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AMENDING CONVENTION WITH IRELAND

NOVEMBER 3, 1999.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 106–15]

The Committee on Foreign Relations, to which was referred the Convention Amending the Convention between the Government of the United States of America and the Government of Ireland 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 July 28, 1997 (the Amending Convention was signed at Washington on September 24, 1999), having considered the same, reports favorably thereon, with one declaration and one proviso, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The principal purposes of the existing treaty between the United States and Ireland are to reduce or eliminate double taxation of income earned by residents of either country from sources within the other country and to prevent avoidance or evasion of the income taxes of the two countries. The principal purpose of the proposed Amending Convention is to modify provisions of the existing treaty

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regarding the application of reduced withholding tax rates to dividends from U.S. Real Estate Investment Trusts ("REITs").

II. BACKGROUND

The proposed Amending Convention was signed on September 24, 1999. The proposed Amending Convention would amend the tax treaty between the United States and Ireland that was signed on July 28, 1997 (the "existing treaty"). The Senate granted advice and consent to the ratification of the existing treaty on October 31, 1997. The existing treaty entered into force on December 17, 1997.

In 1997, the Treasury Department modified its policy with respect to the exclusion of REIT dividends from the reduced withholding tax rates applicable to other dividends under the existing treaty. The new policy was a result of significant cooperation among the Treasury Department, the staff of the Committee on Foreign Relations, the staff of the Joint Committee on Taxation, and representatives of the REIT industry. Under this policy, REIT dividends paid to a resident of a treaty country will be eligible for the reduced rate of withholding tax applicable to portfolio dividends (typically, 15 percent) in certain cases. In 1997, the Senate included a declaration to the existing treaty, which stated that the United States will use its best efforts to negotiate a protocol with Ireland to amend the treaty to incorporate this new policy.[1] The proposed Amending Convention incorporates this new policy with respect to the treaty treatment of REIT dividends.

The proposed Amending Convention was transmitted to the Senate for advice and consent to its ratification on October 29, 1999 (see Treaty Doc. 106–15).

III. SUMMARY

The proposed Amending Convention makes one modification to the existing treaty regarding the tax treatment of dividends received from REITs. In this regard, the proposed Amending Convention modifies the dividends article of the existing treaty to incorporate the new policy with respect to REIT dividends. Under this new policy, REIT dividends paid to a resident of Ireland will be eligible for the reduced rate of withholding tax applicable to portfolio dividends (i.e., 15 percent) in two cases. First, the reduced withholding tax will apply to REIT dividends if the Irish resident beneficially holds an interest of 5 percent or less in each class of the REIT's stock and such dividends are paid with respect to a class of the REIT's stock that is publicly traded. Second, the reduced withholding tax rate will apply to REIT dividends if the Irish resident beneficially holds an interest of 10 percent or less in the REIT and the REIT is diversified, regardless of whether the REIT's stock is publicly traded. In addition, the existing treaty provision with respect to the application of the reduced withholding tax rate to REIT dividends paid to individuals holding less than a specified interest in the REIT will remain substantially unchanged.

[1] The Senate included similar declarations to the 1997 treaties with Austria and Ireland, and a reservation to the 1997 treaty with Luxembourg incorporating the new REIT dividend policy.

IV. Entry Into Force

The proposed Amending Convention will enter into force upon the exchange of instruments of ratification and will take effect with respect to dividends paid on or after the first day of the second month next following the date on which the proposed Amending Convention enters into force.

V. Committee Action

The Committee considered the proposed Amending Convention with Ireland on November 3, 1999, along with other proposed treaties and protocols, and ordered the proposed Amending Convention with Ireland favorably reported by a voice vote, with the recommendation that the Senate give its advice and consent to ratification of the proposed protocol, subject to a declaration and a proviso.

VI. Budget Impact

The Committee has been informed by the staff of the Joint Committee on Taxation that the proposed Amending Convention is estimated to cause a negligible change in fiscal year Federal budget receipts during the 1999–2008 period.

VII. Explanation of Proposed Protocol

A detailed article-by-article explanation of the proposed Amending Convention to the income tax treaty between the United States and Ireland is set forth below.

Article 1

The proposed Amending Convention amends paragraph 4 of Article 10 (Dividends) of the existing treaty. Under the existing treaty, dividends paid by a U.S. regulated investment company ("RIC") or a U.S. REIT are not eligible for the reduced 5-percent source-country tax. Dividends paid by U.S. RICs are eligible for the 15-percent rate. In addition, dividends paid by a U.S. REIT are eligible for the 15-percent rate only if the dividend is owned by an individual who holds less than a 10-percent interest in the U.S. REIT. Otherwise, dividends paid by a U.S. REIT are subject to U.S. taxation at the full 30-percent statutory rate.

Like the existing treaty, the proposed Amending Convention provides that RIC dividends are eligible only for the 15-percent rate. In addition, REIT dividends are eligible for the 15-percent rate only if: (1) the beneficial owner of the dividends is an individual owning not more than a 10-percent interest in the REIT, (2) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person owning not more than 5 percent of any class of the REIT's stock, or (3) the beneficial owner of the dividends owns not more than a 10-percent interest in the REIT and the REIT is diversified. Otherwise, dividends paid by a U.S. REIT are subject to U.S. taxation at the full statutory rate of 30 percent.

Article 2

The proposed Amending Convention is subject to ratification in accordance with the applicable procedures in the United States and Ireland, and instruments of ratification will be exchanged as soon as possible. The proposed Amending Convention will enter into force upon the exchange of instruments of ratification and will take effect with respect to dividends paid on or after the first day of the second month next following the date on which the proposed Amending Convention enters into force.

VIII. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Amending the Convention between the Government of the United States of America and the Government of Ireland 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 July 28, 1997 (the Protocol was signed at Washington on September 24, 1999) (Treaty Doc. 106–15), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISO.—The resolution of ratification is subject to the following proviso, which shall be binding on the President:

(1) SUPREMACY OF CONSTITUTION.—Nothing in the Protocol requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

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