



Double Tax Agreements (Turkey) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 13th day of September 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007 and section 173C of the Tax Administration Act 1994, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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

Order

- 1 Title**

This order is the Double Tax Agreements (Turkey) Order 2010.
- 2 Commencement**

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

The agreement and protocol set out in the Schedule come into force on the date referred to in Article 28(1) of the agreement as the date on which the agreement enters into force.
- 4 Purposes**

The arrangements specified in the agreement and protocol set out in the Schedule have been negotiated with Turkey for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.
- 5 Arrangements to have effect**

The arrangements specified in the agreement and protocol set out in the Schedule have effect according to the agreement and protocol.

Schedule

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

The Government of New Zealand and the Government of the Republic of Turkey, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1**Persons covered**

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

Article 2**Taxes covered**

1. This Agreement 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 movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
 - a) in Turkey:
 - i) the income tax;
 - ii) the corporation tax;(hereinafter referred to as “Turkish tax”).
 - b) in New Zealand: the income tax;
(hereinafter referred to as “New Zealand tax”).

Article 2—*continued*

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement 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 that have been made in their respective taxation laws.

Article 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a)
 - i) the term “Turkey” means the Turkish territory including territorial sea and air space above it, as well as the maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, pursuant to international law;
 - ii) 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;
 - b) the terms “a Contracting State” and “the other Contracting State” mean Turkey or New Zealand as the context requires;
 - c) the term “person” includes an individual, a company and any other body of persons;
 - d) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - e) the term “legal head office” means;
 - i) with respect to Turkey, the registered office registered under the Turkish Code of Commerce;

Article 3—*continued*

- ii) with respect to New Zealand, the place of incorporation;
 - f) the term “national”, in relation to a Contracting State, means:
 - i) any individual possessing the nationality or citizenship of that Contracting State; and
 - ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
 - g) 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;
 - h) the term “competent authority” means:
 - i) in the case of Turkey, the Minister of Finance or a representative authorised by the Minister of Finance; and
 - ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
 - i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement 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 4

Resident

1. For the purposes of this Agreement, 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 that person’s

Article 4—*continued*

domicile, residence, legal head office, place of management 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.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then their status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which the individual has their centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
 - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
 - (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. However, where such person has its place of effective management in a Contracting State and its legal head office in the other Contracting State, then the competent authorities of the Contracting States shall determine by mutual agreement the State of which the person shall be deemed to be a resident for

Article 4—*continued*

the purposes of the Agreement. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for the purposes of enjoying benefits under the Agreement.

Article 5

Permanent establishment

1. For the purposes of this Agreement, 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 a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than 6 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 for more than 183 days in any 12 month period if:
 - a) it carries on activities which consist of the exploration for or exploitation of natural resources, including standing timber, situated in that State; or
 - b) it operates substantial equipment in that State;
 - (i) for the exploration for, or exploitation of, natural resources; or
 - (ii) in activities connected with that exploration or exploitation.
5. Where an enterprise of a Contracting State performs services, other than the services that are dealt with in Article 14, in the other Contracting State:

Article 5—*continued*

- a) through one or more individuals who are present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual or those individuals, or
 - b) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or connected projects through one or more individuals who are performing such services in that other State or are present in that other State for the purpose of performing such services (excluding an individual who performs such services on behalf of another enterprise, unless the first-mentioned enterprise supervises, directs or controls the manner in which such services are performed by the individual),
the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless these services are limited to those mentioned in paragraph 6 which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

Article 5—*continued*

- 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;
 - 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;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is 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 substantially negotiate or 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 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 immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to immovable property, livestock and equipment used in agriculture, forestry or fishing, rights to which the provisions of general law respecting landed or immovable property apply, usufruct of immovable property and rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit natural resources or standing timber; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business profits

1. The 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 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

Article 7—continued

State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate 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.

3. In determining the 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 so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. No 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. Nothing in this Article shall affect any provisions of the laws of either Contracting State at any time in force as they affect the taxation of any income from any form of insurance.
6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8**Shipping and air transport**

1. Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, amounts paid or payable to an enterprise of a Contracting State for carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that other State, may be taxed in that other State.

Article 8—*continued*

3. The provisions of paragraph 1 and 2 of this Article shall also apply to profits from the 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 would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are by the first-mentioned State claimed to be 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, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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:
 - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; provided that such dividends are exempt from tax in that other State;
 - b) 15 per cent 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. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, founders’ shares or other rights, not being debt-claims, participating in profits, as well as other income subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. Profits derived by a resident of New Zealand through a permanent establishment situated in Turkey may, after having been taxed under Article 7, be taxed on the remaining amount of that profit in Turkey, but the tax so charged shall not exceed:
 - a) 5 per cent of the remaining amount provided that such profits are exempt from tax in New Zealand;
 - b) 15 per cent of the remaining amount in all other cases.
5. The provisions of paragraphs 1 and 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

Article 10—*continued*

from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Subject to the provisions of paragraph 4, where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:
 - a) 10 per cent of the gross amount of the interest if it is paid to a bank;
 - b) 15 per cent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2, interest arising in:
 - a) New Zealand and paid to the Government of Turkey or to the Central Bank of Turkey (Türkiye Cumhuriyet Merkez Bankası) shall be exempt from New Zealand tax;

Article 11—*continued*

- b) Turkey and paid to the Government of New Zealand or to the Reserve Bank of New Zealand shall be exempt from Turkish tax.
4. 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 and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises.
5. The provisions of paragraphs 1, 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 or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person 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 or deductible in determining the profits attributable to that 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.
7. 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

Article 11—*continued*

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 this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent 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, or the sale of, any copyright (including any copyright of literary, artistic or scientific work, cinematograph films and recordings for radio and television) any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use of, or the right to use, industrial, commercial or scientific equipment.
4. The provisions of paragraphs 1 and 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 right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a

Article 12—*continued*

Contracting State or not, has in a Contracting State a permanent establishment or fixed base, in connection with which the liability to pay the royalties was incurred and such royalties are borne by or deductible in determining the profits attributable to that permanent establishment or fixed base then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner 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 this Agreement.

Article 13

Alienation of property

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

Article 13—*continued*

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Nothing in this Agreement affects the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

Article 14

Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:
 - a) the individual has a fixed base regularly available to them in that other State for the purpose of performing those services or activities; or
 - b) the individual is present in that other State for the purpose of performing those services or activities for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during the individual's presence in that other State, as the case may be, may be taxed in that other State.
2. Income derived by an enterprise of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

Article 14—*continued*

- a) the enterprise has a permanent establishment in that other State through which the services or activities are performed; or
- b) the period or periods during which the services or activities are performed exceed in the aggregate 183 days in any continuous period of 12 months.

In such circumstances only so much of the income as is attributable to that permanent establishment or to the services or activities performed in that other State, as the case may be, may be taxed in that other State. In either case, the enterprise may elect to be taxed in that other State in respect of such income in accordance with the provisions of Article 7 of this Agreement as if the income were attributable to a permanent establishment of the enterprise situated in that other State. This election shall not affect the right of that other State to impose a withholding tax on such income.

3. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants and other activities requiring specific professional skill.

Article 15

Income from employment

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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

Article 15—*continued*

- any twelve month period commencing or ending in the calendar year concerned, 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 or deductible in determining the profits attributable to 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that State.

Article 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, 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 a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17—*continued*

3. Income derived by an entertainer or a sportsperson from activities exercised in a Contracting State shall be exempt from tax in that State, if the visit to that State is supported wholly or mainly by public funds of the other Contracting State, a political subdivision or a local authority thereof.

Article 18

Pensions

1. Pensions (including government service pensions) and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State. This provision shall also apply to life annuities paid to a resident of a Contracting State.
2. Pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.

Article 19

Government service

1.
 - a) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State to an individual in respect of services rendered to that Government shall be taxable only in that State.
 - b) However, such payments shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - i) is a national of that State; or
 - ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 15, 16 and 17 shall apply to payments in respect of services rendered in connection with a business carried on by the Government referred to in paragraph 1.

Article 20

Students

1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that other State, provided that such payments arise from sources outside that other State.
2. Remuneration which a student or a business apprentice who is a national of a Contracting State derives from an employment which that person exercises in the other Contracting State for a period or periods not exceeding two years, in order to obtain practical experience related to their education or training shall not be taxed in that other State provided that they were present in that State solely for that purpose.

Article 21

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 22

Elimination of double taxation

1. Double taxation for the residents of Turkey shall be eliminated as follows:
 - a) Subject to the provisions of the laws of Turkey regarding the allowance as a credit against Turkish tax of tax payable in a territory outside Turkey (as they may be amended from time to time without changing the general principles hereof), New Zealand tax payable under the laws of New Zealand and in accordance with this Agreement in respect of income (including profits and chargeable gains) derived by a resident of Turkey from sources within New Zealand shall be allowed as a deduction from the Turkish tax on such income. Such deduction, however, shall not exceed the amount of Turkish tax, as computed before the deduction is made, attributable to such income.
 - b) Where in accordance with any provision of the Agreement income derived by a resident of Turkey is exempt from tax in Turkey, Turkey may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
2. Double taxation for the residents of New Zealand shall be eliminated as follows:

Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Turkish tax paid under the laws of Turkey and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in Turkey (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.

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

Article 23—*continued*

connected therewith, which is other or 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.

2. Subject to the provisions of paragraph 4 of Article 10, 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 based on domestic legislation of that other State levied on a permanent establishment which an enterprise of a third State has in that other State carrying on the same activities in similar circumstances.
3. 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 be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements based on domestic legislation of the first mentioned State to which similar enterprises of the first-mentioned State in similar circumstances, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State are or may be subjected.
4. If one of the Contracting States considers that taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities shall use the mutual agreement procedure to endeavour to resolve the matter.
5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.
6. The provisions of this Article shall apply only to the taxes which are the subject of this Agreement.

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 that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if that person's case comes under paragraph 1 of Article 23, to that of the Contracting State of which that person is a national. The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
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 Agreement. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administra-

Article 25—*continued*

tion or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to

Article 25—*continued*

- permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of

Article 26—*continued*

that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Nothing in paragraph 5 requires a Contracting State to provide assistance for an amount of unpaid tax that becomes uncontested more than 6 years before this Article entered into force in that State or if the request for assistance is first made more than 15 years after the date on which the unpaid tax became uncontested.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
 - a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which

Article 26—*continued*

- that State may, under its laws, take measures of conservancy with a view to ensure its collection
- the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to carry out measures which would be contrary to public policy (*ordre public*);
 - c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 27

Members of diplomatic missions and
consular posts

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

Article 28

Entry into force

1. Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its domestic law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications.

Article 28—*continued*

2. The provisions of this Agreement shall have effect:
 - a) in Turkey, for taxes with respect to every taxable period beginning on or after the first day of January of the year following that of entry into force of the Agreement;
 - b) in New Zealand:
 - i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the January of the year following the date on which the Agreement enters into force;
 - ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the Agreement enters into force.
3. Notwithstanding anything in paragraph 2, Article 26 shall have effect from the date agreed in a subsequent exchange of notes through diplomatic channels.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- a) in Turkey, for taxes with respect to any taxable period beginning on or after the first day of January of the year following that in which the notice of termination is given;
- b) in New Zealand:
 - i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the January of the year following that in which the notice of termination is given;
 - ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year

Article 29—*continued*

next following that in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned duly authorized hereto, have signed the present Agreement.

Done in duplicate at Ankara this 22nd day of April 2010, in the English and Turkish languages, both texts being equally authentic.

For the Government of
New Zealand:

Hon John Key

Prime Minister of New Zealand

For the Government of the
Republic of Turkey:

Recep Tayyip Erdoğan

Prime Minister of Turkey

Protocol

At the moment of signing the Agreement between the Government of the Republic of Turkey and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions constitute an integral part of the Agreement.

1. With reference to Article 2 of the Agreement

For greater certainty, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

2. With reference to Article 5 of the Agreement

It is agreed that, for the purposes of determining the duration of activities under paragraphs 3, 4 and 5 of Article 5, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another en-

Protocol—*continued*

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.

3. With reference to Article 5, paragraph 7 of the Agreement

It is agreed that, notwithstanding the provisions of paragraphs 1 and 2 of Article 5, where a person—other than an agent of an independent status to whom paragraph 8 of Article 5 applies—is acting on behalf of an enterprise and,

- a) has no authority, to substantially negotiate or conclude contracts in the name of the enterprise but habitually maintains in a Contracting State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise; or
- b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to 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 of Article 5 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.

4. With reference to Article 6, paragraph 2 of the Agreement

It is understood that, any right referred to in that paragraph shall be regarded as situated where the property to which it relates is situated or where the exploration or exploitation may take place.

5. With reference to Article 7, paragraph 3 of the Agreement

It is understood that, no such deduction will be allowed in respect of contributions to the expenses and losses of the head office or other permanent establishments situated abroad and, likewise, the amounts paid by the permanent establishment to the head office of the enterprise or any of its other offices, by

Protocol—*continued*

way of royalties, interest, commissions or other similar payments.

6. With reference to Article 7 of the Agreement

It is agreed that, where:

- a) a resident of a Contracting State beneficially owns (whether as a direct beneficiary of a trust or through one or more interposed 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 their own capacity instead of through any trust or trusts,

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.

7. With reference to Articles 10 and 11 of the Agreement

It is agreed that, the term "dividends" in Article 10, paragraph 3 of the Agreement includes;

- a) in the case of Turkey, income derived from an investment fund or an investment trust;
- b) in the case of New Zealand, income in relation to profit-related debentures and substituting debentures as defined in Section FA 2 of the Income Tax Act 2007 or any similar provision agreed by the competent authorities of both Contracting States.

It is further agreed that, income referred to in paragraph (b) above is not included in the term "interest" in Article 11, paragraph 4 of the Agreement.

Protocol—*continued*

- 8. With reference to Articles 10, 11 and 12 of the Agreement**
It is agreed that, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, that interest or those royalties.
- 9. With reference to Article 12, paragraph 3 of the Agreement**
It is understood that,
- a) if the principle purpose of a payment under a contract is the provision of consideration within the meaning of paragraph 3, any payment for assistance that is ancillary to that contract and of largely unimportant character is to be treated as a royalty.
 - b) the term “royalties”, as defined in paragraph 3 of Article 12 of the Agreement, includes payments for total or partial forbearance in respect of the use or supply of any property or right referred to in that paragraph.
- 10. With reference to Articles 12 and 13 of the Agreement,**
It is agreed that, in case of any payment received as a consideration for the sale of the property referred to in paragraph 3 of Article 12, the provisions of Article 13 shall apply, unless the payment in question is not a payment for genuine alienation of the said property. In such case the provisions of Article 12 shall apply.
- 11. With reference to Article 23 of the Agreement**
It is agreed that, if New Zealand, after the date of signature of this Agreement, enters into a tax treaty, which includes a Non-Discrimination Article that is in line with the OECD Model Tax Convention on Income and Capital, negotiations for a revision of Article 23 of this Agreement shall take place.

Protocol—*continued***12. With reference to Article 24, paragraph 2 of the Agreement**

It is understood that, with respect to paragraph 2 of Article 24 the taxpayer must in the case of Turkey claim the refund resulting from such mutual agreement within a period of one year after the tax administration has notified the taxpayer of the result of the mutual agreement.

IN WITNESS WHEREOF, the undersigned duly authorized hereto, have signed the present Protocol.

Done in duplicate at Ankara this 22nd day of April 2010, in the English and Turkish languages, both texts being equally authentic.

For the Government of
New Zealand:

Hon John Key

Prime Minister of New Zealand

For the Government of the
Republic of Turkey:

Recep Tayyip Erdoğan

Prime Minister of Turkey

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

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

This order, which comes into force on the 28th day after the date of its notification in the *Gazette*, gives effect to an agreement and protocol between New Zealand and Turkey signed on 22 April 2010 (the **agreement and protocol**). The agreement and protocol relate to providing relief from double taxation and preventing fiscal evasion, and facilitate the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes. The agreement and protocol also contain an assistance in collection provision, which relates to recovering unpaid tax.

The agreement and protocol come into force when the parties have notified each other, through diplomatic channels, that domestic procedures for bringing the agreement and protocol into force have been completed (as required by Article 28 of the agreement). Once they have entered into force, the agreement and protocol have effect despite anything in the Income Tax Act 2007 (other than section BH 1(5)), any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

The date on which the agreement comes into force will be publicised on <http://www.taxpolicy.ird.govt.nz/tax-treaties/turkey>

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 16 September 2010.

This order is administered by the Inland Revenue Department.
