



TREATY SERIES 2009
Nº 13

**Agreement between Ireland and the Isle of Man for the
Exchange of Information Relating to Tax Matters and its
Protocol**

Done at Dublin on 24 April 2008

Notifications of the completion of the necessary internal procedures for
entry into force of this Agreement exchanged on 26 June 2008 and 31
December 2008

Entered into force on 31 December 2008

Presented to Dáil Éireann by the Minister for Foreign Affairs

AGREEMENT BETWEEN IRELAND AND THE ISLE OF MAN FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS AND ITS PROTOCOL

Whereas Ireland and the Isle of Man (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters, which under current practice is conducted by Ireland through the Department of Justice, Equality and Law Reform and by the Isle of Man through its Attorney General;

Whereas the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the Isle of Man under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with Ireland;

Whereas the Isle of Man on 13th December 2000 entered into a political commitment to the OECD’s principles of effective exchange of information and actively participated in the drafting of the OECD Model Agreement on Exchange of Information in Tax Matters;

Whereas the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

Article 1

Scope of the Agreement

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons liable to such taxes, or to the investigation or prosecution of tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:

(a) in the case of Ireland:

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

(b) in the case of the Isle of Man:

the taxes on income or profit.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

Article 3 *Definitions*

1. In this Agreement:

- (a) “Ireland” means Ireland and includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be designated under the laws of Ireland concerning the Continental Shelf as an area within which the rights of Ireland with respect to the sea bed and subsoil and their natural resources may be exercised;
- (b) “Isle of Man” means the island of the Isle of Man;
- (c) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) “competent authority” means, in the case of Ireland, the Revenue Commissioners or their authorised representative; and in the case of the Isle of Man, the Assessor of Income Tax or his delegate;
- (e) “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- (f) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;

(g) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

(h) “information” means any fact, statement, document or record in whatever form;

(i) “legal privilege” means

(i) communications between a professional legal advisor and his client or any person representing his client made in connection with the giving of legal advice to the client;

(ii) communications between a professional legal advisor and his client or any person representing his client or between such an advisor or his client or any such representative and any other person made in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings; and

(iii) items enclosed with or referred to in such communications and made

(a) in connection with the giving of legal advice; or

(b) in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.

Items held with the intention of furthering a criminal purpose are not subject to legal privilege;

(j) “person” means a natural person, a company or any other body or group of persons;

(k) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

(l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

(m) “public collective investment scheme” means any scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

(n) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

(o) “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;

(p) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;

(q) “tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Exchange of Information upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use, at its own discretion, all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that it has the authority, for the purposes referred to in Article 1, to obtain and provide, through its competent authority and upon request:

(a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

(b) (i) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment schemes, information on shares, units and other interests;

- (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) the grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

Article 5
Tax Investigations Abroad

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.
2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

Article 6
Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where the disclosure of the information requested would be contrary to public policy (ordre public).
2. This Agreement shall not impose upon a requested Party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 4 shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the

competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

Article 7 Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 8 Costs

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise necessary to comply with the request) shall be borne by the requesting Party. The competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be extraordinary.

Article 9 Mutual Agreement Procedures

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. The Parties may also agree on other forms of dispute resolution.

Article 10
Entry into Force

This Agreement shall enter into force when each Party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for criminal tax matters, on that date; and
- (b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 11
Termination

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by their respective Governments, have signed this Agreement.

Done at Dublin, Ireland this 24th day of April, 2008, in duplicate.

For Ireland

For the Isle of Man

Brian Cowen

Allan Robert Bell MHK

PROTOCOL

At the time of signing the Agreement between Ireland and the Isle of Man for the Exchange of Information Relating to Tax Matters, the Parties have agreed that the following provisions shall form an integral part of the Agreement:

With reference to paragraph 3 of Article 7, if information provided under the provisions of Article 1 in respect of the taxes covered in Article 2 should subsequently prove to be relevant to the determination, assessment, enforcement or collection of Value Added Tax with respect to persons subject to such tax, or to the investigation or prosecution of Value Added Tax matters in relation to such persons, the information may be used for that purpose only with the express written consent of the requested party.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by their respective Governments, have signed this Protocol.

Done at Dublin, Ireland this 24th day of April, 2008, in duplicate.

For Ireland

For the Isle of Man

Brian Cowen

Allan Robert Bell MHK

JOINT DECLARATION BY IRELAND AND THE ISLE OF MAN

1. Ireland and the Isle of Man have today signed two agreements which seek to strengthen and broaden their current economic and trading relationship.
2. Each country recognises the other's commitment to operate international standards of financial regulation in order to combat money laundering and terrorist financing; and to participate in international efforts to tackle financial and other crimes, including fiscal crime. The Agreement for the Exchange of Information Relating to Tax Matters signed today constitutes a step forward in the global effort to establish an international financial system that is based on transparency and effective exchange of information in tax matters.
3. The Isle of Man already has an agreement on the taxation of savings income in effect with Ireland and each of the other Member States of the European Union ("EU"). In recognition of the Isle of Man's 'good neighbour' policy, Ireland will use its best endeavours to ensure that where EU Directives or Regulations concerning the regulation of financial services include provisions referring to the position of Third Countries, particularly in relation to assessments of equivalence in compliance with EU standards and access to EU markets, the Isle of Man is treated as fairly and favourably as other Third Countries.
4. Ireland and the Isle of Man also recognise the possibility that taxation obstacles may in certain circumstances hinder the free movement of individuals and trade between both countries. Accordingly, through the Agreement for Affording Relief from Double Taxation with Respect to Certain Income of Individuals and Establishing a Mutual Agreement Procedure in connection with the Adjustment of Profits of Associated Enterprises signed today, both countries have agreed to introduce measures to address this matter.
5. Following the entry into force of the agreements signed today, Ireland and the Isle of Man will continue to work together in a spirit of transparency and cooperation to examine what measures could be adopted further to enhance and broaden their bilateral political and economic relationship.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Declaration.

Done at Dublin, Ireland this 24th day of April, 2008, in duplicate.

For Ireland

Brian Cowen

For the Isle of Man

Allan Robert Bell MHK