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Nº 8

**Convention between Ireland and the Republic of Chile for
the Avoidance of Double Taxation and the Prevention of
Fiscal Evasion with Respect to Taxes on Income and Capital
Gains and its Protocol**

Done at Dublin on 2 June 2005

Notifications of the completion of the procedures required by law for the
bringing into force of this Convention exchanged on 22 December 2005
and 28 August 2008

Entered into force on 28 August 2008

Presented to Dáil Éireann by the Minister for Foreign Affairs

**CONVENTION BETWEEN IRELAND AND THE REPUBLIC OF CHILE
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND
CAPITAL GAINS AND ITS PROTOCOL**

The Government of Ireland and the Government of the Republic of Chile, desiring to conclude a Convention 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:

**CHAPTER I
SCOPE OF THE CONVENTION**

Article 1
Persons Covered

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

Article 2
Taxes Covered

1. This Convention shall apply to taxes on income and capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and capital gains all taxes imposed on total income or on elements of income including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Convention shall apply are in particular:
 - a) in Chile, the taxes imposed under the Income Tax Act, “Ley sobre Impuesto a la Renta” (hereinafter referred to as “Chilean tax”); and
 - b) in Ireland,
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;(hereinafter referred to as “Irish tax”).
4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall, at the end of each year, notify each other of any significant changes which have been made in their respective taxation laws.

CHAPTER II DEFINITIONS

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term “Ireland” means Ireland, including any area outside the territorial waters of Ireland designated under the laws of Ireland and in accordance with international law as an area within which Ireland may exercise sovereign rights with regard to the seabed and subsoil and their natural resources;
 - b) the term “Chile” means the Republic of Chile, including any area outside the territorial waters of the Republic of Chile designated under the laws of the Republic of Chile and in accordance with international law as an area within which the Republic of Chile may exercise sovereign rights with regard to the seabed and subsoil and their natural resources;
 - c) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, the Republic of Chile or Ireland, hereinafter “Chile” or “Ireland”, respectively;
 - 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 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 “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
 - h) the term “competent authority” means:
 - (i) in the case of the Republic of Chile, the Minister of Finance or his authorised representative, and
 - (ii) in the case of Ireland, the Revenue Commissioners or their authorised representative;
 - j) the term “national” in relation to a Contracting State means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State;

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

** It will be translated as “(ii) cualquier persona jurídica o asociación constituida conforme a la legislación vigente de un Estado Contratante.”*

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 **Resident**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

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

d) if 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 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 of which it is a national. If the person is a national of both Contracting States or of neither of them the Contracting States shall endeavour to settle the question by mutual agreement. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Convention.

Article 5
Permanent Establishment

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

2. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.

3. The term “permanent establishment” shall also include:

- a) a building site or construction or installation project and the supervisory activities in connection therewith, but only if such building site, construction or installation project or activities last more than six months;
- b) the performance of professional services and of other activities of an independent character in a Contracting State if such activities are carried on within that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period; and
- c) the performance of professional services and of other activities of an independent character in a Contracting State by an individual, if that individual is present in that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period.

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 advertising, supplying information or carrying out scientific research for the enterprise, or any other similar activity, if such activity 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 7 applies) is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts on behalf 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. Notwithstanding the preceding provisions of this Article, an insurance company resident of a Contracting State shall, except in the case of reinsurance, be deemed to have a permanent establishment in the other Contracting State if it insures risks situated therein through a representative other than an agent of independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business, and the conditions that are made or imposed in their commercial or financial relations with such enterprises do not differ from those which would be generally made by independent agents.

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.

CHAPTER III TAXATION OF INCOME

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. For the purposes of this Convention, the term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to 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 or has carried 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 deduction expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

7. Where profits include items of income or gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 *Shipping and Air Transport*

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

2. For the purposes of this Article the term “profits” includes:

a) gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic;

b) interest on sums generated directly from the operation of ships or aircraft in international traffic, if those profits are incidental to the operation by the enterprise of ships or aircraft in international traffic; and

c) profits from the charter or rental on a bareboat basis of ships and aircraft and profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in international traffic, if those profits are incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. 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, if it agrees that the adjustment made by the first mentioned State is justified both in principle and as regard the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. 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. However, 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 that controls directly at least 20 per cent of the voting power in the company paying the dividends;

b) 15 per cent of the gross amount of the dividends, in all other cases.

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

The provisions of this paragraph shall not limit application of the Additional Tax payable in Chile provided that the First Category Tax is fully creditable in computing the amount of Additional Tax.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as any income or distribution assimilated to income from shares under the taxation laws of the Contracting State of which the company paying the dividends or income or 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

Article 11 *Interest*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

a) 5 per cent on the gross amount of the interest derived from:

(i) loans granted by banks and insurance companies;

(ii) bonds or securities that are regularly and substantially traded on a recognized securities market;

(iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment.

b) 15 per cent of the gross amount of the interest in all other cases.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, as well as other income which is assimilated to income from money lent by the taxation laws of the State in which the income arises. The term interest shall not include income dealt with in Article 10.

4. The provisions of paragraphs 1 and 2 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred,

and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where there is a special relationship between the payer and the beneficial owner or between both of them and some other person and the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12 *Royalties*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

(a) 5 per cent of the gross amount of the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment;

(b) 10 per cent of the gross amount of the royalties, in all other cases.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films, tapes and other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent

establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect to which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property 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 or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4 Gains derived by a resident of a Contracting State, from the alienation of shares, comparable interests or other rights representing the capital of a company that is a resident of the other Contracting State, may be taxed in the other Contracting State if,

a) the alienator at any time during the twelve month period preceding such alienation owned, directly or indirectly, shares, comparable interests or other rights representing 20 per cent or more of the capital of that company, or

b) the gains from the alienation of shares, comparable interests or other rights derive more than 50 per cent of their value, directly or indirectly, from immovable property situated in that other Contracting State.

Any other gains derived by a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State may also be taxed in that other Contracting State but the tax so charged shall not exceed 16 per cent of the amount of the gain.

Notwithstanding any other provision of this paragraph, gains derived by a pension fund that is a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

5. Gains from the alienation of any property, other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph 5 shall not affect the right of a Contracting State to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the three years immediately preceding the alienation of the property if the property was held by the individual before he became a resident of that other State.

Article 14

Income from employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other 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 being a person who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment that the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 15
Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar body 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. Notwithstanding the provisions of Articles 7 and 14, 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 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 17
Pensions

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State, but the tax so charged shall not exceed 10 per cent of the gross amount of the pension.

2. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall, to the extent it is not allowable as a relief for taxation purposes to the payer, be taxable only in the first-mentioned State.

Article 18
Government Service

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

b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19 *Students*

Payments which a student, apprentice or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that 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 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 recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV METHODS FOR AVOIDANCE OF DOUBLE TAXATION

Article 21 *Avoidance of Double Taxation*

1. In Chile, double taxation shall be avoided as follows:

Residents in Chile, obtaining income which has, in accordance with the provisions of this Convention, been subject to taxation in Ireland, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income referred to in this Convention.

2. In Ireland, double taxation shall be avoided as follows:

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)

Chilean tax payable under the laws of Chile and in accordance with this Convention, whether directly or by deduction, on profits, income or gains from sources within Chile shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or gains by reference to which Chilean tax is computed:

provided that

- a) in the case of a dividend paid by a company which is a resident of Chile to a company which is a resident of Ireland and which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend, the Chilean tax creditable under this paragraph shall be the First Category tax in Chile payable by the company in respect of the profits out of which the dividend is paid and the amount of the Additional Tax payable in respect of the dividends after the deduction of any First Category tax (i.e. the net amount of the Additional Tax payable), and
- b) in the case of any other dividends paid by a company which is a resident of Chile to a resident of Ireland, the Chilean tax creditable under this paragraph shall be the lesser of-
 - (i) the net amount of the Additional Tax payable in Chile in respect of the dividends, or
 - (ii) 15 per cent of the gross amount of the dividend before computing the Additional Tax.

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

4. Where in accordance with any provisions of this Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

CHAPTER V SPECIAL PROVISIONS

Article 22 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.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing in this Article shall 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 that it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Companies that are residents 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 that is other or more burdensome than the taxation and connected requirements to which other similar companies of the first-mentioned State are or may be subjected.

6. In this Article, the term “taxation” means taxes that are the subject of this Convention.

Article 23 *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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 24
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws in the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by that State. 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.

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

- a) to carry out administrative measures at variance with the laws and the 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”).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall, in the same way as if its own taxation were involved, endeavour to obtain the information to which the request relates even though the other State does not, at that time, need such information for its own taxation purposes.

Article 25
Members of Diplomatic Missions and Consular Posts

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

Article 26
Miscellaneous Provisions

1. Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event the provisions of the

Convention are used in such a manner as to provide benefits not contemplated or not intended, the competent authorities of the Contracting States shall, under the mutual agreement procedure of Article 23, recommend specific amendments to be made to the Convention. The Contracting States further agree that any such recommendation will be considered and discussed in an expeditious manner with a view to amending the Convention, where necessary.

2. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 23 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

3. Where, under any provision of this Convention, 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 Convention 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.

4. With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N° 18.657), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.

5. Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

6. Contributions paid in respect of employment or self-employment by, or on behalf of, an individual who is a resident of a Contracting State, or who is temporarily present in that State, to a pension plan that is recognised for tax purposes in the other Contracting State shall be treated for tax purposes in the first-mentioned State in the same way and subject to the same conditions and limitations as contributions paid to a pension plan that is recognised for tax purposes in that first-mentioned State, to the extent that they are not so treated by the other State, if

a) such individual was contributing on a regular basis to the pension plan for a period ending immediately before that individual became a resident of or temporarily present in the first-mentioned State; and

b) payments made to the scheme by the individual's employer would not be deemed in the other State to be taxable income of the individual; and

c) the competent authority of the first-mentioned State agrees that the pension plan generally corresponds to a pension plan recognised for tax purposes by that State.

7. Nothing in this Convention shall affect the taxation in Chile of a resident in Ireland in respect of profits attributable to a permanent establishment situated in Chile, under both the First Category Tax and the Additional Tax, but only as long as the First Category Tax is deductible in computing the Additional Tax.

CHAPTER VI FINAL PROVISIONS

Article 27 Entry into Force

I. Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. The provisions of this Convention shall have effect:

a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which this Convention enters into force; and

b) in Ireland,

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

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

Article 28 Termination

This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the year in which the Convention enters into force, give to the other Contracting State a notice of termination in writing through diplomatic channels.

2. The provisions of this Convention shall cease to have effect:

a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice is given; and

b) in Ireland,

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

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

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Convention.

Done in duplicate at Dublin, this 2 day of June, 2005 in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT
OF IRELAND**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF CHILE**

Frank M. Daly

Juan Toro Rivera

**PROTOCOL TO THE CONVENTION BETWEEN IRELAND AND THE
REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND CAPITAL GAINS**

On signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between the Government of Ireland and the Government of the Republic of Chile, the signatories have agreed that the following provisions shall form an integral part of the Convention.

In general

Either Government may at any time request consultations, to be conducted by the competent authorities in an expeditious manner on matters relating to the terms, operation and application of the Convention which it considers require urgent resolution.

It is agreed that if, after the date on which the Convention enters into force, either Contracting State introduces a tax on capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Convention by extending its scope to include any tax on capital so introduced. The terms of any such Protocol shall have regard to any arrangements between either Contracting State and a third state for the relief of double taxation on capital.

With reference to paragraph 1 of Article 3

It is agreed that the term “enterprise” applies to the carrying on of any business and that the term “business” includes the performance of professional services and of other of an independent character.

With reference to Article 5

A person carrying on activities in a Contracting State in connection with the exploration on of natural resources situated in that Contracting State (including offshore activities) shall be deemed to be carrying on a business through a permanent in that Contracting State.

With reference to paragraph 3 of Article 5

For the purposes of preventing misuse of Articles 5 and 7, in determining the duration of activities under this paragraph, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise (other than enterprises of that Contracting State) may be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled

directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

With reference to paragraph 3 of Article 7

Without prejudice to paragraph 2 of Article 22, it is understood that the provisions of paragraph 3 of Article 7 shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the establishment is situated.

With reference to paragraph 2 of Article 10 and paragraph 7 of Article 26

In relation to the application of the Additional Tax under the laws of Chile, it is agreed that if the First Category Tax should cease to be fully creditable in computing the amount of Additional Tax to be paid, the Contracting States shall consult with each other with a view to amending the Convention to re-establish the balance of benefits under the Convention.

With reference to Articles 10, 11 and 12

A trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, that interest or those royalties.

With reference to Article 12

It is understood that payments received in connection with the granting of rights in relation to the copyright of a non-customised software programme (for example, so called 'shrink-wrapped' software) that are limited to those that are necessary to enable the user to operate the programme shall be treated as business profits covered by Article 7.

With reference to paragraph 2 of Article 11 and paragraph 2 of Article 12

It is agreed that if any agreement or convention between Chile and a member state of the Organisation for Economic Co-operation and Development entering into force after the date of entry into force of the Convention provides that Chile shall exempt from tax interest or royalties (either generally or in respect of specific categories of interest or royalties) arising in Chile, or limit the tax charged in Chile on such interest or royalties (either generally or in respect of specific categories of interest or royalties) to a rate lower than that provided for in paragraph 2 of Article 11 or paragraph 2 of Article 12, such exemption or lower rate shall automatically apply to interest or royalties (either generally or in respect of those specific categories of interest or royalties) arising in Chile and beneficially owned by a resident of Ireland and interest or royalties arising in Ireland and beneficially owned by a resident of Chile under the same conditions as if such exemption or lower rate had been specified in those paragraphs. The competent authority of Chile shall inform the competent authority of Ireland without delay that the conditions for the application of this paragraph have been met.

With reference Article 13

For the purposes of this Article:

- (i) the National Pensions Reserve Fund of Ireland is a pension fund; and
- (ii) pension funds created under the social security legislation of Chile are pension funds.

With reference to paragraph 1 of Article 16

It is understood that the income referred to in paragraph 1 of Article 16 shall include any income derived from any personal activity exercised in the other State related with that person's renown as an artiste or sportsman.

With reference to paragraph 1 of Article 17

It is understood that the term "pensions" includes any payments made to a scheme member or beneficiary in accordance with the rules of a scheme that is recognised for tax purposes as a pension scheme by the Contracting State in which the payments arise.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Protocol.

Done in duplicate at Dublin, this 2 day of June, 2005 in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT
OF IRELAND**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF CHILE**

Frank M. Daly

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