



Double Taxation Relief (Malaysia) Amendment Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 30th day of September 2013

Present:
His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, 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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Order

1 Title

This order is the Double Taxation Relief (Malaysia) Amendment Order 2013.

2 Commencement

This order comes into force on 1 November 2013.

3 Principal order

This order amends the Double Taxation Relief (Malaysia) Order 1976 (the **principal order**).

4 Clause 1 amended

In clause 1, insert as the heading to that clause “**Title**”.

5 Clause 2 amended

In clause 2, insert as the heading to that clause “**Agreement, First Protocol, and Second Protocol**”.

6 New clause 3 inserted (Third Protocol)

After clause 2, insert:

“3 Third Protocol

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

“(2) The Third Protocol amends the agreement.

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

7 New Schedule 3 inserted

After Schedule 2, insert the Schedule 3 set out in the Schedule of this order.

Schedule

cl 7

New Schedule 3 inserted**Schedule 3**

cl 3

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

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

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

Article 1

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

Article 22**Exchange of information**

- “(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
- “(2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as informa-

“Article 22—*continued*”

tion obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

- “(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
- “a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - “b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - “c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
- “(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
- “(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 2

- (1) The Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Third Protocol have been complied with.
- (2) The Third Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article, and its provisions shall have effect for requests made on or after the date of the entry into force of this Protocol with regard to tax years beginning on or after 1 January following entry into force.

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

Peter Dunne

Rosmidah Zahid

For the Government of
New Zealand:

For the Government of
Malaysia:

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 1 November 2013, amends the Double Taxation Relief (Malaysia) Order 1976 to include and give effect to the Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income made at Wellington on 6 November 2012.

The protocol comes into force when the parties have notified each other that domestic procedures for bringing the protocol into force

have been completed. The date on which the protocol comes into force will be publicised on <http://taxpolicy.ird.govt.nz/tax-treaties>

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 3 October 2013.
This order is administered by the Inland Revenue Department.
