



STATUTORY INSTRUMENTS.

S.I. No. 490 of 2022



DOUBLE TAXATION RELIEF (TAXES ON INCOME) (GUERNSEY)
ORDER 2022

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DOUBLE TAXATION RELIEF (TAXES ON INCOME) (GUERNSEY)
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WHEREAS it is enacted by section 826(1B) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that where the Government by order declare that the arrangements specified in the order have been made with the government of any territory outside the State in relation to—

- (i) exchanging information for the purposes of the prevention and detection of tax evasion in the case of taxes of any kind or description imposed by the laws of the State or by the laws of that territory,
- (ii) such other matters relating to affording relief from double taxation as the Government consider appropriate,

and that it is expedient that those arrangements should have the force of law, and the order so made is referred to in Part 3 of Schedule 24A of the Taxes Consolidation Act 1997, then subject to section 826 of that Act, the arrangements shall, notwithstanding anything in 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 3 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(1B) of the Taxes Consolidation Act 1997, hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Guernsey) Order 2022.
2. It is declared—
 - (a) that the arrangements specified in the Protocol, the text of which is set out in the Schedule, have been made with the States of Guernsey in relation to matters relating to affording relief from double taxation considered appropriate by the Government, and
 - (b) that it is expedient that those arrangements should have the force of law.

SCHEDULE

PROTOCOL BETWEEN IRELAND AND THE STATES OF GUERNSEY AMENDING THE AGREEMENT OF 26 MARCH 2009 FOR AFFORDING RELIEF FROM DOUBLE TAXATION WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS AND ESTABLISHING A MUTUAL AGREEMENT PROCEDURE IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

The Government of Ireland and the States of Guernsey;

Desiring to conclude a Protocol to amend the Agreement between Ireland and the States of Guernsey for Affording relief from Double Taxation with respect to Certain Income of Individuals and Establishing a Mutual Agreement procedure in Connection with the Adjustment of Profits of Associated Enterprises signed on 26 March 2009;

Have agreed as follows:

ARTICLE I

The Preamble to the Agreement shall be deleted and replaced by the following Preamble:

“The Government of Ireland and the States of Guernsey, recognising that the two Parties have concluded an Agreement for the Exchange of Information Relating to Tax Matters;

Desiring to conclude an Agreement for affording relief from double taxation with respect to certain income of individuals and establishing a mutual agreement procedure in connection with the adjustment of profits of associated enterprises;

Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:”.

ARTICLE II

Paragraph 1 of Article 9 (Mutual agreement procedure) of the Agreement shall be deleted and replaced by the following:

“1. Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.”.

ARTICLE III

The following new Article 9A (Entitlement to benefits) shall be inserted after Article 9 (Mutual agreement procedure) of the Agreement as follows:

“ARTICLE 9A

Entitlement to benefits

1. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.
2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which the request has been made will consult with the competent authority of the other Party before rejecting a request made under this paragraph by a resident of that other Party.”.

ARTICLE IV

1. Each of the Parties shall notify to the other in writing 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 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.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at London this 8th day of December 2021, and at London this 8th day of December 2021.

For the Government of Ireland:

Adrian O'Neill

For the States of Guernsey

Jonathan Le Tocq



GIVEN under the Official Seal of the Government,
4 October, 2022.

MICHEÁL MARTIN,
Taoiseach.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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FOILSEACHÁIN RIALTAIS,
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