

**Reprint
as at 24 December 2009**



**Double Taxation Relief (United
States of America) Order 1983**
(SR 1983/196)

David Beattie, Governor-General

Order in Council

At the Government House at Wellington this 26th day of September
1983

Present:

His Excellency the Governor-General presiding 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

		Page
1	Title	2
2	Giving effect to Convention	2

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 1	3
Convention between New Zealand and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	
Schedule 2	36
Protocol amending the Convention between New Zealand and the United States of America 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 (United States of America) Order 1983.

2 Giving effect to Convention

- (1) It is hereby declared that the arrangements specified in the Convention set out in Schedule 1, being arrangements that have been made with the Government of the United States of America with a view to affording relief from double taxation in relation to income tax imposed under the Income Tax Act 1976 and the taxes on income imposed by the laws of the United States of America, shall, in relation to income tax imposed under that Act, have effect from 1 April 1984, unless otherwise specified in the Convention.
- (2) The Protocol set out in Schedule 2, which amends the Convention, comes into force on the date referred to in Article XVI of that Protocol.
- (3) The Convention has effect in accordance with section BH 1(4) of the Income Tax Act 2007.

Clause 2(1): amended, on 24 December 2009, by clause 4(1)(a) of the Double Taxation Relief (United States of America) Amendment Order 2009 (SR 2009/365).

Clause 2(1): amended, on 24 December 2009, by clause 4(1)(b) of the Double Taxation Relief (United States of America) Amendment Order 2009 (SR 2009/365).

Clause 2(2): added, on 24 December 2009, by clause 4(2) of the Double Taxation Relief (United States of America) Amendment Order 2009 (SR 2009/365).

Clause 2(3): added, on 24 December 2009, by clause 4(2) of the Double Taxation Relief (United States of America) Amendment Order 2009 (SR 2009/365).

Schedule 1
**Convention between New Zealand and
the United States of America for the
avoidance of double taxation and the
prevention of fiscal evasion with respect
to taxes on income**

New Zealand and The United States of America,
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
General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance which may be accorded:
 - (a) by the law of either Contracting State; or
 - (b) by any other agreement between the Contracting States.
3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and the United States may tax its citizens and United States companies, as if the Convention had not come into effect. For this purpose, the term “citizen” shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.
4. The provisions of paragraph 3 shall not effect:

Article 1—*continued*

- (a) the benefits conferred in a Contracting State under the Convention in accordance with paragraph 2 of Article 9 (Associated Enterprises), paragraph 1(b) of Article 18 (Pensions and Annuities), and Articles 22 (Relief from Double Taxation), 23 (Non-Discrimination), and 24 (Mutual Agreement Procedure); and
- (b) the benefits conferred in a Contracting State under the Convention in accordance with Articles 19 (Government Service), 20 (Students), and 26 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:
 - (a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the excise taxes imposed with respect to private foundations (hereinafter referred to as United States tax);
 - (b) in New Zealand: the income tax (but excluding the excess retention tax and the bonus issue tax) (hereinafter referred to as New Zealand tax).
2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

Article 3—*continued*

- (a) the term “person” includes an individual, an estate, a trust, a company, and any other body of persons;
- (b) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (c) the term “United States company” means a company which is created or organized under the laws of the United States or any State thereof or the District of Columbia;
- (d) 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;
- (e) the term “international traffic” means any transport by a ship or aircraft of an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
- (f) the term “competent authority” means:
 - (i) in the United States: the Secretary of the Treasury or his delegate; and
 - (ii) in New Zealand: the Commissioner of Inland Revenue or his delegate;
- (g) the term “United States” means the United States of America. When used in a geographical sense, it means the States thereof, the District of Columbia, the territorial waters of the United States, and any area beyond the territorial waters which, in accordance with international law and the laws of the United States is, or may hereafter be, an area within which the rights of the United States with respect to natural resources may be exercised;
- (h) the term “New Zealand” means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accord-

Article 3—*continued*

ance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;

- (i) the terms “a Contracting State” and “the other Contracting State” mean the United States of America or New Zealand as the context requires;
 - (j) the term “tax” means United States tax or New Zealand tax as the context requires.
2. In the Convention, the terms “New Zealand tax” and “United States 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 the Convention applies.
 3. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 24 (Mutual Agreement Procedure), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4
Residence

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is subject to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:
 - (a) this term does not include any person who is subject to tax in that State in respect only of income from sources in that State, nor does it include a person who is subject to tax in that State by reason of citizenship but who is not resident in that State; and
 - (b) in the case of income derived or paid by a partnership, an estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or

Article 4—*continued*

trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

The term “resident of a Contracting State” also includes a company or trust that would be subject to tax as a resident of a Contracting State but for a determination by the competent authority of that State that such company or trust is exempt from tax in that State because it is organized and operated exclusively for charitable or other purposes exempt under the law of that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be 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 a resident of the State with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be 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 a resident of the State of which he is a citizen;
 - (d) if he is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement and determine the mode of application of the Convention to such person.

Article 4—*continued*

4. Where by reason of the provisions of paragraph 1 a company is a resident of both the Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement and determine whether the company is a resident solely of one Contracting State or a resident solely of the other Contracting State for any income year or taxable year as the case may be, but if the competent authorities are unable to make such determination the company shall be treated as a resident of neither Contracting State for the purposes of the Convention.

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. The term “permanent establishment” includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that State for more than twelve months in connection with a building site, or construction or installation project which is being undertaken in that State.

Article 5—*continued*

5. (a) Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on activities in that State in connection with the exploration or exploitation of natural resources situated in that State;
- (b) The provisions of subparagraph (a) shall not apply if such activities are carried on for a period not exceeding six months in the aggregate in any consecutive twelve month period. However for the purposes of this subparagraph activities carried on in that State by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if those activities are connected with activities carried on in that State by the last-mentioned enterprise. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.
6. Notwithstanding the preceding provisions of this Article an enterprise of a Contracting State shall not be regarded as having a permanent establishment solely as a result of one or more of the following:
 - (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 of collecting information, for the enterprise;

Article 5—*continued*

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
7. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 8 applies—is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
 8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
 9. 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 agriculture or forestry) situated in the other Contracting State may be taxed in that other state.
2. The term “real property” shall have the meaning which it has under the law of the Contracting State in which the property in

Article 6—*continued*

question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, subletting or use in any other form 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. The business profits of an enterprise of a Contracting State shall be taxable 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 business 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. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment and with any other associated enterprise.

Article 7—*continued*

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses, research and development expenses and interest, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. The business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.
7. Nothing in this Article shall prevent either Contracting State from taxing according to its law the income or profits from the business of any form of insurance.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Profits of an enterprise of a Contracting State referred to in paragraph 1 from the rental of ships or aircraft or from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that State to the extent that those ships, aircraft or containers are used in international traffic and such profits are incidental to the profits of that enterprise described in paragraph 1.

Article 8—*continued*

3. The provisions of paragraphs 1 and 2 shall also apply to profits from participation in a pool, a joint business, or 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, but for those conditions would 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. Where a Contracting State includes in the profits of an enterprise of that State, and takes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included 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 make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.
3. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax

Article 9—*continued*

liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that, on the basis of available information, the determination of that tax liability is consistent with the principles stated in this Article.

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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall endeavour to 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 provisions of paragraph 2 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 dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
4. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as:
 - (a) the dividends are paid to a resident of that State, or

Article 10—*continued*

- (b) the dividends are attributable to a permanent establishment or a fixed base of the beneficial owner of the dividends situated in that State, or
- (c) the dividends are paid out of profits attributable to one or more permanent establishments of such company in that State, provided that the gross income of the company attributable to such permanent establishment constituted at least 50 percent of the company's gross income from all sources, or
- (d) the dividends are paid by a United States company which is resident in New Zealand for the purposes of New Zealand tax.

Where subparagraph (c) or (d) applies and subparagraphs (a) and (b) do not apply and the beneficial owner of the dividends is a resident of the other Contracting State, tax may be imposed by the first-mentioned State according to its law but the rate of tax shall not exceed 15 percent.

Article 11

Interest

1. Interest derived and beneficially owned by a resident of a Contracting State may be taxed in that 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall endeavour to settle the mode of application of this limitation.
3. Notwithstanding paragraph 2, interest shall be exempt from tax by the Contracting State where it arises if the interest is:
 - (a) derived and beneficially owned by the other Contracting State or an instrumentality of that Contracting State which is not subject to tax on its income by that State; or

Article 11—*continued*

- (b) derived and beneficially owned by a resident of the other Contracting State with respect to debt obligations guaranteed or insured by that State or an instrumentality of that State which is not subject to tax on its income by that State.
4. The provisions of paragraph 2 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 interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or resident of that State, or is a United States company which is resident in New Zealand for the purposes of New Zealand tax but is treated as a resident of neither Contracting State by reason of paragraph 4 of Article 4 (Residence). 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 on 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.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable

Article 11—*continued*

according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

7. Where a resident of a Contracting State pays interest to a person other than a resident of the other Contracting State, that other State may not impose any tax on such interest except insofar as it arises in that other State or insofar as the interest paid is attributable to a permanent establishment or a fixed base of the beneficial owner of the interest situated in that other State.

Article 12

Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State may be taxed in that 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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall endeavour to settle the mode of application of this limitation.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The term “royalties” also includes:
 - (a) payments of any kind received as consideration for the use of, or the right to use, industrial, commercial, or scientific equipment other than payments under a hire-purchase agreement; and
 - (b) income or gains from the alienation of any property or rights described in this paragraph to the extent that such

Article 12—*continued*

income or gains are contingent on productivity, use or disposition of such property or rights.

4. The provisions of paragraph 2 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 royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5.
 - (a) 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, or is a United States company which is resident in New Zealand for the purposes of New Zealand tax but is treated as a resident of neither Contracting State by reason of paragraph 4 of Article 4 (Residence). 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 such 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;
 - (b) Where subparagraph (a) does not operate to deem royalties as arising in either Contracting State and the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, the royalties shall be deemed to arise in that State.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the

Article 12—*continued*

amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article 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, due regard being had to the other provisions of the Convention.

Article 13

Alienation of Property

1. Income or gains derived by a resident of a Contracting State from the alienation or disposition of real property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Article:
 - (a) the term “real property situated in the other Contracting State”, where the United States is that other Contracting State, includes a United States real property interest, and real property referred to in Article 6 which is situated in the United States; and
 - (b) the term “real property”, in the case of New Zealand, includes:
 - (i) real property referred to in Article 6;
 - (ii) shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in New Zealand; and
 - (iii) an interest in a partnership, trust, or estate of a deceased individual, the assets of which consist wholly or principally of real property situated in New Zealand.
3. Income or gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated or used in international traffic shall, except to the extent to which that enterprise has been allowed depreciation in the other Contracting State in respect of those ships, aircraft or containers, be taxable only in the first-mentioned State.

Article 13—*continued*

4. Income or gains described in paragraph 3(b) of Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.
5. For the purposes of this Article, real property consisting of shares in a company referred to in paragraph 2(b)(ii), and interests in a partnership, trust or estate referred to in paragraph 2(b)(iii), shall be deemed to be situated in New Zealand.
6. Income or gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State, or which are attributable to a fixed base available or previously available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.
7. Income or gains from the alienation of any property other than property referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State, unless such services are performed in the other Contracting State and:

- (a) the individual is present in that other State for a period or periods aggregating more than 183 days in any consecutive twelve month period; or
- (b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, in which case so much of the income as is attributable to that fixed base may be taxed in such other State.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 18 (Pensions and Annuities) and 19 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive twelve month period; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic may be taxed only in that State.

Article 16

Limitation on Benefits

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless:
 - (a) more than 75 percent of the beneficial interest in such person (or in the case of a company, more than 75 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

Article 16—*continued*

- (i) individuals who are residents of the United States;
 - (ii) citizens of the United States;
 - (iii) individuals who are residents of New Zealand;
 - (iv) companies as described in subparagraph (b); and
 - (v) the Contracting States; or
- (b) it is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or
- (c) the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Convention.
2. For the purposes of paragraph 1(b), the term “a recognized stock exchange” means:
- (a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and
 - (b) the New Zealand Stock Exchange; and
 - (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.
3. Where
- (a) income derived by a trustee is to be treated for the purposes of the Convention as income of a resident of a Contracting State; and
 - (b) the trustee derived the income in connection with a scheme a principal purpose of which was to obtain a benefit under the Convention;
- then, notwithstanding any other provision of the Convention, the Convention does not apply in relation to that income.
4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of this Article the competent authorities of the Contracting States shall consult each other.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), 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, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars (\$10,000) or its equivalent in New Zealand dollars for the income year or taxable year concerned.
2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in any profits of that other person in any manner whatsoever including (without limitation) the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

Article 18

Pensions and Annuities

1. Subject to the provisions of Article 19 (Government Service)
 - (a) Pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and
 - (b) Pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

Article 18—*continued*

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term “annuities” as used in this paragraph means stated sums (not being alimony) paid periodically at stated times during life or during a specified or ascertainable number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered or to be rendered).

Article 19

Government Service

1.
 - (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services in the discharge of functions of a Governmental nature rendered to that State or subdivision or authority 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 citizen of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
 - (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a citizen of, that State.
3. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 17 (Artistes and Athletes) and 18 (Pensions and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with

Article 19—*continued*

a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Students

Payments received for the purpose of maintenance or education by a student 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 for the purpose of his full-time education shall not be taxed in that State, provided that such payments arise outside that State.

Article 21

Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention shall be taxable only in that State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

Article 22

Relief from Double Taxation

1. Subject to paragraph 4, and in accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), in the case of the United States double taxation shall be avoided as follows:
 - (a) the United States shall allow to a resident or citizen of the United States or a United States company as a credit against United States tax the income tax paid to New Zealand by or on behalf of such resident, citizen or company; and
 - (b) the United States shall also allow to a United States company owning at least 10 percent of the voting stock of a company (other than a United States company) which is a resident of New Zealand and from which the

Article 22—*continued*

United States company receives dividends, as a credit against United States tax, the income tax paid to New Zealand by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.

2. In the case of New Zealand, double taxation shall be avoided as follows:

In accordance with, and 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 for tax paid in a country outside New Zealand (which shall not affect the general principle hereof), United States tax paid under the law of the United States and consistently with this Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand arising in the United States (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; except that such credit shall not exceed the amount of the tax that would be paid to the United States if the resident were not a United States citizen or a United States company. However, where a company which is a resident of New Zealand beneficially owns at least 10 percent of the paid-up share capital of a United States company any dividend derived by the first-mentioned company from the United States company (being dividends which, in accordance with the taxation law of New Zealand in existence at the date of signature of the Convention would be exempt from New Zealand tax) shall be exempt from New Zealand tax.

3. For the purposes of computing United States tax, where a citizen of the United States or a United States company is a resident of New Zealand, the United States shall allow as a credit against United States tax the income tax paid to New Zealand after the credit referred to in paragraph 2. The credit so al-

Article 22—*continued*

lowed against United States tax shall not reduce that portion of the United States tax that is creditable against New Zealand tax in accordance with paragraph 2.

4. For the purpose of allowing relief from double taxation pursuant to this Article, income shall be deemed to arise as follows:
 - (a) income derived by a resident of the United States which may be taxed in New Zealand in accordance with this Convention shall be deemed to arise in New Zealand;
 - (b) income derived by a resident of New Zealand which may be taxed in the United States in accordance with the Convention (other than income taxed by the United States solely because the beneficial owner is a citizen of the United States or a United States company) shall be deemed to arise in the United States;
 - (c) For purposes of paragraph 3, income beneficially owned by a resident of New Zealand who is a citizen of the United States or a United States company shall be deemed to arise in New Zealand to the extent necessary to give effect to the provisions of this paragraph.
5. No provision of this Convention relating to source of income shall apply in determining credits against United States tax for foreign taxes other than those referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered).

Article 23

Non-Discrimination

1. Citizens of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, a United States citizen who is not a resident of the United States and a New Zealand citizen who is

Article 23—*continued*

- not a resident of the United States are not in the same circumstances.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as:
 - (a) obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, exemptions, rebates, reliefs and reductions which it grants to its own residents; or
 - (b) preventing a Contracting State from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State a tax not exceeding 5 percent of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the first-mentioned State; or
 - (c) requiring a Contracting State to grant to a company which is a resident of the other Contracting State the same tax relief that it provides to a company which is a resident of the first-mentioned State with respect to dividends received by it from a company.
 3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 6 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
 4. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement directly connected therewith which is more burdensome than the taxation and directly connected

Article 23—*continued*

requirements to which an enterprise of the first-mentioned State, carrying on the same activities the capital of which is owned or controlled by residents of that State, are or may be subjected.

5. This Article shall not apply to any provision of the taxation laws of a Contracting State which:
 - (a) is reasonably designed to prevent or defeat the avoidance or evasion of taxes; or
 - (b) is in force on the date of signature of this Convention, or is substantially similar in general purpose or intent to any such provision but is enacted after that date;provided that any such provision (except where that provision is in an international agreement) does not allow for different treatment of residents or citizens of the other Contracting State as compared with the treatment of residents or citizens of any third State.
6. Nothing in this Article shall be construed as preventing a Contracting State from distinguishing in its taxation laws between residents and non-residents solely on the basis of their residence.
7. If a Contracting State considers that future taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities of the Contracting States shall consult each other in an endeavour to resolve the matter.

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen. This case must be presented within 3 years from the first notification of that action.

Article 24—*continued*

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
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 25

Exchange of Information and Administrative
Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They

Article 25—*continued*

may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.
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.

Article 26

Diplomatic Agents and Consular Officers

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

Article 27

Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - (a) in the United States:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;
 - (ii) in respect of other taxes, for taxable years beginning on or after the date on which the Convention enters into force.
 - (b) in New Zealand:
 - (i) in respect of withholding tax on income that is derived by a non-resident, for any income year beginning on or after the first day of April next following the date on which the Convention enters into force;
 - (ii) in respect of other New Zealand tax, for any income year beginning on or after the first day of April next following the date on which the Convention enters into force.
3. If the Convention enters into force before 1 April 1984 then, notwithstanding the provisions of paragraph 2(b)(i), New Zealand shall for the purposes of New Zealand tax apply the provisions of Article 10 (Dividends) to dividends derived on or after 1 April 1982 and beneficially owned by a resident of the United States.
4. The Agreement between the Government of New Zealand and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on 16 March 1948 (in this Article referred to as “the 1948 Agreement”) shall cease to have effect in relation to any tax in re-

Article 27—*continued*

spect of which this Convention comes into effect in accordance with paragraph 2 or 3.

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

Article 28
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6 months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

- (a) in the United States:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 month period;
 - (ii) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 month period.
- (b) in New Zealand:
 - (i) in respect of withholding tax on income that is derived by a non-resident on or after the first day of April next following the expiration of the 6 month period;
 - (ii) in respect of other taxes, for any income year beginning on or after the first day of April next following the expiration of the 6 month period.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed the present convention.

DONE at Wellington in duplicate this 23rd day of July 1982.

Warren Cooper
For New Zealand

Charles B Salmon
For the United States of America

Protocol

to the Convention between New Zealand and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

At the signing of the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, concluded today between New Zealand and the United States of America, the undersigned have agreed that the following provisions shall form an integral part of that Convention.

1. With reference to Articles 10, 11 and 12
If in any future double taxation convention with any other country, being a member of the Organisation for Economic Co-operation and Development, New Zealand should limit its taxation at source on any dividends, interest or royalties to a rate lower than the one provided for in any of such articles, New Zealand shall without undue delay enter into negotiations with the United States to review the appropriate article with a view to providing the same treatment on a reciprocal basis.
2. With reference to Articles 7, 12 and 21
So long as New Zealand continues to tax the income of film renters according to section 224 of the Income Tax Act 1976 (including any subsequent enactment which does not affect the general principle thereof) and to exempt from tax in accordance with that section certain payments received from such film renters by persons not resident in New Zealand for the purposes of New Zealand tax, the provisions of Articles 7, 12 and 21 of the Convention shall not affect the taxation by New

Zealand of such income or the exemption by New Zealand of such payments.

DONE at Wellington in duplicate, this 23rd day of July 1982.

Warren Cooper
For New Zealand

Charles B Salmon
For the United States of America

Schedule 2

cl 2(2)

**Protocol amending the Convention
between New Zealand and the United
States of America for the avoidance of
double taxation and the prevention of
fiscal evasion with respect to taxes on
income**

Schedule 2: added, on 24 December 2009, by clause 5 of the Double Taxation Relief (United States of America) Amendment Order 2009 (SR 2009/365).

The Government of New Zealand and the Government of the United States of America, desiring to amend the Convention between the United States of America and New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Wellington on July 23, 1982 (hereinafter referred to as “the Convention”),

Have agreed as follows:

Article I

1. Paragraph 3 of Article 1 (General Scope) of the Convention shall be deleted and replaced by the following:
“3. Except to the extent provided in paragraph 4, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 (Residence)) and its citizens. Notwithstanding the other provisions of this Convention, a former citizen or former long-term resident of a Contracting State may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of that Contracting State.”
2. Article 1 (General Scope) of the Convention shall be amended by adding the following paragraphs:

Article I—*continued*

- “5. (a) Notwithstanding the provisions of paragraph 2(b) of this Article:
- (i) for purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention, shall be determined exclusively in accordance with the provisions of Article 24 (Mutual Agreement Procedure) of this Convention; and
 - (ii) the provisions of Article XVII (National Treatment) of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 23 (Non-Discrimination) of this Convention.
- (b) For the purposes of this paragraph, a ‘measure’ is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.
6. An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.”

Article II

Article 2 (Taxes Covered) of the Convention shall be deleted and replaced by the following:

Article II—*continued*“Article 2
Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property.
3. The existing taxes to which this Convention shall apply are:
 - (a) in the case of New Zealand: the income tax (hereinafter referred to as New Zealand tax);
 - (b) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security and unemployment taxes), and the Federal excise taxes imposed with respect to private foundations (hereinafter referred to as United States tax).
4. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes that have been made in their respective taxation or other laws that significantly affect their obligations under this Convention.”

Article III

1. Paragraph 1(b) of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following:

“(b) the term ‘company’ means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;”
2. Paragraph 1(d) of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following:

“(d) 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

Article III—*continued*

State, and an enterprise carried on by a resident of the other Contracting State; the terms also include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State;”

3. Paragraph 1(g) of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following:
“(g) the term ‘United States’ means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof, the sea bed and subsoil of the submarine areas adjacent to that territorial sea, and any area beyond that territorial sea, over which the United States exercise sovereign rights in accordance with international law; the term, however, does not include Puerto Rico, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam or any other United States possession or territory;”
4. Paragraph 1(h) of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following:
“(h) the term ‘New Zealand’ means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;”
5. Paragraph 1(j) of Article 3 (General Definitions) of the Convention shall be amended by deleting the final “.” and replacing it with “;”
6. Paragraph 1 of Article 3 (General Definitions) of the Convention shall be amended by adding the following subparagraphs:
“(k) the term ‘national’ of a Contracting State means:
 - (i) any individual possessing the nationality or citizenship of that State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that State;

Article III—*continued*

- (l) the term ‘pension fund’ means any person established in a Contracting State that is:
 - (i) operated principally either:
 - (A) to administer or provide pension or retirement benefits; or
 - (B) to earn income for the benefit of one or more persons described in clause (A); and
 - (ii) is either:
 - (A) in the case of New Zealand, a superannuation scheme registered under the Superannuation Schemes Act 1989, a KiwiSaver Scheme registered under the KiwiSaver Act 2006, the New Zealand Superannuation Fund, or the Government Superannuation Fund; or
 - (B) in the case of the United States, generally exempt from income taxation in the United States;
 - (m) the term ‘enterprise’ applies to the carrying on of any business; and
 - (n) the term ‘business’ includes the performance of professional services and other activities of an independent character.”
7. Paragraph 3 of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following:
- “3. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 24 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State concerning the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.”

Article IV

1. Paragraph 1 of Article 4 (Residence) of the Convention shall be deleted and replaced by the following:
 - “1. For the purposes of this Convention, the term ‘resident of a Contracting State’ means any person who, under the laws of that State, is liable to tax therein by reason of domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State. The term ‘resident of a Contracting State’ also includes:
 - (a) a pension fund established in that State; and
 - (b) an organization that is established and maintained in that State exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.”
2. Paragraph 2(c) of Article 4 (Residence) of the Convention shall be amended by deleting the word “citizen” and replacing it with the word “national”.
3. Paragraph 2(d) of Article 4 (Residence) of the Convention shall be amended by deleting the word “citizen” and replacing it with the word “national”.
4. Paragraph 4 of Article 4 (Residence) of the Convention shall be amended by deleting the words “shall be treated as a resident of neither Contracting State for purposes of the Convention” and replacing them with the words “will not be treated as a resident of either Contracting State for purposes of its claiming any benefits provided by the Convention”.

Article V

Article 7 (Business Profits) of the Convention shall be amended by adding the following paragraphs:

- “8. In applying this Article, paragraph 6 of Article 10 (Dividends), paragraph 4 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), and paragraph 6 of Article 13 (Alienation of Prop-

Article V—*continued*

erty), any income or gain attributable to a permanent establishment during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

9. Where:

- (a) a resident of a Contracting State beneficially owns (whether directly or through one or more interposed fiscally transparent entities or trusts) a share of the profits of a business of an enterprise carried on in the other Contracting State by the trustee(s) of a trust other than a trust which is treated as a company for tax purposes; and
- (b) in relation to that enterprise, that resident would have a permanent establishment in that other State if the resident carried on the business of the enterprise in its own capacity,

then the business of the enterprise carried on by the trustee(s) shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and the resident's share of profits may be taxed in the other State but only so much of them as is attributable to that permanent establishment.”

Article VI

Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

“Article 10
Dividends

1. Dividends paid by a company that 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 dividends

Article VI—*continued*

are beneficially owned by a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:

- (a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting power of the company paying the dividends;
- (b) 15 percent of the gross amount of the dividends in all other cases.

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

- 3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 percent or more of the voting power in the company paying the dividends for a 12-month period ending on the date on which entitlement to the dividends is determined and:
 - (a) satisfies the conditions of clause (i) or (ii) of paragraph 2(c) of Article 16 (Limitation on Benefits);
 - (b) satisfies the conditions of clauses (i) and (ii) of paragraph 2(e) of Article 16, provided that the company satisfies the conditions described in paragraph 3 of that Article with respect to the dividends; or
 - (c) has received a determination pursuant to paragraph 4 of Article 16 with respect to this paragraph.

Article VI—*continued*

4. (a) Paragraphs 2(a) and 3 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a U.S. Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, paragraph 2(b) shall apply. In the case of dividends paid by a REIT, paragraph 2(b) shall apply only if:
 - (i) the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT;
 - (ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock; or
 - (iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.
- (b) For the purposes of this paragraph, a REIT shall be 'diversified' if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this rule, foreclosure property shall not be considered an interest in real property. Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in real property corresponding to its interest in the partnership.
5. For purposes of this Article, the term 'dividends' means income from shares or other rights participating in profits, as well as income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payer is a resident.
6. The provisions of paragraphs 2 and 3 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, and the holding in respect of which the dividends are paid is effect-

Article VI—*continued*

- ively connected with such permanent establishment. In such case, the provisions of Article 7 (Business Profits) shall apply.
7. A Contracting State may not impose any tax on dividends paid by a resident of the other State, except insofar as the dividends are paid to a resident of the first-mentioned State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment, nor may it impose tax on a corporation's undistributed profits, except as provided in paragraph 8, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that State.
8. A company that is a resident of New Zealand and that has a permanent establishment in the United States or that is subject to tax in the United States on a net basis on its income that may be taxed in the United States under Article 6 (Income from Real Property) or under paragraph 1 of Article 13 (Alienation of Property) may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income that is subject to tax under Article 6 or under paragraph 1 of Article 13 that, in the United States, represents the dividend equivalent amount of such profits or income.
9. The tax referred to in paragraph 8 shall not be imposed at a rate exceeding the rate specified in paragraph 2(a). In any case, it shall not be imposed on a company that:
- (a) satisfies the conditions of clause (i) or (ii) of paragraph 2(c) of Article 16 (Limitation on Benefits);
 - (b) satisfies the conditions of clauses (i) and (ii) of paragraph 2(e) of Article 16, provided that the company satisfies the conditions described in paragraph 3 of that Article with respect to an item of income, profit or gain described in paragraph 8 of this Article; or
 - (c) has received a determination pursuant to paragraph 4 of Article 16 with respect to this paragraph.”

Article VII

Article 11 (Interest) of the Convention is deleted and replaced by the following:

“Article 11 Interest

1. Interest arising in a Contracting State and beneficially owned by 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. Notwithstanding paragraph 2, interest shall be exempt from tax by the Contracting State where it arises if the interest is:
 - (a) beneficially owned by the other Contracting State or an instrumentality of that Contracting State which is not subject to tax on its income by that State;
 - (b) beneficially owned by a resident of the other Contracting State with respect to debt obligations guaranteed or insured by that State or an instrumentality of that State which is not subject to tax on its income by that State; or
 - (c) beneficially owned by a resident of the other Contracting State that is either:
 - (i) a bank; or
 - (ii) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transactions with unrelated parties;that is unrelated to the payer of the interest. For purposes of this subparagraph (c), the term ‘lending or finance business’ includes the business of:

Article VII—*continued*

- (A) making loans;
 - (B) purchasing or discounting accounts receivable, notes, or installment obligations;
 - (C) engaging in finance leasing (including entering into finance leases and purchasing, servicing, and disposing of finance leases and related leased assets);
 - (D) issuing letters of credit or providing guarantees; or
 - (E) providing charge and credit card services.
4. The provisions of paragraphs 2 and 3 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable

Article VII—*continued*

according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

7. The term ‘interest’ as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.
8. Notwithstanding the provisions of paragraphs 1, 2 and 3:
 - (a) interest arising in the United States that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed by the United States but, if the beneficial owner of the interest is a resident of New Zealand, the interest may be taxed at a rate not exceeding 15 percent of the gross amount of the interest; and
 - (b) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by the United States in accordance with its domestic law.
9. In the case of the United States, the excess, if any, of the amount of interest allocable to the profits of a company resident in the other Contracting State that are either attributable to the permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Alienation of Property) over the interest paid by that permanent establishment or trade or business in the United States shall be deemed to arise in the United States and be beneficially owned by a resident of the other Contracting State. The tax imposed under this Article on such interest shall not exceed the rate provided for in para-

Article VII—*continued*

- graph 2, unless the company is described in paragraph 3, in which case it shall be exempt from such taxation in that other Contracting State.
10. Notwithstanding paragraph 3, interest referred to in subparagraph (c) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 percent of the gross amount of the interest if:
- (a) in the case of interest arising in New Zealand, it is paid by a person that has not paid approved issuer levy in respect of the interest. This subparagraph (a) shall not apply if New Zealand does not have an approved issuer levy, or the payer of the interest is not eligible to elect to pay the approved issuer levy, or if the rate of the approved issuer levy payable in respect of such interest exceeds two percent of the gross amount of the interest. For the purposes of this Article, ‘approved issuer levy’ includes any identical or substantially similar charge payable by the payer of interest arising in New Zealand enacted after the date of this Convention in place of approved issuer levy; or
 - (b) it is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.
11. Nothing in this Article shall be construed as restricting, in any manner, the right of a Contracting State to apply any anti-avoidance provisions of its taxation law.”

Article VIII

Article 12 (Royalties) of the Convention is deleted and replaced by the following:

Article VIII—*continued*“Article 12
Royalties

1. Royalties arising in a Contracting State and beneficially owned by 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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 percent of the gross amount of the royalties.
3. The term ‘royalties’ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The term ‘royalties’ also includes income or gains from the alienation of any property or rights described in this paragraph to the extent that such income or gains are contingent on productivity, use or disposition of such property or rights.
4. The provisions of paragraph 2 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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

Article VIII—*continued*

5. (a) 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 the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
- (b) Where subparagraph (a) does not operate to deem royalties as arising in either Contracting State and the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, the royalties shall be deemed to arise in that State.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article 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, due regard being had to the other provisions of the Convention.”

Article IX

1. Paragraph 6 of Article 13 (Alienation of Property) of the Convention shall be deleted and replaced by the following:
“6. Income or gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State, and gains from the alienation of such

Article IX—*continued*

- permanent establishment (alone or with the whole enterprise) may be taxed in that other State.”
2. Article 13 (Alienation of Property) of the Convention shall be amended by adding the following new paragraph 7:
“7. Where an individual who, upon ceasing to be a resident of one of the Contracting States, is treated under the taxation law of that State as having alienated any property for its fair market value and is taxed in that State by reason thereof, the individual may elect to be treated for purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to be a resident of the first-mentioned State, alienated and reacquired such property for an amount equal to its fair market value at such time.”
 3. Article 13 (Alienation of Property) of the Convention shall be amended by renumbering the current paragraph 7 as new paragraph 8.

Article X

1. Article 14 (Independent Personal Services) of the Convention shall be deleted and the succeeding Articles shall not be renumbered.
2. Paragraph 4 of Article 6 (Income from Real Property) shall be amended by deleting the words “and to income from real property used for the performance of independent personal services”.
3. Paragraph 2(c) of Article 15 (Dependent Personal Services) shall be amended by deleting the words “or a fixed base”.
4. Paragraph 1 of Article 17 (Artistes and Athletes) shall be amended by deleting the words “Articles 14 (Independent Personal Services) and” and replacing them with the word “Article”.
5. Paragraph 2 of Article 17 (Artistes and Athletes) shall be amended by deleting the words “Articles 7 (Business Profits) and 14 (Independent Personal Services)”, and replacing them with the words “Article 7 (Business Profits)”.

Article X—*continued*

6. Paragraph 3 of Article 19 (Government Service) shall be amended by deleting the words “14 (Independent Personal Services),”.

Article XI

Article 16 (Limitation on Benefits) of the Convention shall be deleted and replaced by the following:

“Article 16
Limitation on benefits

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a ‘qualified person’ as defined in paragraph 2.
2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:
 - (a) an individual;
 - (b) a Contracting State, or a political subdivision or local authority thereof;
 - (c) a company, if:
 - (i) its principal class of shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges; and either:
 - (A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident; or
 - (B) the company’s primary place of management and control is in the Contracting State of which it is a resident; or
 - (ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this

Article XI—*continued*

- subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
- (d) a person described in paragraphs 1(a) or 1(b) of Article 4 (Residence) of this Convention, provided that, in the case of a person described in subclause (A) of clause (i) of paragraph 1(1) of Article 3 (General Definitions), more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or
 - (e) a person other than an individual, if:
 - (i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and
 - (ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in re-

Article XI—*continued*

spect of financial obligations to a bank that is not related to the payor).

3. (a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.
- (b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph (a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.
- (c) In determining whether a person is 'engaged' in the active conduct of a trade or business in a Contracting State under subparagraph (a) of this paragraph, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other

Article XI—*continued*

(or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

4. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 nor entitled to benefits with respect to an item of income under paragraph 3 of this Article the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, if it determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention.
5. Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to that income if the combined tax that is actually paid with respect to such income in the first-mentioned Contracting State and in the third jurisdiction is less than 60 percent of the tax that would have been payable in the first-mentioned State if the income was earned in that Contracting State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other Contracting State at a rate that shall not exceed 15 percent of the gross amount thereof. Any

Article XI—*continued*

other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

- (a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; or
 - (b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).
6. For purposes of this Article:
- (a) the term 'recognized stock exchange' means:
 - (i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
 - (ii) the New Zealand Stock Market; and
 - (iii) any other stock exchange agreed upon by the competent authorities;
 - (b) the term 'principal class of shares' means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the 'principal class of shares' are those classes that in

Article XI—*continued*

- the aggregate represent a majority of the aggregate voting power and value of the company;
- (c) the term ‘disproportionate class of shares’ means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company; and
 - (d) a company’s ‘primary place of management and control’ will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.”

Article XII

1. The last sentence of paragraph 1 of Article 22 (Relief from Double Taxation) shall be deleted and replaced by the following:
“For the purposes of this paragraph, the taxes referred to in paragraphs 3(a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.”
2. Paragraph 2 of Article 22 (Relief from Double Taxation) of the Convention shall be amended by deleting the final sentence.
3. Paragraph 5 of Article 22 (Relief from Double Taxation) of the Convention shall be deleted and replaced by the following:
- “5. No provision of this Convention relating to source of income shall apply in determining credits against United States tax for foreign taxes other than those referred to in paragraphs 3(a) and 4 of Article 2 (Taxes Covered).”

Article XIII

Article 23 (Non-Discrimination) of the Convention shall be deleted and replaced by the following:

“Article 23 Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as nationals of New Zealand who are not residents of the United States.
2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. The provisions of paragraphs 1 and 2 shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 6 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not

Article XIII—*continued*

be subjected in the first-mentioned State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. Nothing in this Article shall be construed as preventing the United States from imposing a tax as described in paragraph 8 of Article 10 (Dividends).
7. This Article shall not apply to any provision of the taxation laws of a Contracting State which is reasonably designed to prevent or defeat the avoidance or evasion of taxes.”

Article XIV

Article 25 (Exchange of Information and Administrative Assistance) shall be deleted and replaced by the following:

“Article 25

Exchange of information and administrative
assistance

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes. The exchange of information is not restricted by paragraph 1 of Article 1 (General Scope) or Article 2 (Taxes Covered).
2. Any information received under this Article 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) involved in the assessment, collection, or administration of, the enforcement or prosecution in

Article XIV—*continued*

respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such functions. 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 the preceding paragraphs 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 that 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 that 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 purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitation be construed to permit a Contracting State to decline to supply information 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 requested by the other Contracting State 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.
6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of

Article XIV—*continued*

- unedited original documents (including books, papers, statements, records, accounts, and writings).
7. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Contracting States the obligation to carry out administrative measures that would be contrary to its sovereignty, security, or public policy.
 8. The requested State shall allow representatives of the requesting State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.”

Article XV

Paragraph 1 of the Protocol to the Convention shall be deleted and replaced by the following:

- “1. With reference to Articles 11 and 12:
If in any future double taxation convention with any other country, New Zealand agrees to limit its taxation at source on any interest or royalties to rates lower than the ones provided in this Convention, New Zealand shall notify the United States, and the Contracting States shall, at the request of the United States, and without undue delay, consult each other with a view to concluding an additional protocol to incorporate such lower rates into this Convention.”

Article XVI

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States and New Zealand. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

Article XVI—*continued*

2. The Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1. The provisions of this Protocol shall have effect:
 - (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force;
 - (b) in the United States, in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Protocol enters into force;
 - (c) in New Zealand, in respect of other taxes, for taxable periods beginning on or after the first day of April next following the date on which the Protocol enters into force.
3. Notwithstanding paragraph 2, the provisions of Article 25 (Exchange of Information and Administrative Assistance) shall have effect from the date of entry into force of this Protocol, without regard to the taxable period to which the matter relates.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.
DONE at Washington, in duplicate, this first day of December 2008, in the English language.

Roy Neil Ferguson
For the Government of
New Zealand

Robert M Kimmitt
For the Government of the

United States of America

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*: 29 September 1983.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Double Taxation Relief (United States of America) Order 1983. The reprint incorporates all the amendments to the order as at 24 December 2009, 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)*

Double Taxation Relief (United States of America) Amendment Order 2009
(SR 2009/365)
