## No. 33070. Ireland and Portugal

CONVENTION BETWEEN IRELAND AND THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. DUBLIN, 1 JUNE 1993 [*United Nations, Treaty Series, vol. 1933, I-33070.*]

PROTOCOL BETWEEN IRELAND AND THE PORTUGUESE REPUBLIC AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ITS PROTOCOL SIGNED AT DUBLIN ON 1 JUNE 1993. LISBON, 11 NOVEMBER 2005

**Entry into force:** 18 December 2006 by notification, in accordance with article 4

**Authentic texts:** English and Portuguese

**Registration with the Secretariat of the United Nations:** Ireland, 5 January 2009

## No. 33070. Irlande et Portugal

CONVENTION ENTRE L'IRLANDE ET LA RÉPUBLIQUE PORTUGAISE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU. DUBLIN, 1 JUIN 1993 [*Nations Unies, Recueil des Traités, vol. 1933, I-33070.*]

PROTOCOLE ENTRE L'IRLANDE ET LA RÉPUBLIQUE PORTUGAISE MODIFIANT LA CONVENTION TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SON PROTOCOLE SIGNÉ À DUBLIN LE 1ER JUIN 1993. LISBONNE, 11 NOVEMBRE 2005

**Entrée en vigueur :** 18 décembre 2006 par notification, conformément à l'article 4

**Textes authentiques :** anglais et portugais

**Enregistrement auprès du Secrétariat des Nations Unies :** Irlande, 5 janvier 2009

[ ENGLISH TEXT – TEXTE ANGLAIS ]

# PROTOCOL BETWEEN IRELAND AND THE PORTUGUESE REPUBLIC AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ITS PROTOCOL SIGNED AT DUBLIN ON 1 JUNE 1993

Ireland and the Portuguese Republic;

*Desiring* to conclude a Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and its Protocol, signed at Dublin on 1 June, 1993 (hereinafter referred to as "the Convention");

**HAVE AGREED** as follows:

Article 1

Paragraph 2 of Article 13 (Capital Gains) of the 1993 Convention shall be deleted and replaced by the following:

"2. For the purposes of paragraph 1, gains from the alienation of immovable property situated in the other Contracting State shall include gains from shares or comparable interests, other than shares quoted on a stock exchange, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in that other State."

Article 2

Insert new Paragraph 6 in Article 13 (Capital Gains) of the 1993 Convention as follows:

"6. The provisions of paragraph 5 shall not affect the right of a Contracting State to levy according to its laws, a tax on gains from the alienation of shares in, securities of, or other corporate rights of, or debt claims on a company which is a resident of that Contracting State, if such gains are not subject to tax in the other Contracting State, and

(a) such gains are derived by an individual who is a resident of the other Contracting State and was a resident of the first-mentioned State at any time during the three years immediately preceding the aforementioned alienation, and

(b) (i) the individual who derived the gains has held at any time, either alone or with his or her spouse or one of their relations by blood or marriage, directly or indirectly, at least 5 per cent of the issued share capital of a particular class of shares in that company, or

(ii) the value of the participation exceeds euro 500,000."

Article 3

Insert this new paragraph in the Protocol to the 1993 Convention.

**Ad Article 24, Paragraph 3**

It is understood that the provisions of the Convention shall not be interpreted so as to prevent the application by a Contracting State of the thin capitalisation provisions provided for in its domestic law, except in those cases in which the associated enterprises can show that due to the special characteristics of their activities or their specific economic circumstances, the conditions made or imposed between those enterprises are in conformity with the arm's length principle.

Article 4

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol.

(2) This Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:

(a) 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 the year in which this Protocol enters into force;

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

(b) In Portugal:

(i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following the year in which the Protocol enters into force;

(ii) in respect of other taxes, as to income arising in any fiscal year beginning on or after the first day of January of the year next following the year in which the Protocol enters into force.

In witness whereof, the undersigned duly authorised thereto, have signed this Protocol.

**DONE** in duplicate at Lisbon this 11th day of 2005 in the English and Portuguese languages, both texts being equally authoritative.

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|---|---|
| For Ireland | For the Portuguese Republic |
| Patrick O'Connor | Fernando de Oliveira Neves |

[ PORTUGUESE TEXT – TEXTE PORTUGAIS ]

# PROTOCOLO

## PROTOCOLO ENTRE A REPÚBLICA PORTUGUESA E A IRLANDA QUE REVÊ A CONVENÇÃO PARA EVITAR A DUPLA TRIBUTAÇÃO E PREVENIR A EVASÃO FISCAL EM MATÉRIA DE IMPOSTOS SOBRE O RENDIMENTO E RESPECTIVO PROTOCOLO, ASSINADA EM DUBLIN A 1 DE JUNHO DE 1993

A República Portuguesa e a Irlanda,

Desejando celebrar um Protocolo que altera a Convenção entre as Partes Contratantes para Evitar a Dupla Tributação e Prevenir a Evasão Fiscal em Matéria de Impostos sobre o Rendimento e respectivo Protocolo, assinada em Dublin a 1 de Junho de 1993 (a seguir designada por «a Convenção»),

Acordam no seguinte: –

### ARTIGO 1º

O número 2 do Artigo 13º (Mais-Valias) da Convenção de 1993 é suprimido e passa a ter a seguinte redacção:

«2. Para efeitos do n.º 1 do presente Artigo, os ganhos provenientes da alienação de bens imobiliários situados no outro Estado Contratante compreendem os ganhos provenientes de acções ou de direitos equiparáveis, com excepção de acções cotadas em bolsa, e que retirem, directa ou indirectamente, mais de 50 por cento do respectivo valor, de bens imobiliários situados nesse outro Estado.»

### ARTIGO 2º

No Artigo 13º (Mais-Valias) da Convenção de 1993 é aditado um novo n.º 6, com a seguinte redacção:

«6. O disposto no n.º 5 do presente Artigo não afecta o direito de um Estado Contratante de, nos termos da legislação interna, cobrar um imposto sobre os ganhos provenientes da alienação de acções, valores mobiliários ou outras partes sociais de uma sociedade residente desse Estado Contratante, bem como de créditos sobre uma sociedade residente desse Estado Contratante, se os referidos ganhos não estiverem sujeitos a imposto no outro Estado Contratante, e

(a) os referidos ganhos forem auferidos por uma pessoa singular que é residente do outro Estado Contratante e que foi residente do primeiro Estado mencionado, em qualquer momento, durante os três anos que antecederam imediatamente a referida alienação, e

(b) (i) a pessoa singular que auferiu os ganhos deteve, directa ou indirectamente, em qualquer momento, só ou juntamente com o respectivo cônjuge ou com um dos seus familiares pelo sangue ou pelo casamento, pelo menos 5 por cento do capital emitido correspondente a uma determinada categoria de acções dessa sociedade, ou

(ii) o valor da participação exceder 500.000 euros.»