

TREATY USA - IRELAND

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

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1998

ARTICLE 23

Limitation on Benefits

- 1) Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall be entitled to all the benefits of this Convention only if such resident is a "qualified person" as defined in this Article.
- 2) A resident of a Contracting State is a qualified person for a fiscal year only if such resident is either:
 - a) an individual;
 - b) a qualified governmental entity;
 - c) a person other than an individual, if:
 - i) at least 50 percent of the beneficial interest in such person (or in the case of a company at least 50 percent of the aggregate vote and value of the company's shares) is owned, directly or indirectly, by qualified persons or residents or citizens of the United States, provided that such ownership test shall not be satisfied in the case of a chain of ownership unless it is satisfied by the last owners in the chain, and
 - ii) amounts paid or accrued by the person during its fiscal year:
 - A) to persons that are neither qualified persons nor residents or citizens of the United States, and
 - B) that are deductible for income tax purposes in that fiscal year in the person's State of residence (but not including arm's length payments in the ordinary course of business for
 - (1) services or tangible property, and
 - (2) payments in respect of financial obligations to a bank provided that where such a bank is not a resident of either Contracting State such payment is attributable to a permanent establishment of such bank, and the permanent establishment

is located in either Contracting State) do not exceed 50 percent of the gross income of the person;

- d) a person, other than an individual or a company, if:
 - i) the principal class of units in that person is listed on a recognized stock exchange located in either Contracting State and is substantially and regularly traded on one or more recognized stock exchanges, or
 - ii) the direct or indirect owners of at least 50 percent of the beneficial interests in that person are persons referred to in subparagraph d) i) or e) i);
 - e) a company, if:
 - i) the principal class of its shares is substantially and regularly traded on one or more recognized stock exchanges, or
 - ii) at least 50 percent of the aggregate vote and value of its shares is owned directly or indirectly by companies described in subparagraph e) i), or by persons referred to in subparagraph b), or by companies more than 50 percent of the aggregate vote and value of which is owned by persons referred to in subparagraph b), or by any combination of the above;
 - f) a person described in subparagraph c) of paragraph 1 of Article 4 (Residence), provided that more than half of the beneficiaries, members or participants, if any, in such organization are qualified persons.
- 3)
- a) A resident of a Contracting State that is not a qualified person shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
 - i) such resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless such business is carried out by a bank or insurance company acting in the ordinary course of its business), and
 - ii) the item of income is connected with or incidental to the trade or business in the first-mentioned State, provided that, where such item is connected with a trade or business in the first-mentioned State and such resident has an ownership interest in the activity in the other State that generated the income, the trade or business is substantial in relation to that activity.
 - b) For the purposes of subparagraph a) ii),
 - i) an item of income shall, in any case, be connected with a trade or business if the activity in the other State that generated the item of income is a line of business that forms a part of or is complementary to the trade or business conducted in the first-mentioned State by the income recipient;
 - ii) whether the trade or business of the resident in the first-mentioned State is substantial in relation to the activity in the other State shall be determined based on all the relevant facts and circumstances. In any case, however,

the trade or business will be deemed substantial if, for the preceding fiscal year, or for the average of the three preceding fiscal years, the asset value, the gross income and the payroll expense that are related to the trade or business in the first-mentioned State equals at least 7.5 percent of the asset value, the gross income and the payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent, provided that for the purposes of calculating the above ratios, there shall be taken into account only the resident's proportionate ownership interest in such trade, business or activities, whether held directly or indirectly.

- 4) A resident of one of the Contracting States that derives from the other State income referred to in Article 8 (Shipping and Air Transport) and which is not entitled to the benefits of this Convention because of the foregoing paragraphs, shall nevertheless be entitled to the benefits of this Convention with respect to such income if at least 50 percent of the beneficial interest in such person (or in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares) is owned directly or indirectly:
 - a) by qualified persons or citizens of the United States or individuals who are residents of a third state; or
 - b) by a company or combination of companies the principal class of shares in which are substantially and regularly traded on an established securities market in a third state, provided that such third state grants an exemption under similar terms for profits referred to in Article 8 of this Convention to citizens and corporations of the other State either under its national law or in common agreement with that other State or under a convention between that third state and the other State.

- 5)
 - a) A company that is a resident of a Contracting State shall also be entitled to all of the benefits of the Convention if:
 - i) at least 95 percent of the aggregate vote and value of all its shares is owned directly or indirectly by seven or fewer qualified persons or persons that are residents of member states of the European Union or of parties to the North American Free Trade Agreement (NAFTA) or any combination thereof; and
 - ii) such company meets the base reduction test described in subparagraph c) ii) of paragraph 2, provided that a resident of a member State of the European Union or a party to NAFTA shall be treated as a qualified person for the purpose of that test.

- b) Notwithstanding the other provisions of this paragraph, a company which is in receipt of income referred to in Article 10 (Dividends), 11 (Interest) or 12 (Royalties) shall not be entitled to the benefit of those Articles in respect of such income unless at least 95 percent of its shares is held directly or indirectly by one or more persons that are residents of member states of the European Union or of parties to NAFTA or any combination thereof, who under the income tax convention between their state of residence and the Contracting State from which the income is derived would be entitled to benefits that are at least equivalent to the benefits provided under this Convention with respect to such income.
- 6) A resident of a Contracting State that is not a qualified person pursuant to the provisions of paragraph 2 shall, nevertheless, be granted the benefits of the Convention if the competent authority of that other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention. The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before denying the benefits of the Convention under this paragraph.
- 7) Notwithstanding the other provisions of this Convention:
- a) where an enterprise of Ireland derives income from the United States;
 - b) that income is attributable to a permanent establishment which that enterprise has in a third state; and
 - c) the enterprise is exempt from tax in Ireland on the profits attributable to the permanent establishment; the United States tax benefits that would otherwise apply under the other provisions of this Convention will not apply to any item of income on which the combined tax in Ireland and in the third State is less than 50 percent of the generally applicable tax that would be imposed in Ireland on an enterprise deriving such item directly from the United States. Any dividends, interest or royalties to which this paragraph applies will be subject to United States tax at a rate not exceeding 15 percent of the gross amount thereof. The provisions of this paragraph shall not apply if the income derived from the other Contracting State is connected with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third state (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company).
- 8) The following definitions shall apply for the purposes of this Article:

- a) The term “gross income” as used in subparagraph c) of paragraph 2 means gross income for the fiscal year preceding the current fiscal year provided that the amount of gross income for the fiscal year preceding the current fiscal year shall be deemed to be not less than the average of the annual amounts of gross income for the four fiscal years preceding the current fiscal year.
- b) The term “a recognized stock exchange” means:
 - i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange for purposes of the U.S. Securities Exchange Act of 1934;
 - ii) the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, London, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto, Vienna and Zurich;
 - iii) any other stock exchange agreed upon by the competent authorities of the Contracting States.
- c) The term "units" as used in subparagraph d) of paragraph 2 includes shares and any other instrument, not being a debt-claim, granting an entitlement to:
 - i) share in the assets or income of, or
 - ii) receive a distribution from, the person.
- d)
 - i) The term “principal class of shares” is generally the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. When no single class of shares represents the majority of the voting power and value of the company, the "principal class of shares" is generally those classes that in the aggregate possess more than 50 percent of the voting power and value of the company. The “principal class of shares” also includes any "disproportionate class of shares".
 - ii) The term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company.
 - iii) The term shares shall include depository receipts thereof or trust certificates thereof.
- e) The term "resident of a member state of the European Union" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between any member state of the European Union and the Contracting State from which the benefits of the Convention are claimed, provided that if such convention does not contain a comprehensive Limitation

on Benefits article (including provisions similar to those of subparagraphs c) and e) of paragraph 2), the person would be entitled to the benefits of this Convention under the principles of paragraph 2 if such person were a resident of one of the Contracting States under Article 4 (Residence) of this Convention.

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

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

PROTOCOL

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

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

a) For the purposes of paragraph 2,

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

- A) trades in such class are effected on one or more of such stock exchanges other than in de minimis quantities during every quarter; and
 - B) the aggregate number of shares or units of that class traded on such stock exchange or exchanges during the previous fiscal year is at least 6 percent of the average number of shares or units outstanding in that class during that taxable year, provided that if such class was not listed on a recognized stock exchange in the previous fiscal year the shares or units will be considered to have satisfied the requirement of this subparagraph B);
- ii) a Building Society incorporated in Ireland shall be deemed to be a company the principal class of shares in which:
- A) is listed on the Irish Stock Exchange, and
 - B) which in any fiscal year is substantially and regularly traded on such exchange.

b) For the purpose of paragraph 3,

- i) whether a resident of a Contracting State is engaged in the active conduct of a trade or business will be determined on the basis of an analysis of all the relevant facts and circumstances. In any case, however,
- A) a bank will be considered to be engaged in the active conduct of a trade or business if it regularly accepts deposits from the public or makes loans to the public. It is understood that a resident of a Contracting State that, as of the date of signature of this Convention, is licensed by the banking authorities in that State to engage in the business of banking satisfies this requirement; and
 - B) an insurance company will be considered to be engaged in the active conduct of a trade or business if its gross income consists primarily of insurance or reinsurance premiums and investment income attributable to such premiums;
- ii) in determining whether a person is engaged in the active conduct of a trade or business in a Contracting State, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or

another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

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