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STATUTORY INSTRUMENTS

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**1984 No. 365**

**INCOME TAX**

**The Double Taxation Relief (Taxes on Income)  
(New Zealand) Order 1984**

*Laid before the House of Commons in draft*

Made - - - - 14th March 1984

At the Court at Buckingham Palace, the 14th day of March 1984

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 497(8) of the Income and Corporation Taxes Act 1970 (a), 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 497 of the said Income and Corporation Taxes Act 1970, 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 1984.

2. It is hereby declared—

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order 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; and
- (b) that it is expedient that those arrangements should have effect.

*N. E. Leigh,*  
Clerk of the Privy Council.

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(a) 1970 c.10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c.41) and section 10 of the Capital Gains Tax Act 1979 (c.14).

## SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

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

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

Have agreed as follows:

## ARTICLE 1

**Personal scope**

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

## ARTICLE 2

**Taxes covered**

(1) The taxes which are the subject of this Convention are:

- (a) in the United Kingdom:
  - (i) the income tax;
  - (ii) the corporation tax;
  - (iii) the capital gains tax; and
  - (iv) the petroleum revenue tax;(hereinafter referred to as "United Kingdom tax");
- (b) in New Zealand:
  - (i) the income tax; and
  - (ii) the excess retention tax;(hereinafter referred to as "New Zealand tax").

(2) Notwithstanding the provisions of paragraph (1) of this Article, the terms "United Kingdom tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies.

(3) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention 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 are made in their respective taxation laws.

## ARTICLE 3

**General definitions**

(1) In this Convention, unless the context otherwise requires:

- (a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

- (b) the term “New Zealand” means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
- (c) the term “national” means:
- (i) in relation to the United Kingdom, any individual who has under the law of the United Kingdom the status of United Kingdom national provided he has the right of abode in the United Kingdom, and any legal person or other entity deriving its status as such from the law in force in the United Kingdom;
  - (ii) in relation to New Zealand, any individual who is a New Zealand citizen and any legal person or other entity deriving its status as such from the law in force in New Zealand;
- (d) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, the United Kingdom or New Zealand;
- (e) the term “person” includes an individual, a company and any other body of persons;
- (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) 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;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
- (i) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative.
- (2) As regards the application of this Convention by a Contracting State any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which the Convention applies.

#### ARTICLE 4

##### **Residence**

- (1) For the purposes of this Convention, the term “resident of a Contracting State” means, as the context requires:
- (a) any person who is resident in the United Kingdom for the purposes of United Kingdom tax; or
  - (b) any person who is resident in New Zealand for the purposes of New Zealand tax.
- (2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he 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) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

#### ARTICLE 5

##### **Permanent establishment**

(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) an installation or structure for the exploration or exploitation of natural resources; 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 construction or installation project or any supervisory activity in connection therewith constitutes a permanent establishment but only if such site, construction, installation or activity lasts more than twelve months.

(4) 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, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person, other than an agent of an independent status to whom paragraph (6) of this Article applies, is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article

which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### ARTICLE 6

##### **Exploration and exploitation activities**

(1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on in connection with the exploration and exploitation of the sea-bed and subsoil and their natural resources (in this Article called "specified activities") situated in a Contracting State.

(2) An enterprise of a Contracting State which carries on specified activities in the other Contracting State shall be deemed to be carrying on business in that other State through a permanent establishment situated therein.

(3) An individual who is a resident of a Contracting State who carries on specified activities in the other Contracting State, which consist of professional services or other activities of a independent character, shall be deemed to be performing those activities from a fixed base regularly available to him in that other State.

(4) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment in the other Contracting State may, to the extent that the employment is exercised in connection with specified activities in that other State, be taxed in that other State.

#### ARTICLE 7

##### **Income from immovable property**

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) 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 landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article 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) of this Article 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.

## ARTICLE 8

**Business profits**

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3) of this Article, 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, and which are reasonably connected with profits attributable to the permanent establishment.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

(6) Nothing in this Article shall prevent either Contracting State from taxing according to its law the income or profits from the business of any form of insurance.

## ARTICLE 9

**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) Where profits referred to in paragraph (1) of this Article are derived by an enterprise of a Contracting State from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in that State.

(3) Profits of an enterprise of a Contracting State referred to in paragraphs (1) and (2) of this Article from the rental of ships or aircraft or from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that State to the extent that those ships, aircraft or containers are used in international traffic and such profits are incidental to the profits of the enterprise.

## ARTICLE 10

**Associated enterprises**

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.

#### ARTICLE 11

##### **Dividends**

- (1) (a) Dividends derived from a company which is a resident of the United Kingdom by a resident of New Zealand may be taxed in New Zealand.
- (b) Where a resident of New Zealand is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount of the dividend and of that tax credit at a rate not exceeding 15 per cent.
- (c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of New Zealand shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) An individual who is a resident of New Zealand and who derives dividends from a company which is a resident of the United Kingdom shall, provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he derived those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax. Any such credit may be treated for the purposes of New Zealand tax as assessable income from sources in the United Kingdom.

(3) Dividends derived from a company which is a resident of New Zealand and which are beneficially owned by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in New Zealand but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(4) The term "dividends" as used in this Article includes any item which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

#### ARTICLE 12

##### **Interest**

(1) Interest arising in a Contracting State which is derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but where the beneficial owner of such interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State.

(4) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State which is paid to and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned State if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by:

- (a) the United Kingdom Export Credits Guarantee Department; or
- (b) the New Zealand Export Guarantee Office.

(5) 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 but shall not include any item which is treated as a dividend or distribution under the provisions of Article 11.

(6) The provisions of paragraphs (1) and (2) of this Article 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 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 such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.

(7) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he 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 that permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(8) Where a special relationship exists between the payer and the beneficial owner or between both of them and some other person and the amount of the interest paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

#### ARTICLE 13

##### **Royalties**

(1) Royalties arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but where the beneficial owner of such 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 the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article 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 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 such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where a special relationship exists between the payer and the beneficial owner or between both of them and some other person and the amount of the royalties paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

#### ARTICLE 14

##### **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 7 and situated in the other Contracting State or from the alienation of shares in a company the assets of which consist wholly or principally of such property 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.

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

#### ARTICLE 15

##### **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. However, such income may also be taxed in the other Contracting State if:

- (a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any consecutive period of 12 months; or
- (b) the individual has a fixed base regularly available to him in the other State for the purpose of performing his activities;

but only so much thereof as is attributable to services performed in that State.

(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 16

**Dependent personal services**

(1) Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, 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 State for a period or periods not exceeding in the aggregate 183 days in any consecutive period of 12 months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

## ARTICLE 17

**Directors' fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in his 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 State.

## ARTICLE 18

**Artistes and athletes**

(1) Notwithstanding the provisions of Articles 15 and 16, 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

## ARTICLE 19

**Pensions and annuities**

(1) Pensions (including pensions paid under the social security legislation of a Contracting State), and similar remuneration in consideration of past employment or services, paid to a resident of a Contracting State, and any annuity paid to a resident of a Contracting State, shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## ARTICLE 20

**Government service**

- (1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2) The provisions of Articles 15 and 16 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## ARTICLE 21

**Students**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

## ARTICLE 22

**Elimination of double taxation**

- (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):
  - (a) New Zealand tax payable under the law of New Zealand and in accordance with this Convention whether directly or by deduction, on profits, income or chargeable gains from sources within New Zealand (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the New Zealand tax is computed.
  - (b) In the case of a dividend paid by a company which is a resident of New Zealand to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any New Zealand tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the New Zealand tax payable by the company in respect of the profits out of which such dividend is paid.
- (2) (a) Subject to the provisions of the law of New Zealand from time to time in force relating to the allowance as a credit against New Zealand tax of tax paid in any country other than New Zealand (which shall not affect the general principle hereof), United Kingdom tax computed by reference to income from sources in the United Kingdom and paid under the law of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in the United Kingdom (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 the New Zealand tax computed by reference to the same income and payable in respect of that income.

- (b) In the event that the Government of New Zealand should impose tax on dividends received by companies which are resident in New Zealand the Contracting States will enter into negotiations in order to establish new provisions concerning the taxation of such dividends derived from sources in the United Kingdom.
- (3) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.
- (4) Where, under the provisions of Article 10, profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made or imposed between the two enterprises in their commercial or financial relations had been those which would have been made or imposed between independent enterprises, the amount included in the profits of both enterprises shall be treated for the purpose of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.
- (5) Nothing in this Article shall entitle a person who is a resident of a Contracting State to credit against tax of that Contracting State of tax of the other Contracting State if the terms of the transactions giving rise to the profits on which the tax of the other State is payable are not such as might be expected in a bona fide commercial transaction and if they have as their main object, or one of their main objects, the obtaining of that credit.

#### 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 are or may be subjected.
- (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; provided that this paragraph shall not prevent a Contracting State from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State a tax not exceeding 5 percent of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the first-mentioned State.
- (3) 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 other or more burdensome than the taxation and connected requirements to which enterprises of the first-mentioned State carrying on the same activities, the capital of which is owned or controlled by residents of the first-mentioned State, are or may be subjected.
- (4) Except where the provisions of Article 10, paragraph (8) of Article 12, or paragraph (6) of Article 13, 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.

(5) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any exemption, relief, reduction or allowance for tax purposes which is granted to persons resident in that State.

(6) In this Article the term "taxation" means the taxes to which this Convention applies.

#### ARTICLE 24

##### **Mutual agreement procedure**

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(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 Convention.

(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 Convention.

(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 necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with laws and administrative practice prevailing in either Contracting State;
- (b) to supply information which is not obtainable under laws or in the normal course of the administration of either 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.

#### ARTICLE 26

##### **Diplomatic agents and consular officials**

(1) Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic or permanent mission or consular post of a Contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

#### ARTICLE 27

##### Entry into force

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention 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 respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1984;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1984;
  - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January 1984; and
- (b) in New Zealand:
  - for any income year beginning on or after 1 April 1984 (a).

(2) The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was made in 1966(b) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand, as modified by the Protocol made in 1980(c), shall terminate and cease to have effect from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (1) of this Article.

#### ARTICLE 28

##### Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom:
  - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;
  - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (b) in New Zealand: for any income year beginning on or after 1 April in the calendar year next following that in which the notice is given.

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(a) This paragraph is printed as amended by an Exchange of Notes in London on 22 December 1983 between the Government of the United Kingdom and the Government of New Zealand to incorporate the Entry into Force provisions now in Article 27(1).

(b) S.I. 1966/1020.

(c) S.I. 1980/1531.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Convention.

Done in duplicate at London this 4th day of August 1983.

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

*Young*

For the Government of New Zealand:

*Bill Young*

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#### EXPLANATORY NOTE

*(This Note is not part of the Order.)*

The Convention with New Zealand set out in the Schedule to this Order replaces the Convention signed on 13 June 1966, as amended by the Protocol signed on 25 March 1980.

The Convention provides for business profits not arising through a permanent establishment to be taxed only in the country of the taxpayer's residence. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Articles 5 and 8). The profits accruing to a resident of one country from activities connected with the exploration or exploitation of the sea-bed and subsoil of the other country, may be taxed in the latter country (Article 6). Profits arising from the operation of ships and aircraft are, in general, to be taxed only in the country in which the operator is resident (Article 9).

Provision is made for income arising from immovable property, and income and gains from the alienation of that property to be taxed in the country in which the property is situated (Articles 7 and 14).

The Dividends Article takes account of the imputation system of company taxation in the United Kingdom. It provides that where a United Kingdom company pays a dividend to an individual resident in New Zealand, the recipient will receive a tax credit equal to that to which a resident of the United Kingdom would have been entitled had he received the dividends, less a sum not exceeding 15 per cent of the aggregate of the dividend and the tax credit. Otherwise dividends arising in the United Kingdom and which are beneficially owned by a resident of New Zealand, are exempt from any tax on dividends in the United Kingdom. Where a New Zealand company pays a dividend to a United Kingdom resident, the dividend may be taxed in New Zealand at a rate not exceeding 15 per cent (Article 11).

The rate of tax imposed in the source country on interest (Article 12) and royalties (Article 13) is not to exceed 10 per cent. Certain interest arising on guaranteed or insured loans is exempt in the country of source.

The earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence (Articles 15 and 16). Remuneration paid in respect of services to the Government or a local authority of a country is, in general, to be taxed only in that country (Article 20). Pensions are to be taxed only in the country of the taxpayer's residence (Article 19). Income derived from the activities of athletes and artistes may be taxed in the country where the activities are exercised (Article 18). Some payments made to visiting students are to be exempt from tax in the country visited (Article 21).

Where income continues to be taxable in both countries, credit will be given by the country of the taxpayer's residence in respect of tax imposed by the other country (Article 22).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 23) and for consultation and exchange of information between the taxation authorities of the two countries (Articles 24 and 25).

The Convention will enter into force when the legislative procedures of both countries have been completed and will have effect in the United Kingdom from 1984 (Article 27).

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