

B 1506

L.N. 198 of 2021

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

**Double Taxation Relief (Taxes on Income) (The Swiss
Confederation) (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:-

Citation.

L.N. 322 of
2012.

Amendments to
have effect.

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

2. It is hereby declared:

(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 Swiss Confederation;

(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 MALTA AND THE SWISS
CONFEDERATION AMENDING THE CONVENTION OF 25
FEBRUARY 2011 BETWEEN MALTA AND THE SWISS
CONFEDERATION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of Malta and the Swiss Federal Council,
desiring to conclude a Protocol to amend the Convention of 25
February 2011 between Malta and the Swiss Confederation for the
Avoidance of Double Taxation with Respect to Taxes on Income
(hereinafter "the Convention");

Have agreed as follows:

ARTICLE I

The preamble of the Convention shall be deleted and replaced by
the following:

"The Government of Malta and the Swiss Federal Council

Desiring to conclude a Convention for the avoidance of
double taxation with respect to taxes on income;

Desiring to further develop their economic relationship and
to enhance their cooperation in tax matters;

Intending to eliminate double taxation with respect to taxes
on income 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 Convention for the indirect benefit of residents
of third States);

Have agreed as follows:".

ARTICLE II

1. The existing paragraph 7 of Article 7 "Business Profits" of
the Convention shall be renumbered as paragraph 8.

2. The following new paragraph 7 shall be added to Article 7
of the Convention:

"7. A Contracting State shall make no adjustment to the

profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after five (5) years from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default."

ARTICLE III

1. Paragraph 2 of Article 9 "Associated Enterprises" of the Convention shall be deleted and replaced by the following:

"2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other."

2. The following new paragraph 3 shall be added to Article 9 "Associated Enterprises" of the Convention:

"3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after five (5) years from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default."

ARTICLE IV

Article 23 "Anti-abuse" of the Convention shall be deleted and replaced by the following:

"Article 23
Entitlement to benefits

Notwithstanding the other provisions of this Convention, a

benefit under this Convention 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 Convention."

ARTICLE V

The first sentence of paragraph 1 of Article 25 "Mutual Agreement Procedure" of the Convention shall be deleted and replaced by the following:

"Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State."

ARTICLE VI

1. Each of the Contracting States shall notify to the other via diplomatic channels the completion of the procedures required by its law for the bringing into force of this Protocol.

2. The Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:

(a) in the case in respect of taxes withheld at source, for amounts paid or credited 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, for taxation years beginning on or after the first day of January of the year next following the date on which the Protocol enters into force.

3. Notwithstanding the provisions of paragraph 2, the amendments made by Article II and Article III paragraph 2 of this Protocol, shall have effect from the date of entry into force of this Protocol, without regard to the taxable period to which the matter relates.

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

VERŻJONI ELETTRONIKA

B 1510

Done in duplicate at Rome this 16 July 2020 in the French and English languages, both texts being equally authentic.

For the Government of Malta

Carmel Vassallo

For the Swiss Federal
Council

Rita Adam
