

Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s788 (10), for an Address to Her Majesty from that House praying that the Order be made.

DRAFT STATUTORY INSTRUMENTS

2004 No.

INCOME TAX

**The Double Taxation Relief (Taxes on
Income) (New Zealand) Order 2004**

Made - - - - 2004

At the Court at Buckingham Palace, the day of 2004
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(1), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (New Zealand) Order 2004.
2. It is hereby declared—
 - (a) that the arrangements specified in the Protocol set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (New Zealand) Order 1984(2), have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of New Zealand;

(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended: the relevant amendment is that made by section 198(1) and (2) of the Finance Act 2003 (c. 14).
(2) SI 1984/365.

- (b) that those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration or enforcement of the domestic laws of the United Kingdom and the laws of New Zealand concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
- (c) that it is expedient that those arrangements should have effect.

Clerk of the Privy Council

SCHEDULE

PART I

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF NEW ZEALAND TO AMEND THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS, SIGNED AT LONDON ON 4 AUGUST 1983

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

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, signed at London on 4 August 1983 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

Paragraph (6) of Article 8 of the Convention shall be deleted and the following new paragraph shall be inserted immediately after paragraph (5) of that Article:

“(6) Notwithstanding the provisions of this Article, income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, in the case of insurance other than life insurance, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other Contracting State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 percent of the gross premiums paid for the insurance of those risks.”

ARTICLE II

Article 11 of the Convention shall be deleted and replaced by the following:

“ARTICLE II

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

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

(3) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, 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 Contracting State

of which the company making the distribution is a resident and also includes any other item which, under the laws of the State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other 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 8 or 15 of this Convention, 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 State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE III

The following new paragraph shall be inserted immediately after paragraph (8) of Article 12 of the Convention:

“(9) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE IV

The following new paragraph shall be inserted immediately after paragraph (6) of Article 13 of the Convention:

“(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE V

(1) Paragraph (1) of Article 14 of the Convention shall be deleted and replaced by the following:

“(1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 of this Convention and situated in the other Contracting State, or from the alienation of shares in a company deriving their value or the greater part of their value directly or indirectly from such property, may be taxed in that other State.”

(2) Paragraph (4) of Article 14 of the Convention shall be deleted and the following new paragraphs shall be inserted immediately after paragraph (3) of that Article:

“(4) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

(5) The provisions of this Article shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding that year.”

ARTICLE VI

The following new Article 21A shall be inserted:

“ARTICLE 21A

Other income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7 of this Convention, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In that case the provisions of Article 8 of this Convention shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

(4) Where, by reason of a special relationship between the person referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which might reasonably have been expected to have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

(5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE VII

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

“ARTICLE 25

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State but may be disclosed to and only to persons or authorities (including courts and administrative bodies) 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 Convention 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.

(2) 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 in the same way as if its own taxation were involved, even though that other State may not need such information for its own tax purposes. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall so far as possible provide information under this Article in the form requested.

(3) In no case shall the provisions of paragraphs (1) and (2) of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information whose disclosure would be contrary to public policy.

(4) In no case shall the provisions of paragraph (3) of this Article be construed so as 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 relates to ownership interests in a person.”

ARTICLE VIII

The Governments of the Contracting States shall notify one another, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in relation to the income or gains referred to in Article V of this Protocol, in respect of income tax, capital gains tax and corporation tax on income and gains arising on or after the date of signature of this Protocol;
 - (ii) in relation to the information referred to in Article VII of this Protocol, in respect of such information that is requested or exchanged on or after the date of signature of this Protocol;
 - (iii) in respect of income tax not described in clause (i) of this sub-paragraph, for any year of assessment beginning on or after the sixth day of April next following the date on which this Protocol enters into force;
 - (iv) in respect of corporation tax not described in clause (i) of this sub-paragraph, for any financial year beginning on or after the first day of April next following the date on which this Protocol enters into force;
 - (v) in relation to tax credits in respect of dividends paid by companies which are residents of the United Kingdom, to terminate any entitlement to such tax credits in respect of dividends paid on or after the sixth day of April next following the date on which this Protocol enters into force.
- (b) in New Zealand:

- (i) in relation to the income or gains referred to in Article V of this Protocol, in respect of income tax on income and gains arising on or after the date of signature of this Protocol;
- (ii) in relation to the information referred to in Article VII of this Protocol, in respect of such information that is requested or exchanged on or after the date of signature of this Protocol;
- (iii) in respect of income tax not described in clause (i) of this sub-paragraph, for any income year beginning on or after the first day of April next following the date on which this Protocol enters into force.

ARTICLE IX

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

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

Done in duplicate at London this 4th day of November 2003.

For the Government of the United Kingdom of Great Britain and Northern Ireland: For the Government of New Zealand:

Dawn Primarolo

Russell Marshall

PART II

EXCHANGE OF NOTES

London

Your Excellency

4th November 2003

I have the honour to refer to the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposal:

With reference to paragraph (5) of Article 14 of the Convention as inserted by paragraph (2) of Article V of the Protocol, it is understood that the law mentioned includes provisions of the United Kingdom tax legislation that counter avoidance of capital gains tax by temporary non-residents, participators in non-resident close companies, and individuals who have, or are treated for tax purposes as having, an interest under a settlement.

If the foregoing proposal is acceptable to the Government of New Zealand, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Dawn Primarolo

London

Your Excellency

4th November 2003

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

"I have the honour to refer to the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposal:

With reference to paragraph (5) of Article 14 of the Convention as inserted by paragraph (2) of Article V of the Protocol, it is understood that the law mentioned includes provisions of the United Kingdom tax legislation that counter avoidance of capital gains tax by temporary non-residents, participators in non-resident close companies, and individuals deriving an interest under a settlement.

If the foregoing proposal is acceptable to the Government of New Zealand, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol."

The foregoing proposal being acceptable to the Government of New Zealand, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Protocol.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

Russell Marshall

EXPLANATORY NOTE

(This note is not part of the Order)

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (New Zealand) Order 1984 (S.I.1984/365).

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Protocol contained in Part I of the Schedule to the Order, and that it is expedient that those arrangements should have effect.

Part I of the Schedule to the Order contains the Protocol amending the Convention.

Article I of the Protocol substitutes a new paragraph (6) in place of the existing paragraph (6) of Article 8 of the Convention. The new paragraph preserves the right of either country to tax, in accordance with its domestic legislation, income or profits from any kind of insurance issued by an enterprise of the other country, but limits the amount that may be taxed in this way in specified circumstances, in the case of insurance other than life insurance, to 10 per cent. of the gross premiums paid.

Article II of the Protocol deletes existing Article 11 of the Convention and substitutes a replacement Article 11 providing rules for the taxation of dividends. Dividends paid by a company which is a

resident of one country to a resident of the other country may be taxed in both countries, but the rate of tax imposed in the country of source on dividends beneficially owned by a resident of the other country is not to exceed 15 per cent. of the gross amount of the dividends.

Article III of the Protocol inserts a new paragraph 9 into Article 12 of the Convention, which contains rules for the taxation of interest. The new paragraph provides additional measures against abuse.

Article IV of the Protocol inserts a new paragraph 7 into Article 13 of the Convention, which contains rules for the taxation of royalties. The new paragraph provides additional measures against abuse.

Article V of the Protocol substitutes replacement paragraphs (1) and (4) and inserts a new paragraph (5) into Article 14 of the Convention, which contains rules for the taxation of income or gains deriving from the alienation of property. Paragraph (5) preserves the right of the United Kingdom to tax income or gains from the alienation of any property by a person (including an individual, company or trustee) who is a resident of the United Kingdom at any time during the tax year in which the property is alienated, or has been so resident at any time during the preceding six years.

Article VI of the Protocol inserts a new Article into the Convention (Article 21A), to provide rules for the taxation of items of income that are not specifically dealt with by preceding articles of the Convention. Article 21A provides that such income will be taxed only by the country of which the beneficial owner is a resident, except where it arises from a source in the other country. In that case, the income may also be taxed in that other country.

Article VII of the Protocol deletes existing Article 25 of the Convention and substitutes a replacement Article 25 providing new provisions governing the exchange of information between the competent authorities of the two countries. The replacement Article brings the provisions into line with the developing international standards for exchange of information as reflected in the Agreement on Exchange of Information on Tax Matters published in 2002 by the Organisation for Economic Co-operation and Development.

Article VIII of the Protocol provides that each country will notify the other that it has completed the procedures required by its law to bring the Protocol into force. The Protocol will enter into force on the date of the later of these notifications. When the Protocol enters into force, the amendments in respect of the provisions relating to capital gains and the exchange of information will have effect in both countries from the date on which the Protocol was signed on behalf of the Governments (4th November 2003). In the United Kingdom the other provisions will take effect from 1st April (for corporation tax purposes), and from 6th April (for income tax and dividend tax credit purposes) following the date of entry into force. In New Zealand, the other provisions will take effect from 1st April following the date of entry into force.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

Article IX of the Protocol provides that it will remain in force as long as the Convention remains in force.

The Exchange of Notes comprising Part II of the Schedule to this Order clarifies the intended interpretation of certain parts of the Protocol.