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STATUTORY INSTRUMENTS

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**1995 No. 764**

**INCOME TAX**

**The Double Taxation Relief (Taxes on  
Income) (Republic of Ireland) Order 1995**

*Made - - - - 15th March 1995*

At the Court at Buckingham Palace, the 15th day of March 1995

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988<sup>(1)</sup>, and an Address has been presented to Her Majesty by that House praying that an Order maybe made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of the said Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1995.

2. It is hereby declared—

- (a) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976<sup>(2)</sup>, as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) (No. 2) Order 1976<sup>(3)</sup>, have been made with the Government of the Republic of Ireland with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of the Republic of Ireland; and
- (b) that it is expedient that those arrangements should have effect.

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<sup>(1)</sup> 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).

<sup>(2)</sup> S.I.1976/2151.

<sup>(3)</sup> S.I. 1976/2152.

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*N. H. Nicholls*  
Clerk of the Privy Council

## SCHEDULE

### PROTOCOL

#### **BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF IRELAND AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED AT DUBLIN ON 2ND JUNE 1976, AS AMENDED BY THE PROTOCOL SIGNED AT DUBLIN ON 28TH OCTOBER 1976**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland;

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 Capital Gains, signed at Dublin on 2nd June 1976, as amended by the Protocol signed at Dublin on 28th October 1976 (hereinafter referred to as “the Convention”);

Have agreed as follows:

#### *Article I*

The following new Article shall be inserted immediately after Article 17 of the Convention:

#### *“Article 17A*

##### *Pension Scheme Contributions*

(1) Subject to the conditions specified in paragraph (2) of this Article, where an employee (“the employee”), who is a member of a pension scheme which has been approved or is being considered for approval under the legislation of one of the Contracting States, exercises his employment in the other Contracting State:

- (a) contributions paid by the employee to that scheme during the period that he exercises his employment in that other State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension scheme which has been approved under the legislation of that State; and
- (b) payments made to the scheme by or on behalf of his employer during that period:
  - (i) shall not be treated as part of the employee’s taxable income, and
  - (ii) shall be allowed as a deduction in computing the profits of his employer, in that other State.

(2) The conditions specified in this paragraph are that:

- (a) the employee is employed in the other Contracting State by the person who was his employer immediately before he began to exercise his employment in that State or by an associated employer of that employer;
- (b) the employee was not a resident of that State immediately before he began to exercise his employment there;
- (c) at the time that the contributions referred to in paragraph (1)(a) of this Article are paid, or the payments referred to in paragraph (1)(b) of this Article are made, to the scheme the employee has exercised his employment in that State for:
  - (i) less than ten years where he was a resident of the first-mentioned Contracting State immediately before he began to exercise his employment in the other Contracting State, or

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- (ii) less than five years in other cases.
- (3) For the purposes of this Article:
  - (a) the term “a pension scheme” means a scheme established in relation to an employment in which the employee participates in order to secure retirement benefits;
  - (b) employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person; and the term “control”, in relation to a body corporate, means the power of a person to secure:
    - (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or
    - (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.”

## *ARTICLE II*

- (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 there upon have effect:
  - (a) in the United Kingdom:
    - (i) in respect of income tax, for any year of assessment beginning on or after 6th April 1994;
    - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April 1994;
  - (b) in the Republic of Ireland:
    - (i) in respect of income tax, for any year of assessment beginning on or after 6th April 1994;
    - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April 1994.

In witness whereof the undersigned, duly authorised there to by their respective Governments, have signed this Protocol.

Done in two originals at London this 7th day of November, 1994.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

*T L A Daunt*

For the Government of the Republic of Ireland:

*Joseph Small*

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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976, as amended by the Protocol set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) (No. 2) Order 1976.

The Protocol inserts a new Article 17A providing that tax relief may be given by one State where an employee who has been sent temporarily to work in that State pays contributions to an approved pension scheme in the other State.

In addition, any contributions paid to the pension scheme by the employer will not be treated as part of the employee's taxable income; and the employer will be entitled to a deduction for those contributions when computing taxable profits.

The Protocol will enter into force after both countries have notified each other of the completion of their legislative procedures and shall have effect in both the United Kingdom and the Republic of Ireland from 1st April 1994 in respect of corporation tax; and from 6th April 1994 in respect of income tax. The date of entry into force will be published in the *London, Edinburgh and Belfast Gazettes*.