

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 18,857, 20 ta' Jannar, 2012

Taqsimha B

A.L. 14 tal-2012

**ATT DWAR IT-TAXXA FUQ L-*INCOME*
(KAP. 123)**

Ordni tal-2012 li jemenda l-Ordni dwar Helsien minn Taxxa Doppja (Taxxa fuq l-*Income*) (Repubblika tal-Polonja)

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 76 tal-Att dwar it-Taxxa fuq l-*Income*, il-Ministru tal-Finanzi, l-Ekonomija u Investiment għamel dan l-ordni li ġejj:-

1. It-titolu ta' dan l-ordni hu l-Ordni tal-2012 li jemenda l-Ordni dwar Helsien minn Taxxa Doppja (Taxxa fuq l-*Income*) (Repubblika tal-Polonja), u dan l-Ordni għandu jinqara u jiftiehem haġa waħda mal-Ordni dwar Helsien minn Taxxa Doppja (Taxxa fuq l-*Income*) (Repubblika tal-Polonja), hawn iżjed 'il quddiem imsejjaħ "l-Ordni prinċipali".

Titolu.

A.L. 123.33

2. Qieghed b'dan jiġi dikjarat:

Emendi
jkollhom effett.

(a) illi l-emendi għall-Ordni prinċipali, speċifikati fl-iSkeda li tinsab ma' dan l-Ordni, saru mal-Gvern tar-Repubblika tal-Polonja sabiex jingħata ħelsien minn taxxa doppja u biex tiġi evitata evażjoni fiskali dwar it-taxxi li ġejjin imposti bil-liġijiet tar-Repubblika tal-Polonja:

- (i) it-taxxa fuq l-*income* personali;
- (ii) it-taxxa fuq l-*income* korporattiva;

(b) illi huwa spedjenti li daww l-arrangamenti għandu jkollhom effett;

(c) illi l-Protokol speċifikat fl-iSkeda li tinsab ma' dan l-Ordni beda jseħħ fit-22 ta' Novembru 2011.

B 54

SKEDA

(Artikolu 2)

PROTOKOLL

BEJN

IL-GVERN TA' MALTA

U

L-GVERN TAR-REPUBBLIKA TAL-POLONJA

li jemenda l-Ftehim bejn il-Gvern ta' Malta u l-Gvern tar-Repubblika tal-Polonja għall-Helsien minn Taxxa Doppja u biex tiġi Evitata Eważjoni Fiskali dwar Taxxi fuq l-*Income*, iffirmit fil-Belt Valletta fis-7 ta' Jannar 1994

Il-Gvern ta' Malta u l-Gvern tar-Repubblika tal-Polonja billi jixtiequ jagħmlu Protokoll li jemenda l-Ftehim bejn il-Gvern ta' Malta u l-Gvern tar-Repubblika tal-Polonja għall-Helsien minn Taxxa Doppja u biex tiġi Evitata Eważjoni Fiskali dwar Taxxi fuq l-*Income*, iffirmit fil-Belt Valletta fis-7 ta' Jannar 1994 (hawn iżjed 'il quddiem imsejjah "il-Ftehim"),

Ftiehmu kif ġej:

ARTIKOLU 1

Il-paragrafu 5 tal-Artikolu 2 tal-Ftehim għandu jithassar.

ARTIKOLU 2

L-Artikolu 3 tal-Ftehim għandu jiġi emendat kif ġej:

(1) is-subparagrafu (d) tal-paragrafu 1 tiegħu għandu jithassar u minfloku jidhol dan li ġej:

"(d) il-frazi "persuna" tinkludi individwu, kumpannija, *trust* u kull korp ieħor ta' persuni;"

(2) il-paragrafu 2 tiegħu għandu jithassar u minfloku jidhol dan li ġej:

"2. Rigward l-applikazzjoni ta' dan il-Ftehim, ikun meta jkun, minn Stat Kontraenti, frazi li ma tkunx imfissra fih għandu jkollha, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'ohra, l-istess

tifsir kif ikun mogħti lilha f' dak iż-żmien taħt il-ligijiet ta' dak l-iStat għall-finijiet ta' dawk it-taxxi li l-Ftehim ikun japplika għalihom, hekk li kull tifsira taħt il-ligijiet tat-taxxa applikabbli ta' dak l-iStat tkun tipprevali fuq tifsira mogħtija lill-frazi taħt ligijiet oħra ta' dak l-iStat."

ARTIKOLU 3

L-Artikolu 5 tal-Ftehim għandu jiġi emendat kif ġej:

(1) is-subparagrafu (g) tal-paragrafu 2 tiegħu għandu jithassar u minfloku jidhol dan li ġej:

"(g) art li tkun qegħda tinbena jew proġett ta' kostruzzjoni jew assemblaġġ jew installazzjoni, meta dik l-art jew proġett ikompli għal iktar minn tnax-il xahar.";

(2) il-paragrafu 4 tiegħu għandu jithassar.

ARTIKOLU 4

Il-paragrafu 4 tal-Artikolu 6 tal-Ftehim għandu jithassar u minfloku jidhol dan li ġej:

"4. Id-dispożizzjonijiet tal-paragrafi 1 u 3 għandhom japplikaw ukoll għal *income* mill-proprjeta' immobbli ta' impriza."

ARTIKOLU 5

Il-paragrafu 4 tal-Artikolu 7 tal-Ftehim għandu jithassar.

ARTIKOLU 6

Fl-Artikolu 8 tal-Ftehim minnufih wara l-paragrafu 3 għandu jizdied dan il-paragrafu 4 li ġej:

"4. Għall-finijiet ta' dan l-Artikolu, profitti li jinkisbu mit-thaddim ta' bastimenti jew inġenji tal-ajru fit-traffiku internazzjonali jinkludu profitti li jinkisbu mill-kiri ta' bastimenti jew inġenji tal-ajru jekk dawk il-bastimenti jew inġenji tal-ajru jkunu qegħdin jithaddmu fit-traffiku internazzjonali jew jekk dawk il-profitti ġejjin mill-kiri jkunu inċidentali għal profitti oħra deskritti fil-paragrafu 1 ta' dan l-Artikolu. Izda, dawk il-profitti ma jinkludux profitti ġejjin mill-kiri ta' bastimenti jew inġenji tal-ajru abbażi ta' *bare boat charter* ħlief meta din tkun attività anċillari ta' impriza li tiegħu sehem fit-thaddim internazzjonali ta' bastimenti jew inġenji tal-ajru."

ARTIKOLU 7

Il-paragrafu 2 tal-Artikolu 9 tal-Ftehim għandu jithassar.

ARTIKOLU 8

L-Artikolu 10 tal-Ftehim ghandu jigi emendat kif ġej:

(1) il-paragrafu 2 tiegħu ghandu jithassar u minfloku jidhol dan li ġej:

"2. Izda, dawk id-dividendi jistgħu jigu wkoll intaxxati fl-iStat Kontraenti li l-kumpannija li tkun thallas id-dividendi tkun residenti tiegħu u kif hemm fil-liġijiet tal-iStat, izda:

(a) meta d-dividendi jithallsu minn kumpannija residenti fil-Polonja lil residenti f'Malta, il-Polonja għandha teżenta mit-taxxa d-dividendi jekk is-sid benefiċjarju ta' dawk id-dividendi jkun kumpannija residenti f'Malta li jkollha direttament mill-inqas 10 fil-mija mill-kapital tal-kumpannija li tkun qegħda thallas id-dividendi fid-data meta jithallsu d-dividendi u tkun għamlet dan jew setgħet tagħmel dan għal żmien mhux interrott ta' 24 xahar li dik id-data tkun taħbat fih;

(b) hlief kif provdut fis-subparagrafu (a), it-taxxa hekk imposta mill-Polonja m'għandhiex tkun iżjed minn 10 fil-mija mill-ammont gross tad-dividendi meta s-sid benefiċjarju tad-dividendi jkun residenti ta' Malta;

(c) meta d-dividendi jithallsu minn kumpannija residenti f'Malta lil residenti fil-Polonja li jkun is-sid benefiċjarju tagħhom, it-taxxa ta' Malta fuq l-ammont gross tad-dividendi m'għandhiex tkun iżjed minn dik imposta fuq il-profitti li minnhom jithallsu d-dividendi.

Dan il-paragrafu ma jolqotx it-taxxa li tintalab minn kumpannija dwar il-profitti li minnhom jithallsu d-dividendi.";

(2) il-paragrafi 4 u 5 tiegħu għandhom jithassru u minflokhom jidhlu dawn li ġejjin:

"4. Id-dispożizzjonijiet tal-paragrafi 1 u 2 m'għandhomx japplikaw jekk is-sid benefiċjarju tad-dividendi, li jkun residenti ta' Stat Kontraenti, imexxi negozju fl-iStat Kontraenti l-iehor, li tiegħu tkun residenti kumpannija li thallas id-dividendi permezz ta' stabbiliment permanenti li jkun sitwat hemmhekk u l-parteci-pazzjoni li dwaru jkunu mhallsa d-dividendi jkollha effettivament x'taqsam ma' dak l-istabbiliment permanenti. F'dak il-każ għandhom japplikaw id-dispożizzjonijiet tal-Artikolu 7.

5. Meta kumpannija li tkun residenti ta' Stat Kontraenti tikseb profitti jew *income* mill-iStat Kontraenti l-iehor, dak l-iStat l-

iehor ma jista' jimponi ebda taxxa fuq id-dividendi mhallsa mill-kumpannija, hliet meta dividendi bhal dawk jithallsu lil residenti f'dak l-iStat l-iehor jew safejn il-partecipazzjoni li dwarha jithallsu d-dividendi jkollha effettivament x'taqsam ma' stabbiliment permanenti li jkun sitwat f'dak l-iStat l-iehor, lanqas ma jista' jassoggetta l-profitti mhux imqassma tal-kumpannija ghal xi taxxa fuq profitti mhux imqassma tal-kumpannija, ukoll jekk id-dividendi mhallsa jew il-profitti mhux imqassma jkunu jikkonsistu ghalkollox jew biss f'parti minn profitti jew *income* li jinqalgħu f'dak l-iStat l-iehor.";

(3) dan il-paragrafu 6 li ġej għandu jizdied minnufih wara l-paragrafu 5:

"6. Il-benefiċċji ta' dan l-Artikolu m'għandhomx ikunu japplikaw jekk kien l-għan ewlieni jew wiehed mill-għanijiet ewlenin ta' xi persuna li jkollha x'taqsam mal-holqien jew l-assenjament tal-ishma jew ta' drittijiet oħra li dwarhom jithallas id-dividend li tikseb vantaġġ b'dan l-Artikolu permezz ta' dak il-holqien jew assenjament.".

ARTIKOLU 9

L-Artikolu 11 tal-Ftehim għandu jigi emendat kif ġej:

(1) il-paragrafu 2 tiegħu għandu jithassar u minfloku jidhol dan li ġej:

"2. Izda, dak l-imghax jista' wkoll jigi intaxxat fl-iStat Kontraenti fejn jinqala' u kif hemm fil-ligijiet ta' dak l-iStat, imma jekk min jircevih ikun is-sid benefiċjarju tal-imghax it-taxxa hekk imposta m'għandhiex tkun iżjed minn 5 fil-mija mill-ammont gross tal-imghax.";

(2) il-paragrafi 5 u 6 tiegħu għandhom jithassru u minflokhom jidhol dan li ġej:

"5. Id-dispożizzjonijiet tal-paragrafi 1 u 2 m'għandhomx japplikaw jekk is-sid benefiċjarju tal-imghax, li jkun residenti ta' Stat Kontraenti, ikun qed imexxi negozju fl-iStat Kontraenti l-iehor li fih jinqala' l-imghax, permezz ta' stabbiliment permanenti sitwat hemmhekk, u d-dritt għal dejn li dwaru jithallas l-imghax ikollu effettivament x'jaqsam ma' dak l-istabbiliment permanenti. F'dak il-każ għandhom japplikaw id-dispożizzjonijiet tal-Artikolu 7.

6. L-imghax għandu jitqies li jinqala' fi Stat Kontraenti meta min ihallas ikun dak l-iStat innifsu, sottodivizjoni politika, awtorità lokali jew residenti ta' dak l-iStat. Meta, izda, il-persuna li thallas l-imghax, sew jekk tkun residenti ta' Stat Kontraenti sew jekk ma tkunx,

ikollha fi Stat Kontraenti stabbiliment permanenti li miegħu jkollu x'jaqsam id-dejn li dwaru jkun thallas l-imghax, u dak l-imghax ikun piż ta' dak l-istabbiliment permanenti, allura dak l-imghax għandu jitqies li nqala' fl-iStat li fih ikun sitwat l-istabbiliment permanenti.";

(3) il-paragrafu 8 li ġej għandu jiżdied minnufih wara l-paragrafu 7:

"8. Il-benefiċċji ta' dan l-Artikolu m'għandhomx ikunu japplikaw jekk kien l-għan ewlieni jew wiehed mill-għanijiet ewlenin ta' xi persuna li jkollha x'taqsam mal-holqien jew l-assenjament tad-dritt għal dejn li dwaru jithallas l-imghax li tikseb vantaġġ b'dan l-Artikolu permezz ta' dak il-holqien jew assenjament."

ARTIKOLU 10

L-Artikolu 12 tal-Ftehim għandu jiġi emendat kif ġej:

(1) il-paragrafi 2, 3, 4 u 5 tiegħu għandhom jithassru u minflokhom jidhol dan li ġej:

"2. Izda, dawk ir-*royalties* jistgħu jiġu wkoll intaxxati fl-iStat Kontraenti li fih jinqalgħu u kif hemm fil-liġijiet ta' dak l-iStat, izda jekk min jirċevihom ikun is-sid benefiċjarju tar-*royalties* it-taxxa hekk imposta m'għandhiex tkun iżjed minn 5 fil-mija mill-ammont gross tar-*royalties*.

3. Il-frazi "*royalties*" kif użata f'dan l-Artikolu tfisser hłasijiet ta' kull xorta li jiġu riċevuti bhala korrispettiv għall-użu, jew għall-jedd tal-użu, ta' kull *copyright*, *privattiva*, *trade mark*, disinn jew mudell, pjan, formula jew proċess sigriet, jew għall-użu, jew għall-jedd tal-użu ta' kull tagħmir industrijali, kummerċjali, jew xjentifiku jew għall-informazzjoni (*know-how*) ta' xorta industrijali, kummerċjali jew xjentifiku; il-frazi għandha tinkludi wkoll hłasijiet ta' kull xorta li jkollhom x'jaqsmu ma' films ċinematografiċi, u *films* jew *tapes* għal xandir bir-radju jew bit-telewizjoni.

4. Id-dispożizzjonijiet tal-paragrafi 1 u 2 m'għandhomx japplikaw jekk is-sid benefiċjarju tar-*royalties*, li jkun residenti ta' Stat Kontraenti, ikun qiegħed imexxi negozju fl-iStat Kontraenti l-iehor li fih jinqalgħu r-*royalties*, permezz ta' stabbiliment permanenti li jkun sitwat hemmhekk u d-dritt jew il-proprjetà li dwarha jithallsu r-*royalties* ikollu effettivament x'jaqsam ma' dak l-istabbiliment permanenti. F'dak il-każ għandhom japplikaw id-dispożizzjonijiet tal-Artikolu 7.

5. Ir-*royalties* għandhom jitqiesu li jinqalgħu fi Stat Kontraenti meta min ihallashom ikun dak l-iStat innifsu, sotto-diviżjoni

politika, awtorità lokali jew residenti ta' dak l-iStat. Meta, iżda, il-persuna li thallas ir-*royalties*, sew jekk tkun residenti ta' Stat Kontraenti sew jekk le, ikollha fi Stat Kontraenti stabbiliment permanenti li dwaru tkun ittiehdet ir-responsabbiltà li jithallsu r-*royalties*, u dawk ir-*royalties* ikunu r-responsabbiltà ta' dak l-istabbiliment permanenti, allura dawk ir-*royalties* għandhom jitqiesu li jinqalgħu fl-iStat li fih ikun sitwat l-istabbiliment permanenti.";

(2) dan li ġej il-paragrafu 7 għandu jizdied minnufih wara il-paragrafu 6:

"7. Il-benefiċċji ta' dan l-Artikolu m'għandhomx ikunu japplikaw jekk kien l-għan ewlieni jew wiehed mill-għanijiet ewlenin ta' xi persuna li jkollha x'taqsam mal-holqien jew l-assenjament tad-drittijiet li dwarhom jithallsu r-*royalties* li tikseb vantaġġ b'dan l-Artikolu permezz ta' dak il-holqien jew assenjament.".

ARTIKOLU 11

L-Artikolu 13 tal-Ftehim għandu jithassar u minfloku jidhol dan li ġej:

"ARTIKOLU 13

Qligh minn Proprjeta

1. Kull qligh li jinkiseb mit-trasferiment ta' proprjeta immobbli, imsemmi fil-paragrafu 2 tal-Artikolu 6, jista' jiġi intaxxat fl-iStat Kontraenti li fih tkun sitwata dik il-proprjeta.

2. Kull qligh li jinkiseb minn residenti ta' Stat Kontraenti mit-trasferiment ta' ishma li jiksbu aktar minn 50 fil-mija tal-valur tagħhom direttament jew indirettament minn proprjeta immobbli li tkun sitwata fl-iStat Kontraenti l-iehor jista' jiġi intaxxat f'dak l-iStat l-iehor.

3. Qligh mit-trasferiment ta' proprjeta immobbli li tagħmel parti mill-proprjeta tan-negozju ta' stabbiliment permanenti li impriza ta' Stat Kontraenti jkollha fl-iStat Kontraenti l-iehor, inkluż dak il-qligh mit-trasferiment ta' dak l-istabbiliment permanenti (wahdu jew flimkien mal-imprizi kollha) jista' jiġi intaxxat f'dak l-iStat l-iehor.

4. Qligh mit-trasferiment ta' bastimenti, ingenji tal-ajru jew vetturi tat-triq li jkunu qeghdin jigu operati fi traffiku internazzjonali jew minn proprjeta immobbli li tkun tappartjeni għat-thaddim ta' dawk il-mezzi ta' trasport għandhom jigu intaxxati biss fl-iStat Kontraenti li fih ikun sitwat il-post ta' manigg effettiv tal-impriza.

5. Qligh mit-trasferiment ta' xi proprjeta ohra li ma tkunx dik imsemmija fil-paragrafi 1, 2, 3 u 4 għandu jiġi intaxxat biss fl-iStat

B 60

Kontraenti li min jittrasferixxi jkun residenti fih."

ARTIKOLU 12

L-Artikolu 14 tal-Ftehim għandu jithassar.

ARTIKOLU 13

Il-paragrafu 2 tal-Artikolu 15 tal-Ftehim għandu jithassar u minfloku jidhol dan li ġej:

"2. Minkejja d-dispożizzjonijiet tal-paragrafu 1, salarji, pagi u kumpens ieħor bħal dan li jinkiseb minn residenti ta' Stat Kontraenti dwar impjeg eżerċitat fl-iStat Kontraenti l-ieħor jista' jiġi biss intaxxat fl-iStat l-ewwel imsemmi jekk:

(a) min jirċevih ikun qiegħed fl-iStat l-ieħor għal żmien jew żminijiet li fit-total ma jkunux aktar minn 183 ġurnata f'xi perjodu ta' tnax-il xahar li jibda għaddej jew jintemm fis-sena fiskali involuta; u

(b) il-kumpens ikun imħallas minn, jew f'isem, prinċipal li ma jkunx residenti tal-iStat l-ieħor; u

(ċ) il-kumpens ma jkunx piż fuq l-istabbiliment permanenti li l-prinċipal ikollu fl-iStat l-ieħor."

ARTIKOLU 14

L-Artikolu 21 tal-Ftehim għandu jithassar u minfloku jidhol dan li ġej:

"ARTIKOLU 21

Studenti

Ħlasijiet li student, alljev jew apprendist kummerċjali li jkun jew kien minnufih qabel ma jżur Stat Kontraenti residenti tal-iStat Kontraenti l-ieħor u li jkun preżenti fl-iStat l-ewwel imsemmi unikament għall-finijiet tal-edukazzjoni jew it-taħriġ ta' dak l-individwu jirċievi għall-finijiet tal-manteniment, edukazzjoni jew taħriġ ta' dak l-individwu m'għandux jiġi intaxxat f'dak l-iStat, sakemm dawk il-ħlasijiet ma joriginawx minn għejjun minn barra dak l-iStat."

ARTIKOLU 15

Il-paragrafu 2 tal-Artikolu 22 tal-Ftehim għandu jithassar u minfloku jidhol dan li ġej:

"2. Id-dispożizzjonijiet tal-paragrafu 1 m'għandhomx japplikaw għal

income, li ma jkunx *income* minn proprjetà immobbli kif imfisser fil-paragrafu 2 tal-Artikolu 6, jekk min jirċievi dak l-*income*, li jkun residenti ta' Stat Kontraenti, jiġġestixxi negozju fl-iStat Kontraenti l-iehor permezz ta' stabbiliment permanenti li jkun sitwat hemmhekk u d-dritt jew il-proprjetà li dwarhom jithallas l-*income* ikollu x'jaqsam b'mod effettiv ma' dak l-istabbiliment permanenti. F'dak il-każ, għandhom japplikaw id-dispożizzjonijiet tal-Artikolu 7."

ARTIKOLU 16

L-Artikolu 23 tal-Ftehim għandu jiġi emendat kif ġej:

(1) il-paragrafu 1 tiegħu għandu jithassar u minfloku jidhol dan li ġej:

"1. Fil-każ tal-Polonja, it-taxxa doppja għandha tiġi evitata kif ġej:

(a) meta residenti tal-Polonja jikseb *income* li, kif hemm fid-dispożizzjonijiet ta' dan il-Ftehim jista' jiġi intaxxat f'Malta, il-Polonja għandha, bla ħsara għad-dispożizzjonijiet tas-subparagrafu (b), teżenta dak l-*income* mit-taxxa;

(b) meta residenti tal-Polonja jikseb *income* jew qligħ minn proprjetà li, kif hemm fid-dispożizzjonijiet of Artikoli 10, 11, 12 jew 13, jista' jiġi intaxxat f'Malta, il-Polonja għandha, bla ħsara għad-dispożizzjoni tas-subparagrafu (c), tippermetti bhala tnaqqis mit-taxxa fuq l-*income* jew qligħ minn proprjetà ta' dak ir-residenti ammont li jkun daqsinsaw it-taxxa li tithallas f'Malta. Dak it-tnaqqis m'għandux, madankollu, ikun iktar minn dik il-parti tat-taxxa, li tkun inħadmet qabel ma jingħata t-tnaqqis, li tkun attribwibbli għal dak l-*income* jew qligħ minn proprjetà li jinkiseb minn Malta;

(c) tnaqqis, li jingħata kif hemm fid-dispożizzjoni tas-subparagrafu (b), lil kumpannija li tkun residenti tal-Polonja u li tikseb dividendi minn kumpannija li tkun residenti ta' Malta m'għandhiex, għall-finijiet tat-taxxa tal-Polonja dwar dawk id-dividendi, tkun iżjed minn 10 fil-mija mill-ammont gross tad-dividend;

(d) meta kif hemm f'xi dispożizzjoni ta' dan il-Ftehim, *income* li jinkiseb minn residenti tal-Polonja jkun eżenti mit-taxxa fil-Polonja, il-Polonja tista' madankollu, meta tkun qegħda tikkalkula l-ammont ta' taxxa fuq l-*income* li jifdal ta' dak ir-residenti, tiegħu kont ta' dak l-*income* eżentat.";

(2) il-paragrafi 3 u 4 tiegħu għandhom jithassru.

ARTIKOLU 17

L-Artikolu 26 tal-Ftehim għandu jithassar u minfloku jidhol dan li ġej:

"ARTIKOLU 26

Skambju ta' Informazzjoni

1. L-awtoritajiet kompetenti tal-iStati Kontraenti għandhom jiskambjaw dik l-informazzjoni li tista' tidher li tkun rilevanti sabiex jitwettqu d-dispożizzjonijiet ta' dan il-Ftehim jew għall-amministrazzjoni jew l-infurzar tal-liġijiet domestiċi dwar it-taxxi ta' kull għamla u tip imposti f'isem l-iStati Kontraenti, jew tas-sottodivizionijiet politiċi jew tal-awtoritajiet lokali tagħhom, sakemm it-taxxa taħthom ma tkunx tmur kontra l-Ftehim. L-iskambju ta' informazzjoni mhux ristrett bl-Artikoli 1 u 2.

2. Kull informazzjoni li tiġi riċevuta taħt il-paragrafu 1 minn Stat Kontraenti għandha titqies bħala waħda sigrieta bl-istess mod bħalma hi informazzjoni li tinkiseb taħt il-liġijiet domestiċi ta' dak l-iStat u għandha tkun żvelata biss lil persuni jew awtoritajiet (inklużi qrati u korpi amministrattivi) li għandhom x'jaqsmu mal-istima jew il-ġbir ta', l-infurzar jew il-prosekuzzjoni dwar, id-deċiżjoni tal-appelli f'dak li għandu x'jaqsm mat-taxxi msemmija fil-paragrafu 1, jew is-sorveljanza ta' dak hawn qabel imsemmi. Dawk il-persuni jew awtoritajiet għandhom jużaw l-informazzjoni għal dawk il-finijiet biss. Huma jistgħu jiżvelaw l-informazzjoni fi proċedimenti tal-qorti pubbliċi jew f'deċiżjonijiet gudizzjarji.

3. F'edba każ m'għandhom id-dispożizzjonijiet tal-paragrafi 1 u 2 jiftiehem bħala li jimponu fuq Stat Kontraenti l-obbligu:

(a) li jieħu miżuri amministrattivi li ma jaqblux mal-liġijiet u mal-prattika amministrattiva ta' dak l-iStat Kontraenti jew tal-iStat Kontraenti l-ieħor;

(b) li jagħti informazzjoni li ma tkunx tista' tinkiseb taħt il-liġijiet jew fil-kors normali tal-amministrazzjoni ta' dak l-iStat Kontraenti jew tal-iStat Kontraenti l-ieħor;

(c) li jagħti informazzjoni li tkun tiżvela xi sigriet tal-kummerċ, tan-negozju, industrijali, kummerċjali jew professjonali jew xi proċess kummerċjali, jew informazzjoni li meta din tiġi żvelata din tkun tmur kontra l-ordni pubbliku (*ordre public*).

4. Jekk l-informazzjoni tintalab minn Stat Kontraenti kif hawn f'dan l-Artikolu, l-iStat Kontraenti l-ieħor għandu juża il-miżuri ta' ġbir ta' informazzjoni li jkollu biex jikseb dik l-informazzjoni mitluba, ukoll jekk

dak l-iStat l-iehor jista' ma jkunx jehtieg dik l-informazzjoni għall-finijiet tiegħu tat-taxxa. L-obbligazzjoni li hemm dwarha fis-sentenza li tiġi minnufih qabel din hija soġġetta għal-limitazzjonijiet tal-paragrafu 3 iżda f'ebda każ m'għandhom dawk il-limitazzjonijiet jiftiehmli li jippermettu Stat Kontraenti li jirrofta li jipprovdi informazzjoni unikament għaliex ma jkollu ebda interess domestiku f'dik l-informazzjoni.

5. F'edba każ m'għandhom id-dispożizzjonijiet tal-paragrafu 3 jiftiehmli bħala li jippermettu lil Stat Kontraenti li jirrofta li jipprovdi informazzjoni unikament għaliex l-informazzjoni tkun qegħda tinzamm minn xi bank, xi istituzzjoni finanzjarja oħra, nominee jew persuna li tkun qegħda taġixxi f'kapacità ta' aġenzija jew fiduċjarja jew għaliex ikollha x'taqsam ma' l-interessi dwar proprjetà f'xi persuna."

ARTIKOLU 18

Kull wiehed mill-iStati Kontraenti għandu jagħti avviz bil-miktub permezz tal-kanali diplomatiċi lill-iStat Kontraenti l-iehor li jkunu intemmu l-proċeduri meħtieġa bil-ligijiet tiegħu biex dan il-Protokoll jingiebb fis-seħħ. Il-Protokoll għandu jidhol fis-seħħ fid-data meta jasal l-aħħar mill-avviżi msemmija hawn qabel u għandu jkollu seħħ fiż-żewġ Stati Kontraenti li huma:

(a) dwar taxxi mizmuma f'ras il-għajn - għal ammonti ta' *income* miksuba fl-1 jew wara l-ewwel ta' Jannar tas-sena kalendarja li tiġi minnufih wara s-sena li fiha jibda jseħħ il-Protokoll;

(b) dwar taxxi fuq l-*income* oħra, għal dawk it-taxxi li jingabru għal xi sena ta' taxxa li tibda fl-ewwel jew wara l-ewwel ta' Jannar tas-sena kalendarja li tiġi minnufih wara s-sena li fiha jibda jseħħ il-Protokoll.

B'xhieda ta' dan, is-sottoskritti, awtorizzati kif imiss biex jagħmlu dan, iffirmaw dan il-Protokoll.

Magħmul in duplikat f'Varsavja, illum is-6 ta' April 2011 fl-ilsien Inġliż u dak Pollakk, iż-żewġ testi awtentiċi daqsinsew.

Għall-Gvern ta'
Malta
Tonio Borg

Għall-Gvern tar-
Repubblika tal-Polonja
Radoslaw Sikorski

L.N. 14 of 2012**INCOME TAX ACT
(CAP. 123)****Double Taxation Relief (Taxes on Income) (Republic of Poland)
(Amendment) Order, 2012**

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:-

Citation.

S.L. 123.33

Amendments to
have effect.

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

2. It is hereby declared:

(a) that the amendments to the principal Order, as specified in the Schedule to this Order, have been made with the Government of the Republic of Poland with a view to affording relief from double taxation and preventing fiscal evasion in relation to the following taxes imposed by the laws of the Republic of Poland:

- (i) the personal income tax;
- (ii) the corporate income tax;

(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 22 November 2011.

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 Valetta on the 7th day of January 1994

The Government of Malta and the Government of the Republic of Poland desiring to conclude a Protocol 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 Valetta on the 7th day of January 1994 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

Paragraph 5 of Article 2 of the Agreement shall be deleted.

ARTICLE 2

Article 3 of the Agreement shall be amended as follows:

(1) sub-paragraph (d) of paragraph 1 thereof shall be deleted and replaced by the following:

"(d) the term "person" includes an individual, a company, a trust and any other body of persons;"

(2) paragraph 2 thereof shall be deleted and replaced by the following:

"2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the

B 66

context otherwise requires, have the meaning that it has at that time under the laws of that State for the purposes of the taxes to which Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State."

ARTICLE 3

Article 5 of the Agreement shall be amended as follows:

(1) sub-paragraph (g) of paragraph 2 thereof shall be deleted and replaced by the following:

"(g) a building site or construction or assembly or installation project, where such site or project continues for more than twelve months.";

(2) paragraph 4 thereof shall be deleted.

ARTICLE 4

Paragraph 4 of Article 6 of the Agreement shall be deleted and replaced by the following:

"4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise."

ARTICLE 5

Paragraph 4 of Article 7 of the Agreement shall be deleted.

ARTICLE 6

In Article 8 of the Agreement immediately after paragraph 3 there shall be added the following paragraph 4:

"4. For the purposes of this Article, profits derived from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such ships or aircraft are operated in international traffic or if such rental profits are incidental to other profits described in paragraph 1 of this Article. However, such profits do not include profits from leasing ships or aircraft on a bare boat charter basis except when it is an ancillary activity of an enterprise engaged in the international operation of ships or aircraft."

ARTICLE 7

Paragraph 2 of Article 9 of the Agreement shall be deleted.

ARTICLE 8

Article 10 of the Agreement shall be amended as follows:

(1) paragraph 2 thereof shall be deleted and replaced by the following:

"2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of the State, but:

(a) where the dividends are paid by a company resident of Poland to a resident of Malta, Poland shall exempt from tax the dividends if the beneficial owner of such dividends is a company resident in Malta that holds directly at least 10 per cent of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls;

(b) except as provided in subparagraph (a), the tax so charged by Poland shall not exceed 10 per cent of the gross amount of the dividends where the beneficial owner of the dividends is a resident of Malta;

(c) where the dividends are paid by a company which is a resident of Malta to a resident of Poland which is the beneficial owner thereof Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.";

(2) paragraphs 4 and 5 thereof shall be deleted and replaced by the following:

"4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that

B 68

other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.";

(3) the following paragraph 6 shall be added immediately after paragraph 5:

"6. The benefits of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.".

ARTICLE 9

Article 11 of the Agreement shall be amended as follows:

(1) paragraph 2 thereof 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 5 per cent of the gross amount of the interest.";

(2) paragraphs 5 and 6 thereof shall be deleted and replaced by the following:

"5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.";

(3) the following paragraph 8 shall be added immediately after paragraph 7:

"8. The benefits of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment."

ARTICLE 10

Article 12 of the Agreement shall be amended as follows:

(1) paragraphs 2, 3, 4 and 5 thereof shall be deleted and replaced by the following:

"2. However, such royalties 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 the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. 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.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, 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 was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be

B 70

deemed to arise in the State in which the permanent establishment is situated.";

(2) the following paragraph 7 shall be added immediately after paragraph 6:

"7. The benefits of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment."

ARTICLE 11

Article 13 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 13

Capital Gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprises) may be taxed in that other State.

4. Gains from the alienation of ships, aircraft or road vehicles operated in international traffic or movable property pertaining to the operation of such means of transportation shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 12

Article 14 of the Agreement shall be deleted.

ARTICLE 13

Paragraph 2 of Article 15 of the Agreement shall be deleted and replaced by the following:

"2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment which the employer has in the other State."

ARTICLE 14

Article 21 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 21

Students

Payments which a student, pupil or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of that individual's education or training receives for the purpose of that individual's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State."

ARTICLE 15

Paragraph 2 of Article 22 of the Agreement shall be deleted and replaced by the following:

"2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply."

ARTICLE 16

Article 23 of the Agreement shall be amended as follows:

(1) paragraph 1 thereof shall be deleted and replaced by the following:

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

(a) where a resident of Poland derives income which, in accordance with the provisions of this Agreement may be taxed in Malta, Poland shall, subject to the provisions of sub-paragraph (b), exempt such income from tax;

(b) where a resident of Poland derives income or capital gains which, in accordance with the provisions of Articles 10, 11, 12 or 13, may be taxed in Malta, Poland shall, subject to the provision of subparagraph (c), allow as a deduction from the tax on the income or capital gains of that resident an amount equal to the tax paid in Malta. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such income or capital gains derived from Malta;

(c) a deduction, granted according to the provision of subparagraph (b), to a company which is a resident of Poland and which derives dividends from a company which is a resident of Malta shall not, for the purposes of Polish tax with respect to such dividends, exceed 10 per cent of the gross amount of the dividend;

(d) 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.";

(2) paragraphs 3 and 4 thereof shall be deleted.

ARTICLE 17

Article 26 of the Agreement shall be deleted and replaced by the following:

"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, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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.

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

B 74

ownership interests in a person."

ARTICLE 18

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. The Protocol shall enter into force on the date of receipt of the latter of the notifications referred to above and shall have effect in both Contracting States:

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

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

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

Done in duplicate at Warsaw, this 6th day of April 2011 in the English and Polish languages, all two texts being equally authentic.

For the Government of
Malta
Tonio Borg

For the Government of
the Republic of Poland
Radoslaw Sikorski

