

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

Simon Harris, T.D.
Minister of State

For the Federal Republic of Germany

H.E. Matthias Höpfner
Ambassador of Germany