



## Double Tax Agreements (Samoa) Order 2015

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 9th day of November 2015

Present:

The Right Hon John Key presiding 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.

### Contents

	Page
1 Title	1
2 Commencement	2
3 Commencement of agreement	2
4 Purposes	2
5 Arrangements to have effect	2
<b>Schedule</b>	<b>2</b>
<b>Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance</b>	

### Order

#### 1 Title

This order is the Double Tax Agreements (Samoa) Order 2015.

**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 set out in the Schedule (the **agreement**) comes into force on the date provided for in Article 26 of the agreement.

**4 Purposes**

The arrangements specified in the agreement have been negotiated with the Government of Samoa 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 have effect according to the tenor of the agreement.

**Schedule****Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance**

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The Government of New Zealand and the Government of Samoa,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States)

Have agreed as follows:

**Chapter I****Scope of the Agreement****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. The taxes to which the Agreement shall apply are:
  - (a) In New Zealand:

the income tax (hereinafter referred to as “New Zealand tax”);
  - (b) In Samoa:

the income tax (hereinafter referred to as “Samoa tax”).
2. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the taxes listed in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.
3. Notwithstanding the provisions of paragraphs 1 and 2, 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.

## Chapter II Definitions

### Article 3—General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “person” includes an individual, a company and any other body of persons;
  - (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (c) the term “enterprise” applies to the carrying on of any business;
  - (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 operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (f) the term “competent authority” means:
    - (i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative; and
    - (ii) in the case of Samoa, the CEO of the Ministry for Revenue or an authorised representative;
  - (g) 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;
  - (h) the term “business” includes the performance of professional services and of other activities of an independent character;
  - (i) the terms “a Contracting State” and “the other Contracting State” mean New Zealand or Samoa as the context requires; and
  - (j)
    - (i) 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; and
    - (ii) the term “Samoa” means the Independent State of Samoa and its territorial waters.
2. For the purposes of Articles 10, 11 and 12, dividends, interest or royalties arising in a Contracting State and derived by or through a trust shall be deemed to be beneficially owned by a resident of the other Contracting State where:
- (a) such income is subject to tax in that other State in the hands of the trustee of that trust;
  - (b) with reference to dividends, the income would be subject to tax in the hands of the trustee of that trust but for an exemption that applies to those dividends under the laws of that other State.
3. 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 their domicile, residence, 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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

#### 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 if for more than 183 days in any twelve month period:
  - (a) it carries on activities in that State which consist of, or which are connected with, the exploration for or exploitation of natural resources, including standing timber, situated in that State; or
  - (b) it operates substantial equipment in that State.
5. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State performs services in the other Contracting State:
  - (a) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and where the services performed in that other State through that individual are professional services or other activities of an independent nature, 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 for connected projects through one or more individuals who are present and performing such services in that other State

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 7 which, if performed through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual.

6. For the purposes of determining the duration of activities under paragraphs 3, 4 and 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 and are identical or substantially similar to 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 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.

7. 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;
  - (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 subparagraphs (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.
8. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 9 applies—is acting on behalf of an enterprise and:
- (a) has, and habitually exercises, in a Contracting State an authority to conclude contracts 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 7 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.
9. 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.
10. 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.

## **Chapter III**

### **Taxation of Income**

#### **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 and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property, 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.
5. Any right referred to in paragraph 2 of this Article shall be regarded as situated where the property to which it relates is situated or where the exploration or exploitation may take place.

#### **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, or sales in that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment. It is understood that the profits of an enterprise shall include profits attributable to sales of goods and merchandise referred to in this subparagraph only when the competent authority of the Contracting State in which a permanent establishment of the enterprise is situated considers that the enterprise has entered into an arrangement in relation to the sales of those goods or merchandise to avoid taxation of those profits in that Contracting State.
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 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. For the purposes of the preceding paragraphs, the 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.
5. 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 of a trust other than a trust which is treated as a company for tax purposes; and
  - (b) in relation to that enterprise, that trustee has or would have, if it were a resident of the first-mentioned State, a permanent establishment in the other State,

then the business of the enterprise carried on by the trustee through such permanent establishment 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.

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.
7. 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.

#### Article 8—Ship 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. Notwithstanding the provisions of paragraph 1 and Article 7, profits of an enterprise of a Contracting State derived from carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped or embarked in the other Contracting State and are discharged at a place in that other State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.

3. The provisions of paragraphs 1 and 2 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 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 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 which holds directly at least 10 per cent of the voting power in the company paying the dividends; and
  - (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 and other income treated as income from shares by the laws of the State of which the company making the distribution is a resident.
4. 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. 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 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 10 per cent of the gross amount of the interest.
3. 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, but does not include any income which is treated as a dividend under Article 10.
4. The provisions of paragraphs 1 and 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 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 shall apply.
5. 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 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 deductible in determining the profits attributable to 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 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:
  - (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
  - (b) the use of, or the right to use:
    - (i) motion picture films,
    - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio, internet or other broadcasting;
  - (c) the use of, or the right to use any industrial, scientific or commercial equipment;
  - (d) knowledge or information concerning technical, industrial, commercial or scientific experience;
  - (e) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a) or (b), any such equipment as is mentioned in subparagraph (c) or any such knowledge or information as is mentioned in subparagraph (d);
  - (f) any forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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 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 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 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 the royalties are deductible in determining the profits attributable to such permanent establishment, then the royalties 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 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. Income or 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. Income or 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, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Income or gains derived by an enterprise 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.
4. Income or 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—Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, 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 twelve month period commencing or ending in the income 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 deductible in determining the profits attributable to a permanent establishment 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 exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

### Article 15—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 16—Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, 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 but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

### Article 17—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.

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 18—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 14, 15 or 16 shall apply to payments in respect of services rendered in connection with a business carried on by a Government referred to in paragraph 1.

#### Article 19—Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

#### Article 20—Other Income

1. 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 situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 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 21—Entitlement to Benefits

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

## Chapter IV Elimination of Double Taxation

### Article 22—Elimination of Double Taxation

1. Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Samoa tax paid under the laws of Samoa and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in Samoa (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.
2. Subject to the provisions of the laws of Samoa from time to time in force which relate to the allowance of a credit against Samoa tax of tax paid in a country outside Samoa (which shall not affect the general principle of this Article), New Zealand tax paid under the laws of New Zealand and consistent with this Agreement, in respect of income derived by a resident of Samoa from sources in New Zealand shall be allowed as a credit against Samoa tax payable in respect of that income.
3. For the purpose of paragraph 1, Samoa tax paid shall include an amount equivalent to the amount of any Samoa tax forgone.
4. In paragraph 3, the term “Samoa tax forgone” means an amount which, under the law of Samoa relating to Samoa tax and in accordance with this Agreement, would have been payable as Samoa tax on income but for an exemption from, or a reduction of, Samoa tax on that income resulting from the operation of those provisions of the laws of Samoa which the Government of New Zealand and the Government of Samoa agree from time to time in letters exchanged for this purpose to be provisions to which this paragraph applies; and subject to its terms, such an agreement on applicable provisions shall be valid for as long as those provisions are not modified after the date of that agreement or have been modified only in minor respects so as not to affect their general character.

5. Paragraphs 3 and 4 shall apply only in relation to those years of income that may be agreed by the Government of Samoa and the Government of New Zealand in letters exchanged for this purpose.
6. Notwithstanding paragraphs 3, 4 and 5, a New Zealand resident deriving income from Samoa, being income referred to in those paragraphs, shall not be deemed to have paid Samoa tax in respect of such income where:
  - (a) the New Zealand resident is a financial institution or is associated with a financial institution;
  - (b) the competent authority of New Zealand considers, after consultation with the competent authority of Samoa, that it is inappropriate to do so having regard to:
    - (i) whether any prearrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 for the benefit of that person or any other person;
    - (ii) whether any benefit accrues or may accrue to a person who is neither a New Zealand resident nor a Samoa resident;
    - (iii) the prevention of fraud or the avoidance of the taxes to which this Agreement applies;
    - (iv) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.
7. The provisions of paragraphs 3, 4, 5 and 6 shall only apply for a period of 10 years commencing on the date in which the Agreement enters into force.

## **Chapter V**

### **Special Provisions**

#### Article 23—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. The case must be presented within three 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 24—Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
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 25—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.

### Chapter VI Final Provisions

#### Article 26—Entry into Force

1. Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect:
  - (a) 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 second month next 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;
  - (b) In Samoa:
    - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the Agreement enters into force;
    - (ii) in respect of any other Samoa tax, in relation to income of any year of income beginning on or after 1 January next following that in which the Agreement enters into force.

2. The Agreement between the Government of New Zealand and the Government of Samoa for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments signed at Apia on 24 August 2010 shall terminate and cease to have effect from the date upon which this Agreement has effect in respect of the taxes to which this Agreement applies in accordance with the provisions of paragraph 1 of this Article.
3. The Agreement between the Government of New Zealand and the Government of Samoa on the Exchange of Information with Respect to Taxes signed at Apia on 24 August 2010 shall terminate and cease to have effect from the date upon which Article 24 of this Agreement has effect in accordance with the provisions of paragraph 1 of this Article. Notwithstanding the termination of the Tax Information Exchange Agreement, the Contracting States shall remain bound by the provisions of Article 8 of that Agreement with respect to any information obtained under that Agreement.

#### Article 27—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 at least six months before the end of any calendar year after the 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 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 second month next 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 next following that in which the notice of termination is given;
- (b) in Samoa:
  - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the notice of termination is given;
  - (ii) in respect of any other Samoa tax, for any income year beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Apia this 8th day of July 2015 in the English language.

For the Government of New Zealand

Right Honourable John Key

Prime Minister of New Zealand

For the Government of Samoa

Honourable Tuilaepa Lufesoliai

Sailele Malielegaoi

Prime Minister of Samoa

Michael Webster,  
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 the agreement between the Government of New Zealand and the Government of Samoa for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (the **agreement**). The agreement replaces 2 agreements with Samoa (the **old agreements**) that were given effect to by the Double Tax Agreements (Samoa) Order 2010. The agreement comes into force when the parties to the agreement have notified each other through diplomatic channels that their respective domestic procedures for bringing the agreement into force have been completed in accordance with Article 26. Under that Article the old agreements will terminate and cease to have effect when the corresponding provisions in the agreement take effect. The date on which the agreement comes into force will be publicised at <http://taxpolicy.ird.govt.nz/tax-treaties/samoa>. Once it enters into force, the agreement has effect despite anything to the contrary in the Income Tax Act 2007, any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

### Regulatory impact statement

The Inland Revenue Department produced a national interest analysis to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this national interest analysis can be found at <http://taxpolicy.ird.govt.nz/sites/default/files/tax-treaties/2015-nia-dta-nz-samoa.pdf>.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 12 November 2015.  
This order is administered by the Inland Revenue Department.