



Double Taxation Relief (United Kingdom) Amendment 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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Order

1 Title

This order is the Double Taxation Relief (United Kingdom) Amendment Order 2008.

2 Commencement

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

3 Principal order amended

This order amends the Double Taxation Relief (United Kingdom) Order 1984.

4 Giving effect to Convention

Clause 2 is amended by adding the following subclause as subclause (2):

“(2) The Protocol set out in Schedule 3 comes into force on the date referred to in Article III of that Protocol.”

5 New Schedule 3 added

The Schedule 3 set out in the Schedule of this order is added.

Schedule

cl 5

New Schedule 3 added**Schedule 3**

cl 2(2)

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

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

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

Have agreed as follows:

ARTICLE I

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

**“ARTICLE 25
Exchange of information**

- (1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration

Schedule 3—*continued*

or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by Articles 1 and 2 of this Convention.

- (2) Any information received under paragraph (1) of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph (1), or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (3) In no case shall the provisions of paragraphs (1) and (2) of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.
- (4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its

Schedule 3—*continued*

information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

- (5) In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE II

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

“ARTICLE 25A
Assistance in the collection of taxes

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

Schedule 3—*continued*

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

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

Schedule 3—*continued*

- (6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
- (7) Where, at any time after a request has been made by a Contracting State under paragraph (3) or (4) of this Article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
- (a) in the case of a request under paragraph (3), a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - (b) in the case of a request under paragraph (4), a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection
- the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
- (8) In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to carry out measures which would be contrary to public policy;
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportion-

Schedule 3—*continued*

- ate to the benefit to be derived by the other Contracting State;
- (e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.”

ARTICLE III

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

ARTICLE IV

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

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

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

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 on the 28th day after the date of its notification in the *Gazette*, adds a further Protocol to the 1984 New Zealand–United Kingdom Double Taxation Convention. The new Protocol comes into force on a date to be determined in accordance with its Article III. The Convention is set out in Schedule 1 of the Double Taxation Relief (United Kingdom) Order 1984. The effect of the new Protocol is to amend the Convention by substituting a new Article 25 (about the exchange of information) and inserting a new Article 25A (relating to assistance in the collection of taxes).

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.
