

No. 30717

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**FINLAND  
and  
IRELAND**

**Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains (with exchange of notes). Signed at Dublin on 27 March 1992**

*Authentic texts: Finnish and English.*

*Authentic text of the Exchange of notes: English.*

*Registered by Finland on 24 February 1994.*

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**FINLANDE  
et  
IRLANDE**

**Accord tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôt sur le revenu et de gains en capital (avec échange de notes). Signé à Dublin le 27 mars 1992**

*Textes authentiques : finnois et anglais.*

*Texte authentique de l'Échange de notes : anglais.*

*Enregistré par la Finlande le 24 février 1994.*

# AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Republic of Finland and the Government of Ireland,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains,

Have agreed as follows:

## Article 1

### *Personal Scope*

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

## Article 2

### *Taxes Covered*

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

a) in Finland:

- (i) the state income tax;
- (ii) the communal tax;
- (iii) the church tax; and
- (iv) the tax withheld at source from non-residents' income,

(hereinafter referred to as "Finnish tax");

b) in Ireland:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;

(hereinafter referred to as "Irish tax").

2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed by 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 term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;

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

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

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

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

f) 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;

g) the term "national" means:

<sup>1</sup> Came into force on 26 December 1993, i.e., 30 days after the date of receipt of the last of the notifications (of 26 November 1993) by which the Contracting Parties had informed each other of the completion of the constitutional requirements, in accordance with article 29 (2).

(i) in relation to Finland, any individual possessing the nationality of Finland and any legal person, partnership and association deriving its status as such from the laws in force in Finland;

(ii) in relation to Ireland, any citizen of Ireland and any legal person, association or other entity deriving its status as such from the laws in force in Ireland;

(h) 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;

i) the term "tax" means Finnish tax or Irish tax, as the context requires;

j) the term "competent authority" means:

(i) in Finland, the Ministry of Finance or its authorised representative;

(ii) in Ireland, the Revenue Commissioners or their authorised representative.

2. In this Agreement the terms "Finnish tax" and "Irish tax" do not include any penalty or interest imposed under the laws of a Contracting State concerning the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies by virtue of Article 2.

#### Article 4

##### *Residence*

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, the term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

a) he shall be deemed to be a resident 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 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 of the State in which he has an habitual abode;

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

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

3. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States or of neither of them:

a) it shall be deemed to be a resident of Ireland if its place of effective management is situated in Ireland, or

b) it shall be deemed to be a resident of Finland if its place of effective management is situated in Finland or if it is incorporated in Finland and its place of effective management is not situated in Ireland.

#### 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, an oil or gas well, a quarry or any other place of extraction of natural resources; and

g) an installation or structure used for the exploration or exploitation of natural resources.

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

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State.

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) of this paragraph, 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, 2, 3 and 4 of this Article, where a person — other than an agent of an independent status to whom paragraph 7 of this Article 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 of this Article 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 of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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

### *Limitation of Relief*

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

## Article 7

### *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. a) The term "immovable property" shall, subject to the provisions of sub-paragraphs b) and c) of this paragraph, have the meaning which it has under the law of the Contracting State in which the property in question is situated.

b) The term "immovable property" 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, oil or gas wells, quarries, sources and other natural resources.

c) Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

#### Article 8

##### *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 of this Article, 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 (including executive and general administrative expenses) which are incurred for the purposes of the permanent establishment, whether so incurred in the Contracting State in which the permanent establishment is situated or elsewhere, and which would be so allowed if the permanent establishment were an independent entity which had incurred those expenses.

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. For the purposes of the preceding paragraphs of this Article, 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.

6. Nothing in the foregoing provisions of this Article shall affect any of the provisions of the law of a Contracting State relating specifically to the liability to tax of a life assurance company not having its head office in that State.

7. Where profits include items of income 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 9

##### *Shipping and Air Transport*

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived by a lessor from the rental on a bareboat basis of ships or aircraft if such ships or aircraft are operated in international traffic or if such rental profits are incidental to the profits mentioned in paragraph 1 of this Article.

3. Notwithstanding the provisions of Article 8, profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, except where such containers are used for the transport of goods or merchandise solely between places within the other Contracting State.

4. The provisions of this Article shall also apply to profits from the participation in a pool, a joint business, or an international operating agency.

#### Article 10

##### *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