



Double Tax Agreements (St. Christopher and Nevis) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 8th day of June 2010

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 relating to taxing rights and transfer
pricing adjustments**

Order

- 1 Title**

This order is the Double Tax Agreements (St. Christopher and Nevis) Order 2010.
 - 2 Commencement**

This order comes into force on the 28th day after the date of its notification in the *Gazette*.
 - 3 Commencement of agreements**
 - (1) The agreement set out in Schedule 1 comes into force on the date referred to in Article 13 of the agreement as the date on which the agreement enters into force.
 - (2) The agreement set out in Schedule 2 comes into force on the date referred to in Article 10 of the agreement as the date on which the agreement enters into force.
 - 4 Purposes**

The arrangements specified in the agreements set out in Schedules 1 and 2 have been negotiated with the Federation of St. Christopher and Nevis for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.
 - 5 Arrangements to have effect**

The arrangements specified in each agreement set out in Schedules 1 and 2 have effect according to the respective agreement.
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Schedule 1

cls 3(1), 4, 5

**Agreement relating to exchange of
information**

Agreement between the Government of New Zealand and the Government of the Federation of St. Christopher and Nevis on the exchange of information with respect to taxes

The Government of New Zealand and the Government of the Federation of St. Christopher and Nevis,

Desiring to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

Article 1**Object and scope of this agreement**

The competent authorities of the Contracting States shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of those States concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested State remain applicable. The Requested State shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

Article 2**Jurisdiction**

A Requested State is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3

Taxes covered

1. The taxes which are the subject of this Agreement are all taxes imposed or administered by either State, including any taxes imposed or administered after the date of signature of the Agreement. The competent authorities of the Contracting States shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.
2. This Agreement shall not apply to taxes imposed by municipalities, local authorities, or possessions of a Contracting State.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) 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;
 - (b) the term “Federation of St. Christopher and Nevis” means the territory of the Federation of St. Christopher and Nevis;
 - (c) the term “Applicant State” means the Contracting State requesting information;
 - (d) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

Article 4—*continued*

- (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term “competent authority” means in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner and, in the case of the Federation of St. Christopher and Nevis, the Financial Secretary or any person designated as competent authority by the Financial Secretary;
- (g) the term “Contracting State” means New Zealand or the Federation of St. Christopher and Nevis as the context requires;
- (h) the term “information” means any fact, statement or record in any form whatever;
- (i) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting State to obtain and provide the requested information;
- (j) the term “person” includes an individual, a company and any other body of persons;
- (k) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (l) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (m) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting States;
- (n) the term “Requested State” means the Contracting State requested to provide information; and
- (o) the term “tax” means any tax to which this Agreement applies pursuant to Article 3.

Article 4—*continued*

2. As regards the application of this 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, 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 5

Exchange of information upon request

1. The competent authority of the Requested State shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the Requested State if such conduct occurred in the Requested State.
2. If the information in the possession of the competent authority of the Requested State is not sufficient to enable it to comply with the request for information, that State shall use all relevant information gathering measures to provide the Applicant State with the information requested, notwithstanding that the Requested State may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an Applicant State, the competent authority of the Requested State shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting State shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - (b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2,

Article 5—*continued*

ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Applicant State shall provide the following information to the competent authority of the Requested State when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation;
 - (b) a statement of the information sought including its nature and the form in which the Applicant State wishes to receive the information from the Requested State;
 - (c) the tax purpose for which the information is sought, including a statement of the law imposing the tax to which the request relates;
 - (d) the grounds for believing that the information requested is held in the Requested State or is in the possession or control of a person within the jurisdiction of the Requested State;
 - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
 - (f) a statement that the request is in conformity with the law and administrative practices of the Applicant State, that if the requested information was within the jurisdiction of the Applicant State then the competent authority of the Applicant State would be able to obtain the information under the laws of the Applicant State or in the

Article 5—*continued*

normal course of administrative practice and that the information request is in conformity with this Agreement; and

- (g) a statement that the Applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the Requested State shall forward the requested information as promptly as possible to the Applicant State. To ensure a prompt response, the competent authority of the Requested State shall:
- (a) confirm receipt of a request in writing to the competent authority of the Applicant State and shall notify the competent authority of the Applicant State of deficiencies in the request, if any, within 60 days of the receipt of the request; and
 - (b) if the competent authority of the Requested State has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Applicant State, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax examinations abroad

1. A Contracting State may allow representatives of the competent authority of the other Contracting State to enter the territory of the first-mentioned State to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned State shall notify the competent authority of the first-mentioned State of the time and place of the meeting with the individuals concerned.

Article 6—*continued*

2. At the request of the competent authority of one of the Contracting States, the competent authority of the other Contracting State may allow representatives of the competent authority of the first-mentioned State to be present at the appropriate part of a tax examination in the second-mentioned State.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the other State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the State conducting the examination.

Article 7

Possibility of declining a request

1. The Requested State shall not be required to obtain or provide information that the Applicant State would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested State may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting State the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting State the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

Article 7—continued

- (a) produced for the purposes of seeking or providing legal advice; or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The Requested State may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
 5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.
 6. The Requested State may decline a request for information if the information is requested by the Applicant State to administer or enforce a provision of the tax law of the Applicant State, or any requirement connected therewith, which discriminates against a national of the Requested State as compared with a national of the Applicant State in the same circumstances.

Article 8**Confidentiality**

Any information received by a Contracting State under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting State concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested State.

Article 9**Costs**

Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne

Article 9—continued

by the Requested State, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant State. At the request of either Contracting State, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the Requested State shall consult with the competent authority of the Applicant State in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10**Implementation legislation**

The Contracting States shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 11**No prejudicial or restrictive measures**

1. Neither of the Contracting States shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting State so long as this Agreement is in force and effective.
2. A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting State to residents or nationals of either Contracting State on the basis that the other Contracting State does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2 the term “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

Article 12

Mutual agreement procedure

1. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting States may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting States may communicate with each other directly for the purposes of this Article.
4. The Contracting States may agree on other forms of dispute resolution.

Article 13

Entry into force

The Government of New Zealand and the Government of the Federation of St. Christopher and Nevis shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect for taxable periods beginning on or after 1 January following entry into force or, where there is no taxable period, for all charges to tax arising on or after 1 January following entry into force.

Article 14

Termination

1. This Agreement shall continue in effect indefinitely, but either of the Contracting States may, after the expiration of 3 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination.
2. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Contracting State.

Article 14—*continued*

3. Notwithstanding any termination of this Agreement, the Contracting States shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE at Washington, DC this 24 day of November, 2009, in duplicate in the English language.

For the Government
of New Zealand:

Roy Ferguson

New Zealand Ambassador to the
United States of America

For the Government
of the Federation of St.
Christopher and Nevis:

H E Ambassador Izben C
Williams

Ambassador of St. Kitts and
Nevis to the United States of
America

Schedule 2

cls 3(2), 4, 5

**Agreement relating to taxing rights and
transfer pricing adjustments**

Agreement between the Government of New Zealand and the Government of the Federation of St. Christopher and Nevis for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments

The Government of New Zealand and the Government of the Federation of St. Christopher and Nevis (“the Contracting States”),
Recognising that the Contracting States have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,
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 this Agreement shall apply are:
 - (a) in New Zealand, the income tax; (hereinafter referred to as “New Zealand tax”); and
 - (b) in the Federation of St. Christopher and Nevis, income tax imposed under the Income Tax Act 1976; (hereinafter referred to as “St. Christopher and Nevis tax”).
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this 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 substantial changes to the taxation laws covered by this Agreement.
3. This Agreement shall not apply to taxes imposed by, municipalities, local authorities or possessions of a Contracting State.

Article 3

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) 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 inter-

Article 3—*continued*

- national law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
- (b) the term “Federation of St. Christopher and Nevis” means the territory of the Federation of St. Christopher and Nevis;
 - (c) the term “competent authority” means in the case of New Zealand, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Federation of St. Christopher and Nevis, the Financial Secretary or any person designated as competent authority by the Financial Secretary;
 - (d) the term “Contracting State” means New Zealand or the Federation of St. Christopher and Nevis as the context requires;
 - (e) the term “national”, in relation to a Contracting State, means any individual possessing the nationality or citizenship of that State;
 - (f) the term “person” includes an individual, a company and any other body of persons;
 - (g) the term “tax” means New Zealand tax or St. Christopher and Nevis tax as the context requires; and
 - (h) the term “transfer pricing adjustment” means an adjustment made by the competent authority of a Contracting State to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that State regarding transfer pricing.
2. As regards the application of this 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 this 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:
 - (a) in the case of New Zealand, a person who is a resident of New Zealand for the purposes of New Zealand tax; and
 - (b) in the case of the Federation of St. Christopher and Nevis, a person who is a resident of the Federation of St. Christopher and Nevis for the purposes of St. Christopher and Nevis tax.
2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person’s 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 that individual; if a permanent home is available in both States, or in neither of them, that 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 has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the State of which the individual is a national;
 - (c) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.
4. Where, by reason 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 Pensions

1. Pensions, (including government pensions) annuities and other remunerations paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Pensions and other payments made under the social security legislation of a Contracting State to an individual who is a resident of the other Contracting State shall be taxable only in that other State.
3. However, paragraphs 1 and 2 of this article shall not apply where the pension, payment, annuities or other remuneration is not subject to tax in the Contracting State of which the individual is a resident.

Article 6 Government service

1. (a) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State to an individual in respect of services rendered to that Government shall be taxable only in that State.
(b) However, such payments 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. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by the Government referred to in paragraph 1 may be taxed in accordance with the laws of a Contracting State.

Article 7 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 temporarily present in the first-mentioned State solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided such payments arise from sources outside that State.

Article 8 Mutual agreement procedure in respect of transfer pricing adjustments

1. Where a resident of a Contracting State considers the actions of the other Contracting State result or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the first-mentioned State. The case shall be presented within three years of the first notification of the adjustment.
2. The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Contracting State regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

Article 9 Exchange of information

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the *Agreement Between the Government of New Zealand and the Government of the Federation of St. Christopher and Nevis on the Exchange of Information with Respect to Taxes*.

Article 10

Entry into force

The Government of New Zealand and the Government of the Federation of St. Christopher and Nevis shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided the *Agreement Between the Government of New Zealand and the Government of the Federation of St. Christopher and Nevis on the Exchange of Information with Respect to Taxes* is in force, thereupon have effect:

- (a) in respect of New Zealand tax, for any year of income beginning on or after 1 April in the calendar year following the year in which this Agreement enters into force; and
- (b) in respect of St. Christopher and Nevis tax, for any year of income beginning on or after 1 January in the calendar year following the year in which this Agreement enters into force.

Article 11

Termination

1. This Agreement shall continue in effect indefinitely, but either of the Contracting States may, after the expiration of 3 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination.
2. Such termination shall become effective:
 - (a) in respect of New Zealand tax, in the year of income beginning on or after 1 April in the calendar year following that in which the notice of termination is given;
 - (b) in respect of St. Christopher and Nevis tax, in the year of income beginning on or after 1 January in the calendar year following that in which the notice of termination is given.
3. Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the *Agreement Between the Government of New Zealand and the Government of the Federation of St. Christopher and Nevis on the Exchange of*

Article 11—*continued*

Information with Respect to Taxes, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

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

DONE at Washington, DC this 24 day of November, 2009, in duplicate in the English language.

For the Government
of New Zealand:

Roy Ferguson

New Zealand Ambassador to the
United States of America

For the Government
of the Federation of St.
Christopher and Nevis:

H E Ambassador Izben C
Williams

Ambassador of St. Kitts and
Nevis to the United States of
America

Rebecca Kitteridge,
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*, gives effect to the following agreements between New Zealand and the Federation of St. Christopher and Nevis:

- an agreement on the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes:

- an agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments.

Each agreement comes into force when the parties have notified each other that domestic procedures for bringing the respective agreement into force have been completed.

Once they have entered into force, the agreements have effect in relation to the exchange of information relating to taxes, the allocation of taxing rights, and transfer pricing adjustments despite anything in the Income Tax Act 2007, any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

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

Date of notification in *Gazette*: 10 June 2010.

This order is administered by the Inland Revenue Department.
