

INCOME TAX ACT 1970

INCOME TAX (POLAND) (DOUBLE TAXATION) ORDER 2011

*Approved by Tynwald
Coming into operation*

*22 June 2011
24 June 2011*

The Council of Ministers makes this Order under section 54 of the Income Tax Act 1970¹.

1 Title

This Order is the Income Tax (Poland) (Double Taxation) Order 2011.

2 Commencement

If approved by Tynwald², this Order comes into operation on 24 June 2011.

3 Interpretation

In this Order “applicable arrangements” means:

- (a) the arrangements for the avoidance of double taxation with respect to certain income of individuals contained in an agreement between the Isle of Man and the Republic of Poland signed in London on 7 March 2011 and set out in Schedule 1; and
- (b) the arrangements for the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic contained in an agreement between the Isle of Man and the Republic of Poland signed in London on 7 March 2011 and set out in Schedule 2.

¹ XXI p. 260 (section 54 was amended by section 10 of the Income Tax Act 2009 C.2.)

² As required by section 54(1G) of the Income Tax Act 1970

4 Implementation of the agreements

It is declared that –

- (a) the applicable arrangements have been made with the Republic of Poland –
 - (i) for the avoidance of double taxation with respect to certain income of individuals; and
 - (ii) for the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic;
- (b) it is expedient that those arrangements have effect under section 54 of the Income Tax Act 1970.

MADE 13 April 2011


Chief Secretary

AGREEMENT BETWEEN
THE ISLE OF MAN
AND
THE REPUBLIC OF POLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO CERTAIN INCOME OF INDIVIDUALS

The Isle of Man and the Republic of Poland,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to certain income of individuals,

Have agreed as follows:

ARTICLE 1
PERSONS COVERED

This Agreement shall apply to individuals who are residents of one or both of the Contracting Parties.

ARTICLE 2
TAXES COVERED

1 The taxes which are the subject of this Agreement are:

- (a) In the Isle of Man, taxes on income or profit; and
- (b) in Poland, personal income tax.

2 This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

DEFINITIONS

- 1 For the purposes of this Agreement, unless otherwise defined:
 - (a) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with International law;
 - (b) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with International law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its subsoil may be exercised;
 - (c) the term "competent authority" means, in the case of the Isle of Man, the Assessor of Income Tax or his delegate and, in the case of Poland, the Minister of Finance or his authorised representative;
 - (d) the term "Contracting Party" means the Isle of Man or Poland, as the context requires;
 - (e) the term "national", in relation to a Contracting Party, means any individual possessing the nationality or citizenship of that Contracting Party;
 - (f) the term "person" includes an individual, a company and any other body of persons;
 - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective

management in the territory of a Contracting Party, except when the ship or aircraft is operated solely between places in the territory of the other Contracting Party.

2 As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 4

RESIDENT

1 For the purposes of this Agreement, the term "resident of a Contracting Party" means any person who, under the laws of that Contracting Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Contracting Party and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

2 Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting Parties or in neither of them, he shall be deemed to be a resident only of the Contracting

Party of which he is a national;

- (d) if he is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

3 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Contracting Party in which its place of effective management is situated.

ARTICLE 5

INCOME FROM EMPLOYMENT

1 Subject to the provisions of Articles 6, 8 and 9, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Contracting Party unless the employment is exercised in the territory of the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting Party.

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

- (a) the recipient is present in the territory of the other Contracting Party 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 Contracting Party; and
- (c) the remuneration is not borne by a fixed place of business which the employer has in the territory of the other Contracting Party; and
- (d) the employment is not a case of hiring out of labour.

3 Notwithstanding the preceding provisions of this Article, remuneration

derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in the Contracting Party if the place of effective management of the enterprise is situated therein.

ARTICLE 6
DIRECTORS' FEES

Fees and other similar payments derived by an Individual who is a resident of a Contracting Party in his capacity as a member of the management board, the supervisory board, or of a similar body of a company which is a resident of the other Contracting Party may be taxed in that other Contracting Party.

ARTICLE 7
ARTISTES AND SPORTSMEN

1 Notwithstanding the provisions of Article 5, income derived by an individual who is a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the territory of the other Contracting Party, may be taxed in that other Contracting Party.

2 Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Article 5, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

3 Notwithstanding the provisions of paragraphs 1 and 2, income derived from such activities as defined in paragraph 1 performed within the framework of cultural exchange between the Contracting Parties, shall be exempt from tax in the Contracting Party in which these activities are exercised.

ARTICLE 8
PENSIONS

Subject to the provisions of paragraph 2 of Article 9, pensions and other similar remuneration paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Contracting Party.

ARTICLE 9
GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in the territory of that Contracting Party and the Individual is a resident of that Contracting Party who:
 - (i) is a national of that Contracting Party; or
 - (ii) did not become a resident of that Contracting Party solely for the purpose of rendering the services.

- 2 (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
- (b) However, such pensions and similar remuneration shall be taxable only in the other Contracting Party if the Individual is a resident of, and a national of, that Contracting Party.

3 The provisions of Articles 5, 6, 7 and 8 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or a local authority thereof.

ARTICLE 10

STUDENTS

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

ARTICLE 11
ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided as follows:

- (a) Where a resident of a Contracting Party derives Income which, in accordance with the provisions of this Agreement may be taxed in the other Contracting Party, the first mentioned Contracting Party shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in the other Contracting Party. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such Income derived from the other Contracting Party.
- (b) Where In accordance with any provision of this Agreement, Income derived by a resident of a Contracting Party is exempt from tax therein that Contracting Party may nevertheless, in calculating the amount of tax on the remaining Income of such resident, take into account the exempted income.

ARTICLE 12
NON-DISCRIMINATION

1 Nationals of a Contracting Party shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2 Nothing contained in this Article shall be construed as obliging either Contracting Party to grant to individuals not resident in that Contracting Party any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals who are resident in that Contracting Party.

3 The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 13
MUTUAL AGREEMENT PROCEDURE

1 Where an Individual considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3 The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4 The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of applying this Agreement.

ARTICLE 14
MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 15
ENTRY INTO FORCE

This Agreement shall enter into force on the later of the dates on which each of the Contracting Parties has notified the other in writing that the procedures required by its law have been complied with. This Agreement shall have effect in respect of taxes chargeable for any tax year beginning on or after the first day of January of the year next following that in which this Agreement enters into force, or, where there is no taxable period, all charges to tax arising on or after the first day of January of the year next following that in which this Agreement enters into force.



ARTICLE 16
TERMINATION

1 This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of two years from the date of its entry into force.

2 In such event, this Agreement shall cease to have effect the first day of January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at London, this 7th day of March, 2011, in two originals in the English and Polish languages, both texts being equally authentic.

**FOR
THE ISLE OF MAN:**

John Crane

**FOR
THE REPUBLIC OF POLAND:**

Michał Aniszczyk

**AGREEMENT BETWEEN
THE ISLE OF MAN
AND
THE REPUBLIC OF POLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO ENTERPRISES OPERATING SHIPS OR
AIRCRAFT IN INTERNATIONAL TRAFFIC**

THE ISLE OF MAN

and

THE REPUBLIC OF POLAND

Desiring to conclude an agreement for the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic,

Have agreed as follows:

ARTICLE 1
SCOPE OF THE AGREEMENT

This Agreement shall apply to enterprises operating ships or aircraft in international traffic which are residents of one or both of the Contracting Parties.

ARTICLE 2

TAXES COVERED

1 This Agreement shall apply to the following taxes Imposed by the Contracting Parties:

- (a) in the Isle of Man:
 - taxes on income or profits;
- (b) In Poland:
 - (I) personal income tax, and
 - (ii) corporate income tax.

2 This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement In addition to, or In place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

DEFINITIONS

- 1 For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "a Contracting Party" means the Isle of Man or the Republic of Poland, as the context requires; the term "Contracting Parties" means the Isle of Man and the Republic of Poland;
 - (b) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
 - (c) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
 - (d) the term "person" includes an individual, a company and any other body of persons;
 - (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term "competent authority" means:
 - (i) in the case of the Isle of Man, the Assessor of Income Tax or his delegate;
 - (ii) in the case of Poland, the Minister of Finance or his authorised representative;
 - (g) the term "resident of a Contracting Party" means any person who, under the law of that Contracting Party, is liable to taxation therein by

reason of his domicile, residence, place of effective management or any other criterion of a similar nature;

- (h) the term "enterprise of a Contracting Party" means an enterprise carried on by a resident of a Contracting Party;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in the territory of a Contracting Party, except when the ship or aircraft is operated solely between places in the territory of the other Contracting Party.

2 As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 4

SHIPPING AND AIR TRANSPORT PROFITS AND GAINS

1 Profits derived by an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.

2 Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.

3 The provisions of paragraphs 1 and 2 shall also apply to profits and gains derived by an enterprise of a Contracting Party from the participation in a pool, a joint business or an international operating agency.

4 If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the territory of the Contracting Party in which the home harbour of the ship is situated, or, if there is no such home harbour, in the territory of the Contracting Party of which the operator of the ship is a resident.

ARTICLE 5

MUTUAL AGREEMENT PROCEDURE

1 Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3 The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4 The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of applying this Agreement.

ARTICLE 6
ENTRY INTO FORCE

This Agreement shall enter into force on the later of the dates on which each of the Contracting Parties has notified the other in writing that the procedures required by its law have been complied with. This Agreement shall have effect in respect of taxes chargeable for any tax year beginning on or after the first day of January of the year next following that in which this Agreement enters into force.

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1 This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of two years from the date of its entry into force.

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**FOR
THE ISLE OF MAN:**



**FOR
THE REPUBLIC OF POLAND:**



EXPLANATORY NOTE
(This note is not part of the Order)

This Order is made under section 54 of the Income Tax Act 1970. It implements arrangements negotiated between the Isle of Man and the Republic of Poland for:

- the avoidance of double taxation with respect to certain income of individuals; and
- the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic.