Reprint
as at 25 June 2004

Double Taxation Relief (Republic of Chile) Order 2004

(SR 2004/175)

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 21st day of June 2004

Present:
Her Excellency the Administrator of the Government in Council

Pursuant to section BH 1 of the Income Tax Act 1994, Her Excellency the Administrator of the Government, acting on the advice and with the 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

This order is the Double Taxation Relief (Republic of Chile) Order 2004.

2 Application

This order applies according to the tenor of the convention and protocol set out in the Schedule.

3 Giving effect to convention and protocol

(1) It is declared that the arrangements specified in the convention and protocol set out in the Schedule are, in relation to income tax imposed under the Income Tax Act 1994 and despite anything in that Act or any other enactment, to have effect according to the tenor of the convention and protocol.

(2) Those arrangements have been made with the Government of the Republic of Chile with a view to affording relief from double taxation and prevention of fiscal evasion in relation to—

(a) income tax imposed under the Income Tax Act 1994 in New Zealand; and

(b) income tax imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*" in the Republic of Chile.

Schedule

cls 2, 3

Convention between New Zealand and the Republic of Chile for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

The Government of New Zealand and the Government of the Republic of Chile, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

Chapter I
Scope of the convention

Article 1—Persons covered

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

Article 2—Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amount of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are, in particular:
   (a) in Chile, the taxes imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*" (hereinafter referred to as "Chilean tax"); and
   (b) in New Zealand, the income tax (hereinafter referred to as "New Zealand tax").
4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signa-

Chapter I—*continued*
Article 2—*continued*

ture of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of any significant changes that have been made in their taxation laws.

Chapter II
Definitions

Article 3—General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
   (a) The term "Chile" means the territory of Chile; it also includes any area beyond the territorial sea designated under Chilean legislation and in accordance with international law as an area in which Chile may exercise sovereign rights with respect to natural resources;
   (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 designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
   (c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, the Republic of Chile or New Zealand, hereinafter referred to as "Chile" or "New Zealand", respectively;
   (d) the term "person" includes an individual, a company and any other body of persons;
   (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
   (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively

Chapter II—*continued*
Article 3—*continued*

an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) 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 from a place or between places in the other Contracting State;

(h) the term "competent authority" means:

(i) in the case of the Republic of Chile, the Minister of Finance or an authorised representative, and

(ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;

(i) the term "national" means:

(i) in the case of Chile, any individual possessing the nationality of Chile and in the case of New Zealand, any individual possessing the citizenship of New Zealand; and

(ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;

(j) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4—Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of domicile, residence, place of management, place of incorporation or any

Chapter II—*continued*
Article 4—*continued*

other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

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

(b) if the State in which the individual's centre of vital interests cannot be determined, or if the individual does not have a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;

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

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

3 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities shall by mutual agreement procedure endeavour to settle the question and determine the mode of application of the Convention to such person. In the absence of mutual agreement by the competent authorities, the person shall not be entitled to any relief or exemption from tax provided by the Convention.

Chapter II—*continued*
Article 4—*continued*

4 An item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for the purposes of the taxation law of that Contracting State as the income, profit or gain of a resident.

Article 5—Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
   (a) a place of management;
   (b) a branch;
   (c) an office;
   (d) a factory;
   (e) a workshop; and
   (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the extraction or the exploitation of natural resources.
3. A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts for more than six months.
4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if, for more than six months, substantial equipment or machinery is used in that other State by, for or under contract with the enterprise.
5. The term "permanent establishment" shall also include the performance of professional services and other activities of an independent character by a resident of a Contracting State in another Contracting State if:

Chapter II—*continued*
Article 5—*continued*

(a) such services or activities are carried on within that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period; or

(b) the resident performing such services or engaged in such activities is present in that Contracting State for a period or periods exceeding 183 days within any twelve month period.

6. For the purposes of determining the duration of activities under paragraphs 3, 4, and 5, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

7. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; 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

Chapter II—*continued*
Article 5—*continued*

(e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or carrying out scientific research for the enterprise, if such activity is of a preparatory or auxiliary character.

8. Notwithstanding the provisions of paragraphs 1 and 2 where a person (other than an agent of an independent status to whom paragraph 9 applies) is acting on behalf of an enterprise and 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 7 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business, and that the conditions that are made or imposed in their commercial or financial relations with such enterprises do not differ from those which would be generally made by independent agents.

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

Chapter III
Taxation of income

Article 6—Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention, 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 immovable property apply, usufruct of immovable property, rights to explore for or exploit mineral deposits, other natural resources or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit mineral deposits, other natural resources or standing timber. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7—Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there

Chapter III—*continued*
Article 7—*continued*

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 necessary expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred), whether in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

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

Article 8—Shipping and air transport

1. Profits 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. For the purposes of this Article:
   (a) the term "profits" includes:
      (i) gross revenues derived directly from the operation of ships or aircraft in international traffic; and
      (ii) interest on the amounts derived directly from the operation of ships or aircraft in international traf-

Chapter III—*continued*
Article 8—*continued*

fic, only if such interest is incidental to the operation; and

(b) the expression "operation of ships or aircraft" by an enterprise, also includes:
  (i) the charter or rental on a bareboat basis of ships and aircraft;
  (ii) the rental of containers and related equipment;
  if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9—Associated enterprises

1. Where:
  (a) an enterprise of 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 or might have been expected to 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, has not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had

Chapter III—*continued*
Article 9—*continued*

been those which would have been made between independent enterprises, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10—Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State:
   (a) but if the beneficial owner of the dividends is a resident of Chile the tax so charged in New Zealand shall not exceed 15 per cent of the gross amount of the dividends; and
   (b) if the beneficial owner of the dividends is a resident of New Zealand, the additional tax will apply in accordance with the laws of Chile.

   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 which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and

Chapter III—*continued*
Article 10—*continued*

the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11—Interest

1. Interest arising in a Contracting State and paid to or beneficially owned 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 laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:
   (a) 10 per cent of the gross amount of interest derived from loans granted by banks and insurance companies; and
   (b) 15 per cent of the gross amount of the interest (or such other rate as applies pursuant to Article 9 of the Protocol to this Convention) in all other cases.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. The term interest shall not include income dealt with in Article 10.

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Article 11—*continued*

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by or deductible in determining the income, profits or gains attributable to that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest 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 laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12—Royalties

1. Royalties arising in a Contracting State and paid to or beneficially owned 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 laws of that State, but if the beneficial owner of the royalties is a resident of

Chapter III—*continued*
Article 12—*continued*

the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties (or such other rate as applies pursuant to Article 10 of the Protocol to this Convention).

3. The term "royalties" as used 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 (including the use of or the right to use any scientific, literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical arrangements of published editions), patent, design or model, plan, secret formula or process, trade-mark, or other intangible property or right; or
   (b) the use of, or the right to use, any industrial, scientific or commercial equipment; or
   (c) 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and the royalties are borne by or deductible in determining the income, profits or gains attributable to that permanent establishment, then such royalties shall be deemed

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Article 12—*continued*

to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13—Alienation of property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
2. Income, profits or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.
4. Nothing in this Convention shall affect the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

Chapter III—*continued*

Article 14—Income from employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

Article 15—Directors' fees

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

Article 16—Artistes and sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or

Chapter III—*continued*
Article 16—*continued*

a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State. The income referred to in this paragraph shall include any income derived from any personal activity exercised in the other State related with that person's renown as an artiste or sportsperson.

2. Notwithstanding the provisions of Articles 7 and 14, where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17—Pensions

1. Pensions (including government pensions) paid to a resident of a Contracting State shall be taxable only in that State.

2. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall, to the extent it is not deductible to the payer, be taxable only in the first-mentioned State.

Article 18—Government service

1.

(a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State to an individual in respect of services rendered to that State shall be taxable only in that State.

(b) However, such salaries, wages and other 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 did not become a resident

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Article 18—*continued*

of that State solely for the purpose of rendering the services.

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State.

Article 19—Students

Payments which a student or trainee 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 education or training receives for the purpose of the student's or trainee's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 20—Other income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

Chapter IV
Elimination of double taxation

Article 21—Elimination of double taxation

1. In the case of Chile, double taxation shall be avoided as follows:
   (a) residents in Chile, obtaining income which may, in accordance with the provisions of this Convention be subject to taxation in New Zealand, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income referred to in this Convention;

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Article 21—*continued*

(b) where, in accordance with any provision of the Convention, income derived by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

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

subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Chilean tax paid under the laws of Chile and consistent with this Convention, in respect of income derived by a resident of New Zealand, shall be allowed as a credit against New Zealand tax payable in respect of that income.

Chapter V
Special provisions

Article 22—Limitation of benefits

1. Where dividends, interest and royalties referred to in Articles 10, 11 and 12 arising in a Contracting State are received by a company resident of the other Contracting State and one or more persons not resident in that other Contracting State:

(a) have directly or indirectly or through one or more companies, wherever resident, a substantial interest in such company, in the form of a participation or otherwise; or

(b) exercise directly or indirectly, alone or together, the management or control of such company;

any provision of this Convention conferring an exemption from, or a reduction of, tax shall apply only to dividends, interest and royalties that are subject to tax in the last-mentioned State under the ordinary rules of its tax law.

The foregoing provision shall not apply where the company establishes that the principal purpose of the company, the conduct of its business and the acquisition or maintenance by it of

Chapter V—*continued*
Article 22—*continued*

the shareholding or other property from which the income in question is derived, are motivated by sound business reasons and do not have as a main purpose or one of the main purposes the obtaining of any benefits under this Convention.

2. The provisions of Articles 10, 11 and 12 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 a right or debt-claim in respect of which dividends, interest or royalties are paid to take advantage of those Articles by means of that creation or assignment.

3. Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event the provisions of the Convention are used in such a manner as to provide benefits not contemplated or not intended, the competent authorities of the Contracting States shall, under the mutual agreement procedure of Article 24, recommend specific amendments to be made to the Convention. The Contracting States further agree that any such recommendation will be considered and discussed in an expeditious manner with a view to amending the Convention, where necessary.

4. Where:

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

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

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

Chapter V—*continued*

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, in particular with respect to residence, 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.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.
4. Companies which are residents 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 other similar companies that are residents of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
5. In this Article, the term "taxation" means taxes that are the subject of this Convention.

Article 24—Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the com-

Chapter V—*continued*
Article 24—*continued*

petent authority of the Contracting State of which that person is a resident or, if that person's case comes under paragraph 1 of Article 23, to that of the Contracting State of which that person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and it is not itself able to arrive at a satisfactory solution, to resolve the case by a mutual agreement procedure 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 procedure 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 concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes.

Chapter V—*continued*
Article 25—*continued*

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

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
   (a) to carry out administrative measures at variance with the laws and the 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.
3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same way as if its own taxation were involved even though the other State does not, at that time, need such information.

Article 26—Members of diplomatic missions and consular posts

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

Article 27—Miscellaneous rules

1. With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N° 18.657, as it is in force at the time of signature of this Convention and as it may be amended from time to time without changing the general principle thereof), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances

Chapter V—*continued*
Article 27—*continued*

from such accounts or funds in respect of investment in assets situated in Chile.

2. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 24 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

3. Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

4. Nothing in this Convention shall affect the taxation in Chile of a resident of New Zealand in respect of profits attributable to a permanent establishment situated in Chile, under both the first category tax and the additional tax but only as long as the first category tax is creditable in computing the additional tax.

Chapter VI
Final provisions

Article 28—Entry into force

1. Each of the Contracting States shall notify the other through the diplomatic channel of the completion of the procedures required by law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. The provisions of this Convention shall have effect:
   (a) in Chile,

Chapter VI—*continued*
Article 28—*continued*

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following the date on which this Convention enters into force; and

(b) in New Zealand,

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of January in the calendar year next following the date on which the Convention enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after the first day of April next following the date on which the Convention enters into force.

Article 29—Termination

1. This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the expiration of 5 years from the date after the year in which the Convention enters into force, give to the other Contracting State a notice of termination in writing through the diplomatic channel.

2. The provisions of this Convention shall cease to have effect:

(a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice of termination is given; and

(b) in New Zealand,

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of January in the calendar year next following the date in which the notice of termination is given;

Chapter VI—*continued*
Article 29—*continued*

(ii) in respect of other New Zealand tax, for any income year beginning on or after the first day of April next following that in which the notice of termination is given.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Convention.

DONE in duplicate at Wellington, this 10th day of December 2003 in the English and Spanish languages, both texts being equally authoritative.

For the Government of New Zealand	For the Government of the Republic of Chile
Hon Dr Michael Cullen	Nicolas Guzman

Protocol to the Convention between New Zealand and the Republic of Chile for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

On signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between the Government of the Republic of Chile and the Government of New Zealand, the signatories have agreed that the following provisions shall form an integral part of the Convention.

Article 1.
In general:

(a) It is understood that if, after the date in which the Convention enters into force, either Contracting State introduces a tax on

Article 1.—*continued*

capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Convention by extending its scope to include any tax on capital so introduced.

(b) The Contracting States agree that the Convention shall be interpreted so as not to affect the rights of either Contracting State to tax income, profits or gains derived from fishing in accordance with each State's respective laws.

Article 2.
With reference to Article 2 of the Convention:

For greater certainty, the taxes covered by the Convention do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

Article 3.
With reference to Article 3, paragraph 1(g), of the Convention:

It is agreed that the term "from a place" in Article 3, paragraph 1(g) only includes transport by a ship or aircraft that occurs habitually to and from a particular place in a Contracting State (e.g. a ship which provides transportation services to a maritime platform from a port in a Contracting State) but does not include such transport when the ship or aircraft lands in the territory of another State.

Article 4.
With reference to Article 5 of the Convention:

It is understood that the term "permanent establishment" includes activities which consist of or which are connected with the exploration or exploitation of natural resources, including forestry.

Article 5.
With reference to Article 6, paragraph 2, of the Convention:

It is understood that any right referred to in that paragraph shall be regarded as situated where the property is situated or where the exploration or exploitation may take place.

Article 6.
With reference to Article 7 of the Convention:

Income, premiums or profits from any kind of insurance may be taxed in accordance with the laws of either Contracting State.

Article 7.
With reference to Article 10 of the Convention:

It is agreed that, in relation to the application of the additional tax under the laws of Chile, should:

(a) the first category tax cease to be fully creditable in computing the amount of additional tax; or

(b) the rate of additional tax imposed with respect to residents of New Zealand, as determined under the provisions of Article 4 of the Convention exceed 42 per cent;

the Contracting States shall consult with each other with a view to amending the Convention to re-establish the balance of benefits under the Convention.

Article 8.
With reference to Articles 10, 11 and 12 of the Convention:

A trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, that interest or those royalties.

Article 9.
With reference to Article 11, paragraph 2(b), of the Convention:

It is agreed that if in any future double taxation Convention with any other State, Chile should limit its taxation at source on interest on loans, other than loans granted by banks and insurance companies to a rate below that provided for in Article 11, paragraph 2(b), of the Convention then such lower rate (but not in any event a rate below 10 per cent) shall apply to interest arising in Chile and beneficially owned by a resident of New Zealand and interest arising in New Zealand and beneficially owned by a resident of Chile under the same conditions as if such lower rate had been specified in Article 11, paragraph 2 of the Convention. Chile shall without undue delay inform New Zealand of any such lower rate by way of a diplomatic note. The lower rate will be applied from the date established in the Convention with the other State and communicated in the diplomatic note. Any revision of the rate in Article 11, paragraph 2(b), of the Convention under this Article shall not be regarded as a formal amendment to the Convention.

Article 10.
With reference to Article 12, paragraph 2, of the Convention:

It is agreed that if in any future double taxation Convention with any other State, New Zealand should limit its taxation at source on royalties, which are paid for the use of, or the right to use, industrial, commercial or scientific equipment, to a rate below that provided for in Article 12, paragraph 2, of the Convention then such lower rate (but not in any event a rate below 5 per cent) shall apply to such royalties arising in Chile and beneficially owned by a resident of New Zealand and such royalties arising in New Zealand and beneficially owned by a resident of Chile under the same conditions as if such lower rate had been specified in Article 12, paragraph 2, of the Convention. New Zealand shall without undue delay inform Chile of any such lower rate by way of a diplomatic note. The lower rate will be applied from the date established in the Convention with the other State and communicated in the diplomatic note. Any revision of the

Article 10.—*continued*

rate in Article 12, paragraph 2, of the Convention under this Article shall not be regarded as a formal amendment to the Convention.

Article 11.
With reference to Article 12, paragraph 3, of the Convention:

The term "royalties", as defined in paragraph 3 of Article 12 of the Convention, includes payments for total or partial forbearance in respect of the use or supply of any property or right referred to in that paragraph.

Article 12.
With reference to Article 27, paragraph 1, of the Convention:

The competent authority of Chile will advise the competent authority of New Zealand of any legislation introduced in Chile after the entry into force of this Convention, which establishes accounts or funds as referred to in paragraph 1 of Article 27 of the Convention.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Convention.

DONE in duplicate at Wellington, this 10th day of December 2003 in the English and Spanish languages, both texts being equally authoritative.

For the Government of New Zealand	For the Government of the Republic of Chile
Hon Dr Michael Cullen	Nicolas Guzman

Diane Morcom,
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 convention and protocol to avoid double taxation entered into between New Zealand and the Republic of Chile on 10 December 2003. This order comes into force the day after the date of its notification in the *Gazette*.

The date on which the agreement comes into force and has effect is set out in *Article 28* of the agreement.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 June 2004.

Contents

Notes

1 General

This is a reprint of the Double Taxation Relief (Republic of Chile) Order 2004. The reprint incorporates all the amendments to the order as at 25 June 2004, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

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/legislation/reprints.shtml or Part 8 of the *Tables of 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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