



Double Taxation Relief (Belgium) Amendment Order 2010

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 5th day of July 2010

Present:

The Hon Bill English presiding in Council

Pursuant to section BH 1 of the Income Tax Act 2007, Her Excellency the Administrator of the Government, 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 (Belgium) Amendment Order 2010.

2 Commencement

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

3 Principal order amended

This order amends the Double Taxation Relief (Belgium) Order 1983.

4 Giving effect to Convention

(1) Clause 2 is amended by—

- (a) omitting “the Schedule to this order” and substituting “Schedule 1”; and
- (b) omitting “and notwithstanding anything in that Act or any other enactment,”; and
- (c) omitting “according to the tenor of the Convention”.

(2) Clause 2 is amended by adding the following subclauses as subclauses (2) and (3):

“(2) The Second Protocol set out in Schedule 2, which amends the Convention, comes into force on the date referred to in Article XIII of that Protocol as the date on which it enters into force.

“(3) The Convention has effect in accordance with section BH 1(4) of the Income Tax Act 2007.”

5 New Schedule 2 added

The schedule set out in the Schedule of this order is added as Schedule 2.

Schedule	cl 5
New Schedule 2 added	
Schedule 2	cl 2(2)

**Second Protocol amending the Convention
Between the Government of New Zealand
and the Government of Belgium for the
Avoidance of Double Taxation and the
Prevention of Fiscal Evasion with Respect
to Taxes on Income, and the Protocol,
signed at Brussels on 15 September 1981**

**THE GOVERNMENT OF NEW ZEALAND
AND**

THE GOVERNMENT OF THE KINGDOM OF BELGIUM,
DESIRING to amend the Convention between the Government of
New Zealand and the Government of Belgium for the avoidance of
double taxation and the prevention of fiscal evasion with respect to
taxes on income (in this Second Protocol referred to as “the Con-
vention”), and the Protocol, signed at Brussels on 15 September 1981,
have agreed as follows:

Article I

*Paragraphs 3 and 5 of Article 2 of the Convention shall be deleted
and paragraph 3 shall be replaced by the following:*

- “3. The existing taxes to which the Convention shall apply are in
particular:
- (a) in the case of New Zealand:
 - the income tax,
(hereinafter referred to as “New Zealand tax”);
 - (b) in the case of Belgium:
 - (i) the individual income tax;
 - (ii) the corporate income tax;
 - (iii) the income tax on legal entities;
 - (iv) the income tax on non-residents;
 - (v) the supplementary crisis contribution,

Schedule 2—*continued*Article I—*continued*

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax,

(hereinafter referred to as “Belgian tax”).”

Article II

Sub-paragraph (h) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following:

“(h) the term “competent authority” means:

- (i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
- (ii) in the case of Belgium, the Minister of Finance or an authorised representative.”

Article III

Article 8 of the Convention shall be deleted and replaced by the following:

“Article 8

Ship and aircraft operations

1. Profits from ship or aircraft operations derived by a resident of a Contracting State shall be taxable only in that State.
2. Notwithstanding the provision of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from ship or aircraft operations confined solely to places in that other State. Those profits shall be calculated in accordance with the provisions of Article 7.
3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from ship or aircraft operations derived by a resident of a Contracting State through participation in a pool service, in a joint business or operating organisation or in an international operating agency.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State for

Schedule 2—*continued*Article III—*continued*

discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.”

Article IV

Article 9 of the Convention shall be deleted and replaced by the following:

“Article 9
Associated enterprises

1. Where
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on

Schedule 2—*continued*Article IV—*continued*

those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.”

Article V

Paragraph 3 of Article 10 of the Convention shall be deleted and replaced by the following:

- “3. The term “dividends” as used in this Article means income from shares and other income (even paid in the form of interest) treated as income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.”

Article VI

The following new paragraph 3 shall be inserted in Article 11 of the Convention and paragraphs 3, 4, 5 and 6 shall be renumbered respectively as paragraphs 4, 5, 6 and 7:

- “3. Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is interest which is:
- (a) derived from the investment of funds by the Government of a Contracting State;
 - (b) paid to a bank performing central banking functions in a Contracting State; or
 - (c) paid to and beneficially owned by a resident of the other Contracting State if it is paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by public entities the objective of which is to promote the export and which are agreed upon by the competent authorities of both Contracting States.”

Article VII

Article 16 of the Convention shall be deleted and replaced by the following:

Schedule 2—*continued*

Article VII—*continued*

“Article 16

Company managers

1. 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 or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Remuneration:
 - (a) derived by a person referred to in paragraph 1 from the company in respect of the discharge of day-to-day functions of a managerial or technical nature; or
 - (b) received by a resident of a Contracting State in respect of personal activities as a partner of a company, other than a company with share capital, which is a resident of the other Contracting State shall be taxable in accordance with the provisions of Article 15, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the “employer” were references to the company.”

Article VIII

Paragraph 2 of Article 23 of the Convention shall be deleted and replaced by the following:

- “2. In the case of Belgium, double taxation shall be avoided as follows:
 - (a) Where a resident of Belgium derives income which has been taxed in New Zealand in accordance with the provisions of the Convention, and which is not subject to the provisions of sub-paragraphs (b), (c), and (d) below, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.
 - (b) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of such resident’s

Schedule 2—*continued*Article VIII—*continued*

aggregate income for Belgian tax purposes which are dividends not exempt from Belgian tax according to sub-paragraph (d) hereinafter, interest or royalties, the New Zealand tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.

- (c) Where a resident of Belgium derives income which has been taxed in New Zealand in accordance with the provisions of Article 22, the amount of Belgian tax relating to such income shall not exceed the amount which would be charged according to Belgian law if such income were taxed as earned income derived from sources outside Belgium and subject to foreign tax.
- (d) Dividends derived by a company which is a resident of Belgium from a company which is a resident of New Zealand, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.
- (e) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in New Zealand, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in New Zealand by reason of compensation for the said losses.”

Article IX

In Chapter V of the Convention, under the title “Special Provisions”, the following Article 23A shall be inserted before Article 24:

“Article 23A
Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement

Schedule 2—*continued*Article IX—*continued*

connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

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 a permanent establishment which an enterprise of a third State has in that other State.
3. The taxation on profits from ship or aircraft operations by a resident of a Contracting State to which paragraph 2 of Article 8 applies shall not be less favourably levied in the other State than the taxation levied on profits of enterprises of that other State carrying on the same activities. This paragraph shall not apply to any provisions of the taxation law of a Contracting State which are reasonably designed to prevent or defeat the avoidance or evasion of taxes, including thin capitalisation legislation.
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 other or more burdensome than the taxation and connected requirements to which enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
5. Except where the provisions of paragraph 1 of Article 9, paragraph 7 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. This paragraph shall not apply to any provisions of the taxa-

Schedule 2—*continued*Article IX—*continued*

tion law of a Contracting State which are reasonably designed to prevent or defeat the avoidance or evasion of taxes.

6. The provisions of this Article shall only apply to the taxes which are the subject of this Convention.
7. If one of the Contracting States considers that taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities shall consult each other in an endeavour to resolve the matter.”

Article X

Paragraph 2 of Article 24 of the Convention shall be deleted and replaced by the following:

- “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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.”

Article XI

Paragraph (d) of the Protocol to the Convention is deleted and replaced by the following:

- “(d) If, at any time after the date of signature of the Second Protocol, the competent authorities of both Contracting States agree that juridical or economic double taxation of fringe benefits is occurring, the Government of New Zealand and the Government of Belgium shall without undue delay enter into negotiations with a view to amending the present Convention to resolve the matter.”

Schedule 2—*continued*

Article XII

In case of divergence between the English, French and Dutch texts of the Convention (including the Protocol and this Second Protocol), the English text shall prevail.

Article XIII

Each Contracting State shall notify the other Contracting State of the completion of the procedures required by its laws for the bringing into force of this Second Protocol, which shall form an integral part of the Convention and the Protocol. The Second Protocol shall enter into force on the fifteenth day after the date of the later of these notifications and its provisions shall be effective:

- (a) in New Zealand:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 April next following the date on which the Second Protocol 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 Second Protocol enters into force;
- (b) in Belgium:
 - (i) in respect of all taxes due at source, on income credited or payable on or after 1 January in the calendar year immediately following that in which the Second Protocol enters into force;
 - (ii) in respect of all taxes other than taxes due at source, on income of taxable periods ending on or after 31 December in the calendar year immediately following that in which the Second Protocol enters into force.

Article XIV

This Second Protocol shall remain in force as long as the Convention and the Protocol are applicable.

Schedule 2—*continued*

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Second Protocol.

DONE in duplicate at Brussels, this 7th day of December 2009, in the English, French and Dutch languages, the three texts being equally authoritative.

For the Government of New Zealand:	For the Government of the Kingdom of Belgium:
Peter Kennedy	Didier Reynders
Ambassador	Minister of Finance

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 on the 28th day after the date of its notification in the *Gazette*, amends the Double Taxation Relief (Belgium) Order 1983 (the **principal order**) by adding a protocol agreed by the Governments of New Zealand and Belgium on 7 December 2009. The protocol amends the Convention between the Government of New Zealand and the Government of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the **Convention**), which was given effect by the principal order.

The protocol is set out in *new Schedule 2* of the principal order. The protocol comes into force, and its provisions come into effect, in accordance with Article XIII of the protocol.

This order also adjusts the wording of clause 2 of the principal order to reflect the fact that the Convention has effect in accordance with section BH 1(4) of the Income Tax Act 2007.

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**Double Taxation Relief (Belgium)
Amendment Order 2010**

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

Date of notification in *Gazette*: 8 July 2010.

This order is administered by the Inland Revenue Department.
