



STATUTORY INSTRUMENTS.

**S.I. No. 25 of 2010**



DOUBLE TAXATION RELIEF (TAXES ON INCOME AND ON  
CAPITAL) (REPUBLIC OF BELARUS) ORDER 2010

**(Prn. A10/0109)**

## DOUBLE TAXATION RELIEF (TAXES ON INCOME AND ON CAPITAL) (REPUBLIC OF BELARUS) ORDER 2010

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

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

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

NOW, the Government, in exercise of the powers conferred on them by section 826(1) (as substituted 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 and on Capital) (Republic of Belarus) 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

*Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 5th February, 2010.*

Republic of Belarus 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 and any taxes of a similar character, imposed by the laws of the State or by the laws of the Republic of Belarus, 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 Belarus, 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 Belarus 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 BELARUS  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME AND ON CAPITAL**

Ireland and the Republic of Belarus,

DESIRING to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

HAVE AGREED as follows:

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or a local authority, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which this Convention shall apply are, in particular:
  - a) in the case of Belarus:
    - (i) the tax on income;
    - (ii) the tax on profit;
    - (iii) the income tax on individuals; and
    - (iv) the tax on immovable property

(hereinafter referred to as “Belarusian tax”);

b) in the case of Ireland:

(i) the income tax;

(ii) the income levy;

(iii) the corporation tax; and

(iv) the capital gains tax

(hereinafter referred to as “Irish tax”).

4. The Convention shall apply also to any identical or substantially similar taxes which 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 which have been made in their respective taxation laws.

### Article 3

#### GENERAL DEFINITIONS

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

a) the term “Ireland” includes any area outside the territorial waters of Ireland which has been or may hereafter be designated under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;

b) the term “Belarus” means the Republic of Belarus and, when used in a geographical sense, means the territory over which the Republic of Belarus exercises under the laws of Belarus and in accordance with international law sovereign rights and jurisdiction;

c) the terms “a Contracting State” and “the other Contracting State” mean Belarus or Ireland, as the context requires; and the term “Contracting States” means Belarus and Ireland;

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

e) the term “company” means any legal person or any other entity which is treated as a separate entity for tax purposes;

f) the term “enterprise” applies to the carrying on by a person of any business;

g) 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;

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

i) the term “national” means:

(i) any individual possessing the nationality or citizenship of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

j) the term “competent authority” means:

(i) in the case of Belarus, the Ministry of Taxes and Duties of the Republic of Belarus or its authorised representative;

(ii) in the case of Ireland, the Revenue Commissioners or their authorised representative;

k) the term “business” includes the performance of professional services and of other activities of an independent character;

l) 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.

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 which it has at that time under the law of that State for the purpose 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 registration, place of incorporation or any other criterion of a similar nature. 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 or capital situated therein.

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:

a) an individual shall be deemed to be a resident only of the State in which he has a permanent home available to him; if an individual 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);

b) if the State in which an individual has his centre of vital interests cannot be determined, or if an individual 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;

c) if an individual 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;

d) if each State considers an individual as its own national or if an individual is not a national of either 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 Contracting State in which its place of effective management is situated.

#### Article 5

#### PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

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

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

4. A person which is a resident of a Contracting State carrying on activities offshore in the other Contracting State in connection with the exploration or exploitation of the sea bed and subsoil and their natural resources situated in that other Contracting State shall be deemed to be carrying on a business through a permanent establishment in that other Contracting State.

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

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

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

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

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

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent

establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## Article 6

### 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.

## 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 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

### 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 from the rental on a bareboat basis of ships or aircraft when used in international traffic or where profits from such rental are incidental to the profits referred to in paragraph 1.

3. The provisions of paragraph 1 shall also apply to profits from the participation in 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 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:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b) 10 per cent 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. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the recipient of the dividends is:

- a) the National Treasury Management Agency of Ireland;
- b) the National Pension Reserve Fund of Ireland; or
- c) any organisation, agency or institution wholly or mainly owned by the Government of a Contracting State as may be agreed from time to time

between the Governments of the Contracting States or authorities authorised by the Governments.

4. 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 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.

5. 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on 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 5 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

- a) the Government of a Contracting State;
- b) the Central (National) Bank of a Contracting State;
- c) the National Treasury Management Agency of Ireland;

d) the National Pension Reserve Fund of Ireland;

e) any organisation, agency or institution wholly or mainly owned by the Government of a Contracting State as may be agreed from time to time between the Governments of the Contracting States or authorities authorised by the Governments;

f) if the interest is paid in respect of a loan guaranteed or approved by the Government of either Contracting State; or

g) if the interest is paid in respect of credit to finance the acquisition of industrial, commercial, trade, medical or scientific equipment.

4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest 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 5 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or road vehicles and trucks, 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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

GAINS FROM THE ALIENATION OF PROPERTY  
(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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) 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
  - a) shares, other than shares quoted on a recognised stock exchange, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State; or
  - b) an interest in a partnership deriving more than 50 per cent of its value directly or indirectly from immovable property situated in the other Contracting State,may be taxed in that other 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

## INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting 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 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; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment 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 State.

#### Article 15

#### 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 16

#### ARTISTES AND SPORTSMEN

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

#### Article 17

#### PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, payments received by an individual being a resident of a Contracting State under the social security legislation of the other Contracting State shall be taxable only in that other State.

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

## Article 18

### GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority in the discharge of functions of a governmental nature 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) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority in the discharge of functions of a governmental nature shall be taxable only in that State.

b) However, such pension 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 14, 15, 16 and 17 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 local authority thereof.

## Article 19

### 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 20

##### 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 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

#### Article 21

##### CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by 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 may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

#### Article 22

##### ELIMINATION OF DOUBLE TAXATION

1. In the case of Belarus, double taxation shall be avoided as follows:

Where a resident of Belarus derives income or owns property which, in accordance with the provisions of this Convention, may be taxed in Ireland, Belarus shall allow:

- a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Ireland;

b) as a deduction from the tax on property of that resident, an amount equal to the tax on property paid in Ireland.

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

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

a) tax payable under the laws of Belarus and in accordance with this Convention, whether directly or by deduction, on profits, income or gains from sources within Belarus (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 the Belarusian tax is computed;

b) in the case of a dividend paid by a company which is a resident of Belarus 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 Belarusian tax creditable under the provisions of subparagraph a)) Belarusian tax payable by the company in respect of the profits out of which such dividend is paid.

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

4. 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.

## 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 the other Contracting 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.

5. The provisions of this Article shall apply to the taxes to which this Convention applies.

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

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

## 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 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:

- 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.

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

## a) in Belarus:

(i) in respect of taxes withheld at source, on income derived or credited on or after the first day of January in the calendar year in which this Convention enters into force;

(ii) in respect of other taxes, for taxes chargeable for any tax period beginning on or after the first day of January in the calendar year in which this Convention enters into force.

## b) in Ireland:

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

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

## Article 28

## TERMINATION

This 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 following after the period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

## a) in Belarus:

(i) in respect of taxes withheld at source, on income derived or credited on or after the first day of January in the calendar year next following the year in which the notice of termination is given;

(ii) in respect of other taxes, for taxes chargeable for any tax period beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given.

b) in Ireland:

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

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

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at Dublin this 3<sup>rd</sup> day of November 2009 in the English and Russian languages, both texts being equally authentic.

For Ireland:

For the Republic of Belarus:

Martin Mansergh

Anna Deiko

PROTOCOL

At the moment of signing the Convention between the Republic of Belarus and Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

1. The term “capital” means property in the case of Belarus.
2. Ad paragraph 3 of Article 4 and paragraph 3 of Article 21:

The place of effective management is the place where a company is actually managed and controlled and where the decision making at the highest level on important policies essential for the management of a company takes place.

3. Ad paragraph 2 of Article 6:

It is understood that, until the domestic law of Belarus is amended, the definition of “immovable property” in paragraph 2 of Article 6 shall be applied by Belarus in conformity with its domestic law.

4. Ad paragraph 4b) of Article 13:

The provisions of subparagraph b) of paragraph 4 of Article 13 in the case of Ireland shall be treated as applying also to a trust.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done in duplicate at Dublin this 3<sup>rd</sup> day of November 2009 in the English and Russian languages, both texts being equally authentic.

For Ireland:

Martin Mansergh

For the Republic of Belarus:

Anna Deiko



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.)*

The Convention provides for the allocation of taxing rights between Ireland and Belarus 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 Belarus, 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 credit 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 25% or more of the shares of the paying company) in receipt of dividends from a Belarusian company are granted credit for the tax paid by the Belarusian company on the profits out of which the dividends are paid (known as credit for underlying tax).

Reduced rates of withholding tax are provided for in the case of dividend, interest and royalty income. With respect to dividend income, the Convention provides for a reduced rate of 5% of the gross dividend where the recipient is a company that owns 25% of the company paying the dividends; and 10% otherwise. Exemption from source state taxation on dividends is provided where the dividends are received by the Government or an agency or institution owned by the Government of a Contracting State. Exemption from source state taxation on interest is provided where the interest is derived and beneficially owned by the Government of a Contracting State, Central Bank, agency, or statutory body or institution wholly or mainly owned by the Government of a Contracting State; otherwise source country taxation of interest is limited to 5%. In the case of royalties the rate of source state taxation may not exceed 5%.

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 that 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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