



**TREATY SERIES 2008**  
**Nº 5**

**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**

**Done at Lisbon on 11 November 2005**

**Notification of completion of requirements for entry into force exchanged on 22  
December 2005 and 18 December 2006**

**Entered into force on 18 December 2006**

**Presented to Dáil Éireann by the Minister for Foreign Affairs**

**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 11<sup>th</sup> day of 2005 in the English and Portuguese languages, both texts being equally authoritative.

For Ireland  
Patrick O'Connor

For the Portuguese Republic  
Fernando de Oliveira Neves