

Double Taxation Relief (Republic of the Philippines) Amendment Order 2004

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.

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- 1 Title**
- (1) This order is the Double Taxation Relief (Republic of the Philippines) Amendment Order 2004.
- (2) In this order, the Double Taxation Relief (Republic of the Philippines) Order 1980¹ is called “the principal order”.

¹ SR 1980/215

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Giving effect to Convention

Clause 2 of the principal order is amended by omitting the words “the Schedule to this order”, and substituting the words “Schedules 1 and 2”.

4 Schedule amended

The Schedule of the principal order is amended by omitting the heading to that schedule, and substituting the following heading:

Schedule 1

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

5 New Schedule 2 added

The principal order is amended by adding the Schedule 2 set out in the Schedule of this order.

Schedule

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New Schedule 2 added**Schedule 2**

**Protocol amending the Convention
between the Government of New Zealand
and the Government of the Republic
of the Philippines for the avoidance of
double taxation and the prevention of**

Schedule 2—*continued***fiscal evasion with respect to taxes on
income****Preamble**

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

Desiring that the Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with Protocol, signed at Manila on the 29th day of April 1980, be amended by both Contracting States,

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

ARTICLE I

An additional paragraph 2 shall be inserted in Article 9 (Associated Enterprises) of the Convention:

- “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 might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which might have been expected to have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE II

Paragraph 2 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

Schedule 2—*continued*

- “2 However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

ARTICLE III

Paragraph 2 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following:

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

ARTICLE IV Paragraphs 2 and 3 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following:

- “2 However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.

3The term **royalties** as used in this Article means payments or credits of any kind received as a consideration for:

- (a) the use of, or the right to use, any copyright (including the use of or the right to use any literary, artistic or scientific work, any data or images, or any films, tapes or other medium used for storing data), patent, design or model, plan, secret formula or process, trademark, or other like property or right;

Schedule 2—*continued*

- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the 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);
- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

ARTICLE V

Paragraph 2 of Article 23 (Relief from Double Taxation) of the Convention shall be deleted and replaced by the following:

“2 In the case of New Zealand:

Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle thereof), Philippine tax paid under the laws of the Philippines and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in the Philippines (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

Schedule 2—*continued*

ARTICLE VI

The taxes covered in this Protocol shall apply to income derived on or after the sixtieth day following that in which the Protocol enters into force.

ARTICLE VII

- 1 The Contracting States shall notify each other in writing through diplomatic channels that the constitutional requirements for the entry into force of this Protocol have been complied with.
- 2 This Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

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

DONE at Wellington this 21st day of February 2002 in duplicate in the English language.

FOR THE GOVERNMENT OF NEW ZEALAND FOR THE GOVERNMENT

OF THE REPUBLIC OF THE PHILIPPINES

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, which comes into force on the 28th day after the date of its notification in the *Gazette*, adds a Protocol to the 1980 New Zealand—Republic of the Philippines Double Tax Convention. The protocol makes a number of amendments to the Convention. The amendments—

- prevent double taxation by ensuring that, when a transfer pricing adjustment is made in one State, a corresponding adjustment is made in the other State; and

- lower the maximum withholding rates that may be imposed on dividends, interests, and royalties to 15%, 10%, and 15% respectively; and
- update the definition of royalties; and
- protect New Zealand's tax base by removing tax sparing credits.

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