



Double Taxation Relief (Czech Republic) Order 2008

Anand Satyanand, Governor-General

Order in Council

At Wellington this 28th day of July 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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

Order

- 1 Title**

This order is the Double Taxation Relief (Czech Republic) Order 2008.
- 2 Commencement of order**

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

The agreement set out in the Schedule comes into force on the date referred to in Article 26 of that agreement.
- 4 Purposes**

The arrangements specified in the agreement set out in the Schedule have been negotiated with the Czech Republic for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.
- 5 Arrangements have effect**

The arrangements specified in the agreement set out in the Schedule have effect according to the agreement.

Schedule

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

The Czech Republic and 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
PERSONS COVERED

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

Article 2
TAXES COVERED

1. The existing taxes to which the Agreement shall apply are:
 - (a) in New Zealand:
 - the income tax;
(hereinafter referred to as New Zealand tax);
 - (b) in the Czech Republic:
 - (i) the tax on income of individuals;
 - (ii) the tax on income of legal persons;
(hereinafter referred to as Czech tax).
2. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement 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.
3. The taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term “person” includes an individual, a company and any other body of persons;

- (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the term “enterprise” applies to the carrying on of any business;
- (d) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (e) the term “international traffic” means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (f) the term “competent authority” means:
 - (i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
 - (ii) in the case of the Czech Republic, the Minister of Finance or an authorised representative;
- (g) the term “national”, in relation to a Contracting State, means any individual possessing the nationality or citizenship of that Contracting State;
- (h) the term “business” also includes the performance of professional services and of other activities of an independent character;
- (i) the terms “a Contracting State” and “the other Contracting State” mean the Czech Republic or New Zealand, as the context requires;
- (j)
 - (i) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; 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;
 - (ii) the term “the Czech Republic” means the territory of the Czech Republic over which, under Czech legislation and in accordance with inter-

national law, the sovereign rights of the Czech Republic are exercised.

2. For the purposes of Articles 10, 11 and 12, where a trustee of a trust is subject to tax in New Zealand in respect of dividends, interest or royalties derived by the trust from sources in the Czech Republic, such trustee shall be deemed to be the beneficial owner of the dividends, interest or royalties.
3. As regards the application of the Agreement 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 law of that State for the purposes of the taxes to which the Agreement 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 Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his or her domicile, residence, place of management or any 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 their status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the in-

- individual's personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the individual has their centre of vital interests cannot be determined, or if a permanent home is not available to the individual 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 Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State 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, or supervisory activities in connection with that build-

ing site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:
 - (a) for more than six months:
 - (i) it carries on activities within that State which consist of, or which are connected with, the exploration or exploitation of natural resources, including standing timber, situated in that State; or
 - (ii) the enterprise operates heavy equipment in that State; or
 - (b) services (including consultancy or managerial services) are furnished by the enterprise, or through employees or other personnel engaged by that enterprise for such purpose, but only where activities of that nature continue in the territory of that Contracting State for a period or periods exceeding in the aggregate six months within any twelve month period.

5. Notwithstanding the preceding provisions of this Article, an enterprise shall not 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;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.
7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, 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 natural resources including standing timber, and rights to variable or fixed payments either as consideration for the exploitation or exploration of, or the right to explore for or exploit, natural resources including standing timber; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same

or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. 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.
6. 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.
7. Where
 - (a) a resident of a Contracting State beneficially owns through one or more 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 resident would have a permanent establishment in that other State if the resi-

dent carried on the business of the enterprise directly instead of through any trust or trusts, 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.

8. Where profits include items of income 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 provision of the laws of either Contracting State as they affect the taxation of income or profits of an insurer providing any form of insurance.

Article 8
SHIP AND AIRCRAFT OPERATIONS

1. Profits from ship or aircraft operations derived by a resident of a Contracting State shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from ship or aircraft operations confined solely to places in that other State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating 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 Contracting State for discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

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 be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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 would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would 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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply in the case of fraud, gross negligence or wilful default.

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, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term “dividends” as used in this Article means income from shares and other income treated as income from shares by the laws of the State of which the company making the distribution or payment 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 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 com-

pany's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that Contracting State provided:
 - (a) it is derived and beneficially owned by the Government, a political subdivision, a local authority or the Central Bank of the other Contracting State; or
 - (b) it is derived and beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit granted, guaranteed or insured by:
 - (i) in the case of the Czech Republic, the Czech Export Bank, the Export Guarantee and Insurance Corporation or any other institution as may be agreed upon between the competent authorities of the Contracting States;
 - (ii) in the case of New Zealand, any institution of a similar nature to the Czech Export Bank or the Export Guarantee and Insurance Corporation as may be agreed upon between the competent authorities of the Contracting States.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage

and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from money lent by the laws of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein 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.
6. 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 the person is 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 deductible in determining the profits attributable to that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
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 literary, dramatic, musical, or other 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 like 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; or
 - (d) 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 information as is mentioned in subparagraph c).
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein 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 the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are deductible in determining the profits attributable to that permanent establishment, then such royalties 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 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 Agreement.

Article 13
ALIENATION OF PROPERTY

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. 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 such gains from the alienation of such a

permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares or other similar rights in a company deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, may be taxed in the Contracting State where those gains arise.

Article 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if all the following conditions are met:
 - (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 year of income or fiscal year concerned, and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - (c) the remuneration is not deductible in determining the profits of a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that State.

Article 15
DIRECTORS' FEES

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

Article 16
ENTERTAINERS 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 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.
2. 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, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17
PENSIONS

1. Pensions and any other similar remuneration (including government service pensions and payments made under social security legislation) paid to a resident of a Contracting State shall be taxable only in that State.
2. The provision of paragraph 1 shall apply to a pension paid to a resident of a Contracting State, regardless of whether that pension is paid in consideration of past employment.

Article 18
GOVERNMENT SERVICE

1.
 - (a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, subdivision or authority 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:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 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 or a political subdivision or a local authority thereof.

Article 19
STUDENTS

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

tioned State solely for the purpose of the student or business apprentice's education or training receives for the purpose of the student or business apprentice'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, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that if such income is derived from sources within the other Contracting State, that income may also be taxed in that other State.

Article 21
ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of New Zealand, double taxation shall be eliminated 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), Czech tax paid under the laws of the Czech Republic and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in the Czech Republic (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.
2. In the case of a resident of the Czech Republic, double taxation shall be eliminated as follows:
The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of this Agreement may also be taxed in New Zealand, but shall allow as a deduction from the amount of tax computed on such a base

an amount equal to the tax paid in New Zealand. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of this Agreement, may be taxed in New Zealand.

3. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 22

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 Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

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 23
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret

or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 24
MEMBERS OF DIPLOMATIC MISSIONS
AND CONSULAR POSTS

Nothing in this Agreement 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 25
MISCELLANEOUS RULES

The provisions of this Agreement shall in no case prevent either Contracting State from the application of the provisions of its domestic laws aimed at the prevention of fiscal evasion, in particular, but not limited to, the provisions on thin capitalisation, transfer pricing, substance over form and aggregation of activities carried on by associated enterprises.

Article 26
ENTRY INTO FORCE

Each of the Contracting States shall notify to the other, through the diplomatic channels, the completion of the procedures required by its domestic law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect:

- (a) 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 1 January in the calendar year next following that in which the Agreement enters into force;
 - (ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the Agreement enters into force;
- (b) in the Czech Republic:
 - (i) in respect of taxes withheld at source, to income paid or credited on or after 1 January in the calendar year next following that in which the Agreement enters into force;
 - (ii) in respect of other taxes on income, to income in any taxable year beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

Article 27
TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through the diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

- (a) 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 1 January in the calendar year next following that in which notice of termination is given;
 - (ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which notice of termination is given;
- (b) in the Czech Republic:
 - (i) in respect of taxes withheld at source, to income paid or credited on or after 1 January in the calendar year next following that in which notice of termination is given;
 - (ii) in respect of other taxes on income, to income in any taxable year beginning on or after 1 January in the calendar year next following that in which notice of termination is given.

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

DONE in duplicate at Prague this 26th day of October 2007 in the Czech and English languages, both texts being equally authentic.

Michael Webster,
for 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 28 days after its notification in the *Gazette*, gives effect to the agreement between New Zealand and the Czech Republic relating to double taxation and fiscal evasion with respect to income tax. The agreement also provides for the exchange

of information between the parties for the purpose of administering and enforcing domestic law relating to taxes.

The agreement comes into force after the parties have notified each other that domestic procedures for bringing the agreement into force have been completed, as required by Article 26.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 31 July 2008.

This order is administered by the Inland Revenue Department.
