

Version
as at 28 August 2008



Double Taxation Relief (United Kingdom) Order 1984 (SR 1984/24)

David Beattie, Governor-General

Order in Council

At the Government Buildings at Wellington this 13th day of February 1984

Present:

The Right Hon D MacIntyre 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.

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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.

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Order

1 Title

This order may be cited as the Double Taxation Relief (United Kingdom) Order 1984.

2 Giving effect to Convention

- (1) 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 United Kingdom 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, the capital gains tax, and the petroleum revenue tax imposed by the laws of the United Kingdom, 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 1984.
- (2) The Protocol set out in Schedule 3 comes into force on the date referred to in Article III of that Protocol.

Clause 2(1): amended, on 22 July 2004, by clause 3 of the Double Taxation Relief (United Kingdom) Amendment Order 2004 (SR 2004/181).

Clause 2(2): added, on 28 August 2008, by clause 4 of the Double Taxation Relief (United Kingdom) Amendment Order 2008 (SR 2008/228).

3 Revocations

The Double Taxation Relief (United Kingdom) Order 1966 (SR 1966/119) and the Double Taxation Relief (United Kingdom) Order 1966, Amendment No 1 (SR 1980/222) are hereby revoked.

Schedule 1

Convention between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains

cl 2(1)

Schedule 1 heading: amended, on 22 July 2004, by clause 4 of the Double Taxation Relief (United Kingdom) Amendment Order 2004 (SR 2004/181).

The Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

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 which are the subject of this Convention are:
 - (a) in the United Kingdom:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the capital gains tax; and
 - (iv) the petroleum revenue tax;(hereinafter referred to as “United Kingdom tax”);
 - (b) in New Zealand:
 - (i) the income tax; and
 - (ii) the excess retention tax;(hereinafter referred to as “New Zealand tax”).
- (2) Notwithstanding the provisions of paragraph (1) of this Article, the terms “New Zealand tax” and “United Kingdom tax” do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies.

- (3) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which are made in their respective taxation laws.

Article 3

General definitions

- (1) In this Convention, unless the context otherwise requires:
- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;
 - (b) the term “New Zealand” means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
 - (c) the term “national” means:
 - (i) in relation to the United Kingdom, any individual who has under the law of the United Kingdom the status of United Kingdom national provided he has the right of abode in the United Kingdom, and any legal person or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to New Zealand, any individual who is a New Zealand citizen and any legal person or other entity deriving its status as such from the law in force in New Zealand;
 - (d) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, the United Kingdom or New Zealand;
 - (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 such transport is solely between places in the other Contracting State;
 - (i) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative.
- (2) As regards the application of this Convention by a Contracting State any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which the Convention applies.

Article 4

Residence

- (1) For the purposes of this Convention, the term “resident of a Contracting State” means, as the context requires:
- (a) any person who is resident in the United Kingdom for the purposes of United Kingdom tax; or
 - (b) any person who is resident in New Zealand for the purposes of New Zealand tax.
- (2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- (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 Contracting States shall settle the question by mutual agreement.

- (3) Where by reason of the provisions of paragraph (1) of this Article 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.

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;
 - (f) an installation or structure for the exploration or exploitation of natural resources; and
 - (g) 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 or any supervisory activity in connection therewith constitutes a permanent establishment but only if such site, construction, installation or activity 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) of this paragraph,

provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

- (5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person, other than an agent of an independent status to whom paragraph (6) of this Article 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) of this Article 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.
- (6) 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.
- (7) 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

Exploration and exploitation activities

- (1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on in connection with the exploration and exploitation of the sea-bed and subsoil and their natural resources (in this Article called “specified activities”) situated in a Contracting State.
- (2) An enterprise of a Contracting State which carries on specified activities in the other Contracting State shall be deemed to be carrying on business in that other State through a permanent establishment situated therein.
- (3) An individual who is a resident of a Contracting State who carries on specified activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base regularly available to him in that other State.
- (4) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment in the other Contracting State may, to the extent that the employment is exercised in connection with specified activities in that other State, be taxed in that other State.

Article 7

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) of this Article 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) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 8

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) of this Article, 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 business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establish-

ment is situated or elsewhere, and which are reasonably connected with profits attributable to the permanent establishment.

- (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) 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.
- (6) Nothing in this Article shall prevent either Contracting State from taxing according to its law the income or profits from the business of any form of insurance.

Article 9

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) Where profits referred to in paragraph (1) of this Article are derived by an enterprise of a Contracting State from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in that State.
- (3) Profits of an enterprise of a Contracting State referred to in paragraphs (1) and (2) of this Article from the rental of ships or aircraft or from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that State to the extent that those ships, aircraft or containers are used in international traffic and such profits are incidental to the profits of the enterprise.

Article 10

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 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.

Article 11

Dividends

- (1)
 - (a) Dividends derived from a company which is a resident of the United Kingdom by a resident of New Zealand may be taxed in New Zealand.
 - (b) Where a resident of New Zealand is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount of the dividend and of that tax credit at a rate not exceeding 15 percent.
 - (c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of New Zealand shall be exempt from any tax in the United Kingdom which is chargeable on dividends.
- (2) An individual who is a resident of New Zealand and who derives dividends from a company which is a resident of the United Kingdom shall, provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he derived those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax. Any such credit may be treated for the purposes of New Zealand tax as assessable income from sources in the United Kingdom.
- (3) Dividends derived from a company which is a resident of New Zealand and which are beneficially owned by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in New Zealand but the tax so charged shall not exceed 15 percent of the gross amount of the dividends.
- (4) The term “dividends” as used in this Article includes any item which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
- (5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 12

Interest

- (1) Interest arising in a Contracting State which is derived by 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 law of that State, but where the beneficial owner of such interest is a resident of the other Contracting State the tax so charged shall not exceed 10 percent of the gross amount of the interest.
- (3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State.
- (4) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State which is paid to and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned State if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by:
 - (a) the United Kingdom Export Credits Guarantee Department; or
 - (b) the New Zealand Export Guarantee Office.
- (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 but shall not include any item which is treated as a dividend or distribution under the provisions of Article 11.
- (6) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.
- (7) 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 that permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

- (8) Where a special relationship exists between the payer and the beneficial owner or between both of them and some other person and the amount of the interest paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Royalties

- (1) Royalties arising in a Contracting State which are derived by 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 law of that State, but where the beneficial owner of such royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 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 right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for television or 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) of this Article 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 8 or Article 15, 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 a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- (6) Where a special relationship exists between the payer and the beneficial owner or between both of them and some other person and the amount of the royalties

paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14

Alienation of property

- (1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 and situated in the other Contracting State or from the alienation of shares in a company the assets of which consist wholly or principally of such property may be taxed in that other State.
- (2) Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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) of this Article, shall be taxable in the Contracting State of which the alienator is a resident.

Article 15

Independent personal services

- (1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if:
 - (a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any consecutive period of 12 months; or
 - (b) the individual has a fixed base regularly available to him in the other State for the purpose of performing his activities;but only so much thereof as is attributable to services performed in that State.

- (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 16

Dependent personal services

- (1) Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
- (2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive period of 12 months; 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 17

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 State.

Article 18

Artistes and athletes

- (1) Notwithstanding the provisions of Articles 15 and 16, 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 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 19

Pensions and annuities

- (1) Pensions (including pensions paid under the social security legislation of a Contracting State), and similar remuneration in consideration of past employment or services, paid to a resident of a Contracting State, and any annuity paid to a resident of a Contracting State, 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 20

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) The provisions of Articles 15 and 16 shall apply to remuneration 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.

Article 21

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of 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.

Article 22

Elimination of double taxation

- (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):
 - (a) New Zealand tax payable under the law of New Zealand and in accordance with this Convention whether directly or by deduction, on profits, income or chargeable gains from sources within New Zealand (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the New Zealand tax is computed.
 - (b) In the case of a dividend paid by a company which is a resident of New Zealand to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 percent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any New Zealand tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the New Zealand tax payable by the company in respect of the profits out of which such dividend is paid.
- (2)
 - (a) Subject to the provisions of the law of New Zealand from time to time in force relating to the allowance as a credit against New Zealand tax of tax paid in any country other than New Zealand (which shall not affect the general principle hereof), United Kingdom tax computed by reference to income from sources in the United Kingdom and paid under the law of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in the United Kingdom (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 the New Zealand tax computed by reference to the same income and payable in respect of that income.
 - (b) In the event that the Government of New Zealand should impose tax on dividends received by companies which are resident in New Zealand the Contracting States will enter into negotiations in order to establish new provisions concerning the taxation of such dividends derived from sources in the United Kingdom.

- (3) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains derived by 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 State.
- (4) Where, under the provisions of Article 10, profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made or imposed between the two enterprises in their commercial or financial relations had been those which would have been made or imposed between independent enterprises, the amount included in the profits of both enterprises shall be treated for the purpose of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.
- (5) Nothing in this Article shall entitle a person who is a resident of a Contracting State to credit against tax of that Contracting State of tax of the other Contracting State if the terms of the transactions giving rise to the profits on which the tax of the other State is payable are not such as might be expected in a bona fide commercial transaction and if they have as their main object, or one of their main objects, the obtaining of that credit.

Article 23

Non-discrimination

- (1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement 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 are or may be subjected.
- (2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities; provided that this paragraph shall not prevent a Contracting State from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State a tax not exceeding 5 percent of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the first-mentioned State.
- (3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which enterprises

of the first-mentioned State carrying on the same activities, the capital of which is owned or controlled by residents of the first-mentioned State, are or may be subjected.

- (4) Except where the provisions of Article 10, paragraph (8) of Article 12, or paragraph (6) of Article 13, apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
- (5) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any exemption, relief, reduction or allowance for tax purposes which is granted to persons resident in that State.
- (6) In this Article the term “taxation” means the taxes to which this Convention applies.

Article 24

Mutual agreement procedure

- (1) Where a resident of a Contracting State 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.
- (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.
- (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.
- (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. Any information received by a Contracting State shall be treated as secret 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) of this Article be construed so as to impose on the competent authority of either Contracting State the obligation:
 - (a) to carry out administrative measures at variance with laws and administrative practice prevailing in either Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of either 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.

Article 26

Diplomatic agents and consular officials

- (1) Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.
- (2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic or permanent mission or consular post of a Contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

Article 27

Entry into force

- (1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:
 - (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following the date on which the Convention enters into force;

- (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following the date on which the Convention enters into force;
 - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following the date on which the Convention enters into force; and
 - (b) in New Zealand: for any income year beginning on or after 1 April in the calendar year next following the date on which the Convention enters into force.
- (2) The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was made in 1966 between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland as modified by the Protocol made in 1980, shall terminate and cease to have effect from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (1) of this Article.

Article 28

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;
 - (iii) in respect of petroleum revenue tax for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (b) in New Zealand: for any income year beginning on or after 1 April in the calendar year next following that in which the notice is given.

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

DONE in duplicate at London this 4th day of August 1983.

For the Government of New Zealand

W. L. Young

For the Government of the United
Kingdom of Great Britain and Northern
Ireland

Baroness Young

**Exchange of Letters Constituting an Agreement to Amend Article 27
of the Convention between the Government of the United Kingdom
of Great Britain and Northern Ireland and the Government of New
Zealand for the Avoidance of Double Taxation and the Prevention of
Fiscal Evasion with Respect to Taxes on Income and Capital Gains**

No. 1

C. S. R. Giffard

for the Secretary of State

to

His Excellency Hon. W. L. Young

High Commissioner for New Zealand to the United Kingdom

Foreign and Commonwealth Office

London, 22 December 1983

Your Excellency,

1. I have the honour to refer to the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains signed at London on 4 August 1983 and to the discussions which have taken place between officials regarding the entry into force of that Convention. I now have the honour to propose that paragraph (1) of Article 27 of the Agreement is deleted and replaced by the following:
“(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:
 - (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1984;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1984;
 - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January 1984;
 - and
 - (b) in New Zealand:

for any income year beginning on or after 1 April 1984.”
2. If the proposal set out in this Note is acceptable to the Government of New Zealand, I have the honour to suggest that this Note and your reply to that

effect shall constitute an Agreement between our two Governments which shall come into force on the date of your reply.

I have the honour to convey to Your Excellency the assurance of my highest consideration

(for the Secretary of State)

C. S. R. Giffard

No. 2

His Excellency Hon. W. L. Young

High Commissioner for New Zealand to the United Kingdom

to

The Secretary of State for Foreign and Commonwealth Affairs

Foreign and Commonwealth Office

New Zealand High Commission

London, 22 December 1983

Sir,

I have the honour to acknowledge receipt of your Note of 22 December 1983 which reads as follows:

[As in No. 1]

In reply, I have the honour to confirm that the proposal set out above is acceptable to the Government of New Zealand and that your Note and this reply shall constitute an Agreement between our two Governments which shall come into force on today's date.

I have the honour to convey to you, Sir, the assurance of my highest consideration.

W. L. Young

New Zealand High Commissioner to the
United Kingdom

Schedule 2

Protocol between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, signed at London on 4 August 1983

cl 2(1)

Schedule 2: added, on 22 July 2004, by clause 5 of the Double Taxation Relief (United Kingdom) Amendment Order 2004 (SR 2004/181).

The Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, signed at London on 4 August 1983 (hereinafter referred to as “the Convention”);

Have agreed as follows:

Article I

Paragraph (6) of Article 8 of the Convention shall be deleted and the following new paragraph shall be inserted immediately after paragraph (5) of that Article:

“(6) Notwithstanding the provisions of this Article, income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, in the case of insurance other than life insurance, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other Contracting State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 percent of the gross premiums paid for the insurance of those risks.”

Article II

Article 11 of the Convention shall be deleted and replaced by the following:

“Article 11 Dividends

- (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other

Contracting State, the tax so charged shall not exceed 15 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 Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
- (4) The provisions of paragraphs (1) and (2) of this Article 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 8 or 15 of this Convention, 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.
- (6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.”

Article III

The following new paragraph shall be inserted immediately after paragraph (8) of Article 12 of the Convention:

- “(9) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.”

Article IV

The following new paragraph shall be inserted immediately after paragraph (6) of Article 13 of the Convention:

- “(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.”

Article V

- (1) Paragraph (1) of Article 14 of the Convention shall be deleted and replaced by the following:
- “(1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 of this Convention and situated in the other Contracting State, or from the alienation of shares in a company deriving their value or the greater part of their value directly or indirectly from such property, may be taxed in that other State.”
- (2) Paragraph (4) of Article 14 of the Convention shall be deleted and the following new paragraphs shall be inserted immediately after paragraph (3) of that Article:
- “(4) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.
- (5) The provisions of this Article shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding that year.”

Article VI

The following new Article 21A shall be inserted:

“Article 21A Other income

- (1) Items of income of a resident of a Contracting State, 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) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7 of this Convention, derived by a resident of a Contracting State who carries

on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In that case the provisions of Article 8 of this Convention shall apply.

- (3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.
- (4) Where, by reason of a special relationship between the person referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which might reasonably have been expected to have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.
- (5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.”

Article VII

Article 25 of the Convention shall be deleted and replaced by the following:

“Article 25

Exchange of information

- (1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Convention. 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 but may be disclosed to and only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention or the oversight of the above. Such persons or authorities shall use the information only for such purposes.

They may disclose the information in public court proceedings or in judicial decisions.

- (2) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information in the same way as if its own taxation were involved, even though that other State may not need such information for its own tax purposes. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall so far as possible provide information under this Article in the form requested.
- (3) In no case shall the provisions of paragraphs (1) and (2) of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to 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 whose disclosure would be contrary to public policy.
- (4) In no case shall the provisions of paragraph (3) of this Article be construed so as to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or relates to ownership interests in a person.”

Article VIII

The Governments of the Contracting States shall notify one another, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in relation to the income or gains referred to in Article V of this Protocol, in respect of income tax, capital gains tax and corporation tax on income and gains arising on or after the date of signature of this Protocol;
 - (ii) in relation to the information referred to in Article VII of this Protocol, in respect of such information that is requested or exchanged on or after the date of signature of this Protocol;
 - (iii) in respect of income tax not described in clause (i) of this sub-paragraph, for any year of assessment beginning on or after the sixth day of April next following the date on which this Protocol enters into force;

- (iv) in respect of corporation tax not described in clause (i) of this sub-paragraph, for any financial year beginning on or after the first day of April next following the date on which this Protocol enters into force;
 - (v) in relation to tax credits in respect of dividends paid by companies which are residents of the United Kingdom, to terminate any entitlement to such tax credits in respect of dividends paid on or after the sixth day of April next following the date on which this Protocol enters into force.
- (b) in New Zealand:
- (i) in relation to the income or gains referred to in Article V of this Protocol, in respect of income tax on income and gains arising on or after the date of signature of this Protocol;
 - (ii) in relation to the information referred to in Article VII of this Protocol, in respect of such information that is requested or exchanged on or after the date of signature of this Protocol;
 - (iii) in respect of income tax not described in clause (i) of this sub-paragraph, for any income year beginning on or after the first day of April next following the date on which this Protocol enters into force.

Article IX

This Protocol shall remain in force as long as the Convention remains in force.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at London this 4th day of November 2003.

For the Government of New Zealand

Hon Russell Marshall

For the Government of the United
Kingdom of Great Britain and Northern
Ireland

Rt Hon Dawn Primarolo

Exchange of Notes

London 4 November 2003

Your Excellency

I have the honour to refer to the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposal:

With reference to paragraph (5) of Article 14 of the Convention as inserted by paragraph (2) of Article V of the Protocol, it is understood that the law mentioned includes provisions of the United Kingdom tax legislation that counter avoidance of capital gains tax by temporary non-residents, participators in non-resident close companies, and individuals who have, or are treated for tax purposes as having, an interest under a settlement.

If the foregoing proposal is acceptable to the Government of New Zealand, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

London 4 November 2003

Your Excellency

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

"I have the honour to refer to the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following Proposal:

With reference to paragraph (5) of Article 14 of the Convention as inserted by paragraph (2) of Article V of the Protocol, it is understood that the law mentioned includes provisions of the United Kingdom tax legislation that counter avoidance of capital gains tax by temporary non-residents, participators in non-resident close companies, and individuals deriving an interest under a settlement.

If the foregoing Proposal is acceptable to the Government of New Zealand, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol."

The foregoing Proposal being acceptable to the Government of New Zealand, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Protocol.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

Schedule 3

Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, signed at London on 4 August 1983, as amended by the protocol signed at London on 4 November 2003

cl 2(2)

Schedule 3: added, on 28 August 2008, by clause 5 of the Double Taxation Relief (United Kingdom) Amendment Order 2008 (SR 2008/228).

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, signed at London on 4 August 1983, as amended by the Protocol signed at London on 4 November 2003 (hereinafter referred to as “the Convention”);

Have agreed as follows:

Article I

Article 25 of the Convention shall be deleted and replaced by the following:

“Article 25

Exchange of information

- (1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by Articles 1 and 2 of this Convention.
- (2) Any information received under paragraph (1) of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph (1),

- or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (3) In no case shall the provisions of paragraphs (1) and (2) of this Article be construed so as to impose on a Contracting State the obligation:
- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to 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.
- (4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
- (5) In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article II

The following new Article shall be inserted immediately after Article 25 of the Convention:

“Article 25A

Assistance in the collection of taxes

- (1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2 of this Convention. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
- (2) The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties,

as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

- (3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
- (4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
- (5) Notwithstanding the provisions of paragraphs (3) and (4) of this Article, a revenue claim accepted by a Contracting State for purposes of paragraph (3) or (4) shall not, in that State, be accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph (3) or (4) shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
- (6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
- (7) Where, at any time after a request has been made by a Contracting State under paragraph (3) or (4) of this Article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - (a) in the case of a request under paragraph (3), a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - (b) in the case of a request under paragraph (4), a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

- (8) In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to carry out measures which would be contrary to public policy;
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
 - (e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.”

Article III

- (1) Each of the Contracting States shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect in both Contracting States:
- (a) in relation to the information referred to in Article I of this Protocol, in respect of such information that is requested or exchanged on or after the date of entry into force of this Protocol;
 - (b) in relation to revenue claims referred to in Article II of this Protocol, in respect of requests for assistance made on or after the date of entry into force of this Protocol.

Article IV

This Protocol shall remain in force as long as the Convention remains in force.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at London this 7th day of November 2007.

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*: 16 February 1984.

Contents

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Notes**1 General**

This is a reprint of the Double Taxation Relief (United Kingdom) Order 1984. The reprint incorporates all the amendments to the order as at 28 August 2008, 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 (United Kingdom) Amendment Order 2008 (SR 2008/228)

Double Taxation Relief (United Kingdom) Amendment Order 2004 (SR 2004/181)