

Double Taxation Relief (India) Amendment Order 1999

PURSUANT to section BH 1 of the Income Tax Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

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1 Title and commencement

- (1) This order may be cited as the Double Taxation Relief (India) Amendment Order 1999, and is part of the Double Taxation Relief (India) Order 1986¹ (“the principal order”).
- (2) This order comes into force on the 28th day after the date of its notification in the *Gazette*.

2 Giving effect to Second Protocol to Convention

- (1) Clause 2 of the principal order is amended by omitting the words “Schedules First and Second”, and substituting the words “Schedule 1, Schedule 2, and Schedule 3”.
- (2) The principal order is amended—

¹ SR 1986/336

- (a) By omitting from the First Schedule the heading “FIRST SCHEDULE”, and substituting the heading “SCHEDULE 1”:
- (b) By omitting from the Second Schedule the heading “SECOND SCHEDULE”, and substituting the heading “SCHEDULE 2”:
- (c) By adding, as Schedule 3, the Schedule 3 set out in the Schedule of this order.

**Schedule
New Schedule 3 of Principal order**

**Schedule 3
Second Protocol to the Convention
Between the Government of New Zealand
and the Government of the Republic
of India for the Avoidance of Double
Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income**

Preamble

The Government of New Zealand and the Government of the Republic of India,

Having regard to the Convention between the Government of New Zealand and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Auckland on the 17th day of October 1986 (hereinafter referred to as **the Convention**),

Have agreed as follows:

Article 1

Paragraph 1(a)(ii) of Article 3 of the Convention is replaced by the following:

- (ii) the term **India** means the territory of India and includes the territorial sea and the airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the In-

Schedule 3—*continued*

dian law and in accordance with international law, including the UN Convention on the Law of the Sea;

Article 2

Paragraph 3 of Article 4 of the Convention is replaced by the following:

- “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 of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 3

Paragraph 1 of Article 6 of the Convention is replaced by the following:

- “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 also be taxed in that other State.

Article 4

In paragraph 2 of Article 10 of the Convention, ‘20 per cent’ is replaced by ‘15 percent’.

Article 5

In paragraph 2 of Article 11 of the Convention, ‘15 per cent’ is replaced by ‘10 percent’

Article 6

In paragraph 2 of Article 12 of the Convention, ‘30 per cent’ is replaced by ‘10 percent’.

Schedule 3—*continued*

Article 7

Paragraph 1 of Article 13 of the Convention is replaced by the following:

- “1. Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

Article 8

1. Paragraph 2 of Article 24 of the Convention is replaced by the following:

“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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State.

2. A new paragraph 5 is inserted immediately after paragraph 4 of Article 24 of the Convention and the original paragraph 5 of the Article is renumbered paragraph 6.

“5. This Article shall not apply to any provisions of the taxation laws of a Contracting State which are reasonably designed to prevent or defeat the avoidance or evasion of taxes.

Article 9

1. The Contracting States shall notify each other through diplomatic channels of the completion of the procedures required by the respective laws for the entry into force of this Protocol.

Schedule 3—*continued*

2. This Protocol shall enter into force 30 days after the date of receipt of the later of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:
- (a) in New Zealand: for any income year beginning on or after 1st April in the calendar year next following the date on which the Protocol enters into force;
 - (b) in India: for any **previous year** (as defined in the Income-tax Act, 1961) beginning on or after 1st April in the calendar year next following the date on which the Protocol enters into force.

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

Done in duplicate at New Delhi this 21 day of June 1999 in the Hindi and English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

Mr Adrian Simcock

Mr Ravi Kant

For the Government of New
Zealand

For the Government of the
Republic of India

MARIE SHROFF,
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 adds a Second Protocol to the 1986 New Zealand-India Double Tax Convention. The aim of the Second Protocol is to lower the maximum rate of tax on dividend, interest, royalty, and certain service income paid to non-residents, and to make certain technical clarifications to the 1986 New Zealand-India Double Tax Convention.

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The Second Protocol applies to income derived on or after any income year beginning on or after 1 April in the calendar year next following the date on which it comes into force in accordance with Article 9 of the Second Protocol.

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