Reprint
as at 21 November 1997

Double Taxation Relief (Taiwan) Order 1997

(SR 1997/298)

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 17th day of November 1997

Present:
The Hon Jenny Shipley presiding in Council

Pursuant to section BH 1 of the Income Tax Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

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.

Contents

Order

1 Title and application

(1) This order may be cited as the Double Taxation Relief (Taiwan) Order 1997.

(2) This order applies according to the tenor of the agreement set out in the Schedule.

2 Giving effect to agreement

It is declared that the arrangements specified in the agreement set out in the Schedule, being arrangements that have been made between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand, with a view to affording relief from double taxation in relation to income tax imposed under the Income Tax Act 1994 and the profit seeking enterprise income tax and the individual consolidated income tax imposed under the taxation laws administered by the Department of Taxation, Ministry of Finance, Taipei, are, in relation to income tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, to have effect according to the tenor of the agreement.

Schedule
Agreement between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

The New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand

Desiring to conclude an Agreement 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 Agreement shall apply to persons who are residents of one or both of the territories.

Article 2
Taxes covered

1. The existing taxes to which this Agreement shall apply are:
   (a) in the territory in respect of which the taxation laws administered by the New Zealand Inland Revenue Department is applied at the date of signature of this Agreement:

   the income tax;

   (b) in the territory in respect of which the taxation laws administered by the Department of Taxation, Ministry of Finance, Taipei is applied at the date of signature of this Agreement:

   the profit seeking enterprise income tax and the individual consolidated income tax.
2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing

Article 2—*continued*

taxes. The competent authorities shall notify each other within a reasonable period of time of any significant changes which have been made in the taxation laws of their respective territories.

3. Notwithstanding the provisions of paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either territory. However, the provisions of this paragraph do not apply to Article 22.

Article 3
General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
   (a) the term "territory" means the territory referred to in subparagraph 1(a) or 1(b) of Article 2, as the case requires;
   (b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
   (c) the term "competent authority" means:
      (i) in the case of the territory referred to in subparagraph 1(a) of Article 2, the Commissioner of Inland Revenue or a representative authorised by the Commissioner;
      (ii) in the case of the territory referred to in subparagraph 1(b) of Article 2, the Director-General of the Department of Taxation, Ministry of Finance or a representative authorised by the Director-General.
   (d) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory, as the context requires;
   (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a territory,

Article 3—*continued*

except when the ship or aircraft is operated solely from a place or between places in the other territory;

(f) the term "natural resources" includes standing timber and fish;

(g) For the purposes of Articles 10, 11 and 12, the term "paid", in relation to any amount, includes distributed (whether in cash or other property), credited or dealt with on behalf of a person or at that person's direction; and the terms "pay", "payable" and "payment" have corresponding meanings;

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

(i) the terms "resident of a territory for the purposes of its tax" and "resident of that territory for the purposes of its tax", in relation to a company, includes, in the case of the territory referred to in subparagraph 1(b) of Article 2 and in relation to that territory's tax, a company which is incorporated in that territory.

2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a territory in respect of dividends, interest or royalties shall be deemed to be beneficially entitled to such dividends, interest or royalties.

3. For the purposes of Articles 11, 12 and 15, expenditure that is deductible in determining income, profits or gains attributable to a permanent establishment or fixed base is deemed to be borne by that permanent establishment or fixed base.

4. As regards the application of this Agreement at any time in a territory, any term not defined in the Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that territory concerning the taxes to which the Agreement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

Article 4
Residence

1. For the purposes of this Agreement, a person is a resident of a territory if, under the laws of that territory, the person is liable to tax by reason of domicile, residence, place of head office, place of management or incorporation or other criterion of a similar nature.
2. A person is not a resident of a territory for the purposes of this Agreement if the person is liable to tax in that territory in respect only of income from sources in that territory, provided that this paragraph shall not apply to individuals resident in the territory referred to in subparagraph 1(b) of Article 2.
3. Where by reason of the preceding provisions of this Article an individual is a resident of both territories, then the status of the individual shall be determined as follows:
   (a) the individual shall be deemed to be a resident solely of the territory in which a permanent home is available to the individual; if a permanent home is available to the individual in both territories, the individual shall be deemed to be a resident solely of the territory with which the individual's personal and economic relations are closer (centre of vital interests);
   (b) if the territory in which the individual's centre of vital interests cannot be determined, or if the individual does not have a permanent home available in either territory, the individual shall be deemed to be a resident solely of the territory in which the individual has an habitual abode;
   (c) if the individual has an habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both territories then it shall be deemed to be a resident solely of the territory in which its place of effective management is situated.

Article 5
Permanent establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
   (a) a place of management;
   (b) a branch;
   (c) an office;
   (d) a factory;
   (e) a workshop; and
   (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, or a construction, installation or assembly project constitutes a permanent establishment if it lasts for more than 12 months.
4. An enterprise shall be deemed to have a permanent establishment in a territory and to carry on business through that permanent establishment if, for more than 12 months:
   (a) it carries on supervisory activities in that territory in connection with a building site or a construction, installation or assembly project which is being undertaken in that territory; or
   (b) it carries on activities in that territory which consist of, or which are connected with, the exploration or exploitation of natural resources situated in that territory; or
   (c) substantial equipment is being used in that territory by, for or under contract with the enterprise.
5. For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a territory by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that territory by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed

Article 5—*continued*

to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

6. An enterprise shall not be deemed to have a "permanent establishment" merely by reason of:
   (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or
   (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or
   (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
   (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; or
   (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, such as advertising or scientific research.

7. Notwithstanding the provisions of paragraphs 1 and 2, a person acting in a territory on behalf of an enterprise of the other territory—other than an agent of an independent status to whom paragraph 8 applies—shall be deemed to be a permanent establishment of that enterprise in the first-mentioned territory if the person has and habitually exercises in the first-mentioned territory an authority to conclude contracts on behalf of that enterprise, unless the activities of that person are limited to those described in paragraph 6 and, 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.

8. An enterprise of a territory shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a person who is a broker, general commission agent or any other agent of an

Article 5—*continued*

independent status, and the broker or agent is acting in the ordinary course of its business.

9. The fact that a company which is a resident of a territory controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (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 territory from immovable property (including income from agriculture, forestry or fishing) situated in the other territory may be taxed in that other territory.

2. The term "immovable property" shall have the meaning which it has under the laws of the territory in which the property in question is situated. The term shall in any case include:
   (a) a lease of land and any other interest in or over land, whether or not that land is improved;
   (b) a right to explore for or exploit mineral, oil or gas deposits, or other natural resources;
   (c) a right to receive variable or fixed payments either:
      (i) as consideration for or in respect of the exploitation of, or
      (ii) for the right to explore for or exploit,
      mineral, oil or gas deposits, or other natural resources.

   But 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. Any interest or right referred to in paragraph 2 shall be regarded as being situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be,

Article 6—*continued*

are situated or where the exploration or exploitation may take place.

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

Article 7
Business profits

1. The profits of an enterprise of a territory shall be taxable only in that territory unless the enterprise carries on business in the other territory through a permanent establishment situated in that other territory. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other territory 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 territory carries on business in the other territory through a permanent establishment situated in that other territory, there shall in each territory 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 or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred), whether incurred in the territory in which the permanent establishment is situated or elsewhere. However, no deduction is allowable in respect of expenses which are not deductible under the laws of the territory in which the permanent establishment is situated.

Article 7—*continued*

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. Nothing in this Article shall affect the application of any laws of a territory relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that territory is inadequate to determine the profits to be attributed to a permanent establishment, provided that those laws shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where:

   (a) a resident of a territory is beneficially entitled, whether directly or through one or more interposed trusts, to a share of the business profits of an enterprise carried on in the other territory by the trustee of a trust other than a trust which is treated as a company for tax purposes; and

   (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other territory,

   the enterprise carried on by the trustee shall be deemed to be a business carried on in the other territory by that resident through a permanent establishment situated in that other territory and that share of business profits shall be attributed to that permanent establishment.

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

9. Nothing in this Article shall affect any provisions of the laws of either territory at any time in force as they affect the taxa-

Article 7—*continued*

tion of any income or profits from the business of any form of insurance.

Article 8
Ship and aircraft operations

1. Profits from ship or aircraft operations derived by a resident of a territory shall be taxable only in that territory.
2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other territory where they are profits from ship or aircraft operations confined solely to places in that other territory.
3. The profits to which the provisions of paragraph 1 and 2 apply shall include profits from:
   (a) the lease of ships or aircraft on a full time, voyage or bareboat charter basis, and of containers and related equipment, which is merely incidental to the operation of ships or aircraft by the lessor, provided that the leased ships or aircraft, or the containers and related equipment, are used in operations by the lessee; and
   (b) the share of profits from ship or aircraft operations derived by a resident of a territory through participation in a pool, a joint business or operating organisation or in an international agency.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a territory for discharge at a place in that territory shall be treated as profits from ship or aircraft operations confined solely to places in that territory.
5. For the purposes of paragraphs 1 and 2, cargo handling within a territory shall not be regarded as ship or aircraft operations unless that cargo handling would constitute international traffic as defined in paragraph (1)(e) of Article 3.

Article 9
Associated enterprises

1. Where:

Article 9—*continued*

(a) an enterprise of a territory participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a territory and an enterprise of the other territory,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Nothing in this Article shall affect the application of any laws of a territory relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that territory is inadequate to determine the profits to be attributed to an enterprise, provided that those laws shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

3. Where profits on which an enterprise of a territory has been charged to tax in that territory are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other territory and charged to tax in that other territory, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other territory if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the competent authority of the first-mentioned territory shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned territory. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities shall if necessary consult each other.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a territory for the purposes of its tax, being dividends to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.
2. Those dividends may also be taxed in the territory of which the company paying the dividends is a resident for the purposes of its tax, and according to the laws of that territory, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
3. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the laws, relating to tax, of the territory of which the company making the payment is a resident for the purposes of its tax.
4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of a territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated in that other territory, or performs in that other territory independent personal services from a fixed base situated in that other territory, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In such case, the provisions of Article 7 or 14, as the case may be, shall apply.
5. Where a company which is a resident of a territory derives profits or income from the other territory, that other territory may not impose any tax on the dividends paid by that company, except insofar as such dividends are paid to a resident of that other territory or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base in that other territory, 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 that other territory. This paragraph shall not apply in relation to dividends paid by any company which is a resident of both territories for the purposes of each territory's tax.

Article 11
Interest

1. Interest arising in a territory, being interest to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.

2. That interest may be taxed in the territory in which it arises, and according to the laws of that territory, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. The term "interest" 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 profits, and in particular, interest from government securities and income from bonds or debentures, including premiums and prizes attaching to such bonds or debentures, as well as all other income assimilated to income from money lent by the laws, relating to tax, of the territory in which the income arises, but does not include any income which is treated as a dividend under Article 10.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of a territory, carries on business in the other territory, in which the interest arises, through a permanent establishment situated in that other territory, or performs in that other territory independent personal services from a fixed base situated in that other territory, and the debt-claim in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In such case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a territory when the payer is an authority of that territory, or a sub-division, or a local authority of that territory or a person who is a resident of that territory for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a territory or not, has in a territory a permanent establishment or fixed base in connection with which the debt-claim on which the interest is paid was incurred, and that interest is borne by such permanent establishment or fixed base, then the interest

Article 11—*continued*

shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the person beneficially entitled to the interest, 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 might have been expected to have been agreed upon in the absence of that relationship by the payer and the person beneficially entitled, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the amount of the interest paid shall remain taxable according to the laws, relating to tax, of each territory, subject to the other provisions of this Agreement.

Article 12
Royalties

1. Royalties arising in a territory, being royalties to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.
2. Those royalties may be taxed in the territory in which they arise, and according to the laws of that territory, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" in this Article means payments of any kind, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
   (a) the use of, or the right to use, any copyright, patent, trademark, design or model, plan, secret formula or process, or other like property or right; or
   (b) the use of, or the right to use, any industrial, scientific or commercial equipment; or
   (c) the supply of scientific, technical, industrial or commercial knowledge or information; or
   (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the

Article 12—*continued*

application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or

(e) the use of, or the right to use, any:
  (i) motion picture film; or
  (ii) film or videotape or any other recording for use in connection with television; or
  (iii) tape or any other recording for use in connection with radio broadcasting; or

(f) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
  (i) satellite; or
  (ii) cable, optic fibre or similar technology; or

(g) the use in connection with television or radio broadcasting, or the right to use in connection with television or radio broadcasting, visual images or sounds, or both, transmitted by:
  (i) satellite; or
  (ii) cable, optic fibre or similar technology; or

(h) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of a territory, carries on business in the other territory, in which the royalties arise, through a permanent establishment situated in that other territory, or performs in that other territory independent personal services from a fixed base situated in that other territory, and the property or right in respect of which the royalties are paid is effectively connected with that permanent establishment or fixed base. In such case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a territory when the payer is an authority of that territory, or a sub-division, or a local authority of that territory or a person who is a resident of that territory for the purposes of its tax. Where, however, the per-

Article 12—*continued*

son paying the royalties, whether the person is a resident of a territory or not, has in a territory a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by such permanent establishment or fixed base, then the royalties shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon in the absence of that relationship by the payer and the person beneficially entitled, the provisions of this Article shall apply only to the last-mentioned amount. In that case the excess part of the amount of the royalties paid shall remain taxable according to the laws, relating to tax, of each territory, subject to the other provisions of this Agreement.

Article 13
Alienation of property

1. Income, profits or gains derived by a resident of a territory from the alienation of immovable property (as defined in paragraph 2 of Article 6) situated in the other territory may be taxed in that other territory.

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

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than im-

Article 13—*continued*

movable property) pertaining to the operation of those ships or aircraft, shall be taxable only in the territory in which the enterprise alienating such ships, aircraft or other property is a resident.

4. Nothing in this Agreement affects the application of the laws of a territory relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

5. For the purposes of this Article, the situation of immovable property shall be determined in accordance with paragraph 4 of Article 6.

Article 14
Independent personal services

1. Income derived by an individual who is a resident of a territory in respect of professional services or other independent activities shall be taxable only in that territory unless such services are performed in the other territory and:

   (a) the individual is present in the other territory for a period or periods exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income concerned; or

   (b) a fixed base is regularly available to the individual in the other territory for the purpose of performing the individual's activities.

   If the provisions of subparagraphs (a) or (b) are satisfied, the income may be taxed in that other territory but only so much of it as is attributable to activities performed during such period or periods or from that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as in the performance of 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 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of a territory in respect of an employment shall be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other territory.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:
   (a) the recipient is present in that other territory for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income concerned; and
   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other territory; and
   (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in that other territory.

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 territory may be taxed in that territory.

Article 16
Directors' fees

Directors' fees and similar payments derived by a resident of a territory in that person's capacity as a member of the board of directors of a company which is a resident of the other territory may be taxed in that other territory.

Article 17
Entertainers and sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture,

Article 17—*continued*

radio or television artistes and musicians) and sportspersons from their personal activities as such may be taxed in the territory in which these activities are exercised.

2. Where income in respect of the personal activities of an entertainer or a sportsperson as such accrues not to that entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the territory in which the activities of the entertainer or sportsperson are exercised.

Article 18
Pensions and annuities

1. Pensions and annuities paid to a resident of a territory shall be taxable only in that territory.
2. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19
Students

Where a student, who is a resident of a territory or who was a resident of that territory immediately before visiting the other territory and who is temporarily present in that other territory solely for the purpose of the student's education, receives payments from sources outside that other territory for the purpose of the student's maintenance or education, those payments shall be exempt from tax in that other territory.

Article 20
Other income

1. Items of income of a resident of a territory, wherever arising, not dealt with in the preceding Articles of this Agreement shall be taxable only in that territory except that if such income is

Article 20—*continued*

derived from sources within the other territory, that income may also be taxed in that other territory.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a territory, carries on business in the other territory through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

Article 21
Elimination of double taxation

Subject to the provisions of the laws of a territory from time to time in force relating to the allowance of a credit against tax payable in that territory of tax paid outside that territory (which shall not affect the general principle of this Article), tax paid under the laws of the other territory (but excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the first-mentioned territory from sources in the other territory shall be allowed as a credit against tax payable in the first-mentioned territory in respect of that income. The amount of credit, however, shall not exceed the amount of the tax in the first-mentioned territory on that income computed in accordance with its taxation laws and regulations.

Article 22
Mutual agreement procedure

1. Where a person who is a resident of a territory considers that actions in one or both of the territories result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic laws of the territories, present a case

Article 22—*continued*

to the competent authority of the territory of which the person is a resident. The case must be presented within three years from the first notification of the action which results in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other territory, with a view to the avoidance of taxation not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the territories.

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

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

Article 23
Exchange of information

1. The competent authorities of the territories shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the territories concerning taxes covered by the Agreement insofar as the taxation under those laws is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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, or the determination of appeals in relation to, the

Article 23—*continued*

taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a territory the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;
   (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 territory;
   (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 24
Entry into force

This Agreement shall enter into force on the date on which the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand notify each other in writing that the last of such things has been done as is necessary to give this Agreement effect in the domestic laws of the respective territories. This Agreement shall have effect:

(a) in both territories, in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force;
(b) in respect of other taxes:
   (i) in the territory in which the taxation laws administered by the New Zealand Inland Revenue Department is applied, in relation to income, profits or gains of any year of income beginning on or after 1 April in the calendar year next following the date on which the Agreement enters into force;
   (ii) in the territory in which the taxation laws administered by the Department of Taxation, Ministry of Finance, Taipei is applied, in relation to income, profits or gains

Article 24—*continued*

of any year of income beginning on or after 1 January in the calendar year next following the date on which the Agreement enters into force;

(c) in both territories, in respect to tax in relation to income of aircraft operations to which Article 8 applies, on or after 1 January 1996.

Article 25
Termination

This Agreement shall continue in force indefinitely, but the New Zealand Commerce and Industry Office or the Taipei Economic and Cultural Office in New Zealand may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other written notice of termination and, in that event, the Agreement shall cease to be effective:

(a) in both territories, in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given;

(b) in respect of other taxes:

(i) in the territory in which the taxation laws administered by the New Zealand Inland Revenue Department is applied, in relation to income, profits or gains of any year of income beginning on or after 1 April in the calendar year next following that in which the notice of termination is given;

(ii) in the territory in which the taxation laws administered by the Department of Taxation, Ministry of Finance, Taipei is applied, in relation to income, profits or gains of any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

DONE in duplicate at Auckland this 11th day of November 1996 in the English and Chinese languages, both texts being equally authen-

Article 25—*continued*

tic. In the case of any divergence of meaning between the two texts, the English text shall prevail.

For the New Zealand Commerce and Industry Office	For the Taipei Economic and Cultural Office in New Zealand
A P F Browne	Frank C Lin

Annex

At the signing of the Agreement concluded today between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Agreement.

1. Non-Discrimination

That discrimination in the tax laws of either territory on the grounds of nationality is undesirable. With this in view, it is agreed that:

(a) if either competent authority identifies an issue of discrimination contrary to the spirit of this Agreement, the competent authorities shall consult with a view to removing that discrimination; and

(b) if at any time after the date of signature of this Agreement, New Zealand includes a non-discrimination article in any of its double taxation conventions, the New Zealand Commerce and Industry Office shall without undue delay inform the Taipei Economic and Cultural Office in New Zealand and they shall enter into negotiations with a view to concluding a non-discrimination article in this present Agreement.

2. In respect of Article 10

It is agreed that if in any future double taxation convention with any State, New Zealand limits its taxation at source on dividends to a rate lower than the one provided for in that Article, the New Zealand Commerce and Industry Office shall without undue delay inform the

Taipei Economic and Cultural Office in New Zealand and they shall review that article with a view to amending this Agreement to provide the same treatment.

Done in duplicate at Auckland this 11th day of November 1996, in the English and Chinese languages, both texts being equally authentic. In the case of any divergence of meaning between the two texts, the English text shall prevail.

For the New Zealand Commerce and Industry Office	For the Taipei Economic and Cultural Office in New Zealand
A P F Browne	Frank C Lin

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order gives effect to the provisions of the agreement to avoid double taxation entered into between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand on 11 November 1996.

The order generally takes effect from 1 April 1998 and the 1998–99 income year.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 20 November 1997.

Contents

Notes

1 General

This is a reprint of the Double Taxation Relief (Taiwan) Order 1997. The reprint incorporates all the amendments to the order as at 21 November 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)

Wellington, New Zealand:
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