Reprint
as at 1 November 2013

Double Taxation Relief (Malaysia) Order 1976

(SR 1976/144)

Denis Blundell, Governor-General

Order in Council

At the Government House at Wellington this 8th day of June 1976

Present:
His Excellency the Governor-General in Council

Pursuant to section 172 of the Land and Income Tax Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

Contents

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Inland Revenue Department.

Order

1 Title

This order may be cited as the Double Taxation Relief (Malaysia) Order 1976.

Clause 1 heading: inserted, on 1 November 2013, by clause 4 of the Double Taxation Relief (Malaysia) Amendment Order 2013 (SR 2013/426).

2 Agreement, First Protocol, and Second Protocol

It is hereby declared that the arrangements specified in the agreement set out in Schedules 1 and 2, being arrangements that have been made with the Government of the Federation of Malaysia with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Land and Income Tax Act 1954 and income tax, excess profit tax, and the supplementary income tax (ie, tin profits tax, development tax, timber profits tax), and the petroleum income tax imposed by the law of the Federation of Malaysia shall, in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the agreement.

Clause 2 heading: inserted, on 1 November 2013, by clause 5 of the Double Taxation Relief (Malaysia) Amendment Order 2013 (SR 2013/426).

Clause 2: amended, on 3 November 1994, by clause 2(1) of the Double Taxation Relief (Malaysia) Order 1976, Amendment No 1 (SR 1994/217).

3 Third Protocol

(1) The Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income is set out in Schedule 3.

(2) The Third Protocol amends the agreement.

(3) The Third Protocol comes into force on the date provided for in Article 2 of that protocol.

Clause 3: inserted, on 1 November 2013, by clause 6 of the Double Taxation Relief (Malaysia) Amendment Order 2013 (SR 2013/426).

Schedule 1
Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Schedule 1 heading: amended, on 3 November 1994, by clause 2(2)(a) of the Double Taxation Relief (Malaysia) Order 1976, Amendment No 1 (SR 1994/217).

The Government of New Zealand and the Government of Malaysia,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed follows:

Article 1
Taxes covered

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

(a) in Malaysia:

(i) the income tax and excess profit tax;

(ii) the supplementary income tax, that is, tin profits tax, development tax and timber profits tax; and

(iii) the petroleum income tax;

(b) in New Zealand:

the income tax and the excess retention tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Contracting State or which are imposed by the Government of any Territory to which this Agreement is extended under Article 23.

(3) For the purposes of paragraph (1)(b) of this Article, the income tax does not include the bonus issue tax.

Article 2
General definitions

(1) In this Agreement, unless the context otherwise requires—

(a) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which in accordance with international law has been or may hereafter be designated, under the laws of Malaysia concerning the continental shelf, as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "New Zealand" includes the continental shelf of New Zealand as defined under the law of New Zealand concerning the continental shelf; it does not include the Cook Islands, Niue or the Tokelau Islands;

(c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or New Zealand, as the context requires;

(d) the term "person" includes an individual, a company and such unincorporated bodies of persons as are treated as persons under the laws of the respective Contracting States relating to the taxes to which this Agreement applies by virtue of Article 1;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) the term "Malaysian tax" means tax imposed by Malaysia being tax to which this Agreement applies by virtue of Article 1; the term "New Zealand tax" means tax imposed by New Zealand being tax to which this Agreement applies by virtue of Article 1;

(g) the term "tax" means Malaysian tax or New Zealand tax, as the context requires;

(h) the terms "Malaysian enterprise" and "New Zealand enterprise" mean respectively an enterprise carried on by a Malaysian resident and an enterprise carried on by a New Zealand resident;

(i) the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorised representative, and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;

(j) the term "natural resource royalties" means payments of any kind to the extent to which they are made as consideration for the operation of, or the right to operate, any mine or quarry, or as consideration for the extraction, removal or other exploitation of, or the right to extract, remove or otherwise exploit, standing timber or any natural resource;

(k) the term "industrial or commercial profits" means income or profits derived by an enterprise of a Contracting State from the carrying on of a business, but does not include—

(i) dividends, interest, royalties (as defined in paragraph (3) of Article 10), or natural resource royalties; or

(ii) income or profits from the sale or other disposition of land situated in the other Contracting State or of any estate or interest in land so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such land or any such estate or interest; or

(iii) income or profits from the grant or renewal, or from the sale or other disposition, of any right relating to the operation of any mine or quarry situated in the other Contracting State or to the extraction, removal or other exploitation of any standing timber or of any natural resource so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such right; in this sub-paragraph (k)(iii), the term "right" means any right, licence, permit, authority, title, option, privilege or other concession and includes a share or interest in any right, licence, permit, authority, title, option, privilege or other concession; or

(iv) rent; or

(v) charges for the bailment of livestock; or

(vi) income or profits from operating ships or aircraft; or

(vii) remuneration or other income for personal (including professional) services;

(l) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean a Malaysian enterprise or a New Zealand enterprise, as the context requires;

(m) words in the singular include the plural and words in the plural include the singular.

(2) In determining, for the purposes of Article 8, 9 or 10, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

(3) Every reference in Articles 8 and 19 to a dividend paid by a company which is resident in Malaysia for the purposes of Malaysian tax—

(a) shall be deemed to include a reference to a dividend paid by a company which is resident in Singapore for the purposes of Singapore tax and which has, in relation to that dividend, declared itself to be a resident of Malaysia for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26 December 1968; and

(b) shall be deemed not to include a reference to a dividend paid by a company which is resident in Malaysia for the purposes of Malaysian tax but which has, in relation to that dividend, declared itself to be a resident of Singapore for the purposes of the said Article VII.

(4) In this Agreement, the terms "Malaysian tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 1.

(5) In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies by virtue of Article 1.

Article 3
Fiscal domicile

(1) For the purposes of this Agreement—

(a) the term "New Zealand resident" means a person who is resident in New Zealand for the purposes of New Zealand tax;

(b) the term "Malaysian resident" means a person who is resident in Malaysia for the purposes of Malaysian tax.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is both a New Zealand resident and a Malaysian resident then his status shall, for the purposes of this Agreement, be determined as follows—

(a) he shall be treated solely as a New Zealand resident if he has a permanent home available to him in New Zealand and does not have a permanent home available to him in Malaysia and solely as a Malaysian resident if he has a permanent home available to him in Malaysia and does not have a permanent home available to him in New Zealand; and

(b) failing a resolution of the matter under subparagraph (a) of this paragraph, he shall be treated solely as a New Zealand resident if he has an habitual abode in New Zealand and does not have an habitual abode in Malaysia and solely as a Malaysian resident if he has an habitual abode in Malaysia and does not have an habitual abode in New Zealand; and

(c) failing a resolution of the matter under subparagraphs (a) and (b) of this paragraph, he shall be treated solely as a New Zealand resident if the Contracting State with which his personal and economic relations are the closer is New Zealand and solely as a Malaysian resident if the Contracting State with which his personal and economic relations are the closer is Malaysia.

(3) Where, by reason of the provisions of paragraph (1) of this Article, a person other than an individual is both a New Zealand resident and a Malaysian resident it shall, for the purposes of this Agreement, be treated solely as a New Zealand resident if the centre of its administrative or practical management is situated in New Zealand and solely as a Malaysian resident if the centre of its administrative or practical management is situated in Malaysia whether or not

any person outside New Zealand or Malaysia, as the case may be, exercises or is capable of exercising any overriding control of it or of its policy or affairs in any way whatsoever.

(4) For the purposes of this Agreement the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a New Zealand resident or a person who is a Malaysian resident, as the context requires.

Article 4
Permanent establishment

(1) For the purposes of this Agreement the term "permanent establishment", in relation to an enterprise, means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry, oil well, gas well or other place of extraction of natural resources;
- (g) a farm or plantation, or an agricultural, pastoral or forestry property; and
- (h) a building site or a construction, installation or assembly project which exists for more than six months.

(3) The term "permanent establishment" shall not be deemed to include—

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
- (d) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if—

(a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other Contracting State; or

(b) substantial equipment is in that other Contracting State being used or installed by, for or under contract with the enterprise.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph (6) of this Article applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if—

(a) he has, and habitually exercises in that first-mentioned Contracting State, any authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(b) there is maintained in that first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or

(c) in so acting he carries out in that first-mentioned Contracting State activities of any of the kinds referred to in subparagraph (a)(i) or subparagraph (a)(ii) or subparagraph (a)(iii) of paragraph (8) of this Article.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, a general commission agent or any other agent of independent status, where such a person is acting in the ordinary course of his business as a broker, a general commission agent or other agent of independent status.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute a place of business of either company a permanent establishment of the other.

(8) In any case where paragraph (5) of this Article does not apply, an enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if—

(a) for, or at or to the order of, that enterprise, another enterprise—

(i) manufactures, assembles, processes, packs or distributes in that other Contracting State any goods or merchandise; or

(ii) performs, in that other Contracting State, any mining or quarrying operations or any operations carried on in association with mining or quarrying operations, or performs, in that other Contracting

State, any operations for the extraction, removal or other exploitation of standing timber or of any natural resource; or

(iii) breeds, manages, agists or raises in that other Contracting State any livestock; and

(b) either enterprise participates directly or indirectly in the management, control or capital of the other enterprise, or the same persons participate directly or indirectly in the management, control or capital of both enterprises.

Article 5
Industrial or commercial profits

(1) Industrial or commercial profits of an enterprise of a Contracting State shall be subject to tax only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by that other Contracting State on the whole of the industrial or commercial profits of the enterprise from sources within that other Contracting State whether or not those profits are attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment; and the profits so attributed shall be deemed to be income derived from sources in that other Contracting State and shall be taxed accordingly.

(3) In determining the industrial or commercial profits attributable to a permanent establishment in a Contracting State, there shall be allowed as deductions all expenses of the enterprise, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) If the information available to the competent authority of the Contracting State concerned is inadequate to determine the industrial or commercial profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of that Contracting State in relation to the liability of the enterprise to pay tax in respect of the permanent establishment on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information

available to the competent authority permits, in accordance with the principle stated in this Article.

(5) Industrial or commercial profits shall not be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business of any form of insurance.

Article 6
Associated enterprises

(1) Where—

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and of an enterprise of the other Contracting State;

and in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise.

(2) Profits included in the profits of an enterprise of a Contracting State under paragraph (1) of this Article shall be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.

(3) If the information available to the competent authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.

Article 7
Shipping and air transport

(1) A resident of a Contracting State shall, subject to paragraph (4) of this Article, be exempt from tax in the other Contracting State on income or profits from the operation of ships or aircraft other than operations confined solely to places in that other Contracting State.

(2) The exemption provided in paragraph (1) of this Article shall apply in relation to the share of the income or profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organisation or in an international operating agency but only to the extent to which the share of the income or profits is not attributable to income or profits from voyages, flights or operations confined solely to places in the other Contracting State.

(3) For the purposes of this Article and Article 19, income or profits derived from the carriage of passengers, livestock, mails, goods or merchandise shipped in a Contracting State for discharge at another place in that Contracting State shall be treated as income or profits from the operation of a ship or aircraft confined solely to places in that Contracting State.

(4) Nothing in this Article shall affect the application of—

(a) the principles stated in paragraph (2) of Article 5 or of the provisions of paragraph (3) of that Article in relation to the calculation of the amount of, and the source of, the industrial or commercial profits which are to be attributed to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State; or

(b) the law of a Contracting State in relation to the liability of an enterprise of the other Contracting State to pay tax, in respect of any business (excluding a business to the extent to which it comprises the operation of ships or aircraft other than operations confined solely to places in the Contracting State first-mentioned in this subparagraph) on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that first-mentioned Contracting State; or

(c) the provisions of Article 6.

Article 8
Dividends

(1) The New Zealand tax on dividends, being dividends paid by a company which is resident in New Zealand for the purposes of New Zealand tax, derived and beneficially owned by a Malaysian resident, shall not exceed 15 per centum of the gross amount of the dividends.

(2) Subject to the provisions of this Article, dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, being dividends derived

and beneficially owned by a New Zealand resident, shall be exempt from any tax in Malaysia which may be chargeable on dividends in addition to the tax chargeable in respect of the income of the company.

(3) Nothing in the preceding paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is resident in Malaysia for the purposes of Malaysian tax from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

(4) If after the date of signature of this Agreement the system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of a tax on the income or profits of a company (for which no credit is given to its shareholders) and of a further tax on dividends paid by the company, the Malaysian tax on dividends, being dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, derived and beneficially owned by a New Zealand resident, shall not exceed 15 per centum of the gross amount of the dividends.

(5) If the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with that permanent establishment the limitations of tax referred to in paragraphs (1) and (4) of this Article shall not apply.

(6) Dividends paid by a company which is a resident of a Contracting State, being dividends which are derived and beneficially owned by a person who is not a resident of the other Contracting State, shall be exempt from tax in that other Contracting State. Provided that this paragraph shall not apply in relation to dividends paid by any company which is resident in Malaysia for the purposes of Malaysian tax and which is also resident in New Zealand for the purposes of New Zealand tax.

(7) Nothing in the foregoing paragraphs of this Article shall affect the taxation of the company in respect of the profits out of which the dividends are paid.

Article 9
Interest

(1) Subject to paragraph (2) of this Article, the tax of a Contracting State on interest derived from sources in that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 15 per centum of the gross amount of the interest.

(2) Interest derived from sources in Malaysia and beneficially owned by a New Zealand resident shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as de-

fined in section 2(1) of the Income Tax Act, 1967 of Malaysia (as amended by Act A98 of 1972).

(3) If the person who is the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with that permanent establishment the limitation of tax referred to in paragraph (1) of this Article shall not apply.

(4) The limitation of tax referred to in paragraph (1) of this Article shall not apply where the person paying the interest and the person who is the beneficial owner of the interest are associated with each other. For the purposes of this paragraph a person is associated with another person if either person controls directly or indirectly the other or if any third person controls directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

(5) Where the application of the limitation of tax referred to in paragraph (1) of this Article to any interest is not excluded by virtue of the foregoing provisions of this Article but owing to a special relationship between the person paying the interest and the person who is the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship the limitation of tax referred to in paragraph (1) of this Article shall apply only to the last-mentioned amount.

Article 10
Royalties

(1) Subject to paragraph (2) of this Article, the tax of a Contracting State on royalties derived from sources in that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 15 per centum of the gross amount of the royalties.

(2) Approved industrial royalties derived from sources in Malaysia and beneficially owned by a New Zealand resident shall be exempt from Malaysian tax.

(3) In this Article, the term "royalties" means payments of any kind to the extent to which they are made as consideration for—

(a) the use of or the right to use any—

(i) copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right; or

(ii) industrial, commercial or scientific equipment; or

(iii) motion picture films; or

(iv) films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting; or

(b) the supply of—

(i) scientific, technical, industrial or commercial knowledge or information; or

(ii) any assistance which is given as a means of enabling the application or enjoyment of such knowledge or information; or

(c) the management, control or supervision by a resident of a Contracting State of a business or other activity carried on in the other Contracting State by another enterprise or concern;

but does not include natural resource royalties.

(4) In this Article, the term "approved industrial royalties" means royalties as defined in paragraph (3) of this Article which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes—

(a) manufacturing, assembling or processing; or

(b) construction, civil engineering or shipbuilding; or

(c) electricity, hydraulic power, gas or water supply.

(5) If the person who is the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the knowledge, information, assistance, right or property giving rise to the royalties is effectively connected with that permanent establishment the limitation of tax referred to in paragraph (1) of this Article shall not apply.

(6) Where, owing to a special relationship between the person paying the royalties and the person who is the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

Article 11
Personal services

(1) Subject to Articles 14, 15 and 16, remuneration (other than pensions) derived by an individual who is a resident of a Contracting State in respect of personal (including professional) services may be taxed only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof shall be deemed to have a source in, and may be taxed in, that other Contracting State.

(2) Notwithstanding paragraph (1) of this Article, remuneration (other than pensions) derived by a resident of a Contracting State in respect of personal (in-

cluding professional) services performed in the other Contracting State shall be exempt from tax in that other Contracting State if—

(a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year or the basis period for the year of assessment, as the case may be, of that other Contracting State; and

(b) any period for which the recipient is present within that other Contracting State does not form part of a continuous period of more than 183 days throughout which he is present within that other Contracting State; and

(c) the remuneration is paid by or on behalf of a person who is a resident of the first-mentioned Contracting State; and

(d) the remuneration is not borne by a permanent establishment which that person has in that other Contracting State.

(3) Notwithstanding paragraphs (1) and (2) of this Article, remuneration in respect of employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that Contracting State.

Article 12
Directors' fees

Notwithstanding anything contained in Article 11, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State shall be deemed to have a source in, and may be taxed in, that other Contracting State.

Article 13
Public entertainers and athletes

(1) Notwithstanding anything contained in Article 11, remuneration or income derived by public entertainers (such as theatrical, motion picture, radio or television artistes and musicians) and by athletes from their personal activities as such shall be deemed to have a source in, and may be taxed in, the Contracting State in which these activities are exercised. Provided that this paragraph shall not apply to a public entertainer or athlete who is a resident of a Contracting State and whose visit to the other Contracting State is supported wholly or substantially from the public funds of the Government of the Contracting State first-mentioned in this proviso.

(2) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if it provides the services of a public entertainer or

athlete referred to in paragraph (1) of this Article in that other Contracting State. Provided that this paragraph shall not apply to an enterprise of a Contracting State which is, in relation to the services referred to in this paragraph, supported wholly or substantially from the public funds of the Government of that Contracting State.

(3) For the purposes of this Article, the term "Government" shall, in the case of Malaysia, include the Government of a State of Malaysia.

Article 14
Governmental functions

(1) Remuneration (other than pensions) paid by the Government of Malaysia to any individual who is a citizen of Malaysia in respect of services rendered in the discharge of governmental functions in New Zealand shall be exempt from New Zealand tax.

(2) Remuneration (other than pensions) paid by the Government of New Zealand to an individual who is a citizen of New Zealand in respect of services rendered in the discharge of governmental functions in Malaysia shall be exempt from Malaysian tax.

(3) The provisions of this Article shall not apply to any payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purposes of profit.

(4) For the purposes of this Article, the term "Government" shall, in the case of Malaysia, include the Government of a State of Malaysia.

Article 15
Professors and teachers

(1) An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who at the invitation of a university, college, school or other educational institution which is recognised by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.

(2) This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person.

Article 16
Students and trainees

A student or trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and is present in the first-mentioned Contracting State solely for the purpose of his education or training shall not be taxed in that first-mentioned Contracting State on payments (including salary or wages) to the extent to which he receives such payments for the purposes of his maintenance, education or training provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 17
Dual residents receiving income

(1) This Article shall apply to a person who is resident in Malaysia for the purposes of Malaysian tax and is also resident in New Zealand for the purposes of New Zealand tax.

(2) Where such a person is treated for the purposes of this Agreement solely as a resident of a Contracting State he shall be exempt in the other Contracting State from tax on income other than income which, under the law of that other Contracting State or under this Agreement, is derived, or is deemed to be derived, from sources in that other Contracting State.

Article 18
Limitation of relief

Where this Agreement provides (with or without conditions) that income or profits from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate, in that Contracting State and under the laws in force in the other Contracting State the said income or profits are subject to tax in that other Contracting State by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in that first-mentioned Contracting State shall apply only to so much of the income or profits as is remitted to or received in that other Contracting State:

Provided that where—

(a) in accordance with the foregoing provisions of this Article, an exemption or, as the case may be, a reduction of tax has not been allowed in the first instance in that first-mentioned Contracting State in respect of an amount of income or profits; and

(b) that amount of income or profits has subsequently been remitted to or received in that other Contracting State and is thereby subject to tax in that other Contracting State—

the competent authorities of that first-mentioned Contracting State shall, subject to any laws thereof for the time being in force limiting the time for the making of a refund of tax, allow the exemption or, as the case may be, the reduction of tax in respect of that amount of income or profits and make a refund to the person entitled thereto of any tax found as a consequence of that allowance, to have been paid in excess of the amount of tax properly payable in respect of that amount of income or profits to the extent that that excess has not been credited in payment of any tax due by that person and unpaid in respect of any other income or profits derived by that person.

Article 19
Sources of income

(1) For the purposes of this Agreement—

(a) dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax to a New Zealand resident shall be treated as income from sources in Malaysia:

(b) dividends paid by a company which is resident in New Zealand for the purposes of New Zealand tax to a Malaysian resident shall be treated as income from sources in New Zealand;

(c) remuneration in respect of employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State shall be treated as having a source in that Contracting State;

(d) income or profits derived by a resident of a Contracting State from the operation of ships or aircraft, being income or profits from operations confined solely to places in the other Contracting State, shall be treated as having a source in that other Contracting State;

(e) interest shall be treated as having a source in a Contracting State where the person paying the interest is the Government of that Contracting State or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment and the interest is borne by such permanent establishment, then such interest shall be treated as having a source in the Contracting State in which the permanent establishment is situated;

(f) royalties (as defined in paragraph (3) of Article 10) shall be treated as having a source in a Contracting State where the person paying such royalties is the Government of that Contracting State or a resident of that Contracting State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment and such royalties are borne by such permanent establishment, then such royalties shall be treated as having a source in the Contracting State in which the permanent establishment is situated;

(g) natural resource royalties and income or profits referred to in subparagraph (k)(ii), subparagraph (k)(iii) or subparagraph (k)(iv) of paragraph (1) of Article 2 shall be treated as derived from sources in a Contracting State if the land, mine, quarry, natural resource, standing timber or rent-producing property is situated in that Contracting State.

(2) Notwithstanding anything contained in Article 17 where income or profits of any of the kinds referred to in paragraph (1) of this Article is derived by a resident of a Contracting State and is not, under the provisions of that paragraph, treated as having a source in the other Contracting State, such income or profits shall be exempt from tax in that other Contracting State.

Article 20
Elimination of double taxation

(1) Subject to any provisions of the laws of Malaysia which may from time to time be in force and which relate to the allowance of a credit against Malaysian tax of tax paid in a country outside Malaysia (which shall not affect the general principles hereof), New Zealand tax paid under the law of New Zealand and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a Malaysian resident from sources in New Zealand (excluding in the case of a dividend, tax paid in respect of profits out of which the dividend is paid) shall be allowed as a credit against Malaysian tax payable in respect of that income. However, where such income is a dividend paid by a company which is a New Zealand resident to a company which is a Malaysian resident and which owns at least 10 per centum of the paid-up share capital in the first-mentioned company the credit shall take into account (in addition to any New Zealand tax on the dividends) the New Zealand tax paid by the first-mentioned company in respect of its profits.

(2) Subject to any provisions of the laws of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principles hereof), Malaysian tax paid under the law of Malaysia and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Malaysia (excluding in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income. However, where a company which is a New Zealand resident beneficially owns at least 10 per centum of the paid-up share capital in a company which is a Malaysian resident, any dividend derived by the first-mentioned company from the second-mentioned company (being dividends which, in accordance with the taxation law of New Zealand in existence at the date of signature of this Agreement, would be exempt from New Zealand tax) shall be exempt from New Zealand tax and shall not be taken into

account for the purpose of determining the rate of New Zealand tax payable in respect of any other income derived by that first-mentioned company.

(3) For the purposes of paragraph (2) of this Article the term "Malaysian tax paid" shall be deemed to include Malaysian tax which would, under the law of Malaysia and in accordance with this Agreement, have been payable on—

(a) any income derived from sources in Malaysia had the income not been exempted from Malaysian tax in accordance with—

(i) sections 21, 22 and 26 of the Investment Incentives Act 1968 of Malaysia so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provision which may subsequently be made granting an exemption which is agreed in an Exchange of Letters between the Contracting States, to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character;

(b) interest to which paragraph (2) of Article 9 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph;

(c) approved industrial royalties to which paragraph (2) of Article 10 applies had those royalties not been exempted from Malaysian tax in accordance with that paragraph.

Article 21
Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States 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 States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 22
Exchange of information

(1) The competent authorities shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes to which this Agreement applies by virtue of Article 1.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or reviewing authority) concerned with the assessment or collection of the taxes to which this Agreement applies by virtue of Article 1, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process, or which would be contrary to public policy.

Article 23
Territorial extension

(1) This Agreement may be extended, either in its entirety or with modifications, to any Territory for whose international relations either Contracting State is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Agreement and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in Letters to be exchanged for this purpose.

(2) The termination by Malaysia or New Zealand of this Agreement under Article 25 shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Agreement to any Territory to which it has been extended under this Article.

Article 24
Entry into force

(1) This Agreement shall enter into force on the date when the last of all such things shall have been done in Malaysia and New Zealand respectively as are necessary to give the Agreement the force of law in Malaysia and New Zealand respectively, and shall thereupon have effect—

(a) in Malaysia—

in relation to Malaysian tax for the year of assessment beginning on 1 January 1975 and subsequent years of assessment;

(b) in New Zealand—

in relation to New Zealand tax in respect of income derived during the income year beginning on 1 April 1974 and subsequent income years.

(2) The Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

Article 25
Termination

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before 30 June in any calendar year after the year 1977 give to the other Contracting State notice of termination and, in that event, this Agreement shall cease to be effective—

(a) in Malaysia—

for any year of assessment beginning on or after 1 January in the second calendar year immediately following that in which the notice is given;

(b) in New Zealand—

in respect of income derived during any income year beginning on or after 1 April in the calendar year immediately following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done at KUALA LUMPUR in duplicate this 19th day of March one thousand nine hundred and seventy-six in the English language.

For the Government of New Zealand

Brian Talboys

For the Government of Malaysia

Y M Tengku Tan Sri Razaleigh Hamzah

Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The Government of New Zealand and the Government of Malaysia have agreed that the following provisions shall form an integral part of the Agreement:

1. In connection with Article 2:

   The exclusion from the definition of "industrial or commercial profits" of income or profits referred to in subparagraphs (k)(ii) and (k)(iii) of paragraph (1) shall not be interpreted as preventing Malaysia from taking such income or profits into account for the purpose of calculating any deductions for capital expenditure on mines, plantation allowances and charges, or forestry allowances and charges, in accordance with the law of Malaysia relating to the taxes to which this Agreement applies by virtue of Article 1.

2. In connection with Article 4:

   The term "contract" as used in subparagraph (b) of paragraph (4) shall be construed as not including a contract for the use of or the right to use any industrial, commercial or scientific equipment as referred to in subparagraph (a)(ii) of paragraph (3) of Article 10.

3. In connection with Article 20:

   On or before 30 June in any calendar year after the year 1977 the Government of New Zealand may give to the Government of Malaysia written notice to the effect that the provisions of paragraph (3) of Article 20 shall cease to have force or effect and, in that event, the provisions of those paragraphs shall cease to have any force or effect in New Zealand in respect of income derived during any income year beginning on or after 1 April in the calendar year immediately following that in which the notice is given. However the Government of New Zealand agrees to consult with the Government of Malaysia before giving any such notice.

This protocol shall enter into force on the same date as the Agreement.

Done at KUALA LUMPUR in duplicate this 19th day of March one thousand nine hundred and seventy-six in the English language.

For the Government of New Zealand

Brian Talboys

For the Government of Malaysia
Y M Tengku Tan Sri Razaleigh Hamzah

Schedule 2

Second Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Schedule 2: added, on 3 November 1994, by clause 2(2)(b) of the Double Taxation Relief (Malaysia) Order 1976, Amendment No 1 (SR 1994/217).

The Government of New Zealand and the Government of Malaysia;

Having regard to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Kuala Lumpur on 19 March 1976 (hereinafter referred to as "the Agreement"),

Have agreed that the following provisions shall form an integral part of the Agreement:

Article 1

Subject to Article 21 of the Agreement, a New Zealand resident deriving interest from Malaysia, being income referred to in paragraph (3) of Article 20 of the Agreement, shall not be entitled to the benefit of that paragraph where the competent authority of New Zealand considers, after consultation with the competent authority of Malaysia, that the benefit is inappropriate, having regard to:

(a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph (3) of Article 20 for the benefit of that person or any other person;

(b) whether any benefit accrues or may accrue to any person who is neither a New Zealand resident nor a Malaysian resident;

(c) the prevention of fraud or the avoidance of the taxes to which the Agreement applies;

(d) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.

Article 2

Article 1 of this Second Protocol shall apply to interest derived on or after 1 July 1993.

Article 3

(1) The Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Second Protocol have been complied with.

(2) This Second Protocol shall enter into force on the date of the later of the notifications referred to in paragraph (1) of this Article.

DONE at Kuala Lumpur in duplicate this 14th day of July 1994 in the English language.

Malcolm John McGoun

For the Government of New Zealand

Datuk Clifford Herbert

For the Government of Malaysia

Schedule 3
Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

cl 3

Schedule 3: inserted, on 1 November 2013, by clause 7 of the Double Taxation Relief (Malaysia) Amendment Order 2013 (SR 2013/426).

The Government of New Zealand and the Government of Malaysia

Having regard to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Kuala Lumpur on 19 March 1976, as amended by the Second Protocol to that Agreement done at Kuala Lumpur on 14 July 1994 (hereinafter referred to as "the Agreement"),

Have agreed that the following provisions shall form an integral part of the Agreement:

Article 1

Article 22 of the Agreement shall be deleted and substituted by the following:

Article 22
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 Agreement 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 Agreement. 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.

(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

(1) The Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Third Protocol have been complied with.

(2) The Third Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article, and its provisions shall have effect for requests made on or after the date of the entry into force of this Protocol with regard to tax years beginning on or after 1 January following entry into force.

DONE at Wellington in duplicate this 6 day of November 2012 in the English language.

Peter Dunne	Rosmidah Zahid
For the Government of New Zealand:	For the Government of Malaysia:

P G Millen,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 10 June 1976.

Reprints notes

1 General

This is a reprint of the Double Taxation Relief (Malaysia) Order 1976 that incorporates all the amendments to that Order as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Double Taxation Relief (Malaysia) Amendment Order 2013 (SR 2013/426)

Double Taxation Relief (Malaysia) Order 1976, Amendment No 1 (SR 1994/217)

Wellington, New Zealand:

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