

**L.N. 64 of 2021**

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

**Double Taxation Relief on Taxes on Income with the Republic of  
Poland (Amendment) Order, 2021**

IN EXERCISE of the powers conferred by article 76 of the Income Tax Act, the Minister for Finance and Employment has made the following order:-

1. The title of this order is the Double Taxation Relief on Taxes on Income with the Republic of Poland (Amendment) Order, 2021 and this order shall be read and construed as one with the Double Taxation Relief on Taxes on Income with the Republic of Poland Order, hereinafter referred to as "the principal order" as amended by the Double Taxation Relief (Taxes on Income) (Republic of Poland) (Amendment) Order, 2012.

Citation.

L.N. 28 of 1995.

L.N. 14 of 2012.

2. It is hereby declared:

Amendments to  
have effect.

(a) that the amendments to the principal order, as specified in the Protocol set out in the Schedule to this order (hereinafter referred to as "the Protocol"), have been made with the Government of the Republic of Poland;

(b) that it is expedient that those amendments should have effect following the entry into force of the Protocol and in accordance with the relevant provisions of the Protocol;

(c) that the Protocol shall enter into force on such date as may be announced by notice in the Gazette.

SCHEDULE  
(Article 2)

PROTOCOL BETWEEN THE GOVERNMENT OF MALTA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF MALTA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT VALLETTA ON THE 7TH DAY OF JANUARY 1994, AS AMENDED BY THE PROTOCOL SIGNED AT WARSAW ON THE 6TH DAY OF APRIL 2011

The Government of Malta and the Government of the Republic of Poland, desiring to conclude a Protocol to amend the Agreement between the Government of Malta and the Government of the Republic of Poland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Valletta on the 7th day of January 1994 (hereinafter "the Agreement"), as amended by the Protocol signed at Warsaw on the 6th day of April 2011 (hereinafter "the Amending Protocol"),

Have agreed as follows:

**ARTICLE I**

Paragraph 3 of Article 10 "Dividends" of the Agreement shall be deleted and replaced by the following:

"3. The term "dividends" as used in this Article means income from shares (including income from distributions on certificates or participating units of an investment fund and their redemption, the liquidation or partial liquidation of a company and income from the purchase or redemption of own shares by a company) or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the laws of that State of which the company making the distribution is a resident."

**ARTICLE II**

Paragraph 2 of Article 11 "Interest" of the Agreement shall be deleted and replaced by the following:

"2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 4 per cent of the gross amount of the

interest."

### ARTICLE III

Article 12 "Royalties" of the Agreement, as amended by Article 10 of the Amending Protocol, shall be deleted and replaced by the following:

#### "Article 12

##### Royalties and payments for technical services

1. Royalties or payments for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or payments for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or payments for technical services the tax so charged shall not exceed:

(a) five per cent (5%) of the gross amount of the royalties;

(b) five per cent (5%) of the gross amount of the payments for technical services.

3. (a) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use any industrial, commercial or scientific equipment or for information (know-how) concerning industrial, commercial or scientific experience; the term shall also include payments of any kind related to cinematograph films, and films or tapes for radio or television broadcasting.

(b) The term "payments for technical services" as used in this Article means any payment in consideration for any service of a managerial or consultancy nature, unless the payment:

(i) is made to an employee of the person making the payment;

(ii) is made for teaching in an educational institution or for teaching by an educational institution;

(iii) is made by an individual for services for the personal use of an individual;

(iv) is made for services related to immovable property located in the Contracting State of which the person making the

payment is a resident, if such services resulted in a construction, maintenance project, or a landscaping project or a similar tangible project; or

(v) is accrued under the laws of a Contracting State to the initial value of the machinery or industrial equipment of the person making the payment or to the maintenance of such machinery or industrial equipment.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or payments for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or payments for technical services arise through a permanent establishment situated therein and the right or property in respect of which the royalties or payments for technical services are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties or payments for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, or a local authority or a resident of that State. Where, however, the person paying the royalties or payments for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties or payments for technical services was incurred, and such royalties or payments for technical services are borne by such permanent establishment, then such royalties or payments for technical services shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or payments for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement."

#### ARTICLE IV

Paragraph 2 of Article 13 "Capital Gains" of the Agreement, as amended by Article 11 of the Amending Protocol, shall be deleted and replaced by the following:

"2. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a

partnership or trust, or certificates or participating units of an investment fund, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State."

#### **ARTICLE V**

Article 16 "Directors' fees" of the Agreement shall be deleted and replaced by the following:

#### **"ARTICLE 16 Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in the capacity as a member of the board of directors or of the supervisory board or of any other similar organ or a company which is a resident of the other Contracting State shall be taxed only in that first-mentioned State."

#### **ARTICLE VI**

Paragraph 1 of Article 23 "Elimination of double taxation" of the Agreement, as amended by paragraph 1 of Article 16 of the Amending Protocol, shall be deleted and replaced by the following:

"1. In case of Poland, double taxation shall be avoided as follows:

(a) Where a resident of Poland derives income which may be taxed in Malta in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by Malta solely because the income is also income derived by a resident of Malta), Poland shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Malta.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Malta;

(b) Where in accordance with any provision of this Agreement income derived by a resident of Poland is exempt from tax in Poland, Poland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income."

**ARTICLE VII**

1. Paragraph 2 of Article 25 "Mutual Agreement procedure" of the Agreement shall be deleted and replaced by the following:

"2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States."

2. In Article 25 "Mutual Agreement procedure" of the Agreement the following new paragraph shall be added after paragraph 4:

"5. Where,

(a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

For the purposes of sub-paragraph (b), the competent authorities of the Contracting States may agree to resolve the case within two years."

## ARTICLE VIII

In Article 26 "Exchange of Information" of the Agreement, as amended by Article 17 of the Amending Protocol, the following sentence shall be added at the end of paragraph 2:

"Notwithstanding the foregoing, information received by a Contracting State 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 authorizes such use."

## ARTICLE IX

The following Article 26A shall be added after Article 26:

### "ARTICLE 26A Prevention of Treaty Abuse

Notwithstanding any 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 purposes of the relevant provisions of this Agreement."

## ARTICLE X

1. Each of the Contracting States shall notify in writing through diplomatic channels to the other 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 thirtieth day after the receipt of the later of the notifications referred to in paragraph 1 and shall thereupon have effect:

(a) in respect of taxes withheld at source, to income derived on or after the first day of January of the year next following the date on which the Protocol enters into force;

(b) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after the first day of January of the year next following the date on which the Protocol enters into force.

3. This Protocol shall remain in force as long as the Agreement and the Amending Protocol shall be in force, unless the Protocol is terminated by one of the Contracting States. In such case, the Protocol shall cease to have effect at the end of the calendar year in which the other Contracting State receives the notice of termination. Such note should be delivered at least three months before the end of the calendar year.

Done in duplicate at Warsaw this 30 day of November 2020 in the English and Polish languages, each text being equally authentic.

For the Government of Malta  
John Paul Grech

For the Government of the  
Republic of Poland  
Jan Sarnowski

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