



STATUTORY INSTRUMENTS.

**S.I. No. 30 of 2011**

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DOUBLE TAXATION RELIEF (TAXES ON INCOME AND CAPITAL  
GAINS) (REPUBLIC OF AUSTRIA) ORDER 2011

**(Prn. A11/0125)**

## DOUBLE TAXATION RELIEF (TAXES ON INCOME AND CAPITAL GAINS) (REPUBLIC OF AUSTRIA) ORDER 2011

WHEREAS it is enacted by section 826(1) (as substituted by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that where the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of income tax, corporation tax in respect of income and chargeable gains, capital gains tax or any taxes of a similar character imposed by the laws of the State or by the laws of that territory and, in the case of taxes of any kind or description imposed by the laws of the State or the laws of that territory, in relation to exchanging information for the purposes of the prevention and detection of tax evasion or granting relief from taxation under the laws of that territory to persons who are resident in the State for the purposes of tax, and that it is expedient that those arrangements should have the force of law, and that the order so made is referred to in Part 1 of Schedule 24A of the Taxes Consolidation Act 1997, then, subject to section 826 of that Act, the arrangements shall, notwithstanding any enactment, have the force of law as if such order were an Act of the Oireachtas on and from the date of the insertion of a reference to the order into Part 1 of Schedule 24A:

AND WHEREAS it is further enacted by section 826(6) of the Taxes Consolidation Act 1997 that where such an order is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them by section 826(1) (as substituted by section 35 of the Finance Act 2007) of the Taxes Consolidation Act 1997, hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income and Capital Gains) (Republic of Austria) Order 2011.
2. It is declared that—
  - (a) the arrangements specified in the Protocol, the text of which is set out in the Schedule, have been made with the Government of the Republic of Austria in relation to—

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 21st January, 2011.*

- (i) affording relief from double taxation in respect of income tax, corporation tax in respect of income and chargeable gains, capital gains tax and any taxes of a similar character, imposed by the laws of the State or by the laws of the Republic of Austria, and
- (ii) in the case of taxes of any kind or description imposed by the laws of the State or the laws of the Republic of Austria, exchanging information for the purposes of the prevention and detection of tax evasion and granting relief from taxation under the laws of the Republic of Austria to persons who are resident in the State for the purposes of tax,

and

- (b) it is expedient that those arrangements should have the force of law.

SCHEDULE

PROTOCOL BETWEEN IRELAND

AND

THE REPUBLIC OF AUSTRIA

AND ADDITIONAL PROTOCOL

AMENDING THE CONVENTION FOR THE AVOIDANCE OF  
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME,  
SIGNED AT VIENNA ON 24 MAY 1966 AS AMENDED BY THE  
PROTOCOL SIGNED AT DUBLIN ON 19 JUNE 1987

Ireland and the Republic of Austria desiring to conclude a Protocol and an Additional Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income, signed at Vienna on 24 May 1966 as amended by the Protocol signed at Dublin on 19 June 1987 (hereinafter referred to as “the Convention”),

Have agreed as follows:

**Article 1**

Article 25 of the Convention shall be replaced by the following:

**“ARTICLE 25**

**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 Convention 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 Convention. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may

be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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 2**

The Contracting States shall notify each other through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month next following the date of the receipt of the latter of the notifications referred to above. The provisions of this Protocol shall have effect for requests made on or after the date of entry into force with regard to taxable periods beginning on or after 1 January 2010.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Vienna on 16 December 2009 in the English and German languages, each text being equally authentic.

**For Ireland**

**For the Republic of Austria**

Frank Cogan

Andreas Schieder

**ADDITIONAL PROTOCOL**

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income signed at Vienna on 24 May 1966 as amended by the Protocol signed at Dublin on 19 June 1987, this day concluded between the Republic of Austria and Ireland, the undersigned have agreed that the following provisions shall form an integral part of the Protocol:

Ad Article 25:

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the standard of 'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

3. It is understood that paragraph 5 of Article 25 does not require the Contracting States to exchange information within the terms of that paragraph on a spontaneous or automatic basis.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Additional Protocol.

DONE in duplicate at Vienna on 16 December 2009 in the English and German languages, each text being equally authentic.

**For Ireland**

**For the Republic of Austria**

Frank Cogan

Andreas Schieder



GIVEN under the Official Seal of the Government,  
11 January 2011.

BRIAN COWEN,  
Taoiseach.

EXPLANATORY NOTE.

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Order gives the force of law to the Protocol and Additional Protocol to the Double Taxation Convention between Ireland and Austria which came into effect from 1 January 1964.

This Protocol and Additional Protocol were signed in Vienna on 16 December 2009.

The Protocol updates the Article on Exchange of Information to fully conform to the OECD standard on exchange of information. This will allow both countries to exchange such information as is foreseeably relevant for carrying out the provisions of the Convention.

The Additional Protocol sets out the information which must be provided by the State making a request under the Article on Exchange of Information in order to demonstrate the “foreseeable relevance” of the information requested, and also explains this term.



BAILE ÁTHA CLIATH  
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CONTAE MHAIGH EO,  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)  
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