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**Agreement between Ireland and the Federal Republic of
Germany for the Avoidance of Double Taxation and the
Prevention of Fiscal Evasion with Respect to Taxes on Income
and Capital**

Done at Dublin on 30 March 2011

Notifications of the completion of the procedures necessary for the entry into force of this Agreement
exchanged on 28 November 2012

Entered into force on 28 November 2012

Presented to Dáil Éireann by the Minister for Foreign Affairs and Trade

AGREEMENT BETWEEN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

Ireland and the Federal Republic of Germany, desiring to conclude a new agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

HAVE AGREED as follows:

Article 1
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 and on capital imposed on behalf of a Contracting State, of a “Land” or a political subdivision or local authority of a Contracting State or a “Land”, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in the case of Ireland:

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

(hereinafter referred to as “Irish tax”);

b) in the case of the Federal Republic of Germany:

- i) the income tax (Einkommensteuer);
- ii) the corporation tax (Körperschaftsteuer);

- iii) the trade tax (Gewerbesteuer); and
- iv) the capital tax (Vermögensteuer);

including the supplements levied thereon (hereinafter referred to as “German tax”).

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

Article 3 *General Definitions*

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the terms “a Contracting State” and “the other Contracting State” mean Ireland or the Federal Republic of Germany, as the context requires;
 - b) 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;
 - c) the term “Germany” means the Federal Republic of Germany and, when used in a geographical sense, means the territory of the Federal Republic of Germany, as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;
 - 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 that is treated as a body corporate for tax purposes;
 - f) the term “enterprise” applies to the carrying on of any business;
 - g) the term “business” includes the performance of professional services and of other activities of an independent character;
 - 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 that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- j) the term “national”, in relation to a Contracting State, means:
 - i) in the case of Ireland:

any individual possessing citizenship of Ireland;

and any legal person, partnership, or association deriving its status as such from the laws in force in Ireland;
 - ii) in the case of Germany:

any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in Germany;
- k) the term “competent authority” means:
 - i) in the case of Ireland, the Revenue Commissioners or their authorised representative;
 - ii) in the case of Germany the Federal Ministry of Finance or the agency to which it has delegated its powers.

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 that it has at that time under the law of that State for the purposes of the taxes to which the 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 any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State, a “Land” and any political subdivision or local authority of that State or “Land”. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

- a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- b) if the Contracting 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 Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5 *Permanent Establishment*

1. For the purposes of this 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; and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. 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.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

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

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case

include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

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

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

7. Where profits include items of income or capital 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, Inland Waterways Transport and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. For the purposes of this Article the terms “profits from the operation of ships or aircraft in international traffic” shall include profits from
 - a) the occasional rental of ships or aircraft on a bare-boat basis, and
 - b) the use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

if these activities pertain to the operation of ships or aircraft or boats.

4. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated Enterprises

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

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

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

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

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership or a German Real Estate Investment Trust Company) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein 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.

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

dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 *Interest*

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State 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 but does not include any income which is treated as a dividend under Article 10. 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. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 *Royalties*

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. 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 motion pictures or films, recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The term “royalties” shall also include payments of any kind received as a consideration for the use of or the right to use a person's name, picture or any other similar personality rights, or the recording of entertainers' or sportsmens' performances by radio or television.

3. The provisions of paragraph 1 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.

4. 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 Contracting State in which the permanent establishment is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this 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. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares and similar rights in a company, other than shares quoted on a stock exchange, deriving more than 50 per cent of their value, directly or indirectly, from immovable property situated in the other Contracting State, may be taxed in that other State.

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

6. Where an individual was a resident of a Contracting State for a period of 3 years or more and has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State from taxing under its domestic law an amount that is effectively determined by reference to the capital appreciation of the shares in a company for the period of residence of that individual in the first-mentioned State. In such case, the appreciation of capital by reference to which the amount was taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.

Article 14
Income from Employment

1. Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft or boat operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise which operates the ship, aircraft or boat is situated.

Article 15
Directors' Fees

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

Article 16
Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Paragraphs 1 and 2 shall not apply to income accruing from the exercise of activities by artistes or sportsmen in a Contracting State where the visit to that State is financed entirely or mainly from public funds of the other Contracting State, a “Land”, a political subdivision or a local authority of a Contracting State or a “Land” or by an organisation which in that other State is recognised as a charitable organisation. In such a case the income shall be taxed only in the Contracting State of which the individual is a resident.

Article 17 Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions, other similar remuneration or annuities, arising in a Contracting State and paid to a resident of the other Contracting State, shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, payments which are made in accordance with the social insurance legislation of a Contracting State shall be taxable only in that State.

3. Notwithstanding the provisions of paragraph 1, such a pension, similar remuneration or annuity arising in a Contracting State which is attributable in whole or in part to contributions which, for more than 12 years in that State,

- a) did not form part of the taxable income from employment, or
- b) were tax-deductible, or
- c) were tax-relieved in some other way

shall be taxable only in that State. This paragraph shall not apply if that State does not actually tax the pension, other similar remuneration or annuity, or if the 12-year condition is fulfilled in both Contracting States.

4. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a resident of the other Contracting State as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, a vaccination or a similar event shall be taxable only in the first-mentioned State.

5. The term “annuities” means certain amounts payable periodically at stated times, for life or for 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. Salaries, wages and other similar remuneration, paid by a Contracting State, a “Land”, a political subdivision or a local authority of a Contracting State, or a “Land” to an individual in respect of services rendered to that State, “Land”, political subdivision or local authority, shall be taxable only in that State. 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:

- a) is a national of that State; or
- b) did not become a resident of that State solely for the purpose of rendering the services.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State, a “Land” or a political subdivision or a local authority of a Contracting State or a “Land” to an individual in respect of services rendered to that State, “Land”, subdivision or authority shall be taxable only in that State. However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State, a “Land”, a political subdivision or a local authority of a Contracting State or a “Land”.

4. The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration paid by or on behalf of the Goethe Institute or the German Academic Exchange Service (Deutscher Akademischer Austauschdienst). Corresponding treatment of the remuneration of other comparable institutions of the Contracting States may be arranged by the competent authorities by mutual agreement.

Article 19

Visiting Professors, Teachers and Students

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from the other Contracting State.

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

Article 20

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Agreement.

Article 21

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships and aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 22

Miscellaneous Rules Applicable To Certain Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Agreement where activities (in this Article called “relevant activities”) are carried on offshore in connection with the exploration or exploitation of the sea bed and subsoil and their natural resources situated in a Contracting State.

2. An enterprise of a Contracting State which carries on relevant activities in the other Contracting State shall, subject to paragraph 3 of this Article, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

3. The provisions of paragraph 2 shall not apply where the activities referred to in paragraph 1 are carried on in the areas specified in that paragraph for a period not exceeding a total of:

- a) in the case of activities in connection with exploration, 90 days in any period of twelve months commencing or ending in the fiscal year concerned; and
 - b) in the case of activities in connection with exploitation, 30 days in any period of twelve months commencing or ending in the fiscal year concerned.
4. Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with relevant activities in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State.
5. Gains derived by a resident of a Contracting State from the alienation of:
- a) exploration or exploitation rights; or
 - b) shares (or comparable instruments) deriving their value or the greater part of their value directly or indirectly from such rights, may be taxed in that other State.

In this paragraph “exploration or exploitation rights” mean rights to assets to be produced by the exploration or exploitation of the seabed or subsoil or their natural resources in the other Contracting State, including rights to interests in or to the benefit of such assets.

Article 23 Elimination of Double Taxation

1. Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof):
- a) German tax payable under the laws of Germany and in accordance with this Agreement, whether directly or by deduction, on profits, income or capital gains from sources within Germany (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 capital gains by reference to which German tax is computed;
 - b) in the case of a dividend paid by a company which is a resident of Germany to a company which is a resident of Ireland and which controls directly or indirectly 5 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any German tax creditable under the provisions of subparagraph a)) German tax payable by the company in respect of the profits out of which such dividend is paid;
 - c) for the purposes of sub-paragraphs a) and b) profits, income and capital gains owned by a resident of Ireland which may be taxed in Germany in accordance with this Agreement shall be deemed to be derived from sources in Germany;

- d) where in accordance with any provision of the Agreement income derived by a resident of Ireland is exempt from Irish tax, Ireland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. Tax shall be determined in the case of a resident of Germany as follows:

- a) There shall be exempted from the assessment basis of the German tax any item of income arising in Ireland and any item of capital situated within Ireland which, according to this Agreement, is actually taxed in Ireland and is not dealt with in sub-paragraph b).

In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of Germany by a company being a resident of Ireland at least 10 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which, if paid, would be exempted according to the foregoing sentences.

- b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax payable in respect of the following items of income Irish tax paid under the laws of Ireland and in accordance with this Agreement:

- aa) dividends not dealt with in sub-paragraph a);
- bb) items of income that may be taxed in Ireland according to paragraph 4 of Article 13 (Capital gains);
- cc) directors' fees;
- dd) items of income that may be taxed in Ireland according to Article 16 (Artistes and sportsmen).

- c) The provisions of sub-paragraph b) shall apply instead of the provisions of sub-paragraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in Ireland in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of paragraph 1 of section 8 of the German Law on External Tax Relations (Außensteuergesetz); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable

property forming part of the business property of the permanent establishment (paragraph 2 of Article 13).

- d) Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital, which are under the provisions of this Agreement exempted from German tax.
- e) Notwithstanding the provisions of sub-paragraph a) double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)
 - aa) if in the Contracting States items of income or capital are placed under different provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 26 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or
 - bb) if after due consultation with the competent authority of Ireland, Germany notifies Ireland through diplomatic channels of other items of income to which it intends to apply the provisions of sub-paragraph b). Double taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year, following that in which the notification was made.

Article 24

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. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 5 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. 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.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

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 24 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 the 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

Article 26
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 a Contracting State, a “Land” or a political subdivision or local authority of a Contracting State or a “Land”, 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. Notwithstanding the foregoing provisions, the information may be used for other purposes, if under the law of both States it may be used for these other purposes and the competent authority of the supplying State authorises this use.

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

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

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

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

Article 27
Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, a Land or of a political subdivision or local authority thereof, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
 - a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by

a person who, at that time, cannot, under the laws of that State, prevent its collection, or

- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

Article 28

Procedural Rules for Taxation at Source

1. If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced by this Agreement or ceases to apply.

2. Refund applications must be submitted by the end of the fourth year following the calendar year in which the withholding tax was applied to the dividends, interest, royalties or other items of income.

3. Notwithstanding paragraph 1, each Contracting State shall provide for procedures to the effect that payments of income subject under this Agreement to no tax or only to reduced tax in the state of source may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Article.

4. The Contracting State in which the items of income arise may ask for a certificate by the competent authority on the residence in the other Contracting State.

5. The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

Article 29
Limitation of Relief

Where, under any provision of this Agreement, income or capital 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 capital 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 capital gains as is remitted to or received in that other State.

Article 30
Members of Diplomatic Missions and Consular Posts

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

Article 31
Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 32
Entry into Force

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2. This Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall have effect:

- a) in Ireland:
 - i) in the case of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following the year in which this Agreement enters into force;
 - ii) in the case of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following the year in which this Agreement enters into force;

- b) in Germany:
 - i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the calendar year next following the year in which this Agreement enters into force;
 - ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January in the calendar year next following the year in which this Agreement enters into force.

3. Upon the entry into force of this Agreement, the Convention between Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital and to the Gewerbesteuer (Trade Tax), signed at Dublin on 17th of October 1962, as amended by the Protocol signed at Berlin on 25th of May 2010 (hereinafter referred to as the 1962 Convention), shall cease to have effect from the dates on which this Agreement becomes effective for taxes in accordance with the relevant provisions of paragraph 2.

4. Notwithstanding paragraphs 2 and 3, where the provisions of Article XXII of the 1962 Convention would have afforded any greater relief from tax than is due under this Agreement, any such provision as aforesaid shall continue to have effect for a period of 12 months from the date on which the provisions of this Agreement would otherwise have effect in accordance with the provisions of paragraph 2.

5. Notwithstanding the provisions of paragraphs 2 and 3 and the provisions of Article 17 where, immediately before the entry into force of this Agreement an individual was in receipt of payments falling within Articles XIII and XV of the 1962 Convention, that individual may elect that the provisions of Articles XIII and XV shall continue to apply to such payments and not the provisions of Article 17.

Article 33 Termination

This Agreement shall remain in force until terminated by one of the Contracting States.

Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of entry into force of the Agreement. In such event, this Agreement shall cease to have effect:

- a) in Ireland:
 - i) in the case of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following the year in which notice of termination is given;
 - ii) in the case of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following the year in which notice of termination is given;

- b) in Germany:
- i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the calendar year next following the year in which notice of termination is given;
 - ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January in the calendar year next following the year in which notice of termination is given.

Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

*Article 34
Registration*

Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter, shall be initiated by the Contracting State where the Agreement was signed, immediately following its entry into force. The other Contracting State shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat.

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

DONE in duplicate at Dublin on 30th March 2011 in the English and German languages, both texts being equally authoritative.

For Ireland
Michael Noonan

For the Federal Republic of Germany
Busso von Alvensleben

PROTOCOL

to the Agreement between Ireland and The Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on 30th March 2011

Ireland and The Federal Republic of Germany have in addition to the Agreement of 30th March 2011 for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital agreed on the following provisions, which shall form an integral part of the said Agreement:

1. With reference to this Agreement as a whole:

a) Retirement Benefit Schemes in Ireland

It is understood that, taking account of

aa) tax-relief given for contributions or premiums paid in respect of retirement benefit schemes, retirement annuity contracts or other pension products in accordance with Part 30 of the Taxes Consolidation Act 1997 of Ireland, and

bb) the exemption from tax of income and gains accruing to a fund (referred to in this paragraph as a “pension fund”) created by such contributions or premiums, distributions (for the purposes of section 784A of the Taxes Consolidation Act 1997) from an approved retirement fund (within the meaning of that section) that was created by the transfer of accrued rights or assets from a pension fund shall only be taxable by reference to the provisions of that section, notwithstanding any provision of this Agreement.

b) Undertakings for Collective Investment

aa) Notwithstanding the provisions of this Agreement but without prejudice to any benefits to which an undertaking for collective investment in transferable securities (“UCITS”) would otherwise be entitled under this Agreement, a UCITS which is established in a Contracting State and which receives income arising in the other Contracting State shall be treated for purposes of applying the Agreement to such income as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives, but only to the extent that the beneficial interests in the UCITS are owned by equivalent beneficiaries.

bb) However, if at least 95 percent of the beneficial interests in the UCITS are owned by equivalent beneficiaries, the UCITS shall be treated as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of all of the income it receives.

cc) For purposes of this paragraph,

- i) the term “UCITS” means an undertaking for collective investment in transferable securities within the meaning of European Communities (Undertaking for Collective Investment in Transferable Securities) Regulations 1989, as amended or extended from time to time and any other regulations that may be construed as one with those Regulations, as well as any other investment fund, arrangement or entity established in either Contracting State which the competent authorities of the Contracting States agree to regard as a UCITS for purposes of this paragraph; and
 - ii) the term “equivalent beneficiary” means a resident of the Contracting State in which the UCITS is established, and a resident of any other State with which the Contracting State in which the income arises has an income tax agreement that provides for effective and comprehensive information exchange who would, if he received the particular item of income for which benefits are being claimed under this Agreement, be entitled under that agreement, or under the domestic law of the Contracting State in which the income arises, to a rate of tax with respect to that item of income that is at least as low as the rate claimed under this Agreement by the UCITS with respect to that item of income.
- c) Common Contractual Fund in Ireland

A Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits.

2. With reference to Article 10 (Dividends):

It is understood that the term “dividends” also includes income from distributions on certificates of a German “Investmentvermögen”.

3. With reference to Articles 10 (Dividends) and 11 (Interest):

Notwithstanding the provisions of Article 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting States in which they arise, and according to the law of that State,

- a) if they are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner (“stiller Gesellschafter”) from his participation as such, or from a loan with an interest rate linked to borrower’s profit (“partiarisches Darlehen”) or from profit sharing bonds (“Gewinnobligationen”) within the meaning of the tax law of Germany, and
- b) under the condition that they are deductible in the determination of profits of the debtor of such income.

4. With reference to Article 12 (Royalties):

It is understood that if, following the signature of the Agreement, the laws of Ireland should change to allow a greater amount of royalties to be disregarded for the purposes of the Income Tax Acts than would be permitted by the provisions of Section 234(3A)(a) of the Taxes Consolidation Act 1997 at the time of signature of the Agreement, then Ireland shall notify Germany of such change and, if Germany so requests, shall enter into a renegotiation of the Article so that such royalties arising in Germany may be taxed in Germany.

5. With reference to paragraph 3 of Article 17 (Pensions and Annuities) and paragraph 2 a) of Article 23 (Elimination of Double Taxation) and paragraph 6 of this Protocol:

It is understood income is actually taxed when it is actually included in the taxable base by reference to which the tax is computed. Income is not actually taxed when, being subject to tax treatment normally applicable to such income, it is either not taxable or exempt from tax.

6. With reference to paragraph 2 of Article 20 (Other Income):

Where the recipient and the payer of a dividend are both residents of Germany and the dividend is attributed to a permanent establishment that the recipient of the dividend has in Ireland but is not actually taxed in Ireland, Germany may tax such a dividend at the rates provided for in paragraph 2 of Article 10. Ireland shall give a credit for such tax according to the provisions of Article 23.

7. With reference to Article 23 (Elimination of Double Taxation):

It is understood that references in paragraph 2e) aa) to items of income or capital being placed under different provisions of this Agreement or being attributed to different persons are references to income or capital being so placed or attributed in accordance with the provisions of this Agreement and to such differences where they are based not on different interpretations of facts or the provisions of the Agreement but rather on different provisions of the domestic law of each Contracting State, as distinguished in paragraphs 32.5 and 32.6 of the July 2008 version of the Commentary on Article 23A and 23B of the model tax convention on income and on capital of the OECD.

8. With reference to Article 26 (Exchange of Information):

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect for each Contracting State:

- a) The receiving agency may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying agency.
- b) The receiving agency shall on written request inform the supplying agency about the use of the supplied data and the results achieved thereby.

- c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying agency.
- d) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any prohibition of or restriction on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.
- e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.
- f) The receiving agency shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage or loss as a result of supply under the exchange of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.
- g) Where the domestic law of the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.
- h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

Joint Declaration by Ireland and the Federal Republic of Germany on the occasion of the signing on the 30th March 2011 in Dublin of the Agreement between Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital and with regard to the improper use of that Agreement

Ireland and the Federal Republic of Germany, on the occasion of the signing on 30th March 2011 in Dublin of the new Agreement between Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital and with regard to the improper use of that Agreement,

Have reached the following understanding:

Improper use of the Agreement

Having regard to paragraphs 7 to 12 of the July 2008 version of the Commentary to Article 1 of the OECD model tax convention, it is understood that this Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance where those provisions are used to challenge arrangements which constitute an abuse of the Agreement.

It is further understood that an abuse of the Agreement takes place where a main purpose for entering into certain transactions or arrangements is to secure a more favourable tax position and obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions of the Agreement.

This Joint Declaration is signed in duplicate at Dublin, in the English and German languages, this 30th day of March, 2011.

For Ireland
Michael Noonan

For the Federal Republic of Germany
Busso von Alvensleben