Double Tax Agreements (Viet Nam) Order 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 24th day of March 2014

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.

Contents

Order

1 Title

This order is the Double Tax Agreements (Viet Nam) Order 2014.

2 Commencement

This order comes into force on 24 April 2014.

3 Commencement of agreement

The agreement set out in the Schedule (the **agreement**) comes into force on the date provided for in Article 27 of the agreement.

4 Purposes

The arrangements specified in the agreement have been negotiated with the Government of the Socialist Republic of Viet Nam 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 the agreement have effect according to the tenor of the agreement.

Schedule

cl 3

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

The Government of New Zealand and the Government of the Socialist Republic of Viet Nam,

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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
   (a) In New Zealand: the income tax
   (hereinafter referred to as "New Zealand tax");
   (b) In Viet Nam:
      (i) the personal income tax; and
      (ii) the business income tax
   (hereinafter referred to as "Vietnamese tax").
4. 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 of any significant changes which have been made in their respective taxation laws.

Article 3
General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

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(a) the term "Viet Nam" means the Socialist Republic of Viet Nam; when used in a geographical sense, it means its land territory, islands, internal waters, territorial sea and airspace above them, the maritime areas beyond territorial sea including seabed and subsoil thereof over which the Socialist Republic of Viet Nam exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law;

(b) 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;

(c) the term "person" includes an individual, a company and any other body of persons;

(d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(e) 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;

(f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(g) the term "competent authority" means:

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

  (ii) in the case of Viet Nam, the Minister of Finance or an authorised representative;

(h) the term "national", in relation to a Contracting State, means:

  (i) in the case of Viet Nam, any individual possessing the nationality of Viet Nam and in the case of

Article 3—*continued*

New Zealand, any individual possessing the citizenship of New Zealand; and

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

(i) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or Viet Nam as the context requires.

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

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

(a) the individual shall be deemed to be a resident only of the State in which 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 individual's personal and economic relations are closer (centre of vital interests);

Article 4—*continued*

(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. If the State in which the place of effective management is situated cannot be determined, or the place of effective management is in neither State, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement in accordance with Article 24 the Contracting State of which the person shall be deemed to be a resident for the purpose of the Agreement, having regard to its places of management, the place where it is registered or incorporated and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement.

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;

Article 5—*continued*

(d) a factory;
(e) a workshop;
(f) a warehouse; and
(g) 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 building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than 6 months.

4. The term "permanent establishment" likewise encompasses the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 6 months within any 12 month period.

5. 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) it carries on activities in that State which consist of, or which are connected with, the exploration for or exploitation of natural resources, including standing timber, situated in that State; or
(b) it operates substantial equipment in that State.

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

Article 5—*continued*

7. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
   (a) the use of facilities solely for the purpose of storage or display 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 or display;
   (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.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 9 applies—is acting in a Contracting State on behalf of an enterprise and:
   (a) has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise; or
   (b) habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
   (c) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise,

   that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 7 which, if exercised through a fixed place of business, would not make

Article 5—*continued*

this fixed place of business a permanent establishment under the provisions of that paragraph.

9. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, the agent will not be considered an agent of an independent status within the meaning of this paragraph.

10. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting 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 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, any natural resources, rights to explore for or exploit natural resources or standing

Article 6—*continued*

timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit natural resources or 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 and to income from immovable property used for the performance of independent personal services.

5. Any right referred to in paragraph 2 of this Article shall be regarded as situated where the property to which it relates is situated or where the exploration or exploitation may take place.

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:
   (a) that permanent establishment; or
   (b) sales in that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment. It is understood that the profits of an enterprise shall include profits attributable to sales of goods and merchandise referred to in this subparagraph only when the competent authority of the Contracting State in which a permanent establishment of the enterprise is situated considers that the enterprise has entered into an arrangement in relation to the sales of those goods or merchandise to avoid taxation of those profits in that Contracting State.

Article 7—*continued*

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 business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

Article 7—*continued*

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

6. Where:

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

(b) in relation to that enterprise, that trustee has or would have, if it were a resident of the first-mentioned State, a permanent establishment in the other State,

then the business of the enterprise carried on by the trustee through such permanent establishment 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 the resident's share of profits may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

7. 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.

8. Nothing in this Article shall affect any provisions of the laws of either Contracting State at any time in force as they affect the taxation of any income from any form of insurance.

Article 8
Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and Article 7, profits of an enterprise of a Contracting State derived from carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped or embarked in the other Contracting State and are discharged at a place in that other State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed 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.

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-men-

Article 9—*continued*

tioned 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.

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 Contracting 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:
   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 50 per cent of the voting power in the company paying the dividends; and
   (b) 15 per cent of the gross amount of the dividends in all other cases.

   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, mining shares, founders' shares or other rights participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting

Article 10—*continued*

State of which the company paying the dividends is a resident through a permanent establishment situated therein or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, 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 Contracting 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 Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

6. No relief shall be available under this Article if it is the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting 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 Contracting State.

Article 11—*continued*

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. 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, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) activities referred to in subparagraph 1(b) of Article 7. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 11—*continued*

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, the creation or assignment of the debt-claim or other rights in respect of which the interest is paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the interest or the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

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 Contracting 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 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 copyright of literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical

Article 12—*continued*

arrangements of published editions), patent, design or model, plan, secret formula or process, trade-mark, or other like property or right;

(b) the use of, or the right to use, any industrial, scientific or commercial equipment;

(c) knowledge or information concerning technical, industrial, commercial or scientific experience;

(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 knowledge or information as is mentioned in subparagraph (c); or

(e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) activities referred to in subparagraph 1(b) of Article 7. In such case the provisions of Article 7 or Article 14, as the case may be, 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by or deductible in determining the profits attributable to such permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

Article 12—*continued*

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.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the royalties or the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

Article 13
Alienation of property

1. Income or 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. Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

Article 13—*continued*

3. Income or gains derived by an enterprise 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. Income or gains derived by a resident of a Contracting State from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

Article 14
Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such services are performed in the other Contracting State and:

   (a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any 12 month period commencing or ending in the taxation year concerned; or

   (b) a fixed base is regularly available to the individual in the other State for the purpose of performing the individual's activities.

   If the provisions of subparagraphs (a) or (b) are satisfied, the income may be taxed in that other State but only so much of it as is attributable to activities performed during such period or periods or from that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Income from employment

1. Subject to the provisions of Articles 16, 18 and 19, 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 Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
   (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the taxation 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 neither borne by nor deductible in determining the profits attributable to a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16
Directors' fees

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

Article 17
Entertainers and sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, 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 Contracting 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States. In such a case, the income is taxable only in the Contracting State in which the entertainer or the sportsperson is a resident.

Article 18
Pensions

Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 19
Government service

1. (a) Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to that Government or local authority shall be taxable only in that State.

Article 19—*continued*

(b) However, such payments shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the individual is a resident of that Contracting State who:

(i) is a national of that Contracting State; or

(ii) did not become a resident of that Contracting State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall apply to payments in respect of services rendered in connection with a business carried on by a Government or a local authority referred to in paragraph 1.

Article 20
Students

1. 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-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 that such payments arise from sources outside that State.

2. Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which the student or business apprentice exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year concerned shall not be taxed in that other State if the employment is directly related to the individual's studies or apprenticeship carried out in the first-mentioned State.

Article 21
Other income

1. 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.

Article 21—*continued*

2. The provisions of paragraph 1 shall not apply to the income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

Article 22
Elimination of double taxation

1. In Viet Nam, double taxation shall be eliminated as follows:
   (a) Where a resident of Viet Nam derives income or gains which under the law of New Zealand and in accordance with this Agreement may be taxed in New Zealand, Viet Nam shall allow as a credit against its tax on the income, or capital an amount equal to the tax paid in New Zealand. The amount of credit, however, shall not exceed the amount of the Vietnamese tax on that income, profits or gains computed in accordance with the taxation laws and regulations of Viet Nam.
   (b) Where a resident of Viet Nam derives income or gains which in accordance with any provision of the Agreement are taxable only in New Zealand, Viet Nam may nevertheless, in calculating the amount of tax on the remaining income of such resident in Viet Nam, take into account the exempted income or gains.

2. In New Zealand, double taxation shall be eliminated as follows:

Article 22—*continued*

(a) Subject to the provisions of the laws of New Zealand 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 of this Article), Vietnamese tax paid under the laws of Viet Nam and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in Viet Nam (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.

(b) Where in accordance with any provisions of the Agreement income derived by a resident of New Zealand is exempt from tax in New Zealand, New Zealand may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. For the purpose of paragraph 2(a) of this Article:

(a) the tax paid in Viet Nam on dividends to which paragraph 2 of Article 10 applies, on interest to which paragraph 2 of Article 11 applies, and on royalties to which paragraph 2 of Article 12 applies, shall be deemed to include an amount of tax specified in paragraph 3(b) of this Article when such tax would have been payable as Vietnamese tax but for an exemption from or a reduction of tax granted for that year or any part thereof as a result of the application of the provisions of Vietnamese law designed to provide tax incentives to promote foreign investment for development purposes.

(b) For the purpose of sub-paragraph 3(a) of this Article, the amount of tax paid deemed to be paid in Viet Nam on dividends to which paragraph 2 of Article 10 applies, on interest to which paragraph 2 of Article 11 applies, and on royalties to which paragraph 2 of Article 12 applies, shall be deemed to be 5 per cent of the gross amount of such dividends to which subparagraph 2(a) applies, 15 per cent of the gross amount of such dividends to sub-

Article 22—*continued*

paragraph 2(b) applies, 10 per cent of the gross amount of such interest and 10 per cent of the gross amount of such royalties.

4. Notwithstanding paragraph 3(a) of this Article, a New Zealand resident deriving income from Viet Nam, being income referred to in that paragraph, shall not be deemed to have paid Vietnamese tax in respect of such income where:
   (a) the New Zealand resident is a financial institution or is associated with a financial institution;
   (b) the competent authority of New Zealand considers, after consultation with the competent authority of Viet Nam, that it is inappropriate to do so having regard to:
      (i) whether any prearrangements have been entered into by any person for the purpose of taking advantage of paragraph 3(a) for the benefit of that person or any other person;
      (ii) whether any benefit accrues or may accrue to a person who is neither a New Zealand resident nor a Vietnamese resident;
      (iii) the prevention of fraud or the avoidance of the taxes to which this Agreement applies;
      (iv) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.

5. The provision of paragraph 3 of this Article shall only apply for a period of 10 years after the date on which the Agreement enters into force.

Article 23
Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

Article 23—*continued*

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances. This provision shall not be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State in similar circumstances are or may be subjected.

5. The provisions of this Article shall apply only to the taxes covered in this Agreement.

Article 24
Mutual agreement procedure

1. Where a person who is a resident of a Contracting State considers that the actions of the competent authority 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 that person is a resident. The case must be presented within three years

Article 24—*continued*

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. They may also consult together for the elimination of double taxation in cases not provided for in 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 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 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 Article 1.

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

Article 25—*continued*

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.

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 26
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 27
Entry into force

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 Agreement. The 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 the first day of January following the calendar year in which the Agreement enters into force;
  (ii) in respect of other New Zealand tax, for any taxation year beginning on or after 1 April next following the date on which the Agreement enters into force;

(b) in Viet Nam:
  (i) in respect of taxes withheld at source, in relation to taxable amounts as derived on or after the first day of January following the calendar year in which the Agreement enters into force, and in subsequent calendar years; and
  (ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising on or after the first day of January following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

Article 28
Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination on or

Article 28—*continued*

before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry 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 the first day of January following the calendar year in which the notice of termination is given;
  (ii) in respect of other New Zealand tax, for any taxation year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given;

(b) in Viet Nam:
  (i) in respect of taxes withheld at source, in relation to taxable amounts as derived on or after the first day of January following the calendar year in which the notice of termination has been received, and in subsequent calendar years; and
  (ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising on or after the first day of January following the calendar year in which the notice of termination has been received, and in subsequent calendar years.

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

DONE in duplicate at Ha Noi this 5th day August 2013 in the English and Vietnamese languages, both texts being equally authentic.

Haike Manning	Truong Tan Sang
For the Government of New Zealand	For the Government of the Socialist Republic of Viet Nam

Protocol

At the time of signing of this Agreement between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

Article I

With reference to Article 2 of the Agreement:

It is agreed that, notwithstanding the provisions of paragraphs 1 and 2 of that Article, the taxes covered by the Agreement do not include any penalties or interest imposed by either Contracting State in relation to non-compliance with the taxation laws of a Contracting State, including for late payment or non-payment of taxes.

Article II

With reference to Article 6 of the Agreement:

It is understood that the term "standing timber" includes cultivated and naturally occurring forests.

Article III

With reference to Article 23 of the Agreement:

It is understood that this Article shall not apply to any provision of the laws of either Contracting State which:

(a) is designed to prevent the avoidance or evasion of taxes including:
  (i) measures designed to address thin capitalisation and transfer pricing;
  (ii) controlled foreign company and foreign investment fund rules; and
  (iii) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures;

(b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the trans-

feree would be beyond the taxing jurisdiction of a Contracting State under its laws;

(c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that a company, being a resident of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, may access such consolidation treatment on the same terms and conditions as other companies that are residents of the first-mentioned State;

(d) provides for the transfer of losses within a group of companies;

(e) does not allow an exemption in relation to dividends paid by a company that is a resident of a Contracting State for purposes of its tax; or

(f) any provision adopted after the date of signature of the Agreement which is substantially similar in purpose or intent to a provision covered by this paragraph, or is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

Article IV

With reference to Articles 10, 11 and 12 of the Agreement:

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

Article V

With reference to paragraph 1 of Article 25:

It is understood that if at any time after the date of signature of this Protocol, Viet Nam agrees to include a reference to Article 2 in the last sentence of that paragraph in any of its future Agreements on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Viet Nam shall without undue delay enter into negotiations with New Zealand with a view to providing the same treatment.

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

DONE in duplicate at Ha Noi this 5th day August 2013 in the English and Vietnamese languages, both texts being equally authentic.

Haike Manning
For the Government of New Zealand

Truong Tan Sang
For the Government of Socialist Republic of Viet Nam

Michael Webster,
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 24 April 2014, gives effect to the Agreement Between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect To Taxes on Income (the **agreement**).

The agreement comes into force when the parties have notified each other that domestic procedures for bringing the agreement into force have been completed. The date on which the agreement comes into force will be publicised on http://taxpolicy.ird.govt.nz/tax-treaties. Once it enters into force, the agreement has effect despite anything to the contrary 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 Legislation Act 2012.
Date of notification in *Gazette*: 27 March 2014.
This order is administered by the Inland Revenue Department.

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2014