Double Taxation Relief (Australia) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 15th day of February 2010

Present:
His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title
This order is the Double Taxation Relief (Australia) Order 2010.

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

3 Commencement of agreement
The agreement set out in the Schedule comes into force in accordance with Article 30 of that agreement.

4 Purposes
The arrangements specified in the agreement set out in the Schedule have been negotiated with Australia for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.

5 Arrangements have effect
The arrangements specified in the agreement set out in the Schedule have effect according to the agreement.

6 Amendment to and subsequent revocation of Double Taxation Relief (Australia) Order 1995

(1) This clause amends and subsequently revokes the Double Taxation Relief (Australia) Order 1995.

(2) Clause 2(1) is amended by adding ", as affected by Article 30 of the agreement set out in the Schedule of the Double Taxation Relief (Australia) Order 2009".

(3) The Double Taxation Relief (Australia) Order 1995 (SR 1995/23) is revoked at the end of the date on which the agreement and protocol given effect by that order terminate under paragraph 3 of Article 30 of the agreement set out in the Schedule of this order.

Schedule

cl 3

Convention between Australia and New Zealand for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion

The Government of Australia and the Government of New Zealand,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion,

Have agreed as follows:

Chapter I
Scope of the Convention

Article 1—Persons covered

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

2. In the case of an item of income (including profits or gains) derived by or through a person that is fiscally transparent with respect to that item of income under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income of a resident.

Article 2—Taxes covered

1. The taxes to which this Convention shall apply are:

a) in the case of Australia:

(i) the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources; and

(ii) the fringe benefits tax

imposed under the federal law of Australia

(hereinafter referred to as "Australian tax");

b) in the case of New Zealand:

the income tax, including the fringe benefit tax

Chapter I—*continued*
Article 2—*continued*

(hereinafter referred to as "New Zealand tax").

2. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal laws of Australia or the laws of New Zealand after the date of signature of the Convention in addition to, or in place of, the taxes listed in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the laws of their respective States relating to the taxes to which the Convention applies within a reasonable period of time after those changes.

Chapter II
Definitions

Article 3—General definitions

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

a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

b) the term "New Zealand" means the territory of New Zealand but does not include Tokelau; it also includes

Chapter II—*continued*
Article 3—*continued*

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 "business" includes the performance of professional services and of other activities of an independent character;

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

e) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;

f) the term "enterprise" applies to the carrying on of any business;

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 the ship or aircraft is operated solely between places in the other Contracting State;

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

(i) any individual possessing the nationality or citizenship of that Contracting State; and

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

j) the term "person" includes an individual, a trust, a partnership, a company and any other body of persons;

Chapter II—*continued*
Article 3—*continued*

k) the term "tax" means Australian tax or New Zealand tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;

l) the term "recognised stock exchange" means:

(i) the Australian Securities Exchange and any other Australian stock exchange recognised as such under Australian law;

(ii) the securities markets (other than the New Zealand Debt Market) operated by the New Zealand Exchange Limited; and

(iii) any other stock exchange agreed upon by the competent authorities; and

m) the term "managed investment trust" means a trust that is a managed investment trust for the purposes of Australian tax.

2. For the purposes of Articles 5 and 6, the term "natural resources" means naturally-occurring deposits or sources of materials and substances, such as minerals, oils, gas and water. The term also includes naturally-occurring forests and fish.

3. As regards the application of the Convention 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 laws of that State concerning the taxes to which the Convention 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.

4. For the purposes of Articles 10, 11 and 12, dividends, interest or royalties arising in a Contracting State and derived by or through a trust shall be deemed to be beneficially owned by a resident of the other Contracting State where such income is subject to tax in that other State in the hands of a trustee of that trust.

Chapter II—*continued*

Article 4—Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax as a resident of that State, and also includes that State and any political subdivision or local authority of that State. 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 their status shall be determined as follows:
   a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
   b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State in which that 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 that individual is a national.

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 25 the Contracting State of which the person shall be deemed to be a resident for the purposes of the Convention, having regard to its places of

Chapter II—*continued*
Article 4—*continued*

management, the place where it is incorporated or otherwise constituted 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 Convention.

4. Where an item of income, profits or gains derived by an individual is exempt from tax in New Zealand by reason only of the status of that individual as a transitional resident under the laws of New Zealand, no relief or exemption from tax shall be available under this Convention in Australia in respect of that item of income, profits or gains.

5. Notwithstanding paragraph 3 of this Article, where by reason of paragraph 1 of this Article a company, which is a participant in a dual listed company arrangement, is a resident of both Contracting States then it shall be deemed to be a resident only of the Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.

6. The term "dual listed company arrangement" as used in this Article means an arrangement pursuant to which two companies that are listed on a stock exchange specified in subsubparagraphs 1 *l)(i)* and *(ii)* of Article 3 respectively, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:

a) the appointment of common (or almost identical) boards of directors, except where the effect of the relevant regulatory requirements prevents this;

b) management of the operations of the two companies on a unified basis;

c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;

d) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and

Chapter II—*continued*
Article 4—*continued*

e) cross-guarantees as to, or similar financial support for, each other's material obligations or operations, except where the effect of the relevant regulatory requirements prevents such guarantees or financial support.

7. Notwithstanding the other provisions of this Convention, a managed investment trust which receives income (including profits and gains) arising in New Zealand shall be treated, for the purposes of applying the Convention to such income, as an individual resident of Australia and as the beneficial owner of the income it receives, but only to the extent that residents of Australia are the owners of the beneficial interests in the managed investment trust. However, if:

a) the managed investment trust has its principal class of units listed on a stock exchange specified in subsubparagraph 1 *l)(i)* of Article 3 and is regularly traded on one or more recognised stock exchanges; or

b) at least 80 per cent of the value of the beneficial interests in the managed investment trust is owned by residents of Australia,

the managed investment trust shall be treated as an individual resident of Australia and as the beneficial owner of all the income it receives.

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 the 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) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

Chapter II—*continued*
Article 5—*continued*

g) an agricultural, pastoral or forestry property.

3. A building site or a construction, installation or assembly project shall constitute a permanent establishment but only if it lasts more than 6 months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

a) performs services in the other Contracting State

(i) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual, or

(ii) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other State;

b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources or standing timber situated in that other State for a period or periods exceeding in the aggregate 90 days in any twelve month period; or

c) operates substantial equipment in the other State (including as provided in subparagraph *b)*) for a period or periods exceeding in the aggregate 183 days in any twelve month period,

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 7 which, if exercised through a fixed place of busi-

Chapter II—*continued*
Article 5—*continued*

ness, would not make this place of business a permanent establishment under the provisions of that paragraph.

5. For the purposes of subsubparagraph *a)(ii)* of paragraph 4, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual. Furthermore, services performed through an individual who is present and performing such services in a State for any period not exceeding 5 days shall be disregarded for the purposes of subsubparagraph *a)(ii)* of paragraph 4, unless such services are performed by that individual in that State on a regular or frequent basis.

6. *a)* The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.

b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by the same person or persons.

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, display or delivery of goods or merchandise belonging to the enterprise;

Chapter II—*continued*
Article 5—*continued*

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 such activities are, in relation to the enterprise, 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 on behalf of an enterprise and:

a) has, and habitually exercises, in a Contracting State an authority to substantially negotiate or conclude contracts on behalf of the enterprise; or

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

9. 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 person who is a broker, gen-

Chapter II—*continued*
Article 5—*continued*

eral commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business as such a broker or agent.

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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

11. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

Chapter III
Taxation of income and fringe benefits

Article 6—Income from real property

1. Income derived by a resident of a Contracting State from real property (including profits of an enterprise from agriculture, forestry or fishing) may be taxed in the Contracting State in which the real property is situated.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated and includes:

a) any natural resources, property accessory to real property, rights to which the provisions of general law respecting real property apply, and rights to standing timber;

b) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for natural resources, and a right to exploit those resources; and

Chapter III—*continued*
Article 6—*continued*

c) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or for the right to explore for or exploit, natural resources.

Ships, boats and aircraft shall not be regarded as real property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, natural resources or standing timber, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise. The profits of the enterprise shall be determined in accordance with the principles of paragraphs 2 and 3 of Article 7 as if such income were attributable to a permanent establishment in the Contracting State in which the real property is situated.

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 that permanent establishment.

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.

Chapter III—*continued*
Article 7—*continued*

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

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 affect the application of any law of a Contracting State relating to tax imposed on income from insurance with non-resident insurers.

7. 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

Chapter III—*continued*
Article 7—*continued*

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.

8. No adjustments to the profits attributable to a permanent establishment of an enterprise for a year of income shall be made by a Contracting State after the expiration of 7 years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of 7 years, an audit into the profits of the enterprise has been initiated by either State.

Article 8—Shipping and air transport

1. Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, amounts paid or payable to an enterprise of a Contracting State for carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped 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 profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pooling arrangement or other profit sharing arrangement.
4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in the transport of goods or merchandise, provided that such use, maintenance or rental is directly connected or ancillary to the operation of ships or aircraft in international traffic.

Chapter III—*continued*

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 operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. 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 might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, 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

Chapter III—*continued*
Article 9—*continued*

provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

4. No adjustments to the profits of an enterprise for a year of income shall be made by a Contracting State in accordance with the provisions of paragraphs 1 and 2 after the expiration of 7 years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of 7 years, an audit into the profits of an enterprise has been initiated by that State.

Article 10—Dividends

1. Dividends paid by a company which is a resident of a Contracting State, being dividends beneficially owned by 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 the tax so charged shall not exceed:

   a) 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 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. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 per cent or more of the voting

Chapter III—*continued*
Article 10—*continued*

power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends:

a) has its principal class of shares listed on a recognised stock exchange specified in subsubparagraph 1 *l)(i)* or *(ii)* of Article 3 and is regularly traded on one or more recognised stock exchanges;

b) is owned directly or indirectly by one or more companies:

(i) whose principal class of shares is listed on a recognised stock exchange specified in subsubparagraph 1 *l)(i)* or *(ii)* of Article 3 and is regularly traded on one or more recognised stock exchanges; or

(ii) which, if that company or each of those companies owned directly the holding in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of such dividends under a tax treaty between the State of which that company is a resident and the Contracting State of which the company paying the dividends is a resident; or

c) does not meet the requirements of subparagraphs *a)* or *b)* of this paragraph but the competent authority of the first-mentioned Contracting State determines that the first sentence of paragraph 9 of this Article does not apply. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Convention under this subparagraph.

4. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends holds directly no more than 10 per cent of the voting power of the company paying the dividends, and the beneficial

Chapter III—*continued*
Article 10—*continued*

owner is a Contracting State, or political subdivision or a local authority thereof (including a government investment fund).

5. The term "dividends" as used in this Article means income from shares or other rights participating in profits, as well as other amounts which are 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 for the purposes of its tax.

6. The provisions of paragraphs 1, 2, 3 and 4 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. 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—being dividends beneficially owned by a person who is not a resident of the other Contracting State—except insofar as the holding in respect of which such 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 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 State.

8. Notwithstanding paragraph 7, dividends paid by a company which is a resident of Australia for the purposes of Australian tax and which is also a resident of New Zealand for the purposes of New Zealand tax may be taxed in a Contracting State to the extent that the dividends are paid out of profits or income arising in that State. Where such dividends are beneficially owned by a resident of the other Contracting State, paragraphs

Chapter III—*continued*
Article 10—*continued*

2 and 3 of this Article shall apply as if the company paying the dividends were a resident only of the first-mentioned State.

9. 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 beneficially owned 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 laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned State if:

a) the interest is derived by a Contracting State or by a political sub-division or a local authority thereof (including a government investment fund), or by a bank performing central banking functions in a Contracting State; or

b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest

Chapter III—*continued*
Article 11—*continued*

and using those funds in carrying on a business of providing finance.

4. Notwithstanding paragraph 3, interest referred to in subparagraph *b)* of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if:

a) in the case of interest arising in New Zealand, it is paid by a person that has not paid approved issuer levy in respect of the interest. This subparagraph *a)* shall not apply if New Zealand does not have an approved issuer levy, or the payer of the interest is not eligible to elect to pay the approved issuer levy, or if the rate of the approved issuer levy payable in respect of such interest exceeds two percent of the gross amount of the interest. For the purposes of this Article, "approved issuer levy" includes any identical or substantially similar charge payable by the payer of interest arising in New Zealand enacted after the date of this Convention in place of approved issuer levy; or

b) it is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

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, 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.

6. The provisions of paragraphs 1 and 2, subparagraph *b)* of paragraph 3 and paragraph 4 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

Chapter III—*continued*
Article 11—*continued*

which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment 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, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. 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 might have been expected to 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 Convention.

9. 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

Chapter III—*continued*
Article 11—*continued*

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 beneficially owned 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 laws of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
   - *a)* the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
   - *b)* the supply of information concerning technical, industrial, commercial or scientific experience;
   - *c)* the supply of 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)* or any such information as is mentioned in subparagraph *b)*;
   - *d)* the use of, or the right to use:
     - *(i)* motion picture films;
     - *(ii)* films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting;
   - *e)* the use of, or the right to use, some or all of the part of the radiofrequency spectrum as specified in a spectrum licence of a Contracting State, where the payment or credit arises in that State; or

Chapter III—*continued*
Article 12—*continued*

f) 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 and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by or deductible in determining the profits attributable to such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to 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 or credits shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 credited, to take advantage of this Article by means of

Chapter III—*continued*
Article 12—*continued*

that creation or assignment. 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, profits or gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Income, profits or gains from the alienation of property (other than real property) forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than real property) pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from real property situated in the other Contracting State may be taxed in that other State.
5. Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.
6. Where an individual who upon ceasing to be a resident of a Contracting State, is treated under the taxation law of that State as having alienated any property and is taxed in that State by reason thereof, the individual may elect to be treated for the

Chapter III—*continued*
Article 13—*continued*

purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to be a resident of the first-mentioned State, alienated and reacquired the property for an amount equal to its fair market value at that time.

7. The provisions of this Article shall not affect the right of Australia to tax, in accordance with its laws, income, profits or gains from the alienation of any property derived by a person who is a resident of Australia at any time during the year of income in which the property is alienated, or has been so resident at any time during the 6 years immediately preceding that year.

Article 14—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 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 State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income of that other State, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, or is borne by or deductible in determining the profits attributable to a permanent establishment which the employer has in the first-mentioned State, and

c) the remuneration is neither borne by nor deductible in determining the profits attributable to a permanent establishment which the employer has in the other State.

Chapter III—*continued*
Article 14—*continued*

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.

4. Notwithstanding the preceding provisions of this Article, remuneration derived by an individual who is a resident of a Contracting State in respect of a secondment to the other Contracting State shall be taxable only in the first-mentioned State where the individual is present in the other State for a period or periods not exceeding in the aggregate 90 days in any twelve month period.

5. For the purposes of paragraph 4, "secondment to the other Contracting State" means an arrangement pursuant to which an employee of an enterprise of a Contracting State, being the enterprise with which the employee has a formal contract of employment, temporarily performs employment services in the other State for a permanent establishment of the enterprise situated in that other State, or for an associated enterprise (as referred to in subparagraph *c)* of paragraph 6 of Article 5), where such employment services are of a similar nature to those ordinarily performed by that employee for the first-mentioned enterprise. However, it does not include an arrangement that has as one of its main purposes the obtaining of benefits under paragraph 4.

Article 15—Fringe benefits

1. Where, except for the application of this Article, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Convention in respect of salary or wages from the employment to which the benefit relates.

2. For the purposes of this Article:

a) "fringe benefit" includes a benefit provided to an employee or to an associate of an employee by:

Chapter III—*continued*
Article 15—*continued*

(i) an employer;
(ii) an associate of an employer; or
(iii) a person under an arrangement between that person and the employer, associate of an employer or another person in respect of the employment of that employee,

and includes an accommodation allowance or housing benefit so provided but does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;

b) a Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary or wages from the relevant employment is allocated to that State in accordance with this Convention and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned 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 State.

Article 17—Entertainers and sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, 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 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

Chapter III—*continued*
Article 17—*continued*

Articles 7 and 14, 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 the income derived in respect of personal activities exercised by a sportsperson as a member of a recognised team regularly playing in a league competition organised and conducted in both Contracting States, except in respect of performance as a member of a national representative team of either Contracting State. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

Article 18—Pensions

1. Pensions (including government pensions) and other similar periodic remuneration paid to a resident of a Contracting State shall be taxable only in that State. However, such income arising in the other Contracting State (other than payments of portable New Zealand superannuation or portable veteran's pension or equivalent portable payments arising in New Zealand) shall not be taxed in the first-mentioned State to the extent that such income would not be subject to tax in the other State if the recipient were a resident of that other State.
2. Lump sums arising in a Contracting State and paid to a resident of the other Contracting State under a retirement benefit scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, shall be taxable only in the first-mentioned State.
3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Chapter III—*continued*

Article 19—Government service

1. *a)* Salaries, wages and other similar remuneration (other than a pension) paid by a Contracting State or a political subdivision or 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 salaries, wages and other similar 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 14, 16 and 17 shall apply to salaries, wages and other similar remuneration paid in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 20—Students

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

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State who car-

Chapter III—*continued*
Article 21—*continued*

ries 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 such case the provisions of Article 7 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 the Convention and arising in the other Contracting State may also be taxed in the other Contracting State.

Article 22—Source of income

Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19 may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to arise from sources in that other Contracting State.

Chapter IV
Elimination of double taxation

Article 23—Elimination of double taxation

1. Subject to the provisions of the laws of Australia which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), New Zealand tax paid under the laws of New Zealand and in accordance with this Convention, in respect of income derived by a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income.

2. Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Australian tax

Chapter IV—*continued*
Article 23—*continued*

paid under the laws of Australia and in accordance with this Convention, in respect of income derived by a resident of New Zealand (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.

3. Where, in accordance with paragraph 2 of Article 1, an item of income is taxed in a Contracting State in the hands of a person that is fiscally transparent under the laws of the other State, and is also taxed in the hands of a resident of that other State as a participant in such person, that other State shall provide relief in respect of taxes imposed in the first-mentioned State on that item of income in accordance with the provisions of this Article.

Chapter V
Special provisions

Article 24—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 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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

Chapter V—*continued*
Article 24—*continued*

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 8 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. This Article shall not apply to any provision of the laws of a Contracting State which:

a) is designed to prevent the avoidance or evasion of taxes;

b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the 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 that 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;

Chapter V—*continued*
Article 24—*continued*

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

f) provides deductions to eligible taxpayers for expenditure on research and development; or

g) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

6. In this Article, provisions of the laws of a Contracting State which are designed to prevent avoidance or evasion of taxes include:

a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

b) controlled foreign company, transferor trusts and foreign investment fund rules; and

c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions.

Article 25—Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Convention, the 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 the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

Chapter V—*continued*
Article 25—*continued*

2. The competent authority shall endeavour, if the claim 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. 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 Convention. They may also consult together for the elimination of double taxation in cases not provided for in 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.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

6. Where,
   a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
   b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within

Chapter V—*continued*
Article 25—*continued*

two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been reserved or rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

7. The issues to which the provisions of paragraph 6 apply are:
   a) issues of fact; and
   b) issues which the Government of Australia and the Government of New Zealand agree, in an Exchange of Notes, shall be covered by the provisions of paragraph 6.

Article 26—Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed, in the case of Australia, under the federal tax laws administered by the Commissioner of Taxation, and in the case of New Zealand, under its tax laws, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
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

Chapter V—*continued*
Article 26—*continued*

be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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 (ordre public).

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 finan-

Chapter V—*continued*
Article 26—*continued*

cial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27—Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed, in the case of Australia, under the federal tax laws administered by the Commissioner of Taxation, and in the case of New Zealand, under its tax laws, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of con-

Chapter V—*continued*
Article 27—*continued*

servancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

Chapter V—*continued*
Article 27—*continued*

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

Article 28—Members of diplomatic missions and consular posts

Nothing in this Convention 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 international agreements.

Chapter VI
Final provisions

Article 29—Miscellaneous

1. The Contracting States shall consult each other at intervals of not more than five years regarding the terms, operation and application of the Convention with a view to ensuring that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion. The first such consultation shall take place no later than the end of the fifth year after the entry into force of the Convention.

2. With reference to Article 11, if in any future tax treaty with any other State, New Zealand should provide for more favourable treatment of interest derived by financial institutions, New Zealand shall without undue delay inform Australia and shall enter into negotiations with Australia with a view to providing the same treatment.

Article 30—Entry into force

1. The Contracting States shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the Convention shall have effect:

   a) in the case of Australia:

      (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the Convention enters into force;

      (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the Convention enters into force;

      (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Convention enters into force;

Chapter VI—*continued*
Article 30—*continued*

b) in the case of 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 the second month next following the date on which the Convention enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the Convention enters into force.

2. Notwithstanding paragraph 1, paragraphs 6 and 7 of Article 25 shall have effect from the date agreed in an exchange of notes through the diplomatic channel.

3. The Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Melbourne on 27 January 1995, as modified by the Protocol signed at Melbourne on 15 November 2005 (hereinafter referred to as "the 1995 Agreement"), shall cease to have effect with respect to taxes to which this Convention applies in accordance with the provisions of paragraph 1. The 1995 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this paragraph.

Article 31—Termination

This Convention shall continue in effect indefinitely, but either Contracting State may terminate the Convention by giving written notice of termination, through the diplomatic channel, to the other State at least six months before the end of any calendar year beginning after the expiration of five years from the date of its entry into force and, in that event, the Convention shall cease to be effective:

a) in the case of Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or

Chapter VI—*continued*
Article 31—*continued*

after the first day of the second month next following the date on which the notice of termination is given;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the notice of termination is given;

(iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the notice of termination is given;

b) in the case of 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 the second month next following the date on which the notice of termination is given;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Convention.

DONE at Paris this 29th day of June, 2009, in duplicate in the English language.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force 28 days after its notification in the *Gazette*, gives effect to the agreement between New Zealand and

Australia (the **Convention**) relating to double taxation with respect to income tax and fringe benefits and the prevention of fiscal evasion. The Convention also provides for the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes. The Convention was signed on 29 June 2009. It replaces the previous double tax agreement with Australia that was given effect under the Double Taxation Relief (Australia) Order 1995.

The Convention comes into force after the parties have notified each other that domestic procedures for bringing the agreement into force have been completed, as required by Article 30. It will then have effect for each type of tax on the dates set out in Article 30. Under that article, the previous double tax agreement with Australia will cease to have effect for a type of tax when the Convention comes into effect for that type of tax. This order amends the Double Taxation Relief (Australia) Order 1995 to give effect to this transition, and then revokes that order after the previous double tax agreement ceases to have any effect. These dates will be publicised on:

www.taxpolicy.ird.govt.nz/international/DTA/australia.html.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 18 February 2010.
This order is administered by the Inland Revenue Department.

Wellington, New Zealand:
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