



STATUTORY INSTRUMENTS.

S.I. No. 31 of 2011



DOUBLE TAXATION RELIEF (TAXES ON INCOME AND ON
CAPITAL) (FEDERAL REPUBLIC OF GERMANY) ORDER 2011

(Prn. A11/0126)

DOUBLE TAXATION RELIEF (TAXES ON INCOME AND ON CAPITAL) (FEDERAL REPUBLIC OF GERMANY) ORDER 2011

WHEREAS it is enacted by section 826(1) (as amended by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that where the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of income tax, corporation tax in respect of income and chargeable gains, capital gains tax or any taxes of a similar character imposed by the laws of the State or by the laws of that territory and, in the case of taxes of any kind or description imposed by the laws of the State or the laws of that territory, in relation to exchanging information for the purposes of the prevention and detection of tax evasion or granting relief from taxation under the laws of that territory to persons who are resident in the State for the purposes of tax, and that it is expedient that those arrangements should have the force of law, and that the order so made is referred to in Part 1 of Schedule 24A to the Taxes Consolidation Act 1997, then, subject to section 826 of that Act, the arrangements shall, notwithstanding any enactment, have the force of law as if such order were an Act of the Oireachtas on and from the date of the insertion of a reference to the order into Part 1 of Schedule 24A:

AND WHEREAS it is further enacted by section 826(6) of the Taxes Consolidation Act 1997 that where such an order is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann:

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them by section 826(1) (as amended by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income and on Capital) (Federal Republic of Germany) Order 2011.
2. It is declared that—
 - (a) the arrangements specified in the Agreement, the text of which is set out in the Schedule, have been made with the Government of the Federal Republic of Germany in relation to—

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 21st January, 2011.

- (i) affording relief from double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, and
 - (ii) in the case of taxes of any kind or description imposed by the laws of the State or the laws of the Federal Republic of Germany, exchanging information for the purposes of the prevention and detection of tax evasion and granting relief from taxation under the laws of the Federal Republic of Germany to persons who are resident in the State for the purposes of tax,
and
- (b) it is expedient that those arrangements should have the force of law.

SCHEDULE

PROTOCOL

AMENDING THE CONVENTION

BETWEEN IRELAND

AND

THE FEDERAL REPUBLIC OF GERMANY

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME AND CAPITAL AND TO
THE GEWERBESTEUER (TRADE TAX)

IRELAND

AND

THE FEDERAL REPUBLIC OF GERMANY

Desiring to amend the Convention between Ireland and the Federal Republic of Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to the Gewerbesteuer (trade tax) signed at Dublin on the 17th day of October 1962

Have agreed as follows:

Article 1

Article XXII shall be amended by:

(a) replacing the third sentence in paragraph 2(a)(aa) with:

“The first sentence shall in the case of income from dividends apply only to such dividends as are paid to a company which is a resident of the Federal Republic by a company which is a resident of Ireland, at least 10 per cent of the voting shares of which are owned by the first-mentioned company.”

(b) replacing paragraph 2(a)(bb) with:

“there shall be allowed as a credit against Federal Republic tax payable in respect of the following items of income from sources within Ireland the Irish tax payable under the laws

of Ireland and in accordance with this Convention in respect of:

- (i) dividends not dealt with in sub-paragraph (*aa*) above;
- (ii) remuneration and pensions within the meaning of Article XIII paid out of public funds of Ireland to an individual who is a German national without being also a national of Ireland.”

and

- (c) deleting the final sentence of paragraph 2(*b*).

Article 2

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

(2) This Protocol shall enter into force on the day of the exchange of the instruments of ratification and shall thereupon have effect:

(a) in Ireland:

- (i) in the case of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the year in which this Agreement enters into force;
- (ii) in the case of corporation tax, for any financial year beginning on or after the first day of January in the year in which this Agreement enters into force;

(b) in the Federal Republic of Germany:

- (i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the year in which this Agreement enters into force;
- (ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January in the year in which this Agreement enters into force.

(3) The Irish text of the Convention shall cease to have effect from the dates on which this Protocol becomes effective for taxes in accordance with the relevant provisions of paragraph 2.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

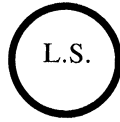
DONE in duplicate at Berlin on 25 May 2010 in the German and English languages, both texts being equally authoritative.

For Ireland

For the Federal Republic of Germany

Dan Mulhall

Susanne Wasum-Rainer



GIVEN under the Official Seal of the Government,
11 January 2011.

BRIAN COWEN,
Taoiseach.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order gives the force of law to the Protocol to the Double Taxation Convention between Ireland and the Federal Republic of Germany. The existing Double Taxation Convention between Ireland and Germany was signed at Dublin on 17 October 1962. It entered into effect retrospectively from 1958 and 1959 depending on the taxes concerned.

This Protocol was signed at Berlin on 25 May 2010.

The Protocol amends the provisions of Article XXII of the Double Taxation Convention dealing with the relief of double taxation for dividends paid by Irish companies to residents of Germany. It removes the obligation on Germany to grant the 18% credit as set out in the Convention.

The requirement to grant an 18% credit relates to the manner in which Germany taxed dividends when the Convention was negotiated, when Germany granted an imputation credit for corporate income tax paid at the level of the company. However, this is no longer the case and accordingly the Convention is being updated.

In addition, the shareholding threshold for exemption in Germany of dividends received by German companies from Irish companies has been reduced from 25% to 10% and the condition that the paying and receiving companies be limited by shares has been removed.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
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