

Protocol

amending the Agreement of 30 March 2011

between

the Federal Republic of Germany

and

Ireland

for the Avoidance of Double Taxation

and the Prevention of Fiscal Evasion with

respect to Taxes on Income and on Capital

as amended by the Protocol of 3 December 2014

The Federal Republic of Germany

and

Ireland,

Desiring to conclude a Protocol amending the Agreement of 30 March 2011 between the Federal Republic of Germany and Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital as amended by the Protocol of 3 December 2014,

Have agreed as follows:

Article I

The Preamble shall be deleted and replaced by the following Preamble:

“The Federal Republic of Germany

and

Ireland,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:”.

## Article II

1. A new paragraph (4.1) shall be inserted after paragraph 4 of Article 5 as follows:

“(4.1) Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.”.

2. A new paragraph 8 shall be inserted after paragraph 7 of Article 5 as follows:

“(8) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or

of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.”.

### Article III

Sub-paragraph a) of paragraph 2 of Article 10 shall be deleted and replaced by the following sub-paragraph:

“a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership or a Real Estate Investment Trust Company) which holds directly at least 10 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends);”.

### Article IV

Paragraph 4 of Article 13 shall be deleted and replaced by the following paragraph:

“(4) Gains derived by a resident of a Contracting State from the alienation of shares (other than shares quoted on a stock exchange) or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State (except immovable property, or part thereof, that was alienated between that time and the time of the alienation of the shares or comparable interests, as long as no part of the value of these shares or comparable interests is derived

directly or indirectly from that immovable property, or the part thereof that was alienated, at the time of that subsequent alienation).”.

#### Article V

A new Article 29A shall be inserted after Article 29 as follows:

#### “Article 29A Prevention of Treaty Abuse

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”.

#### Article VI

Paragraph 8 of the Protocol to the Agreement shall be deleted.

#### Article VII

1. This Protocol shall be ratified; 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

a) in Germany:

- i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the calendar year next following the year in which this Protocol enters into force;
- ii) in the case of other taxes, in respect of taxes levied 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;

b) in Ireland:

- i) in the case of income tax, universal social charge and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following the year in which this Protocol enters into force;
- ii) in the case of corporation tax, for any financial year 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 19<sup>th</sup> January 2021 in duplicate in the German and English languages, both texts being equally authoritative.

For the Federal Republic of Germany

Deike Potzel

For Ireland

Simon Coveney