



Double Taxation Relief (India) Amendment Order 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

This order is made under section BH 1 of the Income Tax Act 2007 and section 173C of the Tax Administration Act 1994 on the advice and with the consent of the Executive Council.

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Order

1 Title

This order is the Double Taxation Relief (India) Amendment Order 2017.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Principal order

This order amends the Double Taxation Relief (India) Order 1986 (the **principal order**).

4 Clause 2 amended (Giving effect to Convention)

Replace the heading to clause 2 with “**Convention, First Protocol, and Second Protocol**”.

5 New clause 3 inserted (Third Protocol)

After clause 2, insert:

3 Third Protocol

- (1) The Third Protocol to the Convention between the Government of the Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income is set out in Schedule 4.
- (2) The Third Protocol amends the Convention.
- (3) The Third Protocol comes into force as provided for in Article 3 of that protocol.
- (4) The arrangements specified in the Third Protocol have been negotiated with the Government of the Republic of India for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.
- (5) The arrangements specified in the Third Protocol have effect according to the tenor of that protocol.

6 New Schedule 4 inserted

After Schedule 3, insert the Schedule 4 set out in the Schedule of this order.

Schedule
New Schedule 4 inserted

cl 6

Schedule 4
**Third Protocol to the Convention between the Government of the
Republic of India and the Government of New Zealand for the
Avoidance of Double Taxation and the Prevention of Fiscal Evasion
with Respect to Taxes on Income**

cl 3

The Government of New Zealand and the Government of the Republic of India;
Having regard to the Convention between the Government of New Zealand and the
Government of the Republic of India for the Avoidance of Double Taxation and the
Prevention of Fiscal Evasion with Respect to Taxes on Income done at Auckland on
17th day of October, 1986 (hereinafter referred to as “the Convention”), have agreed
as follows:

Article 1

Article 26 of the Convention 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 (including documents) 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 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 (including documents) 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 Convention is amended by adding after Article 26 the following new Article:

“Article 26A

Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of 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 this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
 - a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);
 - c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.”

Article 3

Each of the Contracting States shall notify to the other the completion of its procedures required by its laws for bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications.

Article 4

The Protocol, which shall form an integral part of the Convention, shall remain in force as long as the Convention remains in force and shall apply as long as the Convention itself is applicable.

IN WITNESS whereof the undersigned duly authorized by their respective Governments have signed this Protocol.

DONE in duplicate at New Delhi, this 26 day of October, 2016, in the Hindi and English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

For the Government of New Zealand:
Andrea Smith
Deputy Secretary, Ministry of Foreign
Affairs and Trade

For the Government of the Republic of
India:
Preeti Saran
Secretary (East), Ministry of External
Affairs

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the 28th day after the date of its notification in the *Gazette*, gives effect to the Third Protocol to the Convention between the Government of the Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the **protocol**).

The agreement will come into force in accordance with Article 3 of the protocol.

Each party to the protocol will notify to the other the completion of its procedures required by its laws for the bringing into force of the protocol. The date on which the protocol comes into force will be publicised on <http://taxpolicy.ird.govt.nz/tax-treaties>

Regulatory impact statement

The Inland Revenue Department produced a national interest analysis (which incorporated all elements of a regulatory impact statement) to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of the national interest analysis can be found (appended to the Report of the Finance and Expenditure Committee) at https://www.parliament.nz/en/pb/sc/reports/document/SCR_72358/ite-of-the-third-protocol-to-the-convention-between-the

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 August 2017.

This order is administered by the Inland Revenue Department.