

SCHEDULE 25

Section 833.

ITA67 Sch8

The Convention set out in this Schedule was ratified subject to the exclusion of articles XIV and XVI in accordance with reservations made by the Senate of the United States of America. Instruments of ratification were exchanged at Washington, District of Columbia, on 20th December, 1951.

Reciprocal Relief of Double Taxation in Respect of Irish Income Tax, Sur-tax and Corporation Profits Tax and United States Federal Income Taxes, Including Sur-Taxes

Convention Between the Government of Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

The Government of Ireland and the Government of the United States of America,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries:

The Government of Ireland:

Patrick McGilligan, Minister for Finance;

Seán MacBride, Minister for External Affairs;

The Government of the United States of America;

George A. Garrett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Dublin;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows:—

Article I

(1) The taxes which are the subject of the present Convention are:—

(a) In the United States of America:

The Federal income taxes, including surtaxes (hereinafter referred to as United States tax).

(b) In Ireland:

The income tax (including surtax) and the corporation profits tax (hereinafter referred to as Irish tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of the signature of the present Convention.

Article II

(1) In the present Convention, unless the context otherwise requires—

(a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term “Ireland” means the Republic of Ireland and the term “Irish” has a corresponding meaning.

(c) The terms “territory of one of the Contracting Parties” and “territory of the other Contracting Party” mean the United States or Ireland as the context requires.

(d) The term “United States corporation” means a corporation, association or other like entity created or organised in or under the laws of the United States.

(e) The term “Irish corporation” means any kind of juridical person created under the laws of Ireland.

(f) The terms “corporation of one Contracting Party” and “corporation of the other Contracting Party” mean a United States corporation or an Irish corporation as the context requires.

(g) The term “resident of Ireland” means any person (other than a citizen of the United States or a United States corporation) who is resident in Ireland for the purposes of Irish tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in Ireland if its business is managed and controlled in Ireland.

(h) The term “resident of the United States” means any individual who is resident in the United States for the purposes of United States tax and not resident in Ireland for the purposes of Irish tax, and any United States corporation and any partnership created or organised in or under the laws of the United States, being a corporation or partnership which is not resident in Ireland for the purposes of Irish tax.

(i) The term “Irish enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of Ireland.

(j) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(k) The terms “enterprise of one of the Contracting Parties” and “enterprise of the other Contracting

Party” mean a United States enterprise or an Irish enterprise, as the context requires.

(l) The term “permanent establishment” when used with respect to an enterprise of one of the Contracting Parties means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a bona fide commission agent or broker acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one Contracting Party has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX and XIV, a resident of Ireland shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by Ireland in the case of a resident of the United States.

(3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

Article III

(1) An Irish enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed upon the entire income of such enterprise from all sources within the United States.

(2) A United States enterprise shall not be subject to Irish tax in respect of its industrial or commercial profits unless it is engaged in trade or business in Ireland through a permanent establishment situated therein. If it is so engaged, Irish tax may be imposed upon the entire income of such enterprise from all sources within Ireland.

(3) Where an enterprise of one of the Contracting Parties is engaged in trade or business in the territory of the other Contracting Party through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other Contracting Party, be deemed to be income from sources within the territory of such other Contracting Party.

(4) In determining the industrial or commercial profits from sources within the territory of one of the Contracting Parties of an enterprise of the other Contracting Party, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former Contracting Party by such enterprise.

Article IV

Where an enterprise of one of the Contracting Parties, by reason of its participation in the management, control or capital of an enterprise of the other Contracting Party, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally 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.

Article V

(1) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual resident of Ireland or an Irish corporation derives from operating ships documented or aircraft registered under the laws of Ireland, shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in Ireland or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States, shall be exempt from Irish tax.

(3) This Article shall not be deemed to affect the arrangement between Ireland and the United States, providing for reciprocal exemption of shipping profits from income tax, effected between the Government of the United States and the Government of Ireland by exchange of Notes dated August 24, 1933, and January 8, 1934.

Article VI

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of Ireland who is subject to Irish tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 per cent.; provided that such rate of tax shall not exceed five per cent. if such a resident is a corporation controlling, directly or indirectly, at least 95 per cent. of the entire voting power in the corporation paying the dividend, and not more than 25 per cent. of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five per cent. shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Dividends derived from sources within Ireland by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends, and (c) not engaged in trade or business in Ireland, shall be exempt from Irish surtax.

(3) Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any calendar year after the calendar year in which the exchange of the instruments of ratification takes place and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) hereof shall cease to be effective as to Irish tax on and after the sixth day of April, in the calendar year next following that in which such notice is given.

Article VII

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of Ireland who is subject to Irish tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in Ireland controlling, directly or indirectly, more than 50 per cent. of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within Ireland by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in Ireland, shall be exempt from Irish tax; but such exemption shall not apply to such interest paid by a corporation resident in Ireland to a United States corporation controlling, directly or indirectly, more than 50 per cent. of the entire voting power in the paying corporation.

Article VIII

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, and derived from sources within the United States by a resident of Ireland who is subject to Irish tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.

(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, and derived from sources within Ireland by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in Ireland shall be exempt from Irish tax.

(3) For the purposes of this Article the term "royalties" shall be deemed to include rentals in respect of motion picture films.

Article IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of Ireland who is subject to Irish tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall

not exceed 15 per cent.: provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within Ireland by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in Ireland, shall be exempt from Irish surtax.

Article X

(1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a citizen of Ireland who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from Irish tax.

(2) Any salary, wage, similar remuneration, or pension, paid by the Government of Ireland to an individual (other than a citizen of the United States who is not also a citizen of Ireland) in respect of services rendered to Ireland in the discharge of governmental functions, shall be exempt from United States tax.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

Article XI

(1) An individual who is a resident of Ireland shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (a) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (b) such services are performed for or on behalf of a person resident in Ireland.

(2) An individual who is a resident of the United States shall be exempt from Irish tax upon profits, emoluments or other remuneration in respect of personal (including professional) services performed within Ireland in any year of assessment if (a) he is present within Ireland for a period or periods not exceeding in the aggregate 183 days during that year, and (b) such services are performed for or on behalf of a person resident in the United States.

Article XII

(1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of Ireland shall be exempt from United States tax.

(2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from

sources within Ireland by an individual who is a resident of the United States shall be exempt from Irish tax.

(3) The term "life annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

Article XIII

(1) Subject to section 131 of the United States Internal Revenue Code as in effect on the day on which this Convention shall have come into effect, Irish tax shall be allowed as a credit against United States tax. For this purpose, the recipient of a dividend paid by a corporation which is a resident of Ireland shall be deemed to have paid the Irish income tax appropriate to such dividend if such recipient elects to include in his gross income for the purposes of United States tax the amount of such Irish income tax. For the purposes only of this Article, income derived from sources in the United Kingdom by an individual who is resident in Ireland shall be deemed to be income from sources in Ireland if such income is not subject to United Kingdom income tax.

(2) Subject to such provisions (which shall not affect the general principle hereof) as may be enacted in Ireland, United States tax payable in respect of income from sources within the United States shall be allowed as a credit against any Irish tax payable in respect of that income. Where such income is an ordinary dividend paid by a United States corporation, such credit shall take into account (in addition to any United States income tax deducted from or imposed on such dividend) the United States income tax imposed on such corporation in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, such tax on profits shall likewise be taken into account in so far as the dividend exceeds such fixed rate.

(3) For the purposes of this Article, compensation, profits, emoluments and other remuneration for personal (including professional) services shall be deemed to be income from sources within the territory of the Contracting Party where such services are performed.

Article XIV

A resident of Ireland not engaged in trade or business in the United States shall be exempt from United States tax on gains from the sale or exchange of capital assets.

Article XV

(1) Dividends and interest paid, on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place, by an Irish corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident in the United States or a United States corporation.

(2) Dividends and interest paid, on or after the sixth day of April of the first year of assessment

specified in Article XXII (2) (b) (i) of this Convention, by a United States corporation shall be exempt from Irish tax except where the recipient is a resident of Ireland.

Article XVI

An Irish corporation shall be exempt from United States tax on its accumulated or undistributed earnings, profits, income or surplus, if individuals who are residents of Ireland control, directly or indirectly, throughout the latter half of the taxable year, more than 50 per cent. of the entire voting power in such corporation.

Article XVII

(1) The United States income tax liability for any taxable year beginning prior to January 1, 1936, of any individual (other than a citizen of the United States) resident in Ireland, or of any Irish corporation, remaining unpaid on the date of signature of the present Convention, may be adjusted on a basis satisfactory to the United States Commissioner of Internal Revenue: provided that the amount to be paid in settlement of such liability shall not exceed the amount of the liability which would have been determined if—

(a) the United States Revenue Act of 1936 (except in the case of an Irish corporation in which more than 50 per cent. of the entire voting power was controlled, directly or indirectly, throughout the latter half of the taxable year, by citizens or residents of the United States), and

(b) Article XV and XVI of the present Convention,

had been in effect for such year. If the taxpayer was not, within the meaning of such Revenue Act, engaged in trade or business in the United States and had no office or place of business therein during the taxable year, the amount of interest and penalties shall not exceed 50 per cent. of the amount of the tax with respect to which such interest and penalties have been computed.

(2) The United States income tax unpaid on the date of signature of the present Convention for any taxable year beginning after the thirty-first day of December, 1935, and prior to the first day of January in the calendar year in which the exchange of instruments of ratification takes place in the case of an individual resident of Ireland or in the case of any Irish corporation shall be determined as if the provisions of Articles XV and XVI of the present Convention had been in effect for such taxable year.

(3) The provisions of paragraphs (1) of this Article shall not apply—

(a) unless the taxpayer files with the Commissioner of Internal Revenue on or before the thirty-first day of December of the second calendar year following the calendar year in which the exchange of the instruments of ratification takes place a request that such tax liability be so adjusted and furnishes such information as the Commissioner may require; or

(b) in any case in which the Commissioner is satisfied that any deficiency in tax is due to fraud with intent to evade the tax.

Article XVIII

A professor or teacher from the territory of one of the Contracting Parties who visits the territory of the other Contracting Party for the purpose of teaching, for a period not exceeding two years, at a university, college, school or other educational institution in the territory of such other Contracting Party shall be exempted by such other Contracting Party from tax on his remuneration for such teaching for such period.

Article XIX

A student or business apprentice from the territory of one of the Contracting Parties who is receiving full-time education or training in the territory of the other Contracting Party shall be exempted by such other Contracting Party from tax on payments made to him by persons within the territory of the former Contracting Party for the purposes of his maintenance, education or training.

Article XX

(1) The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term “taxation authorities” means, in the case of the United States, the Commissioner of Internal Revenue or his authorised representative and, in the case of Ireland, the Revenue Commissioners or their authorised representative.

Article XXI

(1) The nationals of one of the Contracting Parties shall not, while resident in the territory of the other Contracting Party, be subjected therein to other or more burdensome taxes than are the nationals of such other Contracting Party resident in its territory.

(2) The term “nationals” as used in this Article means—

(a) In relation to Ireland, all citizens of Ireland; and

(b) In relation to the United States, United States citizens;

and includes all legal persons, partnerships and associations deriving their status as such from, or created or organised under, the laws in force in any territory of the Contracting Parties to which the present Convention applies.

Article XXII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington, District of Columbia, as soon as possible.

(2) Upon exchange of ratifications, the present Convention shall have effect—

(a) as respects United States tax, for the taxable years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) (i) as respects Irish income tax, for the year of assessment beginning on the 6th day of April in the calendar year in which the exchange of instruments of ratification takes place and subsequent years;

(ii) as respects Irish surtax, for the year of assessment beginning on the 6th day of April immediately preceding the calendar year in which the exchange of instruments of ratification takes place, and subsequent years; and

(iii) as respects Irish corporation profits tax, for any chargeable accounting period beginning on or after the first day of April in the calendar year in which the exchange of instruments of ratification takes place, and for the unexpired portion of any chargeable accounting period current at that date.

Article XXIII

(1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any calendar year following the calendar year in which the exchange of instruments of ratification takes place, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective—

(a) as respects United States tax, for the taxable years beginning on or after the first day of January in the calendar year next following that in which such notice is given;

(b) (i) as respects Irish income tax, for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given;

(ii) as respects Irish surtax, for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and

(iii) as respects Irish corporation profits tax, for any chargeable accounting period beginning on or after the first day of April in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

IN WITNESS WHEREOF the above-named Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Dublin, in duplicate, this thirteenth day of September, 1949.

For the Government of Ireland:

P. McGILLIGAN

SEAN MacBRIDE

For the Government of the United States of America:

GEORGE A. GARRETT.