Reprint
as at 3 April 1981

Double Taxation Relief (Canada) Order 1981

(SR 1981/86)

David Beattie, Governor-General

Order in Council

At the Government House at Wellington this 30th day of March 1981

Present:
His Excellency the Governor-General in Council

Pursuant to section 294 of the Income Tax Act 1976, 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 section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Inland Revenue Department.

Schedule 3
Convention between the Government of New Zealand and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Order

1 Title

This order may be cited as the Double Taxation Relief (Canada) Order 1981.

2 Giving effect to Convention

It is hereby declared that the arrangements specified in the Convention set out in the Schedule, being arrangements that have been made with the Government of Canada with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Income Tax Act 1976 and the income taxes imposed by the Government of Canada, 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 Convention.

3 Revocation

The Double Taxation Relief (Canada) Order 1948 is hereby revoked.

Schedule

Convention between the Government of New Zealand and the Government of Canada 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 Canada,

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

Have agreed as follows

Article 1
Personal scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2
Taxes covered

1. The existing taxes to which this Convention shall apply are:

   (a) in the case of Canada:

   the income taxes imposed by the Government of Canada,

   (b) in the case of New Zealand:

   the income tax and the excess retention tax.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes by either Contracting State or which are imposed by any territory to which this Convention is extended under Article 25. The Contracting States shall notify each other of changes which have been made in their respective taxation laws.

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

Article 3
General definitions

1. In this Convention unless the context otherwise requires:

   (a) (i) the term “Canada” used in a geographical sense means the territory of Canada, including any area outside the territorial waters of Canada which under the laws of Canada is an area within which the rights of Canada with respect to the seabed and subsoil and their natural resources may be exercised;

(ii) the term "New Zealand", when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or Tokelau; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation and in accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the seabed and subsoil;

(b) The terms "Contracting State", "a Contracting State" and "the other Contracting State" mean Canada or New Zealand as the context requires;

(c) The term "person" includes an individual, a company, an estate, a trust or any other body of persons;

(d) The term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes; in French the term "societe" also means a "corporation" within the meaning of Canadian law;

(e) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(f) The term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his authorised representative;

(ii) in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative, and

(iii) in the case of a territory to which this Convention is extended under Article 25, the competent authority for the administration in such territory of the taxes which are the subject of the Convention;

(g) The term "Canadian tax" means tax imposed by Canada being tax to which this Convention applies by virtue of Article 2; the term "New Zealand tax" means tax imposed by New Zealand being tax to which this Convention applies by virtue of Article 2;

(h) The term "tax" means Canadian tax or New Zealand tax as the context requires;

(i) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State except to the extent that

the ship or aircraft is used principally for any transport exclusively between places in the other Contracting State;

(j) The term "industrial or commercial profits" means income derived by an enterprise from the carrying on of a business, but does not include dividends, interest, royalties (as defined in Article 12), income referred to in Article 6, income referred to in Article 13, rents, profits from operating ships, boats or aircraft, or remuneration from personal (including professional) services;

(k) The term "national" means—

(i) in relation to New Zealand, any individual who is a New Zealand citizen;

(ii) in relation to Canada, any individual who is a Canadian citizen.

(l) Words in the singular include the plural and words in the plural include the singular.

2. In determining, for the purposes of Articles 10, 11 or 12, 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. In this Convention, the terms "Canadian 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 Convention applies by virtue of Article 2.

4. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4
Resident

1. For the purposes of this Convention, the terms "resident of Canada" and "resident of New Zealand" mean respectively any person who is resident in Canada for the purposes of Canadian tax and any person who is resident in New Zealand for the purposes of New Zealand tax.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall for the purposes of this Convention, be determined as follows:

(a) he shall be deemed to be solely a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be solely a resident of the

State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State 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 State, he shall be deemed to be solely a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be solely a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors.

Article 5
Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. A permanent establishment shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(g) a building site or construction, installation or assembly project which exists for more than six months.

3. The term "permanent establishment" shall be deemed not 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 stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising, the supply of information or scientific research.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

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

(b) substantial equipment or machinery is for more than six months in that other 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 an independent status to whom paragraph 6 applies—shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if—

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

(b) he maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or

(c) in so acting—

(i) he manufactures, assembles, processes, packs or distributes in that first-mentioned State any goods or merchandise; or

(ii) he performs, in that first-mentioned State, any mining or quarrying operations or any operations carried on in association with mining or quarrying operations, or performs, in that first-mentioned State, any operations for the extraction, removal or other exploitation of standing timber or of any natural resource.

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 State through a broker, general commission agent or any other agent of an independent status where any such 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 either company a permanent establishment of the other.

Article 6
Income from real property

1. Income derived by a resident of a Contracting State from real property (including income from agricultural, pastoral or other farming activities and from forestry) situated in the other Contracting State may be taxed in that other State.

2. (a) Subject to subparagraphs (b) and (c) of this paragraph, the term "real property" as used in this Article—

   (i) in the case of property situated in Canada, means any property which under the laws of Canada is regarded as real property;

   (ii) in the case of property situated in New Zealand, includes every estate or interest in real property or in land and every structure or building erected on, and every improvement to, that land;

   (b) the term "real property" as so used shall in any case include—

   (i) property accessory to real property;

   (ii) livestock and equipment used in agricultural, pastoral or other farming activities, or in forestry;

   (iii) rights to which the provisions of the general law respecting real property apply;

   (iv) usufruct of real property and any other right of taking any profit or produce from real property; and

   (v) rights to payments of any kind to the extent to which such payments are consideration for the operation of, or the right to operate, any mine, oil well, gas well, or quarry, or for the extraction, removal, or other exploitation of, or the right to extract, remove, or otherwise exploit, standing timber or any natural resource;

   (c) the term "real property" as so used shall not include ships, boats or aircraft.

3. The provisions of paragraph 1 shall apply to income derived from the direct use of real property or from the letting or subletting of real property or from the bailment of livestock, or from the use in any other form of, or the grant of any right whatsoever in respect of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

Article 7
Business profits

1. Industrial or commercial profits of an enterprise of a Contracting State shall be subject to tax only in that 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, the profits of the enterprise may be taxed in the other State but only so much of them as is 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 State and may 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 State in which the permanent establishment is situated or elsewhere.

4. If the information available to the competent authority of the 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 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 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. Provided that if the law in force in either Contracting State at the date of signature of this Convention relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the

Contracting States shall consult with each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

Article 8
Shipping and air transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. To the extent that they are not covered by paragraph 1 profits from any transport by ships or aircraft exclusively between places in a Contracting State may be taxed in that State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by an enterprise of a Contracting State from its participation in a pool, a joint business or in an international operating agency.

Article 9
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 an enterprise of the other Contracting State,

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. If the information available to the competent authority of a Contracting State is inadequate to determine, for the purposes of paragraph 1, 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 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 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.
3. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so in-

cluded are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, subject to the provisions of paragraph 4, make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

4. The provisions of paragraph 3 relating to an appropriate adjustment are not applicable after the expiration of six (6) years after the end of the income year or the taxation year in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the amount of tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The limitation on the amount of tax for which paragraph 2 provides shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. Such dividends may be taxed separately or together with industrial or commercial profits according to the laws of the State in which the permanent establishment or the fixed base is situated.

4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

5. A company which is a resident of New Zealand and which has a permanent establishment in Canada shall, in accordance with the provisions of Canadian law, remain subject to the additional tax on companies other than Canadian corporations, but the rate of such tax shall not exceed 15 percent.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the amount of tax so charged shall not exceed 15 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

   Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The limitation on the amount of tax for which paragraph 2 provides shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. Such interest may be taxed separately or together with industrial or commercial profits according to the laws of the State in which the permanent establishment or the fixed base is situated.

4. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that 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 or a fixed base in connection with which the indebtedness in respect of which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness in respect of which it is paid, exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation provided for under paragraph 2 shall apply only to the last-mentioned amount. In such

case, the excess part of the payments shall remain taxable according to the laws of each Contracting State.

Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the amount of tax so charged shall not exceed 15 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind to the extent to which they are paid as consideration for—

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

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

      (ii) industrial, commercial or scientific equipment;

      (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;

   (b) The supply of scientific, technical, industrial or commercial knowledge, information or assistance (including management services),—

   but does not include payments within the meaning of subparagraph (b)(v) of paragraph 2 of Article 6.

4. The limitation on the amount of tax for which paragraph 2 provides shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the knowledge, information, assistance, right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. Such royalties may be taxed separately or together with industrial or commercial profits according to the laws of the State in which the permanent establishment or the fixed base is situated.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment

or a fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation provided for under paragraph 2 shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State.

Article 13
Alienation of property

1. Income or gains from—

   (a) the sale or other disposition of—

      (i) real property, as defined in paragraph 2 of Article 6, situated in a Contracting State; or

      (ii) any share or comparable interest in a company or association (including a partnership) whose assets consist wholly or principally of real property so situated; or

   (b) the sale or other disposition of—

      (i) any right relating to the operation of any mine, oil well, gas well, or quarry so situated or to the extraction, removal, or other exploitation of standing timber or of any natural resource so situated; or

      (ii) any share or comparable interest in a company or association (including a partnership) whose assets consist wholly or principally of any such rights,—

   may be taxed in that State and according to the law of that State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

Article 14
Personal services

1. Subject to Articles 15, 17 and 18, remuneration or income derived by a resident of a Contracting State in respect of personal (including professional) services shall be taxable only in that State unless the services are performed in the other Contracting State. If the services are so performed such remuneration or income as is derived therefrom in respect thereof may be taxed in that other State.

2. Notwithstanding paragraph 1 remuneration or income derived by a resident of a Contracting State in respect of personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State, if:

   (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the income year or the taxation year of that other State, and

   (b) the remuneration or income is paid by or on behalf of a person who is not a resident of that other State, and

   (c) the remuneration or income is not borne by a permanent establishment or a fixed base which that person has in that other State.

3. Notwithstanding the preceding provisions of this Article, remuneration or income in respect of services performed aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the operator is a resident.

Article 15
Directors' fees

Directors' fees and other 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 may be taxed in that other State.

Article 16
Entertainers and athletes

1. Notwithstanding anything contained in this Convention, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where the services mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, then the profits derived from providing those services by such an enterprise may, notwithstanding any-

thing contained in this Convention, be taxed in the first-mentioned State unless the enterprise is substantially supported from the public funds of the other State, including any political subdivision, local authority or statutory body thereof, in connection with the provision of such activities or unless the enterprise is a non-profit organisation no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.

Article 17
Pensions

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State shall, subject to the provisions of paragraph 2, be taxable only in that other State.

2. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the laws of that State in any taxation year or income year where they exceed the sum of 10,000 Canadian dollars in that year; provided that the tax so charged shall not exceed—

   (a) In the case of pensions, the lesser of

      (i) 15 percent of the gross amount of the payment, and

      (ii) the rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the payment received by him in the year, if he were resident in the Contracting State in which the payment arises.

   (b) In the case of annuities other than payments of any kind under an income-averaging annuity contract, 15 percent of the amount of the payment or payments that are subject to tax in that State.

3. The competent authorities of the Contracting States may, if necessary, agree to modify the sum mentioned in paragraph 2 as a result of monetary or economic developments.

4. In this Article the term “annuities” means stated sums payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

Article 18
Government service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision thereof to an individual in respect of services rendered to that State or subdivision shall be taxable only in that State.

   (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

      (i) is a national of that State; or

      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 14 and 15 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision thereof.

Article 19
Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State 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 State, provided that such payments arise from sources outside that State.

Article 20
Other income

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in that other State and, subject to paragraph 3, according to the law of that State.

3. Where the income is income derived from an estate or trust resident in Canada by a resident of New Zealand, the Canadian tax on that income shall not exceed 15 percent of the gross amount of the income if it is subject to tax in New Zealand.

4. 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 21
Elimination of double taxation

1. In the case of Canada, double taxation shall be avoided as follows:

   (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions—which shall not affect the general principle hereof—and unless a greater deduction or relief is provided under the laws of Canada, tax payable in New Zealand on profits, income or gains arising from sources in New Zealand shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

   (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions—which shall not affect the general principle hereof—for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in New Zealand.

2. Subject to any provisions of the law 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 principle hereof), Canadian tax paid under the law of Canada and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Canada (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.

3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State consistently with this Convention shall be deemed to arise from sources in that other State.

Article 22
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 Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satis-

factory 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 the Convention.

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 the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

   (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

   (b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

4. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

Article 23
Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. 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 reviewing authorities) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

   (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

   (b) to supply particulars which are 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).

Article 24
Diplomatic and consular officials

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

2. Notwithstanding Article 4, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.

3. This Convention shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

Article 25
Territorial extension

1. This Convention 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 to which this Convention applies. 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 Notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of this Convention by one of them under Article 27 shall also terminate, in the manner provided for in that Article, the application of this Convention to any territory to which it has been extended under this Article.

Article 26
Entry into force

1. Each of the Contracting States shall notify to the other the completion of the procedure required by its laws for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect—

   (a) in New Zealand—

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 April 1976;

(ii) in respect of other New Zealand tax, for any income year commencing on or after 1 April 1976;

(b) in Canada—

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January 1976;

(ii) in respect of other Canadian tax, for taxation years commencing on or after 1 January 1976.

2. Subject to paragraph 3, the Agreement between the Government of New Zealand and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Ottawa on March 12, 1948 (in this Article referred to as "the 1948 Agreement") shall cease to have effect in relation to any tax in respect of which this Convention comes into effect in accordance with paragraph 1.

3. Where any provision of the 1948 Agreement would have afforded any greater relief from tax in one of the Contracting States than is afforded by this Convention, any such provision shall continue to have effect in that Contracting State—

(a) in the case of New Zealand in respect of withholding tax on income that is derived by a non-resident, in respect of income derived during any financial year commencing before the date of signature of this Convention and, in respect of other New Zealand tax, for any income year commencing before that date;

(b) in the case of Canada in respect of tax withheld at the source on amounts paid or credited to non-residents before 31 December in the calendar year during which this Convention was signed and, in respect of other Canadian tax for any taxation year commencing on or before that date.

4. The 1948 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

Article 27
Termination

This Convention shall continue in effect indefinitely, but either Contracting State may, on or before 30 June in any calendar year after the year 1983, give to the other Contracting State written notice of termination and, in that event, this Convention shall cease to be effective—

(a) in Canada—

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year immediately following that in which the notice is given; and

(ii) in respect of other Canadian tax for taxation years commencing on or after the first day of January in the calendar year immediately following that in which the notice is given;

(b) in New Zealand—

in respect of income derived during any income year commencing on or after 1st 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 Convention.

DONE at Wellington in duplicate this 13th day of May one thousand nine hundred and eighty in the English and French languages, each version being equally authentic.

For the Government of New Zealand

Hugh Templeton

For the Government of Canada

Edward C Lumley

Protocol

1. For the purposes of Article 6 and Article 13—

(a) 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; and

(b) a right as so defined shall be treated as being situated in the Contracting State in which the real property, mine, oil well, gas well, quarry, standing timber or natural resource to which it relates is situated.

2. Should New Zealand at any time after the date of signature include a non-discrimination Article in any of its double tax conventions then discussions will be held between the Contracting States to decide whether a non-discrimination Article should be included in the present Convention.

3. With respect to Article 17, it is understood that pensions paid by, or out of funds created by, the Government of New Zealand, or a political subdivision

thereof to any individual in respect of services rendered to the Government of New Zealand or subdivision thereof, shall be taxable only in New Zealand.

DONE at Wellington in duplicate this 13th day of May one thousand nine hundred and eighty in the English and French languages, each version being equally authentic.

For the Government of New Zealand
Hugh Templeton

For the Government of Canada
Edward C Lumley

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*: 2 April 1981.

Contents

Notes

1 General

This is a reprint of the Double Taxation Relief (Canada) Order 1981. The reprint incorporates all the amendments to the order as at 3 April 1981, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
    - indentation
    - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
    - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
    - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2011