Reprint
as at 25 September 1997

Double Taxation Relief (Republic of Korea) Order 1983

(SR 1983/5)

David Beattie, Governor-General

Order in Council

At the Government Buildings at Wellington this 31st day of January 1983

Present:
The Right Hon David Thomson 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.

Order

1 Title

This order may be cited as the Double Taxation Relief (Republic of Korea) Order 1983.

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 Republic of Korea 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, the corporation tax, and the inhabitant tax imposed by the laws of the Republic of Korea, 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 from 1 April 1981 according to the tenor of the Convention.

Clause 2: amended, on 25 September 1997, by clause 2(1) of the Double Taxation Relief (Republic of Korea) Amendment Order 1997 (SR 1997/167).

Schedule 1
Convention Between the Government of New Zealand and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Schedule number: added, on 25 September 1997, by clause 2(2)(a) of the Double Taxation Relief (Republic of Korea) Amendment Order 1997 (SR 1997/167).

The Government of New Zealand and the Government of the Republic of Korea,

Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,

Have agreed as follows:

Article 1
Personal scope

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

Article 2
Taxes covered

1. The taxes to which this Convention shall apply are:
   - (a) In the case of Korea:
     - (i) the income tax;
     - (ii) the corporation tax; and
     - (iii) the inhabitant tax (hereinafter referred to as "Korean tax");
   - (b) In the case of New Zealand:
     - (i) the income tax; and
     - (ii) the excess retention tax (hereinafter referred to as "New Zealand tax").
2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signa-

Article 2—*continued*

ture of the Convention in addition to, or in place of, the existing taxes.

The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

Article 3
General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
   (a) the term "Korea" means the Republic of Korea and, when used in a geographical sense, it includes any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and subsoil and their natural resources may be exercised;
   (b) 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;
   (c) the terms "a Contracting State" and "the other Contracting State" mean Korea or New Zealand, as the context requires;
   (d) the term "tax" means Korean tax or New Zealand tax as the context requires;

Article 3—*continued*

(e) the term "person" includes an individual, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "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;

(i) the term "competent authority" means, in the case of Korea, the Minister of Finance or his authorised representative; and in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;

(j) the term "national" means:

(i) in respect of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership or association deriving its status as such from the law in force in New Zealand;

(ii) in respect of Korea, any individual possessing the nationality of Korea and any legal person, partnership or association deriving its status as such from the law in force in Korea.

2. In determining for the purposes of Articles 10, 11 or 12, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that State shall be treated as being beneficially owned by that trustee.

Article 3—*continued*

3. In the Convention, the terms "New Zealand tax" and "Korean tax" mean the respective taxes to which the Convention applies by virtue of Article 2.

4. As regards the application of the Convention by a Contracting State, 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 a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature. But this term 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 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;

Article 4—*continued*

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 or assembly 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;

Article 5—*continued*

(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.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

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

(b) it carries on activities in that other State for more than twelve months in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources situated in that other State.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of independent status to whom paragraph 7 applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 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.

Article 5—*continued*

7. 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.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) 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 property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable 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 immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to in-

Article 6—*continued*

come from immovable property used for the performance of independent personal services.

Article 7
Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provi-

Article 7—*continued*

sions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated enterprises

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 in 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.

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.

Article 10—*continued*

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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed fifteen percent of the gross amount of the dividends.

   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 or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services 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.

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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraph 2,
   (a) Interest arising in a Contracting State and received by the Government of the other Contracting State including a political subdivision or a local authority thereof or the central bank of that other Contracting State shall be taxable only in that other Contracting State.
   (b) Interest arising in a Contracting State in respect of loans or credits made:
      – in the case of Korea, by the Export Import Bank of Korea;
      – in the case of New Zealand, by any financial institution agreed to be of a similar nature to the Export Import Bank of Korea by the competent authorities of both Contracting States, and paid to a resident of the other Contracting State shall be taxable only in that other State.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. However this term does not include income dealt with in Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the

Article 11—*continued*

debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial 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 Convention.

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 recipient is the beneficial owner of the royalties the tax so charged shall not exceed ten percent of the gross amount of the royalties.

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

Article 12—*continued*

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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base.

   In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation 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.

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

Article 12—*continued*

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 Convention.

Article 13
Income or gains from the alienation of property

1. Income or gains derived by a resident of a Contracting State from the alienation of immovable property as defined in paragraph 2 of Article 6 may be taxed in the State in which such property is situated.
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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such 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 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 from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a

Article 14—*continued*

fixed base regularly available to him in the other Contracting 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, 20 and 21, 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 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 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 16
Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his 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 Contracting State.

Article 17
Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his 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 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 Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that State is substantially supported by the public funds of the other Contracting State, including those of any political subdivision, local authority or statutory body thereof, nor to income derived by a non-profit making organisation in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, members or shareholders.

Article 18
Pensions and annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any

Article 18—*continued*

annuity paid to such a resident shall be taxable only in that State.

2. The term "annuity" as used in this Article 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 a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

   (i) is a national of that State; or

   (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a 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 a Contracting State or a political subdivision or a local authority thereof.

4. The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of remuneration or pensions paid by

Article 19—*continued*

the Bank of Korea, the Export-Import Bank of Korea and the Korea Trade Promotion Corporation and also in respect of remuneration or pensions paid by any other institute of either Contracting State performing functions of a governmental nature as the competent authorities of the Contracting States shall agree.

Article 20
Students and apprentices

1. An individual 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 as a student at a recognised university, college, school or other similar recognised educational institution in the first-mentioned State or as a business or technical apprentice therein shall be exempt from tax in that first-mentioned State on all remittances from abroad for the purposes of his maintenance, education or training.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that Contracting State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from an arrangement for assistance programme entered into by the Government of a Contracting State shall be exempt from tax in that Contracting State on
   (a) the amount of such grant, allowance or award;
   (b) all remittances from abroad for the purposes of his maintenance, education or training.

Article 21
Professors and teachers

1. A professor or teacher who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the competent authority in that other Contracting State, visits that other Contracting State for a period not

Article 21—*continued*

exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research.

2. The provisions of paragraph 1 shall not apply to income from personal services for research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 22
Other income

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

Article 23
Relief from double taxation

1. In the case of Korea, double taxation shall be avoided as follows:

   Subject to any provisions of the law of Korea which may from time to time be in force and which relate to the allowance of a credit against Korean tax of tax paid in any country outside Korea (which shall not affect the general principle hereof), the New Zealand tax paid under the laws of New Zealand and consistently with this Convention, whether directly or by deduction, in respect of income derived by a Korean resident from sources in New Zealand (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 Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within New Zealand bears to the entire income subject to Korean tax.

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

Article 23—*continued*

(a) Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle hereof), Korean tax paid under the law of Korea and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Korea (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. The credit shall not however exceed that proportion of New Zealand tax which the income from sources within Korea bears to the entire income subject to New Zealand tax.

(b) Dividends derived by a company which is a resident of New Zealand from a company which is a resident of Korea (being dividends which, in accordance with the taxation law of New Zealand in existence at the date of signature of this Convention, would be exempt from New Zealand tax) shall be exempt from New Zealand tax.

3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

4. For the purposes of paragraph 2, and with respect to items of income dealt with in Articles 10, 11 and 12, the term "Korean tax paid" shall, notwithstanding any reduction of tax under the provisions of paragraph 2 of Articles 10, 11 and 12, be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws but for the exemption or reduction of Korean tax in accordance with the Korean laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Convention or any other provisions which may

Article 23—*continued*

subsequently be introduced in Korea in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be of a substantially similar character.

Article 24
Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. 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 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 Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25
Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, as well as to prevent fiscal evasion. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment 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 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).

Article 26
Diplomatic and consular officers

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

Article 27
Territorial extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations either Contracting State is responsible, which 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 Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 29 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory to which it has been extended under this Article.
3. Paragraph 2 of Article 2 shall apply to any taxes imposed by any territory to which the Convention is extended under this Article.

Article 28
Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Wellington as soon as possible.

   The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.
2. This Convention shall have effect:
   - (a) in Korea:
     - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year in which the Convention is signed; and
     - (ii) in respect of other taxes for any taxation year beginning on or after the first day of January in the calendar year in which the Convention is signed.
   - (b) in New Zealand:

Article 28—*continued*

in respect of income assessable for any income year beginning on or after the first day of April in the calendar year in which the Convention is signed.

Article 29
Termination

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of signing this Convention, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

(a) in Korea:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and

(ii) in respect of other taxes for any taxation year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

(b) in New Zealand:

in respect of income assessable for any income year beginning on or after the first day of April in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Seoul this 6th day of October of the year one thousand nine hundred and eighty one in the English language.

For the Government of
New Zealand
B E Talboys

For the Government of the
Republic of Korea
Dong-Whie Kim

Protocol

To the Convention between the Government of New Zealand and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

At the moment of signing the Convention between the Government of New Zealand and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. In respect of Article 2

   It is understood that:

   (a) for the purposes of sub-paragraph (a) of paragraph 1, the Convention shall also apply to the Korean defense tax where charged by reference to the income tax or the corporation tax,

   (b) for the purposes of sub-paragraph (b) of paragraph 1 the New Zealand income tax does not include the bonus issue tax.

2. In respect of Article 7

   It is understood that nothing in Article 7 shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Convention relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contract-

ing States shall consult each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

3. In respect of Article 8

It is understood that the provisions of paragraph 1 of Article 8 shall also apply to profits from the operation of vessels engaged in fishing, dredging or hauling activities on the high seas.

4. In respect of Article 10

It is understood that if in any future double taxation Convention with any other State, New Zealand limits its taxation at source on dividends to a rate lower than the one provided for in that Article, the Government of New Zealand shall without undue delay inform the Government of the Republic of Korea and both Governments shall review that article with a view to amending the Convention to provide the same treatment to the Republic of Korea.

5. In respect of Article 12

It is understood that notwithstanding the provisions of paragraph 3 of Article 12, 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 that such payments are dependent upon production, sales, performance, results or any other similar basis related to the utilisation of that equipment.

6. In respect of Article 13

It is understood that notwithstanding paragraph 4 of Article 13, gains from the alienation of shares, rights or corporate interests in a company, the assets of which consist principally of immovable property situated in Korea, may be taxed in Korea in accordance with Korean taxation laws.

7. Non-discrimination

If, at any time after the date of signature of this Protocol, 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 Republic of Korea and shall enter into negotiations with the

Government of the Republic of Korea with a view to including such an Article in the present Convention.

IN WITNESS WHEREOF, the undersigned have signed this Protocol which shall have the same force and validity as if it were inserted word by word in the Convention.

DONE in duplicate at Seoul this 6th day of October of the year one thousand nine hundred and eighty one in the English language.

For the Government of
New Zealand
B E Talboys

For the Government of the
Republic of Korea
Dong-Whie Kim

Schedule 2
Second Protocol to the Convention Between the Government of the Republic of Korea and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Schedule 2: added, on 25 September 1997, by regulation 2(2)(b) of the Double Taxation Relief (Republic of Korea) Amendment Order 1997 (SR 1997/167).

The Government of the Republic of Korea and the Government of New Zealand (hereinafter referred to as "the Contracting Parties")

Having regard to the Convention between the Government of the Republic of Korea and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Seoul on 6 October 1981 (hereinafter referred to as "the Convention"),

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

Article 1

Notwithstanding paragraph 4 of Article 23 of the Convention, a New Zealand resident deriving income from Korea, being income referred-to in that paragraph, shall not be deemed to have paid Korean tax in respect of such income where the competent authority of New Zealand considers, after consultation with the competent authority of the Republic of Korea, that it is inappropriate to do so having regard to:

(a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph 4 of Article 23 for the benefits of that person or any other person;

(b) the extent to which benefits accrue to a person who is neither a New Zealand resident nor a resident of Korea;

(c) the prevention of fraud or the prevention of the evasion or avoidance of the taxes to which the Convention applies;

(d) any other matter which the competent authorities consider relevant in the particular circumstances of the case including any submissions from the New Zealand resident concerned.

Article 2

Paragraph 4 of Article 23 of the Convention is hereby deleted and substituted with the following paragraph:

"4. For the purposes of paragraph 2, and with respect to items of income dealt with in Articles 10, 11 and 12, the term "Korean tax paid" shall be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws and in accordance with this Convention but for the exemption or reduction of Korean tax in accordance with the Korean laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in Korea in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character."

Article 3

Article 1 and 2 of this Second Protocol shall apply to income derived on or after the day on which it enters into force.

Article 4

1. The Contracting Parties shall notify each other 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 later of the notification referred to in paragraph 1 of this Article.

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

DONE at Wellington in duplicate this 14th day of July in the English language.

Don McKinnon
For the Government of
New Zealand

Yoon-Kyung Oh
For the Government of
The Republic of Korea

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*: 3 February 1983.

Contents

Notes

1 General

This is a reprint of the Double Taxation Relief (Republic of Korea) Order 1983. The reprint incorporates all the amendments to the order as at 25 September 1997, 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 (Republic of Korea) Amendment Order 1997 (SR 1997/167)

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