



STATUTORY INSTRUMENTS.

**S.I. No. 20 of 2010**



DOUBLE TAXATION RELIEF (TAXES ON INCOME) (REPUBLIC OF  
SERBIA) ORDER 2010

**(Prn. A10/0104)**

## DOUBLE TAXATION RELIEF (TAXES ON INCOME) (REPUBLIC OF SERBIA) ORDER 2010

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

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

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann: NOW, the Government, in exercise of the powers conferred on them by section 826(1) (as amended by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of Serbia) Order 2010.

2. It is declared—

- (a) that the arrangements specified in the Convention, the text of which is set out in the Schedule to this Order, have been made with the Government of the Republic of Serbia in relation to affording relief from double taxation in respect of income tax, corporation tax, capital gains tax and any taxes of a similar character imposed by the laws of

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the State or by the laws of the Republic of Serbia and, in the case of taxes of any kind or description imposed by the laws of the State or the laws of the Republic of Serbia, in relation to exchanging information for the purposes of the prevention and detection of tax evasion and granting relief from taxation under the laws of the Republic of Serbia to persons who are resident in the State for the purposes of tax, and

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

**SCHEDULE  
CONVENTION  
BETWEEN  
IRELAND  
AND  
THE REPUBLIC OF SERBIA  
FOR THE AVOIDANCE OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME**

The Government of Ireland and the Government of the Republic of Serbia desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

## **Article 1**

### **PERSONS COVERED**

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

## **Article 2**

### **TAXES COVERED**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Convention shall apply are in particular:

— in the case of Ireland:

- 1) the income tax;
  - 2) the corporation tax; and
  - 3) the capital gains tax;
- (hereinafter referred to as "Irish tax");

— in the case of Serbia:

- 1) the corporate income tax;
  - 2) personal income tax.
- (hereinafter referred to as "Serbian tax").

4. The 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 taxation laws.

## **Article 3**

### **GENERAL DEFINITIONS**

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

- 1) the term "Ireland" includes any area outside the territorial waters of Ireland which has been or may hereafter be designated under the laws of

Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;

2) the term “Serbia” means the Republic of Serbia and when used in a geographical sense it means the territory of the Republic of Serbia;

3) the terms “a Contracting State” and “the other Contracting State” mean Ireland or Serbia, as the context requires;

4) the term “person” includes an individual, a company and any other body of persons;

5) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

6) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

7) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

8) the term “national”, in relation to a Contracting State, means:

— any individual possessing the nationality or citizenship of that Contracting State; and

— any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

9) the term “competent authority” means:

— in the case of Ireland, the Revenue Commissioners or their authorised representative;

— in the case of Serbia, the Ministry of Finance or its authorised representative;

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, 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, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **Article 4**

### **RESIDENT**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

1) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

2) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

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

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

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

## **Article 5**

### **PERMANENT ESTABLISHMENT**

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

2. The term “permanent establishment” includes especially:

1) a place of management;

2) a branch;

3) an office;

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4) a factory;

5) a workshop; and

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

3. The term “permanent establishment” also includes:

1) a building site or construction or installation project if it lasts more than twelve months;

2) the carrying on of activities in a Contracting State in connection with the exploration or exploitation of the seabed and subsoil and their natural resources situated in that Contracting State, if such activities are carried on for a period or periods exceeding in the aggregate 30 days in any twelve month period.

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

1) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

2) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

3) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

4) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

5) 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;

6) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs 1) to 5), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting 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.

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 IMMOVABLE PROPERTY**

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

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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 which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

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

## **Article 8**

### **INTERNATIONAL TRAFFIC**

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 in international traffic of ships or aircraft, referred to in paragraph 1, shall include profits from the leasing of ships or aircraft on a bareboat charter basis where it is an ancillary activity of an enterprise engaged in the international operation of ships and aircraft.

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

## **Article 9**

### **ASSOCIATED ENTERPRISES**

#### 1. Where

- 1) 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
- 2) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## **Article 10**

### **DIVIDENDS**

1. Dividends paid by a company which 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, the tax so charged shall not exceed:

- 1) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25 per cent of the voting power of the company paying the dividends;
- 2) 10 per cent of the gross amount of the dividends in all other cases.

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

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

4. The provisions of paragraphs 1 and 2 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 therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **INTEREST**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is derived and beneficially owned by the Government of the other Contracting State, including any political subdivision or local authority thereof, the Central Bank or any financial institution wholly or almost wholly owned by that Government.

4. The term "interest" as used in this Article, means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as

other income assimilated to income from money lent by the laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 and Article 14, as the case may be, shall apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12**

### **ROYALTIES**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- 1) 5 per cent of the gross amount of the royalties referred to in subparagraph 1) of paragraph 3;
- 2) 10 per cent of the gross amount of the royalties referred to in subparagraph 2) of paragraph 3.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use:

- 1) any copyright of literary, artistic or scientific work (including cinematographic films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission and excluding computer software);
  - 2) any patent, trade mark, design or model, plan, secret formula or process, computer software, or for the use of, or the right to use, industrial, commercial or scientific equipment (other than ships or aircraft operated in international traffic) or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State where the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 this Convention.

### **Article 13**

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting

State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

4. Gains derived by a resident of a Contracting State from the alienation of shares in a company or of an interest in a partnership, trust or other entity may be taxed in the other Contracting State where the shares or the interest derive more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph 5 shall not affect the right of a Contracting State to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

#### **Article 14**

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, unless:

1) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

2) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other State.

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

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18 and 19, 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:
  - 1) 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, and
  - 2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - 3) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

## **Article 16**

### **DIRECTORS' FEES**

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

## **Article 17**

### **ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 14 and 15, 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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions

of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is wholly or mainly supported by public funds of one of both of the Contracting States or political subdivisions or local authorities thereof or if the activities are exercised within the framework of a cultural or sports exchange programme approved by both Contracting States. In such a case, the income is taxable only in the Contracting State in which the artiste or sportsman is a resident.

### **Article 18**

#### **PENSIONS AND ANNUITIES**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment or an annuity paid to a resident of a Contracting State shall be taxable only in that State.

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

### **Article 19**

#### **GOVERNMENT SERVICE**

1. 1) Salaries, wages and other similar remuneration 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.

2) 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:

— is a national of that State; or

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

2. 1) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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.

- 2) However, such pensions and other similar remuneration 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, 16, 17 and 18 shall apply to salaries, wages, pensions and other similar remuneration 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**

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

#### **Article 21**

#### **OTHER INCOME**

1. Items of income of 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, if the recipient of such 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 right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

## Article 22

### ELIMINATION OF DOUBLE TAXATION

1. In Ireland double taxation shall be eliminated as follows:

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

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

2) in the case of a dividend paid by a company which is a resident of Serbia to a company which is a resident of Ireland and which controls directly or indirectly 5 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Serbian tax creditable under the provisions of subparagraph 1) of this paragraph) Serbian tax payable by the company in respect of the profits out of which such dividend is paid.

2. In Serbia double taxation shall be eliminated as follows:

Where a resident of Serbia derives income which, in accordance with the provisions of this Convention, may be taxed in Ireland, Serbia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Ireland.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Ireland.

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

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

5. 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 23**

#### **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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision 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, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

### **Article 24**

#### **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, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits 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. They may consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

### **Article 25**

#### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, 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.

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

- 1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- 2) 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;
- 3) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

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

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

#### **Article 26**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

#### **Article 27**

### **ENTRY INTO FORCE**

1. The Contracting States shall notify each other in writing, through diplomatic channels, that the procedures required by their domestic laws for entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

1) in the case of Ireland:

— in respect of income tax and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force;

— in respect of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force;

2) in the case of Serbia:

— in respect of the taxes on income derived in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the Convention enters into force.

**Article 28****TERMINATION**

The Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of this Convention. In such event, this Convention shall cease to have effect:

1) in the case of Ireland:

— in respect of income tax and capital gains tax, for any year of assessment beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires;

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

2) in the case of Serbia:

— in respect of the taxes on income derived in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination has been given.

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

Done at Belgrade this 23rd day of September 2009, in two originals, in the English and Serbian languages, both originals being equally authentic.

**Antóin MacUnfraidh**

**Vuk Djokovic**

FOR THE GOVERNMENT OF  
IRELAND

FOR THE GOVERNMENT OF  
THE REPUBLIC OF SERBIA



GIVEN under the Official Seal of the Government,  
26 January 2010.

MARY COUGHLAN,  
Tánaiste.

## EXPLANATORY NOTE.

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

This Order gives the force of law to the Convention between Ireland and Serbia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which is set out in the Schedule to the Order. The effect of the Convention is summarised below.

This Convention with Serbia, which was signed in Belgrade on 23rd September 2009 is comprehensive in scope and is based on the OECD Model Convention.

The taxes covered by the Convention are, for Ireland, Income Tax, Corporation Tax and Capital Gains Tax: for Serbia, Corporate Tax and Personal Income Tax.

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

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

Source state taxation of dividends (depending on the ownership interest in the paying company) is restricted to 5% or 10% of the gross dividend. Source state taxation of interest is restricted to 10% with an exemption for interest derived and beneficially owned by the State itself, the Central Bank or any financial institution wholly owned or almost wholly owned by the Government. Source state taxation of royalties is restricted to 5% and 10% (depending on the nature of royalties involved).

The Convention also provides for safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, for consultation between the competent authorities of the two countries for the purpose of resolving any doubts or difficulties arising as to the interpretation or application of the Convention and for the exchange of such information between these authorities as is necessary for carrying out the provisions of the Convention or of the domestic law of either country in relation to the taxes covered by the Convention.

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

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