragraph 3 of Article 23 (Limitation on Benefits).

ARTICLE 13
Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property (real property) referred to in Article 4 (Income from Immovable Property (Real Property)) and situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article, the term "immovable property (real property) referred to in Article 6 (Income from Immovable Property (Real Property)) and situated in the other Contracting State" shall include:

a) in the United States, a United States real property interest; and

b) in Ireland, shares (including stock and any security) other then shares quoted on a stock exchange, deriving the greater part of their value directly or indirectly from immovable property situated in Ireland.

3. Gains from the alienation of movable property that are attributable to a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or that are attributable to a fixed base that is available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated in international traffic or personal property pertaining to the operation of such ships, aircraft or containers, shall be taxable only in that State.

5. Gains from the alienation of any property other than property referred to in paragraphs 1 to 4 inclusive shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14
Independent Personal Services

1. Income derived by a resident or a Contracting State in respect of professional services or other activities of an independent 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 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, architects, dentists and accountants.

ARTICLE 15
Dependent Personal Services

1. Subject to the provisions of Articles 15 (Directors' Fees), 18 (Pensions Social Security Annuities, Alimony and Child Support) and 19 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, 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 any twelve month period commencing or ending in the fiscal year concerned;

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 described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic may be taxed only in that State.

ARTICLE 16
Directors’ Fees

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in the State where such fees or payments arise.

2. Directors' fees and other similar payments shall be deemed to arise in the Contracting State in which the company is resident except to the extent that such fees are paid in respect of attendance at meetings held in the other Contracting State.

ARTICLE 17

Artistes and Sportsmen

1. Income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as a sportsmen, from his personal activities as such exercised in the other Contracting State, which income would be exempt from tax in that other Contracting State under the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to his or borne on his behalf, from such activities does not exceed twenty thousand
United States dollars ($20,000) or its equivalent in Irish pounds for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or a sportsmen who is a resident of a Contracting State in his capacity as such accrues not to the entertainer or sportsman himself but to another person who is a resident of that State, that income of that other person, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

ARTICLE 18
Pensions, Social Security, Annuities,
Alimony and Child Support

1. a) Subject to the provisions or Article 19 (Government Service) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and

b) notwithstanding the provisions of Article 19, payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other Contracting State shall be taxable only in that other State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term “annuities” as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid by a resident of a Contracting State, and deductible therein, to a resident of the other Contracting State shall be taxable only in that other State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, judicial separation, separate maintenance, or compulsory support.

4. Periodic payments, not dealt with in paragraph 3, for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, judicial separation, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

5. For the purposes of this Convention, where an individual who is a member of a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State, contributions paid by the individual to the plan during the period that he performs personal services in the other Contracting State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension plan that is established and recognized under the legislation of that State, and any payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State. The provisions of this paragraph shall not apply unless:

a) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made immediately before he visited the other State;

b) the individual has performed personal services in the other State for a cumulative period not exceeding five calendar years; and

c) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to a pension plan recognized for tax purposes by that State.

6. Where, under paragraph 5, contributions to a foreign pension plan are deductible in computing an individual's taxable income in a Contracting State and, under the laws in force in that State, the individual is, in respect of income or gains, subject to tax by reference only to the amount thereof which is remitted to or received in that State, and not by reference to the full amount of such income or gains, then the deduction which would otherwise be allowed to the individual under paragraph 5 in respect of such contributions shall be reduced to an amount that bears the same proportion to such deduction as the amount remitted bears to the full amount of the income or gains of the individual that would be taxable in that State if the income or gains had not been taxable on the amount remitted only.

ARTICLE 19
Government Service

1. a) Salaries wages and other similar remuneration other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

i) is a national of that State; or

ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), 17 (Artistes and Sportsmen) and 16 (Pensions, Social Security, Annuities, Alimony and Child Support) shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20
Students and Trainees

Payments received by a student, apprentice, or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education at a recognized educational institution, or for his full-time training, shall not be taxed in that State, provided that such payments arise outside that State, and are for the purpose of his maintenance, education, or training. The exemption from tax provided by this Article shall apply to an apprentice or business trainee only for a period of time not exceeding one year from the date he first arrives in the first-mentioned Contracting State for the purpose of his training.

ARTICLE 21
Offshore Exploration and Exploitation Activities

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

2. An enterprise of a Contracting State which carries on exploration activities or exploitation activities in the other Contracting State shall, subject to paragraph 3 of this Article, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

3. Exploration activities which are carried on by an enterprise of a Contracting State in the other Contracting State for a period or periods not exceeding in the aggregate 120 days within any period of twelve months shall not constitute the carrying on of business through a permanent establishment situated therein. For the purposes of determining such period or periods:

a) where an enterprise of a Contracting State carrying on exploration activities in the other Contracting State is associated with another enterprise carrying on substantially similar exploration activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;

b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

4. A resident of a Contracting State who carries on exploration activities or exploitation activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in that other State. However, income derived by a resident of a Contracting State in respect of such exploration activities performed in the other Contracting State shall not be taxable in that other State if the activities are performed in that other State for a period or periods not exceeding in the aggregate 120 days within any period of twelve months.

5. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with a permanent establishment that is deemed to exist with respect to exploration activities or exploitation activities carried on in the other Contracting State may be taxed in that other State, to the extent that the duties are performed offshore in that other State.

ARTICLE 22
Other Income

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

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 (Income from Immovable Property (Real Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 23

Limitation on Benefits

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall be entitled to all the benefits of this Convention only if such resident is a "qualified person" as defined in this Article.

2. A resident of a Contracting State is a qualified person for a fiscal year only if such resident is either:

a) an individual;

b) a qualified governmental entity;

c) a person other than an individual, if:

i) at least 50 percent of the beneficial interest in such person (or in the case of a company at least 50 percent of the aggregate vote and value of the company's shares) is owned, directly or indirectly, by qualified persons or residents or citizens of the United States, provided that such ownership test shall not be satisfied in the case of a chain of ownership unless it is satisfied by the last owners in the chain, and

ii) amounts paid or accrued by the person during its fiscal year:

A) to persons that are neither qualified persons nor residents or citizens of the United States, and

B) that are deductible for income tax purposes in that fiscal year in the person's State of residence (but not including arm's length payments in the ordinary course of business for

(l) services or tangible property, and

(2) payments in respect of financial obligations to a bank

provided that where such a bank is not a resident of either Contracting State such payment is attributable to a permanent establishment of such bank, and the permanent establishment is located in either Contracting State)

do not exceed 50 percent of the gross income of the person;

d) a person, other than an individual or a company, if:

i) the principal class of units in that person is listed on a recognized stock exchange located in either Contracting State and is substantially and regularly traded on one or more recognized stock exchanges, or

ii) the direct or indirect owners of at least 50 percent of the beneficial interests in that person are persons referred to in subparagraph d) i) or e) i);

e) a company, if:

i) the principal class of its shares is substantially and regularly traded on one or more recognized stock exchanges, or

ii) at least 50 percent of the aggregate vote and value of its shares is owned directly or indirectly by companies described in subparagraph e) i), or by persons referred to in subparagraph b), or by companies more than 50 percent of the aggregate

vote and value of which is owned by persons referred to in subparagraph b), or by any combination of the above;

f) a person described in subparagraph c) of paragraph 1 of Article 4 (Residence), provided that more than half of the beneficiaries, members or participants, if any, in such organization are qualified persons.

3. a) A resident of a Contracting State that is not a qualified person shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:

i) such resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless such business is carried out by a bank or insurance company acting in the ordinary course of its business), and

ii) the item of income is connected with or incidental to the trade or business in the first-mentioned State, provided that, where such item is connected with a trade or business in the first-mentioned State and such resident has an ownership interest in the activity in the other State that generated the income, the trade or business is substantial in relation to that activity.

b) For the purposes of subparagraph a) ii),

i) an item of income shall, in any case, be connected with a trade or business if the activity in the other State that generated the item of income is a line of business that forms a part of or is complementary to the trade or business conducted in the first-mentioned State by the income recipient;

ii) whether the trade or business of the resident in the first-mentioned State is substantial in relation to the activity in the other State shall be determined based on all the relevant facts and circumstances. In any case, however, the trade or business will be deemed substantial if, for the preceding fiscal year, or for the average of the three preceding fiscal years, the asset value, the gross income and the payroll expense that are related to the trade or business in the first-mentioned State equals at least 7.5 percent of the asset value, the gross income and the payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent,

provided that for the purposes of calculating the above ratios, there shall be taken into account only the resident's proportionate ownership interest in such trade, business or activities, whether held directly or indirectly.

4. A resident of one of the Contracting States that derives from the other State income referred to in Article 8 (Shipping and Air Transport) and which is not entitled to the benefits of this Convention because of the foregoing paragraphs, shall nevertheless be entitled to the benefits of this Convention with respect to such income if at least 50 percent of the beneficial interest in such person (or in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares) is owned directly or indirectly:

a) by qualified persons or citizens of the United States or individuals who are residents of a third state; or

b) by a company or combination of companies the principal class of shares in which are substantially and regularly traded on an established securities market in a third state,

provided that such third state grants an exemption under similar terms for profits referred to in Article 8 of this Convention to citizens and corporations of the other State either under its national law or in common agreement with that other State or under a convention between that third state and the other State.

5. a) A company that is a resident of a Contracting State shall also be entitled to all of the benefits of the Convention if:

i) at least 95 percent of the aggregate vote and value of all its shares is owned directly or indirectly by seven or fewer qualified persons or persons that are residents of member states of the European Union or of parties to the North American Free Trade Agreement (NAFTA) or any combination thereof; and

ii) such company meets the base reduction test described in subparagraph c) ii) of paragraph 2, provided that a resident of a member State of the European Union or a party to NAFTA shall be treated as a qualified person for the purpose of that test.

b) Notwithstanding the other provisions of this paragraph, a company which is in receipt of income referred to in Article 10 (Dividends), 11 (Interest) or 12 (Royalties) shall not be entitled to the benefit of those Articles in respect of such income unless at least 95 percent of its shares is held directly or indirectly by one or more persons that are residents of member states of the European Union or of parties to NAFTA or any combination thereof, who under the income tax convention between their state of residence and the Contracting State from which the income is derived would be entitled to benefits that are at least equivalent to the benefits provided under this Convention with respect to such income.

6. A resident of a Contracting State that is not a qualified person pursuant to the provisions of paragraph 2 shall, nevertheless, be granted the benefits of the Convention if the competent authority of that other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before denying the benefits of the Convention under this paragraph.

7. Notwithstanding the other provisions of this Convention:

a) where an enterprise of Ireland derives income from the United States;

b) that income is attributable to a permanent establishment which that enterprise has in a third state; and

c) the enterprise is exempt from tax in Ireland on the profits attributable to the permanent establishment; the United States tax benefits that would otherwise apply under the other provisions of this Convention will not apply to any item of income on which the combined tax in Ireland and in the third State is less than 50 percent of the generally applicable tax that would be imposed in Ireland on an enterprise deriving such item directly from the United States. Any dividends, interest or royalties to which this paragraph applies will be subject to United

States tax at a rate not exceeding 15 percent of the gross amount thereof. The provisions of this paragraph shall not apply if the income derived from the other Contracting State is connected with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third state (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company).

8. The following definitions shall apply for the purposes of this Article:

a) The term “gross income” as used in subparagraph c) of paragraph 2 means gross income for the fiscal year preceding the current fiscal year provided that the amount of gross income for the fiscal year preceding the current fiscal year shall be deemed to be not less than the average of the annual amounts of gross income for the four fiscal years preceding the current fiscal year.

b) The term “a recognized stock exchange” means:

i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange for purposes of the U.S. Securities Exchange Act of 1934;

ii) the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, London, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto, Vienna and Zurich;

iii) any other stock exchange agreed upon by the competent authorities of the Contracting States.

c) The term "units" as used in subparagraph d) of paragraph 2 includes shares and any other instrument, not being a debt-claim, granting an entitlement to:

i) share in the assets or income of, or

ii) receive a distribution from, the person.

d) i) The term “principal class of shares” is generally the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. When no single class of shares represents the majority of the voting power and value of the company, the "principal class of shares" is generally those classes that in the aggregate possess more than 50 percent of the voting power and value of the company. The “principal class of shares” also includes any "disproportionate class of shares".

ii) The term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company.

iii) The term shares shall include depository receipts thereof or trust certificates thereof.

e) The term "resident of a member state of the European Union" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between

any member state of the European Union and the Contracting State from which the benefits of the Convention are claimed, provided that if such convention does not contain a comprehensive Limitation on Benefits article (including provisions similar to those of subparagraphs c) and e) of paragraph 2), the person would be entitled to the benefits of this Convention under the principles of paragraph 2 if such person were a resident of one of the Contracting States under Article 4 (Residence) of this Convention.

f) The term "resident of a party to NAFTA" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between any party to NAFTA and the Contracting State from which the benefits of the Convention are claimed, provided that if such convention does not contain a comprehensive Limitation on Benefits article (including provisions similar to those of subparagraphs c) and e) of paragraph 2), the person would be entitled to the benefits of this Convention under the principles of paragraph 2 if such person were a resident of one of the Contracting States under Article 4 (Residence) of this Convention.

9. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article, including the publication of regulations or other public guidance. The competent authorities shall, in accordance with the provisions of Article 27 (Exchange of Information and Administrative Assistance), exchange such information as is necessary for carrying out the provisions of this Article.

ARTICLE 24
Relief from Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income:

a) the Irish tax paid by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Ireland and from which the United States company receives dividends, the Irish tax paid by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

2. For the purposes of paragraph 1, the amount of the credit less the amount of any excess paid by Ireland pursuant to paragraph 3 b) of Article 10 (Dividends) shall be treated as an income tax paid to Ireland by the beneficial owner of the dividend.

3. Where a United States citizen is a resident of Ireland:

a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Ireland who is not a United States citizen, Ireland shall allow as a credit against Irish tax, only the tax paid, if any, that the United States may impose under the

provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);

b) for purposes of computing United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to Ireland after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the Irish tax in accordance with subparagraph a); and

c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in Ireland to the extent necessary to avoid double taxation of such income under subparagraph b).

4. 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) United States tax payable under the law of the United States and in accordance with the Convention (other than payable solely by reason of citizenship), whether directly or by deduction, on profits, income or chargeable gains from sources within the United States (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 United States tax is computed; and

b) in the case of a dividend paid by a company which is a resident of the United States to a company which is a resident of Ireland and which controls directly or indirectly 10 percent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any United States tax creditable under the provisions of subparagraph a) of this paragraph the United States tax payable by the company in respect of the profits out of which such dividend is paid.

5. Except as provided in subparagraph c) of paragraph 3, for the purposes of allowing relief from double taxation pursuant to this Article, and subject to such source rules in the domestic laws of the Contracting States as apply for purposes of limiting the foreign tax credit, income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 4 of Article 1 (General Scope)) shall be deemed to arise in that other State.

6. Where, under any provision of this Convention, income or gains is or are wholly or partly relieved from tax in a Contracting State and, under the laws in force in the other Contracting State, an individual, in respect of the said income or gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other State, and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income or gains as is remitted to or received in that other State.

ARTICLE 25

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of the tax of a Contracting State, a citizen of that Contracting State who is not a resident of that Contracting State and a citizen of the other Contracting State who is not a resident of the first-mentioned Contracting State are not in the same circumstances.

2. The taxation on a permanent establishment or fixed base that a resident or 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. The provisions of this paragraph 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.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 5 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

5. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 7 of Article 10 (Dividends).

ARTICLE 26
Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States and the time limits prescribed in such laws for presenting claims for refund, present his case to the competent authority of either Contracting State.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the

competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

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. In particular the competent authorities of the Contracting States may agree, with a view to the avoidance of taxation which is not in accordance with the Convention:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits. or allowances between persons;

c) to the same characterization of particular items of income;

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income;

f) to a common meaning of a term;

g) to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments;

h) to advance pricing arrangements; and

i) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

Any principle of general application established by an agreement or agreements shall be published by the competent authorities of both Contracting States in accordance with their laws and administrative practices.

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.

5. If an agreement cannot be reached by the competent authorities pursuant to the previous paragraphs of this article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The competent authorities may release to the arbitration board such information as is necessary for carrying out the arbitration procedure. The decision of the arbitration board shall be binding on the taxpayer and on both States with regard to that case. The procedures, including the composition of the board, shall be established between the Contracting States by notes to be exchanged through diplomatic channels after consultation between the competent authorities. The provisions of this paragraph shall not have effect until the date specified in the exchange of diplomatic notes.

ARTICLE 27

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, including the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if its own taxation were involved, notwithstanding the fact that the other State may not, at that time, need such information for purposes of its own tax. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings), to the extent such depositions and documents can be obtained under the laws and administrative practices of that other State.

4. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine a person's books and records with their consent.

ARTICLE 28
Diplomatic Agents and Consular Officers

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

ARTICLE 29
Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged as soon as possible.

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

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the date on which the Convention enters into force;

b) in respect of other taxes, in the case of the United States, for taxable periods, and in the case of Ireland, for financial years with respect to the corporation tax and for years of assessment with respect to the income tax and capital gains tax, beginning on or after the first day of January next following the date on which the Convention enters into force.

3. Where the provisions of the Convention between the Government of Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Dublin on 13 September, 1949 (hereinafter referred to as "the 1949 Convention") would have afforded any greater relief from tax to a person entitled to its benefits than is afforded under this Convention, such provisions as aforesaid shall continue to have effect for a period of twelve calendar months from the date on which the provisions of this Convention would otherwise have effect in accordance with the provisions of paragraph 2 of this Article.

4. The provisions of the 1949 Convention shall cease to have effect when the provisions of this Convention take effect in accordance with paragraphs 2 and 3.

5. Subparagraph b) of paragraph 5 of Article 23 (Limitation on Benefits) shall not have effect for a period of twenty-four calendar months from the date on which the provisions of this Convention would otherwise have effect in accordance with paragraph 2 of this Article or for a further period of twelve calendar months if paragraph 3 applies.

ARTICLE 30
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6 months prior notice of termination has been given to the other Contracting State through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 months period; and

b) in respect of other taxes, in the case of the United States, for taxable periods, and in the case of Ireland, for financial years with respect to the corporation tax and for years of assessment with respect to the income tax and capital gains tax, beginning on or after the first day of January next following the expiration of the 6 months period.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Convention.

DONE at Dublin in duplicate, this 28 day of July, 1997.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
(s) Jean Kennedy Smith

FOR THE GOVERNMENT OF IRELAND:
(s) Charlie McCreevy

PROTOCOL

At the time of signing the Convention between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

1. With reference to income, profit or gain derived by fiscally transparent persons.

For the purposes of the Convention, where a resident of a Contracting State is entitled to income, profit or gain in respect of an interest in a person that derives income, profit or gain from the other Contracting State, any income, profit or gain so derived will be considered to be income, profit or gain of that resident to the extent it is treated as such for purposes of the taxation laws of the first-mentioned Contracting State.

The aforementioned reference to "person" shall not include a resident of a Contracting State within the meaning of subparagraph 1 d) of Article 4 (Residence).

2. With reference to Article 2 (Taxes Covered).

For the purposes of paragraph 1, it is understood that this Convention shall not apply to the Federal Excise Taxes imposed on insurance premiums paid to foreign insurers where such premiums are not subject to the generally applicable tax imposed on insurance corporations in the Contracting State in which such insurers are resident.

3. With reference to Article 6 (Income from Immovable Property (Real Property)).

A resident of a Contracting State who is liable to tax in the other Contracting State on income from immovable property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis in accordance with the law of that other Contracting State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the other Contracting State, pursuant to a request by the taxpayer, agrees to terminate the election.

4. With reference to Articles 7 (Business Profits), 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Capital Gains), 14 (Independent Personal Services) and 22 (Other Income).

In applying paragraphs 1 and 2 of Article 7, paragraph 6 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12, paragraph 3 of Article 13, Article 14 and paragraph 2 of Article 22, any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

5. With reference to Article 10 (Dividends).

For the purposes of paragraph 5, the term "dividends" shall not include interest which, by reason of the fact that it was paid to a non-resident company, is treated as dividends under the domestic laws of either Contracting State, to the extent that such interest does not exceed the amount which would be expected to be paid between independent parties dealing at arm's length.

6. With reference to Article 11 (Interest).

In accordance with section 871(h) (4) and 881(c) (4) of the Internal Revenue Code, interest arising in the United States that is determined with reference to the profits of the issuer or of one of its associated enterprises, and paid to a resident of Ireland also may be taxed in the United States, and according to the laws of the United States, but if the beneficial owner is a resident of Ireland, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article 10 (Dividends). Interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

7. With reference to Article 14 (Independent Personal Services).

In determining the income described in paragraph 1 that is taxable in the other Contracting State, the principles of paragraph 3 of Article 7 (Business Profits) shall apply.

8. With reference to Article 21 (Offshore Exploration and Exploitation Activities).

Where a permanent establishment is deemed to exist by virtue of that Article, a "balancing charge" under Chapter II of Part XVI of the Income Tax Act, 1967 will not be imposed for the reason only that the trade carried on through the permanent establishment is treated as having permanently ceased because of the termination of the relevant activities in Ireland, except to the extent that the person carrying on the activities referred to in that Article has made a claim under the laws of Ireland for accelerated capital allowances in respect of machinery or plant used for the purposes of the permanent establishment. Normal wear and tear allowances would, however, be granted in respect of the machinery or plant concerned and no balancing charge would be imposed with respect to such allowances.

9. With reference to Article 23 (Limitation on Benefits).

a) For the purposes of paragraph 2,

i) the shares in a class of shares or the units in a class of units are considered to be substantially and regularly traded on one or more recognized stock exchanges in a fiscal year if:

A) trades in such class are effected on one or more of such stock exchanges other than in de minimis quantities during every quarter; and

B) the aggregate number of shares or units of that class traded on such stock exchange or exchanges during the previous fiscal year is at least 6 percent of the average number of shares or units outstanding in that class during that taxable year, provided that if such class was not listed on a recognized stock exchange in the previous fiscal year the shares or units will be considered to have satisfied the requirement of this subparagraph B);

ii) a Building Society incorporated in Ireland shall be deemed to be a company the principal class of shares in which:

A) is listed on the Irish Stock Exchange, and

B) which in any fiscal year is substantially and regularly traded on such exchange.

b) For the purpose of paragraph 3,

i) whether a resident of a Contracting State is engaged in the active conduct of a trade or business will be determined on the basis of an analysis of all the relevant facts and circumstances. In any case, however,

A) a bank will be considered to be engaged in the active conduct of a trade or business if it regularly accepts deposits from the public or makes loans to the public. It is understood that a resident of a Contracting State that, as of the date of signature of this Convention, is licensed by the banking authorities in that State to engage in the business of banking satisfies this requirement; and

B) an insurance company will be considered to be engaged in the active conduct of a trade or business if its gross income consists primarily of insurance or reinsurance premiums and investment income attributable to such premiums;

ii) in determining whether a person is engaged in the active conduct of a trade or business in a Contracting State, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

iii) a resident of a Contracting State does not have an ownership interest in an activity in the other State merely because it supplies goods, provides services or grants other facilities to that activity. For example, a lessor who would not otherwise have an ownership interest in an activity in the other State would not acquire such an interest merely because it leased property for use by that activity.

10. With reference to Article 27 (Exchange of Information and Administrative Assistance).

For the purposes of paragraph 3, the Contracting States consider that, at the date of signature of this Convention, the laws and practices of Ireland do not permit its tax authorities to carry out enquiries on behalf of any state where no liability to Ireland's taxes as covered by this Convention are at issue. However, if, after the date of signature of this Convention, the laws and practices of Ireland in this respect change to permit such enquiries, on behalf of any state, then, subject to the provisions of Article 27, the tax authorities of Ireland shall carry out such enquiries on behalf of the United States and exchange the information so obtained.

IN WITNESS WHEREOF, the undersigned, being. duly authorized by their respective Governments, have signed this Convention.

DONE at Dublin in duplicate, this *28* day of July, 1997.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
(s) Jean Kennedy Smith

FOR THE GOVERNMENT OF IRELAND:
(s) Charlie McCreevy

NOTES OF EXCHANGE

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 238

July 28, 1997

His Excellency
Ray Burke, T.D.,
Minister for Foreign Affairs,
Ireland.

Excellency,

I have the honour to refer to the Convention and Protocol between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains which has been signed today and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention and Protocol signed today, the negotiators developed and agreed upon a common understanding and interpretation of the following provisions.

1. With reference to Article 7 (Business Profits).

For the purposes of paragraph 6, the assets of a permanent establishment shall be understood to include any property or rights used by or held by or for such permanent establishment.

2. With reference to Article 18 (Pensions, Social Security, Annuities, Alimony and Child Support).

It is understood that the term "or similar legislation" is intended to refer to United States tier I Railroad Retirement benefits.

3. With reference to subparagraph 2 c) of Article 23 (Limitation on Benefits).

It is understood that transactions between associated enterprises will be considered arm's length if the conditions made or imposed between the two enterprises in their commercial or financial relations do not differ from those that would be made between independent enterprises. Transactions between independent enterprises referred to in Article 9 (Associated Enterprises) will be considered to be arm's length. Whether two enterprises are associated will be determined without regard to the residence of the two enterprises.

4. With reference to subparagraph 2 d) and 2 e) of Article 23 (Limitation on Benefits).

It is understood that, for the purposes of determining whether a person, other than an individual or a company, qualifies for benefits under clause ii) of subparagraph 2 d) or a company qualifies for benefits under clause ii) of subparagraph 2 e), a person is “referred to in subparagraph d) i) or e) i)” or "referred

to in subparagraph b)", and a company is "described in subparagraph e) i)", only if that person or company is a resident of one of the Contracting States and is entitled to the benefits of the Convention by reason of subparagraph b), d) i) or e) i), as the case may be.

5. With reference to paragraph 3 of Article 26 (Mutual Agreement Procedure).

It is understood that the competent authorities may consult for the elimination of double taxation in cases not provided for in the Convention only with respect to covered taxes.

6. With reference to Article 27 (Exchange of Information and Administrative Assistance).

It is understood that, in addition to the provisions of paragraph 3 of Article 27, the United States may, pursuant to a request under the provisions of the Irish Criminal Justice Act, 1994 (or any law which succeeds that Act) to the Irish Minister for Justice, obtain information, including authenticated copies of unedited original documents, of financial institutions located in Ireland, or depositions of witnesses located in Ireland, as is appropriate for giving effect to such request, for the purpose of the investigation (including investigations by the Internal Revenue Service) or prosecutions of criminal fiscal offences (including criminal revenue offences) under the laws of the United States, as provided for in said Act. Ireland may obtain such types of information for the enforcement of Irish tax law by making requests directly to the United States competent authority.

The foregoing understandings are acceptable to the Government of the Unites States. If the foregoing understandings are acceptable to the Government of Ireland, I have the honour to confirm that this Note and Your Excellency's reply thereto shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(s) Jean Kennedy Smith

OIFIG AN AIRE GNOTHAI EACHTRACHA
Office of the Minister For Foreign Affairs

BAILE ATHA CLIATH 2
Dublin 2

28 July 1997.

Her Excellency, Mrs. Jean Kennedy Smith,
Ambassador of the United States of America,

Dublin.

Excellency,

I have received your note of 28 July, 1997, that states the following:

I have the honour to refer to the Convention and Protocol between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains which has been signed today and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention and Protocol signed today, the negotiators developed and agreed upon a common understanding and interpretation of the following provisions.

1. With reference to Article 7 (Business Profits).

For the purposes of paragraph 6, the assets of a permanent establishment shall be understood to include any property or rights used by or held by or for such permanent establishment.

2. With reference to Article 18 (Pensions, Social Security, Annuities, Alimony and Child Support).

It is understood that the term "or similar legislation" is intended to refer to United States tier I Railroad Retirement benefits.

3. With reference to subparagraph 2 c) of Article 23 (Limitation on Benefits).

It is understood that transactions between associated enterprises will be considered arm's length if the conditions made or imposed between the two enterprises in their commercial or financial relations do not differ from those that would be made between independent enterprises. Transactions between independent enterprises referred to in Article 9 (Associated Enterprises) will be considered to be arm's length. Whether two enterprises are associated will be determined without regard to the residence of the two enterprises.

4. With reference to subparagraph 2 d) and 2 e) of Article 23 (Limitation on Benefits).

It is understood that, for the purposes of determining whether a person, other than an individual or a company, qualifies for benefits under clause ii) of subparagraph 2 d) or a company qualifies for benefits under clause ii) of subparagraph 2 e), a person is "referred to in subparagraph d) i) or e) i)" or "referred to in subparagraph b)", and a company is "described in

subparagraph e) i)", only if that person or company is a resident of one of the Contracting States and is entitled to the benefits of the Convention by reason of subparagraph b), d) i) or e) i), as the case may be.

5. With reference to paragraph 3 of Article 26 (Mutual Agreement Procedure).

It is understood that the competent authorities may consult for the elimination of double taxation in cases not provided for in the Convention only with respect to covered taxes.

6. With reference to Article 27 (Exchange of Information and Administrative Assistance).

It is understood that, in addition to the provisions of paragraph 3 of Article 27, the United States may, pursuant to a request under the provisions of the Irish Criminal Justice Act, 1994 (or any law which succeeds that Act) to the Irish Minister for Justice, obtain information, including authenticated copies of unedited original documents, of financial institutions located in Ireland, or depositions of witnesses located in Ireland, as is appropriate for giving effect to such request, for the purpose of the investigation (including investigations by the Internal Revenue Service) or prosecutions of criminal fiscal offences (including criminal revenue offences) under the laws of the United States, as provided for in said Act. Ireland may obtain such types of information for the enforcement of Irish tax law by making requests directly to the United States competent authority.

The foregoing understandings are acceptable to the Government of the United States. If the foregoing understandings are acceptable to the Government of Ireland, I have the honour to confirm that this Note and your Excellency's reply thereto shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

The foregoing understandings are acceptable to the Government of Ireland. I have the honour to confirm that Your Excellency's Note and the present reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(s) Ray Burke, T.D.
Minister for Foreign Affairs.