



STATUTORY INSTRUMENTS.

S.I. No. 21 of 2011



DOUBLE TAXATION RELIEF (TAXES ON INCOME) (STATE OF
KUWAIT) ORDER 2011

(Prn. A11/0111)

DOUBLE TAXATION RELIEF (TAXES ON INCOME) (STATE OF KUWAIT) ORDER 2011

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) (State Of Kuwait) Order 2011.
2. It is declared—
 - (a) that the arrangements specified in the Agreement, the text of which is set out in the Schedule to this Order, have been made with the Government of the State of Kuwait in relation to—

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

- (i) affording relief from double taxation and the prevention from fiscal evasion with respect to 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 State of Kuwait, and
- (ii) in the case of taxes of any kind or description imposed by the laws of the State or the laws of the State of Kuwait, exchanging information for the purposes of the prevention and detection of tax evasion and granting relief from taxation under the laws of the State of Kuwait 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
AGREEMENT
BETWEEN
THE GOVERNMENT OF IRELAND
AND
THE GOVERNMENT OF THE STATE OF KUWAIT
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of Ireland and the Government of the State of Kuwait,

Desiring to promote their mutual economic relations through the conclusion between them of an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed by each Contracting State 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 this Agreement shall apply are in particular:

a) in the case of Kuwait:

- (1) the corporate income tax;
- (2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
- (3) the Zakat;
- (4) the tax subjected according to the supporting of national employee law;

(hereinafter referred to as “Kuwaiti tax”);

b) in the case of Ireland:

- (1) the income tax;
- (2) the income levy;
- (3) the corporation tax;
- (4) capital gains tax;

(hereinafter referred to as “Irish tax”).

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the laws of a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the terms “a Contracting State” and “the other Contracting State” mean Ireland or Kuwait, as the context requires;
 - b) the term “Kuwait” means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;
 - c) 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;
 - d) the term “person” includes an individual, a company and any other body of persons, but does not include a partnership other than one deriving its status from Kuwaiti law and which is treated as a taxable entity under the laws of Kuwait;
 - e) the term “national”, in relation to a Contracting State, means:
 - (1) any individual possessing the nationality or citizenship of that Contracting State;

- (2) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- g) the term “enterprise” applies to the carrying on of any business;
- h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- i) the term “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;
- j) the term “tax” means Irish tax, or Kuwaiti tax, as the context requires;
- k) the term “competent authority” means:
 - (1) in the case of Kuwait: the Minister of Finance or an authorised representative of the Minister of Finance;
 - (2) in case of Ireland: the Revenue Commissioners or their authorised representative;
- l) the term “business” includes the performance of professional services and of other activities of an independent character.

2. As regards the application of this Agreement 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 purposes of the taxes to which this Agreement 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 Agreement, the term “resident of a Contracting State” means:

- a) in the case of Kuwait:
 - (1) an individual who has his domicile in Kuwait and is a Kuwaiti national or an individual who under the laws of Kuwait is liable to tax in Kuwait but does not include any individual who is liable to tax in Kuwait in respect only of income from sources in Kuwait;

(2) a company which is incorporated in Kuwait;

b) in the case of Ireland:

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 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. For the purposes of paragraph 1, a resident of a Contracting State shall include all of the following:

- a) the Government of that State;
- b) any Governmental institution created in that Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity, which is wholly-owned and controlled directly by the Government of that Contracting State;
- c) any entity established in that State all the capital of which has been provided by that State or any governmental institution, referred to in subparagraph b), together with other states.

3. 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) 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);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if his status cannot be determined under the provisions of subparagraphs a) to c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, 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 Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources.

3. A building site, a construction, assembly, erection or installation project or supervisory activities in connection therewith carried out in a Contracting State, constitutes a permanent establishment only if such site, project or activities continue for a period of more than 9 months.

4. An enterprise of a Contracting State carrying on activities in the other Contracting State in connection with the exploration or exploitation of the seabed or subsoil, or the natural resources thereof, of that other Contracting State shall be deemed to be carrying on a business through a permanent establishment in that other Contracting State but only if such activities, of the enterprise and of an enterprise or enterprises, if any, connected with it, continue for a period or periods the aggregate of which, in any period of twelve-months, is more than 30 days.

5. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State shall constitute the carrying on of a business through a permanent establishment in that Contracting State but only if activities of that nature continue for the same project or a connected project for a period or periods the aggregate of which, in any period of twelve-months, is more than six months.

6. 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 subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of independent status to whom paragraph 8 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 6 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.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's length conditions, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 Contracting 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 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 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 in that other State. If the enterprise carries on or has carried on business in that manner, the profits of the enterprise may be taxed in the other State but only so much of them as are 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 those deductible 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. 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.

5. 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.

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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting 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 all of the following:

- a) profits from the rental on a bareboat basis of ships or aircraft;
- b) profits from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, used for the transport of goods or merchandise;

where such ships, aircraft, containers, trailers or related equipment, as the case may be, are operated in international traffic.

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

Article 9

Associated Enterprises

1. Where 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 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 State has been charged to tax in that other Contracting 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 Contracting 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 Agreement 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 who is the beneficial owner of such dividends shall be taxable only in that other State.

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

2. The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

3. The provisions of paragraph 1 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.

4. 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 who is the beneficial owner of the dividends 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 paid to a resident of the other Contracting State who is the beneficial owner of such interest shall be taxable only in that other State.

2. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the 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 income which is subjected to the same taxation treatment as income from money lent by the taxation 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.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein 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.

4. 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 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 State in which the permanent establishment is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, 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 Agreement.

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% of the gross amount of such royalties.

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 cinematography films and works on films, tapes or other means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) 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 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 of the royalties 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 Agreement.

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. For the purposes of paragraph 1, gains from the alienation of immovable property situated in the other Contracting State shall include gains from shares (including stock and any security), other than shares quoted on a stock exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in that other State.

3. 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 the other State.

4. 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.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 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 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 all of the following conditions are met:

- a) the resident is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State;
- 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 Contracting State.

4. An individual who is both a national of a Contracting State and an employee of an enterprise of that Contracting State the principal business of which consists of the operation of aircraft in international traffic as the national carrier of that Contracting State and who derives remuneration in respect of duties performed in the other Contracting State for that enterprise shall be exempt from tax in that other Contracting State on remuneration derived from his employment with that enterprise for a period of three years beginning on the date on which he first performs those duties in that other Contracting 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 or other similar organ of a company which is a resident of the other Contracting State may be taxed in the 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 the 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.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from their personal activities as entertainers or sportsmen exercised in the other Contracting State if their visit to that other Contracting State is substantially supported from public funds of the first-mentioned Contracting State. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman, as the case may be, is a resident.

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 in consideration of past employment 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 18

Government Service

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

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who either:
 - (1) is a national of that State;
 - (2) did not become a resident of that Contracting State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 19

Professors and Teachers

1. A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the sole purpose of teaching or carrying out advanced study (including research) at a university, college or other recognised research institute or other establishment for higher education in that Contracting State and who was immediately before that visit a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that Contracting State for such purpose. An individual shall be entitled to the benefits of this Article only once.

2. The preceding provisions of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 20

Students and Trainees

Payments which a student or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State 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 Contracting 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 Agreement, shall be taxable only in that State.

2. The provision 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 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 22

Elimination of double taxation

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

- a) Kuwaiti tax payable under the laws of Kuwait and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Kuwait (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or chargeable gains by reference to which Kuwaiti tax is computed;
- b) in the case of a dividend paid by a company which is a resident of Kuwait to a company which is a resident of Ireland and which controls directly or indirectly at least 10% of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Kuwaiti tax for which credit may be allowed under the provisions

of sub-paragraph a)) Kuwaiti tax payable by the company in respect of the profits out of which such dividend is paid.

2. Where a resident of Kuwait derives income which, in accordance with the provisions of this Agreement, may be taxed in both Ireland and Kuwait, Kuwait shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid on the income in Ireland. Such deduction shall not, however, exceed that part of the tax on the income, as computed before the deduction is given, which is attributable to the income which may be taxed in Ireland.

3. For the purposes of paragraphs 1 and 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 Agreement shall be deemed to arise from sources in that other Contracting State.

4. Where in accordance with any provisions of this Agreement 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 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 tax 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 5 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 Agreement, 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 this Agreement.

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

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

Article 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 Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. 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. The provisions of paragraphs 1 and 2 shall, in no case, be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

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. The provisions of paragraph 3 shall, in no case, 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

Miscellaneous Rules

1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

- a) by the laws of a Contracting State in the determination of the tax imposed by that State;
- b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

Article 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

Article 28

Entry into Force

1. Each of the Contracting States shall notify the other of the completion of the procedures required by its Constitution or its domestic law for the entry into force of this Agreement.

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

a) in Ireland:

- (1) in respect of income tax, the 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 the Agreement enters into force;
- (2) in respect of corporation tax, for any financial year beginning on or after the first day of January in the calendar year in which the Agreement enters into force;

b) in Kuwait:

for taxable periods beginning on or after the first day of January in the calendar year in which the Agreement enters into force.

Article 29

Duration and Termination

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect:

a) in Ireland:

- (1) in respect of income tax, the income levy and capital gains tax, for any year of assessment beginning on or after the first day of January next following the expiry of the period of five years in which the notice is given;

- (2) in respect of corporation tax, for any financial year beginning on or after the first day of January next following the expiry of the period of five years in which the notice is given;

b) in Kuwait:

for taxable periods beginning on or after the first day of January in the calendar year next following the expiry of the period of five years in which the notice is given.

In WITNESS WHEREOF the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done at Kuwait City this 17 Dhul Hijja 1431 corresponding to the 23rd day of November 2010, in two originals, in the English and Arabic languages, both texts being equally authentic.

For the Government of Ireland

**For the Government of the State of
Kuwait**

Ciarán Madden

Khalifa M. Hamada

PROTOCOL

At the time of signing this Agreement between the Government of Ireland and the Government of the State of Kuwait for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of this Agreement:

1. With respect to paragraph 1d) of Article 30.

Where, under any provision of this Agreement, a partnership is entitled, as a resident of Kuwait, to exemption from tax in Ireland on any income or capital gains, that provision shall not be construed as restricting the right of Ireland to tax any member of the partnership who is a resident of Ireland on his share of such income or capital gains; but any such income or gains shall be treated for the purposes of Article 22 of this Agreement as income or gains from sources in Kuwait.

2. With respect to paragraph 1a) of Article 4:

If Kuwait should introduce an income tax on individuals, the definition of a resident of Kuwait for the purpose of this Agreement will be reconsidered by the competent authorities of the Contracting States.

3. With respect to paragraph 2c) of Article 4:

The entities to which subparagraph c) of paragraph 2 shall apply are the following:

- (1) The Gulf Investment Corporation;
- (2) The United Arab Shipping Company;
- (3) any other entity to be agreed upon by the Competent Authorities of the Contracting States.

4. With respect to paragraph 1 of Article 7:

Payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply.

5. With respect to paragraphs 1 and 2 of Article 7:

It is understood that where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. In particular, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

6. With respect to paragraph 6 of Article 7:

It is understood that if the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in that Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the making of an estimate by the competent authority, provided that the law shall be applied in accordance with the principles of Article 7.

In WITNESS WHEREOF the respective plenipotentiaries of both Contracting States have signed this Protocol.

Done at Kuwait City this 17 Dhul Hijja 1431 corresponding to the 23rd day of November 2010, in two originals, in the English and Arabic languages, both texts being equally authentic.

For the Government of Ireland

**For the Government of the State of
Kuwait**

Ciarán Madden

Khalifa M. Hamada



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

BRIAN COWEN,
Taoiseach.

EXPLANATORY NOTE.

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

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

This Agreement, which was signed in Kuwait City on 23rd November 2010, is comprehensive in scope and is based on the OECD Model Convention.

The taxes covered by the Agreement are, for Ireland, Income Tax, Income Levy, Corporation Tax and Capital Gains Tax; for Kuwait, the Corporate Income Tax, the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwaiti Foundation for Advancement of Science (KFAS), the Zakat and the tax subjected according to the supporting of national employee law.

The Agreement provides for the allocation of taxing rights between Ireland and Kuwait 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 Kuwait, may under the terms of the Agreement be taxed in both countries. Where both countries continue to have taxing rights, for example in the case of business profits arising through a permanent establishment which a person resident in one country has in the other country, or in the case of capital gains arising from the disposal of immovable property, the Agreement provides that the country of residence of the recipient of the income or gain will give relief against its tax on the income or gains for the tax paid in the other country on the same income or gains. Irish direct investors (i.e. Irish companies holding 10% or more of the voting power of the paying company) in receipt of dividends from a Kuwaiti company are granted credit for the tax paid by the Kuwaiti company on the profits out of which the dividends are paid (known as credit for underlying tax).

There is an exemption from source country taxation with respect to dividend, and interest income. Source State taxation royalties is restricted to 5%.

The Agreement also provides for consultation between the competent authorities of the two countries for the purpose of resolving any doubts or difficulties arising as to the interpretation or application of the Agreement and for the exchange of such information between these authorities as is foreseeable relevant for carrying out the provisions of the Agreement or of the domestic law of either country in relation to the taxes of every kind.

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

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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