

PROTOCOL

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF POLAND

AND

THE GOVERNMENT OF MALTA

**AMENDING THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF POLAND AND THE
GOVERNMENT OF MALTA 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 the Republic of Poland and the Government of Malta desiring to conclude a Protocol amending the Agreement between the Government of the Republic of Poland and the Government of Malta 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 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 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 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 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 04.2011 in the Polish and English languages, all two texts being equally authentic.

**For the Government of
the Republic of Poland**

Radostaw Sienki

**For the Government of
Malta**

James Buge