Reprint
as at 22 July 2004

Double Taxation Relief (Netherlands) Order 1981

(SR 1981/43)

David Beattie, Governor-General

Order in Council

At the Government Buildings at Wellington this 9th day of March 1981

Present:
The Right Hon R D Muldoon presiding in Council

Pursuant to section 294 of the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

Contents

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

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

This order is administered by the Inland Revenue Department.

Schedule 2 24
Second Protocol amending the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income with protocol, signed at the Hague on 15 October 1980

Order

1 Title

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

2 Giving effect to Convention

It is hereby declared that the arrangements specified in the Convention set out in Schedules 1 and 2, being arrangements that have been made with the Government of the Kingdom of the Netherlands with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Income Tax Act 1976 and the income tax, wages tax and dividend tax imposed by the Government of the Kingdom of the Netherlands, shall in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the Convention.

Clause 2: amended, on 22 July 2004, by clause 3 of the Double Taxation Relief (Netherlands) Amendment Order 2004 (SR 2004/179).

Schedule 1
Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Schedule 1 heading: amended, on 22 July 2004, by clause 4 of the Double Taxation Relief (Netherlands) Amendment Order 2004 (SR 2004/179).

The Government of New Zealand

and

the Government of the Kingdom of the Netherlands

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

Have agreed as follows:

Chapter I
Scope of the Convention

Article 1—Personal scope

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

Article 2—Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of one of the States, 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 income or gains from the alienation of real or personal property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are in particular:
   a. in the case of the Netherlands:
      – de inkomstenbelasting (income tax),
      – de loonbelasting (wages tax),
      – de vennootschapsbelasting (company tax),
      – de dividendbelasting (dividend tax),

      (hereinafter referred to as "Netherlands tax");
   b. in the case of New Zealand:
      – the income tax and the excess retention tax,

      (hereinafter referred to as "New Zealand tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of any significant changes which have been made in their respective taxation laws.

Chapter II
Definitions

Article 3—General definitions

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

   a. the term "State" means the Netherlands or New Zealand as the context requires; the term "States" means the Netherlands and New Zealand;

   b. the term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea-bed and its subsoil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

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

   d. the term "person" includes an individual, a company and any other body of persons;

   e. the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

   f. the terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

   g. the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other State;

   h. the term "national" means:

      1. in the case of the Netherlands, any individual possessing the nationality of the Netherlands, and any legal person, partnership and

association deriving its status as such from the laws in force in the Netherlands;

2. in the case of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership and association deriving its status as such from the laws in force in New Zealand;

i. the term "competent authority" means:

1. in the case of the Netherlands the Minister of Finance or his authorised representative;

2. in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative.

2. In the Convention, the terms "Netherlands tax" and "New Zealand tax" do not include any charge imposed as a penalty under the laws of either State relating to the taxes to which the Convention applies.

3. As regards the application of the Convention by one of the States any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

Article 4—Resident

1. For the purposes of this Convention, the term "resident of one of the States" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State in respect only of income from sources situated therein.

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

a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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

d. if he is a national of both States or of neither of them, the competent authorities of the 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 States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5—Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
   a. a place of management;
   b. a branch;
   c. an office;
   d. a factory;
   e. a workshop, and
   f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
4. 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 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.
5. An enterprise of one of the States shall be deemed to have a permanent establishment in the other State if:

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

b. substantial equipment or machinery is for more than twelve months in that other State being used by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 7 applies—is acting on behalf of an enterprise and has, and habitually exercises, in one of the States an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in one of the States 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.

8. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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 real property

1. Income derived by a resident of one of the States from real property (including income from agriculture or forestry) situated in the other State may be taxed in that other State.

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

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

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

Article 7—Business profits

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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 one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each 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. Insofar as it has been customary in one of the States to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. 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.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8—Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 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 one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

   b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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 these 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 one of the States includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other State has been charged to tax in that other State and that other State agrees that 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 Convention and the competent authorities of the States shall if necessary consult each other.

Article 10—Dividends

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means:

   a. in the case of the Netherlands, income which is subject to dividend tax;

   b. in the case of New Zealand, income from shares and other income assimilated to income from shares by the taxation laws of New Zealand.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of one of the States derives profits or income from the other 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 one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the State in which the interest arises shall not levy a tax on interest paid to the other State or to any agency or any instrumentality (including a financial institution) wholly owned by that other State, or to the Central Bank of the Netherlands or to the Reserve Bank of New Zealand.

4. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.

5. 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. However, this term does not include income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other 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.

7. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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 State, due regard being had to the other provisions of this Convention.

Article 12—Royalties

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

2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of

literary, artistic or scientific work including cinematograph films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of one of the States, carries on business in the other 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.

6. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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 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 State, due regard being had to the other provisions of this Convention.

Article 13—Alienation of property

1. Income or gains derived by a resident of one of the States from the alienation of real property referred to in Article 6 and situated in the other State may be taxed in that other State.

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

3. Income or gains from the alienation of ships or aircraft operated in international traffic or personal property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.

4. Income or gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on income or gains from the alienation of shares or "jouissance" rights in a company, the capital of which is wholly or partly divided into shares and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State at any time within the five years immediately preceding the alienation of the shares or "jouissance" rights.

Article 14—Independent personal services

1. Income derived by a resident of one of the States in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. 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.

Article 15—Dependent personal services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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 one of the States in respect of an employment exercised in the other 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 the fiscal 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 a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in that State.

Article 16—Directors' fees and other remuneration

1. Where a resident of the Netherlands is a "director" of a company which is a resident of New Zealand, and derives from that company fees and other remuneration in respect of his services to the company, such fees and other remuneration may be taxed in New Zealand.
2. Where a resident of New Zealand is a "bestuurder" or a "commissaris" of a company which is a resident of the Netherlands and derives from that company fees and other remuneration in respect of his services to the company, such fees and other remuneration may be taxed in the Netherlands.
3. Where the remuneration mentioned in paragraph 1 or 2 is derived by a person who exercises activities of a regular and substantial character in a permanent establishment situated in the State other than the State of which the company is a resident and the remuneration is deductible in determining the taxable profits of that permanent establishment then, notwithstanding the provisions of paragraph 1 or 2 of this Article, the remuneration, to the extent to which it is so deductible, shall be taxable only in the State in which the permanent establishment is situated.

Article 17—Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.

Article 18—Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment and any annuity paid to such resident shall be taxable only in that State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19—Government service

1. a. Remuneration, other than a pension, paid by one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

   b. However, such remuneration shall be taxable only in the State of which the individual is a resident if the services are rendered in that State and the individual:

      1. is a national of that State; or

      2. did not become a resident of that State solely for the purpose of rendering the services.

2. a. Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority and any pension paid to an individual under the social security scheme of one of the States, may be taxed in that State.

   b. However, such pension shall be taxable only in the State of which the individual is a resident if he is a national of that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the States or a political subdivision or a local authority thereof.

Article 20—Professors and teachers

1. Payments which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21—Students

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

Chapter IV
Elimination of double taxation

Article 22—Elimination of double taxation

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed in New Zealand.

2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraph 1 of Article 16, and Article 19 of this Convention may be taxed in New Zealand and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands laws for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, and Article 17 of this Convention may be taxed in New Zealand to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in New Zealand on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands laws for the avoidance of double taxation.

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

   a. subject to any provisions of the laws of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle hereof), Netherlands tax paid under the laws of the Netherlands and consistently with the Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in the Netherlands (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;

   b. for the purposes of this Article, profits, income or gains of a resident of New Zealand which may be taxed in the Netherlands in accordance with the Convention shall be deemed to arise from sources in the Netherlands.

Chapter V
Special provisions

Article 23—Mutual agreement procedure

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the State of which he is a resident. 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 Convention.

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 State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the States may communicate with each other directly for the purpose of giving effect to the provisions of the Convention.

Article 24—Exchange of information

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

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

   a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 State;

c. to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 25—Diplomatic agents and consular officers

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

2. For the purposes of the Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is subjected therein to the same obligations in respect of taxes on income as are residents of that State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to individuals who are members of a diplomatic or consular mission of a third State, being present in one of the States and who are not subjected in either State to the same obligations in respect of taxes on income as are residents of that State.

Article 26—Territorial extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the country of the Netherlands Antilles and to any territory for whose international relations New Zealand is responsible, if that country or territory imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Government of the Kingdom of the Netherlands and the Government of New Zealand in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any country or territory to which it has been extended under this Article.

Chapter VI
Final provisions

Article 27—Entry into force

This Convention shall enter into force on the last of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally

required in their respective States have been complied with, and its provisions shall apply:

a. in the case of the Netherlands, to taxable years and periods beginning on or after the first day of January 1979;

b. in the case of New Zealand, to income assessable for any income year beginning on or after the first day of April 1979.

Article 28—Termination

This Convention shall remain in force indefinitely but the Government of the Kingdom of the Netherlands or the Government of New Zealand may on or before 30 June in any calendar year beginning after the expiration of five years from the date of its entry into force, give to the other Government through diplomatic channels written notice of termination and, in that event, the Convention shall cease to apply:

a. in the case of the Netherlands, to taxable years and periods beginning after the end of the calendar year immediately following that in which the notice of termination is given;

b. in the case of New Zealand, to income assessable for any income year beginning on or after 1 April in the calendar year immediately following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE at The Hague this 15th day of October 1980, in duplicate, in the English and Netherlands languages, both texts being equally authentic.

For the Government of New Zealand,
Brian Talboys

For the Government of the Kingdom of the Netherlands,
C A van der Klaauw

Protocol

to the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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

I
With reference to Article 2

For the purposes of subparagraph b of paragraph 3 the New Zealand tax does not include the bonus issue tax.

II
With reference to Article 4

An individual living aboard a ship without any residence in either of the States shall be deemed to be a resident of the State in which the ship has its home harbour.

III
With reference to Article 7

In respect of paragraphs 1 and 2, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

IV
With reference to Article 7

Nothing in that Article shall affect the operation of any law of either State relating to the calculation of income and the computation of profits from life insurance, provided that if the relevant laws in force in that State at the date of signature of the Convention are varied (otherwise than in minor respects so as not to affect its general character) the competent authorities of the States shall consult with each other with a view to agreeing to any amendment of this provision that may be appropriate.

V
With reference to Articles 10, 11 and 12

If in any future double taxation convention with any other country, being a member of the Organisation for Economic Co-operation and Development, New Zealand should limit its taxation at source on dividends, interest and royalties to a rate lower than the one provided for in any of such articles, New Zealand shall without undue delay enter into negotiations with the Netherlands to review the appropriate article with a view to providing the same treatment.

VI
With reference to Articles 10, 11 and 12

In determining whether dividends, interests or royalties are beneficially owned by a resident of New Zealand, dividends, interest or royalties in respect of which a trustee is subject to tax in New Zealand shall be treated as being beneficially owned by that trustee.

VII
With reference to Articles 10, 11 and 12

Applications for the refund of tax levied not in accordance with the provisions of Articles 10, 11 and 12 shall be lodged with the competent authority of the State having levied the tax within a period of five years after the expiration of the fiscal year in which the tax has been levied.

VIII
With reference to Article 11

The expression "any agency or any instrumentality (including a financial institution) wholly owned by that other State" as used in paragraph 3 shall not include the Bank of New Zealand.

IX
With reference to Article 12

a. Notwithstanding the provisions of paragraph 4, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply except to the extent the amount of such payments are based on production, sales, performance or any other similar basis related to the use of the said equipment.

b. In respect of paragraph 4, payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blueprints related thereto, or for consultant or supervisory services shall be deemed not to be payments received as a consideration for information concerning industrial, commercial or scientific experience.

X
With reference to Articles 18 and 19

It is understood that the term "pensions and other similar remuneration" includes only periodical payments.

XI

If, at any time after the date of signature of the Convention, New Zealand shall include an Article on non-discrimination in any of its double taxation conventions, the Government of New Zealand shall without undue delay inform the Government of the Kingdom of the Netherlands and shall enter into negotiations with the Government of the Kingdom of the Netherlands with a view to including such an Article in the Convention concluded today.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at The Hague this 15th day of October 1980, in duplicate, in the English and Netherlands languages, both texts being equally authentic.

For the Government of New Zealand,
Brian Talboys

For the Government of the Kingdom of the Netherlands,
C A van der Klaauw

Schedule 2
Second Protocol amending the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income with protocol, signed at the Hague on 15 October 1980

Schedule 2: added, on 22 July 2004, by clause 5 of the Double Taxation Relief (Netherlands) Amendment Order 2004 (SR 2004/179).

Preamble

The Government of New Zealand and the Government of the Kingdom of the Netherlands,

Desiring that the Convention between the Government of New Zealand and the Government of the Kingdom of the Nether-lands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, with protocol, signed at the Hague on the 15th day of October 1980, be amended by both States,

Have agreed that the following provisions shall be integrated into the Convention:

Article I

The following new Article shall be inserted immediately after Article 21 of the Convention

"Article 21A—Other income

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of one of the States, carries on business in the other State 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 income 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.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of one of the States not dealt with in the foregoing Articles of this Convention and arising in the other State may also be taxed in that other State, but the tax so charged shall not exceed 15 per cent of the gross amount of such income."

Article II

1. Paragraph 2 of Article 22 of the Convention shall be deleted and replaced by the following:

"2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraph 1 of Article 16, Article 19 and paragraph 2 of Article 21A of this Convention may be taxed in New Zealand and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands laws for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions."

2. Paragraph 3 of Article 22 of the Convention shall be deleted and replaced by the following:

"3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 17 and paragraph 3 of Article 21A of this Convention may be taxed in New Zealand to the extent that these items of income are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in New Zealand of these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands laws for the avoidance of double taxation."

3. A new paragraph 4 shall be inserted immediately after paragraph 3 of Article 22 of the Convention and paragraph 4 of the Convention shall be renumbered paragraph 5:

"4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in New Zealand on items of income which according to Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, Article 14 and paragraph 2 of Article 21A of this Convention may be taxed in New Zealand to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly."

Article III

1. The following new Article shall be inserted immediately before Article 23 of the Convention:

"Article 22A—Non-discrimination

1. Nationals of one of the States shall not be subjected in the other State to any taxation or any requirement 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the States.
2. The taxation on the profits as determined in accordance with the provisions of Article 7 of a permanent establishment which an enterprise of one of the States has in the other State and which are attributable to that permanent establishment in accordance with the provisions of Article 7, shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging one of the States to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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 to which other similar enterprises of the first-mentioned State, 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 States considers that taxation measures of the other State infringe the principles set forth in this Article, the competent authorities of the States shall consult each other in an endeavour to resolve the matter."

2. Article XI of the Protocol shall be deleted.

Article IV

The existing text of Article IV of the Protocol shall become paragraph 1 and the following new paragraph shall be inserted immediately after that paragraph:

"2. Notwithstanding the provisions of Article 7, an enterprise of one of the States that carries on a business of any form of insurance, other than life insurance, and that derives income or profits from the other State in the form of premiums paid for the insurance of risks situated in that other State, may to that extent be taxed in the other State in accordance with the law of that other State relating

specifically to the taxation of any person who carries on such business. However the amount of the income or profits so derived shall not exceed 10 per cent of the gross amounts receivable from carrying on such business, other than where the income or profits so derived are attributable to a permanent establishment of an enterprise of the first-mentioned State, in which case the provisions of Article 7 shall apply. The first-mentioned State shall allow a deduction or a credit of the tax levied on such income or profits in the other State in accordance with the provisions of paragraph 3 or 5 of Article 22, as the case may be. The provisions of this paragraph shall not apply to income or profits from a contract of reinsurance entered into between two enterprises resident of the Netherlands, except where the enterprise paying the reinsurance premium has a permanent establishment in New Zealand and that premium is deductible in determining the taxable profits of that permanent establishment."

Article V
Entry into force

1. The States shall notify each other in writing through diplomatic channels that the constitutional requirements for the entry into force of this Second Protocol have been complied with.

2. This Second Protocol shall enter into force on the thirtieth day after the date of the latter of the notifications referred to in paragraph 1 of this Article and shall have effect:

   (a) in New Zealand:

   in respect of income arising in any income year beginning on or after 1 April next following the date on which this Protocol enters into force;

   (b) in the Netherlands:

   in respect of income arising on or after 1 January in the calendar year following the date on which this Protocol enters into force;

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Second Protocol.

Done at Wellington this 20th day of December 2001 in duplicate in the English and Netherlands languages, both texts being equally authoritative.

For the Government of New Zealand
Phil Goff

For the Government of the Kingdom of the Netherlands
A E de Bijll Nachenius

P G Millen,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 March 1981.

Contents

Notes

1 General

This is a reprint of the Double Taxation Relief (Netherlands) Order 1981. The reprint incorporates all the amendments to the order as at 22 July 2004, as specified in the list of amendments at the end of these notes.

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

2 Status of reprints

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

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

3 How reprints are prepared

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

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

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

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

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

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

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

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

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

Double Taxation Relief (Netherlands) Amendment Order 2004 (SR 2004/179)

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