

No. 49224. Poland and Malta

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. VALETТА, 7 JANUARY 1994 [*United Nations, Treaty Series*, vol. 2799, I-49224.]

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 VALETТА ON THE 7TH DAY OF JANUARY 1994. WARSAW, 6 APRIL 2011

Entry into force: 22 November 2011 by notification, in accordance with article 18

Authentic texts: English and Polish

Registration with the Secretariat of the United Nations: Poland, 11 January 2012

N° 49224. Pologne et Malte

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE POLOGNE ET LE GOUVERNEMENT DE MALTE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU. LA VALETTE, 7 JANVIER 1994 [*Nations Unies, Recueil des Traités*, vol. 2799, I-49224.]

PROTOCOLE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE POLOGNE ET LE GOUVERNEMENT DE MALTE MODIFIANT L'ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE POLOGNE ET LE GOUVERNEMENT DE MALTE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU, SIGNÉ À LA VALETTE LE 7 JANVIER 1994. VARSOVIE, 6 AVRIL 2011

Entrée en vigueur : 22 novembre 2011 par notification, conformément à l'article 18

Textes authentiques : anglais et polonais

Enregistrement auprès du Secrétariat des Nations Unies : Pologne, 11 janvier 2012

[ENGLISH TEXT – TEXTE ANGLAIS]

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