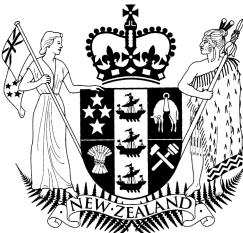


**Reprint
as at 30 November 2001**



Double Taxation Relief (Russian Federation) Order 2001

(SR 2001/350)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 26th day of November 2001

Present:

Her Excellency the Governor-General in Council

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

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Inland Revenue Department.

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Order

1 Title

This order is the Double Taxation Relief (Russian Federation) Order 2001.

2 Application

This order applies according to the tenor of the agreement set out in the Schedule.

3 Giving effect to agreement

- (1) It is declared that the arrangements specified in the agreement set out in the Schedule are, in relation to income tax imposed under the Income Tax Act 1994 and despite anything in that Act or any other enactment, to have effect according to the tenor of the agreement.
- (2) Those arrangements have been made with the Government of the Russian Federation with a view to affording relief from double taxation in relation to—
- (a) income tax imposed under the Income Tax Act 1994; and
 - (b) tax on income (profits) of enterprises and organisations and income tax on individuals imposed under the law of the Russian Federation.

Schedule

r 3

**Agreement between the Government of
New Zealand and the Government of the
Russian Federation for the avoidance of
double taxation and the prevention of
fiscal evasion with respect to taxes on
income**

The Government of New Zealand and the Government of the Russian Federation,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

**Article 1
Personal scope**

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

**Article 2
Taxes covered**

1. The existing taxes to which this Agreement shall apply are:
 - (a) in New Zealand: the income tax
(in this Agreement referred to as "New Zealand tax");
 - (b) in Russia:
 - (i) tax on income (profits) of enterprises and organisations; and
 - (ii) income tax on individuals
(in this Agreement referred to as "Russian tax").
2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in the taxation laws of their respective Contracting States.

Article 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) – the term “New Zealand” means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
– the term “Russia” means the territory of the Russian Federation, it also includes any area adjacent to the territorial sea which by the Russian Federation legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of the Russian Federation with respect to natural resources may be exercised;
 - (b) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (c) 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 Russia, the Ministry of Finance of the Russian Federation or its authorised representative;
 - (d) the terms “a Contracting State” and “the other Contracting State” mean New Zealand or Russia as the context requires;
 - (e) 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;
 - (f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contract-

Article 3—continued

- ing State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term “person” includes an individual, a company and any other body of persons.
2. Nothing in subparagraph (a) of paragraph 1 of this Article is intended to vary the effect as between the Contracting States of paragraph 2 of Article IV of the Antarctic Treaty done at Washington on 1 December 1959.
3. As regards the application of this Agreement at any time by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that State. In case of divergence between the tax laws of that State to which this Agreement applies and any other laws of that State the tax laws to which this Agreement applies shall prevail.

Article 4
Residence

1. For the purposes of this Agreement, a person is a resident of a Contracting State:
- (a) in the case of New Zealand, if the person is resident in New Zealand for the purposes of New Zealand tax;
- (b) in the case of Russia, if the person is resident in Russia for the purposes of Russian tax.
2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
3. Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then the status of the individual 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 the individual; if a permanent home is available to the individual in both States or a permanent home is not available in either State, the individual shall be deemed to be a resident only of the State with which the individual’s

Article 4—continued

- personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the individual has its centre of vital interests cannot be determined, or if the individual does not have not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the 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 solely of the State of which the individual is a citizen;
 - (d) if the individual is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 5

Permanent establishment

- 1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- 2. The term “permanent establishment” includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry or any other place of exploration or exploitation of natural resources.
- 3. A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, con-

Article 5—continued

- stitutes a permanent establishment if it lasts for more than 12 months.
4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if, for more than 3 months:
- (a) it carries on activities in that State which consist of, or which are connected with, the exploration or exploitation of natural resources situated in that State; or
 - (b) substantial equipment is being used in that State by, for or under contract with the enterprise.
5. An enterprise shall not be deemed to have a “permanent establishment” merely by reason of:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
 - (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; or
 - (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.
6. Notwithstanding the provisions of paragraphs 1 and 2, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph 7 applies – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:
- (a) the person has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of that enterprise, unless the activities of that person are limited to those described in paragraph 5 and, if exer-

Article 5—continued

- cised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to that enterprise.
7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a person who is a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business as a broker or agent.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from real property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “real property” shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to real property, any livestock, rights to which the provisions of general law respecting real property apply, rights known as usufruct of real property, rights to explore for or exploit natural resources, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, natural resources.

Article 6—continued

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.
4. The provisions of paragraphs 1 and 3 shall also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

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 in that other State. If the enterprise carries on business in that manner, 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 in that other State, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise 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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

Article 7—continued

5. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Notwithstanding the provisions of this Article, an enterprise of one of the States that carries on a business of any form of insurance, other than life insurance, and that derives income or profits from the other State in the form of premiums paid for the insurance of risks situated in that other State, may to that extent be taxed in the other State in accordance with the law of that other State relating specifically to the taxation of any person who carries on such business. However, the amount of the income or profits so derived shall not exceed 10 per cent of the gross amounts receivable from carrying on such business, other than where the income or profits so derived are attributable to a permanent establishment of an enterprise of the first-mentioned State, in which case the other provisions of this Article shall apply.
7. Where profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

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 provisions 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.
3. The provisions of paragraphs 1 and 2 shall apply in relation to 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.

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 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 profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of paragraph 1, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which would have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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.

Article 10—continued

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 15 per cent of the gross amount of the dividends.
3. The term “dividends” in this Article means income from shares and other income treated as income from shares by the tax laws of the Contracting State of which the company making the payment is a resident.
4. The provisions of paragraphs 1 and 2 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In that case, the provisions of Article 7 or 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by that company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base 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 that other State.

Article 11

Interest

1. Interest arising in a Contracting State, being interest which is beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

Article 11—*continued*

2. However, such interest may 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. The term “interest” in this Agreement means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and in particular, interest from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income assimilated to income from money lent by the laws of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the debt-claim in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or 14, as the case may be, shall apply.
5. 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 a permanent establishment or fixed base in connection with which the debt-claim on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of

Article 11—continued

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 would have been agreed upon by the payer and the beneficial owner in the absence of that relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the amount of the interest paid shall remain taxable according to the tax laws of each Contracting State, subject to the other provisions of this Agreement.

Article 12 Royalties

1. Royalties arising in a Contracting State, being royalties which are beneficially owned by a resident of the other Contracting State, may be taxed in that other State.
2. However, such royalties may 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 10 per cent of the gross amount of the royalties.
3. The term “royalties” as used in this Article means payments of any kind, 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 (including the use of or the right to use any literary, artistic or scientific work, any data or images, or any films, tapes or other medium used for storing data), patent, design or model, plan, secret formula or process, trade-mark, or other like property or right; or
 - (b) the use of, or the right to use, any industrial, scientific or commercial equipment; or
 - (c) know-how (information concerning industrial, commercial or scientific experience); or
 - (d) any assistance that is incidental, 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), any such

Article 12—continued

- equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (e) 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the property or right in respect of which the royalties are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a person who 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 a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, 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, having regard to what they are paid for, exceeds the amount which would have been agreed upon in the absence of that relationship by the payer and the beneficial owner of the royalties, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the amount of the royalties paid shall remain taxable according to the tax laws of each Contracting State, subject to the other provisions of this Agreement.

Article 13

Alienation of property

1. Gains derived by a resident of a Contracting State from the alienation of real property (as defined in paragraph 2 of Article 6) situated in the other Contracting State may be taxed in that other State.
2. 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 or pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State in which the alienator of such ships, aircraft or property is a resident.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 may be taxed in the Contracting State where such property is situated.

Article 14

Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of independent character shall be taxable only in that State unless such services are performed in the other Contracting State and:
 - (a) a fixed base is regularly available to the individual in the other State for the purpose of performing the individual's activities; or
 - (b) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned.

Article 14—continued

If the provisions of subparagraph (a) or (b) are satisfied, the income may be taxed in that other State but only so much of it as is attributable to activities performed during such period or periods or from that fixed base.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent personal services

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 Contracting State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
 - (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that State.

Article 16

Directors' fees

Directors' fees and 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 14 and 15, income derived by entertainers (such as theatre, motion picture, radio or television artists or musicians) or sportspersons from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Where income in respect of the personal activities of an entertainer as such accrues not to the entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

Article 18

Pensions

1. Pensions, other than government pensions, and annuities paid to a resident of a Contracting State shall be taxable only in that State.
2. Pensions paid by the Government of a Contracting State may be taxed in that State. Such pensions may also be taxed in the other Contracting State, but only to the extent of 50 per cent of the amount of the pension paid.

Article 19

Government service

1. Remuneration (other than pensions) paid by the Government of a Contracting State to any individual in respect of services rendered to that Government shall be exempt from any tax in the other Contracting State if the individual is not resident in this other Contracting State or is a resident in that other Con-

Article 19—continued

- tracting State solely for the purpose of rendering those services.
2. Paragraph 1 shall not apply to payments in respect of services rendered in connection with any business carried on by a Government. In that case, the provisions of Article 15 or 16, as the case may be, shall apply.

**Article 20
Students**

Where a student, who is a resident of a Contracting State or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of the student's education or training, receives payments from sources outside that other State for the purpose of the student's maintenance, education or training, those payments shall be exempt from tax in that other State.

**Article 21
Other income**

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the preceding Articles of this Agreement shall be taxable only in that State, except if such income is derived from sources within the other Contracting State, then that income may also be taxed in that other State.

**Article 22
Elimination of double taxation**

1. 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), Russian tax paid under the laws of Russia and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in Russia (excluding, in the case of a dividend, tax paid in re-

Article 22—*continued*

spect 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.

2. In the case of Russia, double taxation is eliminated as follows: Where a resident of Russia derives income which, in accordance with the provisions of this Agreement, may be taxed in New Zealand, the amount of New Zealand tax on that income may be credited against the tax imposed on that resident in Russia. The amount of credit, however, shall not exceed the amount of the tax on that income computed in accordance with the taxation laws and regulations of Russia.

Article 23
Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on a permanent establishment which an enterprise of a third State has in that other State.
3. Enterprises of one of the Contracting States, 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 other similar 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.
4. This Article shall not apply to any provisions of the taxation laws of a Contracting State which:

Article 23—continued

- (a) are reasonably designed to prevent or defeat the avoidance or evasion of taxes; or
- (b) are in force on the date of signature of this Agreement, or are substantially similar in general purpose or intent to any such provision but are enacted after the date of signature of this Agreement,
provided that any such provision does not allow for different treatment of residents of the other Contracting State as compared with the treatment of residents of any third State.
- 5. The provisions of this Article shall apply only to the taxes which are the subject of this Agreement.
- 6. 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 use the mutual agreement procedure to endeavour to resolve the matter.

Article 24
Mutual agreement procedure

- 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic laws of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action which results in taxation not in accordance with the provisions of the Agreement.
- 2. The competent authority shall endeavour, if the objection appears to it to be justified and 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 not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

Article 24—*continued*

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 Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching agreement in the sense of the preceding paragraphs.

Article 25
Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes to which the Agreement applies insofar as the taxation under those laws is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall 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, or the determination of appeals in relation to, the taxes to which the Agreement applies. Such persons or authorities shall use the information only for such purposes.
2. In no case shall the provisions of paragraph 1 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.

Article 26

Members of diplomatic missions and consular posts

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

Article 27

Entry into force

Both Contracting States shall notify each other in writing through the diplomatic channel of the completion of their respective procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and thereupon the provisions of this Agreement shall have effect:

- (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 the first day of January next following the date on which the Agreement enters into force;
 - (ii) in respect of other New Zealand tax, for any income year beginning on or after the first day of April next following the date on which the Agreement enters into force;
- (b) in Russia:
 - (i) in respect of taxes withheld at source, to amounts of income derived on or after the first day of January in the calendar year next following the year in which the Agreement enters into force;
 - (ii) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after the first day of January in the calendar year next following the year in which the Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force indefinitely, but either Contracting State may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force,

Article 28—continued

give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, the Agreement shall cease to have effect:

- (a) in New Zealand:
 - (i) in respect of withholding tax on income that is derived by a non-resident, on or after the first day of January in the calendar year next following that in which the notice of termination is given;
 - (ii) in respect of other New Zealand tax, for any income year beginning on or after the first day of April in the calendar year next following that in which the notice of termination is given;
- (b) in Russia:
 - (i) in respect of taxes withheld at the source, to amount of income derived on or after the first day of January in the calendar year next following the year in which the notice has been given;
 - (ii) in respect of other taxes on income, to such taxes chargeable for any taxable period beginning on or after the first day of January in the calendar year next following the year in which the notice has been given.

Done at Wellington, on 5 September 2000 in duplicate, in the English and Russian languages, both texts being equally authentic.

For the Government of
New Zealand

For the Government of
the Russian Federation

**Protocol to the agreement between the
Government of New Zealand and the
Government of the Russian Federation
for the avoidance of double taxation
and the prevention of fiscal evasion with
respect to taxes on income**

At the signing of the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, concluded this day between the Government of New Zealand and the Government of the Russian Federation, the undersigned have agreed

that the following provisions shall form an integral part of the Agreement.

1. With reference to the Agreement,

The term “natural resources” shall have the meaning which it has under the laws of the Contracting State in which the natural resources are situated, and in any case shall include standing timber.

2. With reference to Article 5,

For the purposes of determining the duration of activities under paragraphs 3 and 4 of Article 5, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

3. With reference to subparagraphs (a) and (b) of paragraph 5 of Article 5,

The reference to the term “delivery” shall not apply where delivery represents a substantial amount of the consideration received for the goods.

4. With reference to Article 6,

Any interest or right referred to in paragraph 2 of Article 6 shall be regarded as being situated where the land or natural resources (including mineral, oil or gas deposits or quarries), as the case may be, are situated or where the exploration or exploitation may take place.

5. With reference to Articles 7, 14 and 23,

It is understood that in the case of interest and advertising paid by an enterprise of a Contracting State, the capital of which is wholly owned by residents of the other Contracting State, such interest and advertising shall be deductible in computing the taxable profits of such enterprise, unless the interest and

advertising relate to profits which are exempt from tax. The above sentence shall apply accordingly to interest and advertising when computing the taxable profits of a permanent establishment or a fixed base. However, the amount so deducted shall not exceed the amount which an independent enterprise would have agreed to under the same or similar circumstances.

6. With reference to paragraph 1 of Article 7,

Where:

- (a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trusts, to a share of the business profits 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 would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

7. With reference to Article 8,

The expression “ship or aircraft operations confined solely to places in that State” includes profits derived from the carriage by ships or aircraft solely between places in a Contracting State of passengers, livestock, mail, goods or merchandise which are loaded in a Contracting State for discharge at a place in that State.

8. With reference to Articles 10, 11 and 12,

A trustee subject to tax in a Contracting State in respect of dividends, interest or royalties beneficially owned by a resident of a Contracting State shall be deemed to be the beneficial owner of those dividends, interest or royalties.

9. With reference to Articles 11, 12 and 15,

The reference to the term “borne by” also is applicable to interest, royalties or remuneration that is deductible in determining the profits attributable to a permanent establishment or the income attributable to a fixed base.

10. With reference to Article 18,

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

11. With reference to assistance in the collection of tax,

If, at any time after date of signature of the Agreement, both Contracting States agree that there is a need to include a provision dealing with assistance in the collection of tax, the Contracting States shall without undue delay enter into negotiations with a view to amending the Agreement to include such a provision.

Done at Wellington, on 5 September 2000 in duplicate, in the English and Russian languages, both texts being equally authentic.

For the Government of
New Zealand

For the Government of
the Russian Federation

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 gives effect to the provisions of the agreement to avoid double taxation entered into between New Zealand and the Russian Federation on 5 September 2000. This order generally takes effect from 1 April 2002 and the 2002-03 income year.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 29 November 2001.

Contents

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Notes

1 *General*

This is a reprint of the Double Taxation Relief (Russian Federation) Order 2001. The reprint incorporates all the amendments to the regulations as at 30 November 2001, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions,

see <http://www.pco.parliament.govt.nz/editorial-conventions/>
or Part 8 of the *Tables of New Zealand Acts and Ordinances
and Statutory Regulations and Deemed Regulations in Force*.

**4 *Changes made under section 17C of the Acts and
Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***
