



STATUTORY INSTRUMENTS.

S.I. No. 438 of 2015



DOUBLE TAXATION RELIEF (TAXES ON INCOME AND ON
CAPITAL) (FEDERAL REPUBLIC OF GERMANY) ORDER 2015

DOUBLE TAXATION RELIEF (TAXES ON INCOME AND ON CAPITAL) (FEDERAL REPUBLIC OF GERMANY) ORDER 2015

WHEREAS it is enacted by section 826(1) (as amended by section 157 of the Finance Act 2010 (No. 5 of 2010)) 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, granting relief from taxation under the laws of that territory to persons who are resident in the State for the purposes of tax or collecting and recovering tax (including interest, penalties and costs in connection with such tax) for the purpose of the prevention of tax evasion, 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 amended by section 157 of the Finance Act 2010 (No. 5 of 2010)) of the Taxes Consolidation Act 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 2015.
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 the Federal

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 16th October, 2015.

Republic of Germany in relation to affording relief from double taxation and the prevention from fiscal evasion with respect to taxes on income, 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 the Federal Republic of Germany,

and

(b) it is expedient that those arrangements should have the force of law.

SCHEDULE

Protocol

amending the Agreement 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 on Capital

done at Dublin on 30 March 2011

Ireland

and

the Federal Republic of Germany

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters to ensure an effective and appropriate collection of tax, and in particular,

Considering the need to encourage alignment with the new version of Article 7 of the Model Tax Convention on Income and on Capital as adopted on 22 July 2010 by the Council of the Organisation for Economic Co-operation and Development (OECD) and interpretation consistent with the Commentary thereon,

Have agreed to amend the Agreement 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 on Capital signed at Dublin on 30 March 2011 as follows:

Article I

The reference to the Irish tax called the “income levy” in sub-paragraph ii), sub-paragraph a), paragraph 3 of Article 2, sub-paragraph i), sub-paragraph a), paragraph 2 of Article 32 and sub-paragraph i), paragraph a) of Article 33 shall be replaced by “universal social charge”.

Article II

Sub-paragraph c), paragraph 1 of Article 3 shall be deleted and replaced by the following sub-paragraph:

"c) the term “Germany” means the Federal Republic of Germany and, when used in a geographical sense, means the territory of the Federal Republic of Germany as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;"

Article III

1. Article 7 shall be deleted and replaced by the following:

“Article 7

Business profits

(1) Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting

State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

(2) For the purposes of this Article and Article 23, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

(3) Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other Contracting State shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment if it agrees with the adjustment made by the first mentioned State; if the other Contracting State does not so agree, the Contracting States shall endeavour to eliminate any double taxation resulting therefrom by mutual agreement.

(4) Where profits include items of income or capital gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.”

2. Notwithstanding paragraph 1 of Article 7, where in accordance with the laws of Ireland, profits in respect of life assurance business written before 1 January 2001 are attributed to a permanent establishment of an enterprise, on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in Article 7 shall preclude Ireland from determining the profits to be taxed by such apportionment; the method of apportionment shall, however, be such that the result shall be in accordance with the principles contained in Article 7 before its amendment by the preceding provisions of this Protocol.

Article IV

Paragraph 3 of Article 8 shall be deleted and replaced by the following paragraph:

“(3) For the purposes of this Article, profits from the operation of ships, aircraft or boats shall include profits from

- a) the occasional rental of ships, aircraft or boats on a bare-boat basis, and

b) the use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

if these activities pertain to the operation of ships, aircraft or boats.”

Article V

The reference to “paragraph 3 of Article 26” in sub-paragraph aa), sub-paragraph e), paragraph 2 of Article 23 shall be replaced by “paragraph 3 of Article 25”.

Article VI

(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. The Agreement as amended by this Protocol shall thereupon have effect for periods beginning on or after the first day of January in the calendar year next following the year in which this Protocol enters into force.

Done at Dublin on 3 December 2014 in duplicate in the English and German languages, both texts being equally authoritative.

For Ireland

For the Federal Republic of
Germany

Simon Harris, T.D.
Minister of State

H.E. Matthias Höpfner
Ambassador of Germany



GIVEN under the Official Seal of the Government,
13 October 2015.

ENDA KENNY,
Taoiseach.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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