



STATUTORY INSTRUMENTS.

S.I. No. 32 of 2011



DOUBLE TAXATION RELIEF (TAXES ON INCOME) (MALAYSIA)
ORDER 2011

(Prn. A11/0127)

DOUBLE TAXATION RELIEF (TAXES ON INCOME) (MALAYSIA)
ORDER 2011

WHEREAS it is enacted by section 826(1) (as substituted 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 of 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 substituted by section 35 of the Finance Act 2007) of the Taxes Consolidation Act 1997, hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Malaysia) Order 2011.
2. It is declared that—
 - (a) the arrangements specified in the Protocol, the text of which is set out in the Schedule, have been made with the Government of Malaysia 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 in respect of income tax, corporation tax in respect of income and chargeable gains, capital gains tax and any taxes of a similar character, imposed by the laws of the State or by the laws of Malaysia, and
- (ii) in the case of taxes of any kind or description imposed by the laws of the State or the laws of Malaysia, exchanging information for the purposes of the prevention and detection of tax evasion and granting relief from taxation under the laws of Malaysia 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 AGREEMENT

BETWEEN

THE GOVERNMENT OF IRELAND

AND

THE GOVERNMENT OF MALAYSIA

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF IRELAND

AND

THE GOVERNMENT OF MALAYSIA

Desiring to conclude a Protocol to amend the Agreement between the two Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Kuala Lumpur on 28 November 1998 (hereinafter referred to as “the Agreement”), have agreed as follows:

Article 1

Article 27 of the Agreement shall be amended by substituting for that Article the following:

“Article 27

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 2

(1) Each of the Contracting States shall notify the other, through diplomatic channels on the completion of the procedures required by its law for the bringing into force of this Protocol which shall form an integral part of the Agreement. This Protocol shall enter into force on the date of the later of these notifications, and its provisions shall have effect for tax years beginning on or after the first day of January in the calendar year following the year of the entry into force of this Protocol.

(2) This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article 30 of the Agreement.

IN WITNESS whereof the undersigned, duly authorised thereto, by their respective Governments, have signed this Protocol.

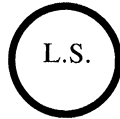
DONE in duplicate at Kuala Lumpur this 16th day of December 2009, in the Malay and the English languages, the two texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Protocol, the English text shall prevail.

For the Government of Ireland

For the Government of Malaysia

Eugene Hutchinson

Wan Abdul Aziz bin Wan Abdullah



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 Agreement between the Government of Ireland and the Government of Malaysia which entered into force in 2000.

This Protocol was signed at Kuala Lumpur on 16 December 2009.

The Protocol updates the Article on Exchange of Information to fully conform to the OECD standard on exchange of information. This will allow both countries to exchange such information as is foreseeably relevant for carrying out the provisions of the Agreement.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
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€2.54

