

L.N. 383 of 2011

**INCOME TAX ACT
(CAP. 123)**

**Double Taxation Relief on Taxes on Income with
the Federal Republic of Germany (Amendment) Order, 2011**

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following order:-

1. This title of this order is the Double Taxation Relief on Taxes on Income with the Federal Republic of Germany (Amendment) Order, 2011 and it shall be read and construed as one with the Double Taxation Relief on Taxes on Income with the Federal Republic of Germany Order, hereinafter referred to as "the principal Order".

Citation.

S.L. 123.06

2. It is hereby declared:

Amendments to
have effect.

(a) that the amendments to the principal Order, as specified in the Schedule to this Order, have been made with the the Federal Republic of Germany;

(b) that it is expedient that those amendments should have effect;

(c) that the Protocol specified in the Schedule to this Order has entered into force on the 19th May, 2011.

SCHEDULE

(Article 2)

Protocol

Amending the Agreement of 8 March 2001

between

the Republic of Malta

and

the Federal Republic of Germany

for the Avoidance of Double Taxation

with respect to Taxes on Income and on Capital

The Republic of Malta and the Federal Republic of Germany,

Desiring to conclude a Protocol amending the Agreement of 8 March 2001 between the Federal Republic of Germany and the Republic of Malta for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital,

Have agreed as follows:

Article I

Article 26 of the Agreement shall read as follows:

"Article 26

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, of a Land or a political subdivision or local authority thereof, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1, 2 and paragraph 2 of Article 27.

(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. Notwithstanding the foregoing provisions, the information may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

(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 II

Number 4 of the Protocol to the Agreement shall read as follows:

"4. With reference to Article 26:

(1) If the requesting competent authority confirms that the requested information is "foreseeably relevant" to the purposes mentioned in Article 26 of the Agreement, the requested competent authority shall accept this confirmation

provided that the request satisfies the following requirements:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the requesting Contracting State wishes to receive the information from the requested Contracting State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested Contracting State or is in the possession or control of a person within the jurisdiction of the requested Contracting State;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the law and administrative practices of the requesting Contracting State, that if the requested information was within the jurisdiction of the requesting Contracting State then the competent authority of the requesting Contracting State would be able to obtain the information under the laws of the requesting Contracting State or in the normal course of administrative practice and that it is in conformity with this Agreement;
- g) a statement that the requesting Contracting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(2) The requested information shall also be "foreseeably relevant" in the case of a request for information where the name of the person is unknown and the requesting competent authority confirms to the requested competent authority that it has reasonable grounds for suspecting the existence of criminal tax matters involving assets situated or persons resident in the Contracting States. For the purposes of this paragraph the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Contracting State.

(3) Insofar as personal data are supplied under Article 26, the following additional provisions shall apply:

- a) The data-receiving State may use such data only for the stated purpose and shall be subject to the conditions prescribed by the data-supplying State.
- b) The data-receiving State shall on request inform the data-supplying State about the use of the supplied data and the results achieved thereby.

c) Personal data may be supplied only to the competent authorities. Any subsequent supply to other authorities may be effected only with the prior approval of the supplying competent authority.

d) The data-supplying State shall be obliged to ensure that the data to be supplied are accurate and that they are foreseeably relevant for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the data-receiving State shall be informed of this without delay. That State shall be obliged to correct or erase such data.

e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

f) The data-receiving State shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply under the exchange of data pursuant to this Agreement. In relation to the damaged person, the data-receiving State may not plead to its discharge that the damage had been caused by the data-supplying State.

g) If the domestic law of the data-supplying State provides for special provisions for the erasure of the personal data supplied, that State shall inform the data-receiving State accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

h) The Contracting States shall be obliged to keep official records of the supply and receipt of personal data.

i) The data-supplying and the data-receiving States shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure."

Article III

(1) This Protocol shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible in Berlin.

(2) This Protocol shall enter into force on the day of the exchange of the instruments of ratification. Upon the date of entry into force, this Protocol shall

have effect in both Contracting States even on taxes levied prior to its entry into force.

(3) This Protocol shall be an integral part of the Agreement and shall remain in force for as long as the Agreement itself.

Done in Malta on 17 June 2010 in two originals, each in the German and English languages, both texts being equally authentic.

TONIO FENECH

BERND BRAUN

For the Republic of Malta

For the Federal Republic of Germany

