

**Reprint
as at 4 February 1983**



**Double Taxation Relief (Italy)
Order 1983
(SR 1983/4)**

David Beattie, Governor-General

Order in Council

At the Government Buildings at Wellington this 31st day of January
1983

Present:

The Right Hon David Thomson presiding in Council

Pursuant to section 294 of the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

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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.

Schedule

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**Convention between the Government of New Zealand
and the Government of the Republic of Italy for the
avoidance of double taxation with respect to taxes on
income and the prevention of fiscal evasion**

Order**1 Title**

This order may be cited as the Double Taxation Relief (Italy) Order 1983.

2 Giving effect to Convention

It is hereby declared that the arrangements specified in the Convention set out in the Schedule, being arrangements that have been made with the Government of the Republic of Italy with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Income Tax Act 1976 and the personal income tax and corporate income tax imposed by the laws of Italy, shall, in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the Convention.

Schedule**Convention between the Government of
New Zealand and the Government of
the Republic of Italy for the avoidance
of double taxation with respect to taxes
on income and the prevention of fiscal
evasion**

The Government of New Zealand and the Government of the Republic of Italy; desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion.

Have agreed as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

1. This Convention shall apply only to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on income or gains from the alienation of movable or immovable property.
3. The existing taxes to which this Convention shall apply are, in particular:
 - (a) in the case of Italy:
 - (i) the personal income tax (L'imposta sul reddito delle persone fisiche);
 - (ii) the corporate income tax (L'imposta sul reddito delle persone giuridiche);even if they are collected by withholding taxes at source. (hereinafter referred to as "Italian tax");
 - (b) in the case of New Zealand:

the income tax and the excess retention tax, even if they are collected by withholding taxes at source. (hereinafter referred to as "New Zealand tax").
4. The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.
5. Subject to the provisions of Article 17 the Convention shall not apply to taxes (even if they are collected by withholding taxes at source) payable on lottery winnings, on prizes other than those connected with securities, and winnings from games of chance, ability, contests, guessing games, and betting.

Article 2—*continued*

6. For the purposes of subparagraph (b) of paragraph 3 of this Article, the income tax does not include the bonus issue tax.

Article 3

General definitions

1. In this Convention, unless the context otherwise requires:
 - (a) the term “New Zealand”, when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or Tokelau; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the sea-bed and subsoil;
 - (b) the term “Italy” means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with the laws of Italy concerning the exploration for and exploitation of natural resources, may be designated as an area within which the rights of Italy with respect to the sea-bed and subsoil and natural resources may be exercised;
 - (c) the terms “a Contracting State” and “the other Contracting State” mean New Zealand or Italy as the context requires;
 - (d) the term “person” comprises an individual, a company and any other body of persons;
 - (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (f) 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

Article 3—*continued*

- State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “national” means:
- (i) in the case of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership and association deriving its status as such from the law in force in New Zealand
 - (ii) in the case of Italy, any individual possessing the nationality of Italy and any legal person, partnership and association deriving its status as such from the law in force in Italy;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term “competent authority” means:
- (i) in the case of New Zealand: the Commissioner of Inland Revenue or his authorised representative
 - (ii) in the case of Italy: the Ministry of Finance.
2. In this Convention, the terms “Italian tax” and “New Zealand tax” do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies by virtue of Article 2.
3. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article 4

Fiscal domicile

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of

Article 4—*continued*

that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources situated in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

Permanent establishment

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

Article 5—*continued*

2. The term “permanent establishment” shall include 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 other place of extraction of natural resources;
 - (g) a building site or construction or assembly project which exists for more than twelve months.
3. The term “permanent establishment” shall not be deemed to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:
 - (a) it carries on supervisory activities in that other State for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other State; or

Article 5—*continued*

- (b) substantial equipment or machinery is for more than twelve months in that other State being used or installed by, for or under contract with the enterprise.
5. 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 6 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
6. 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 broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from real property

1. Income from real property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.
2. The term “real property” (“beni immobili”) shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall, in any case, include property accessory to real property, livestock and equipment used in agriculture and forestry and rights to which the provisions of general law respecting landed property apply. The term shall also include usufruct of real property

Article 6—*continued*

and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as real property.

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 the income from real property of an enterprise and to the income from real property used for the performance of professional 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 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.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

Article 7—continued

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this article.
5. 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.
6. For the purposes of the preceding paragraphs, 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.
7. 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.

Article 8**Shipping and air transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

Article 9 Associated enterprises

Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which might be expected to be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to 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 if the recipient is the beneficial owner of the dividends the amount of tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.
This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution 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

Article 10—*continued*

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 or performs in that other State professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the dividends are taxable in that other Contracting State according to its own law.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base 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.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:
 - (a) the payer of the interest is the Government of that Contracting State or a local authority thereof; or

Article 11—*continued*

- (b) the interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof; or
 - (c) the interest is paid to any other agency or instrumentality (including a financial institution), in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.
4. The term “interest” as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term “interest” does not include income dealt with in Article 10.
5. 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 therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claims in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the interest is taxable in that other Contracting State according to its own law.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

Article 11—*continued*

7. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, 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 such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to 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 if the recipient is the beneficial owner of the royalties the amount of tax so charged shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 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 estab-

Article 12—*continued*

lishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the royalties are taxable in that other Contracting State according to its own law.

5. Royalties, shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne as such by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Alienation of property

1. Income or gains from the alienation of real property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.
2. Income or gains from the alienation of movable property (personal property) forming part of the business property of a permanent establishment which an enterprise of a Contracting

Article 13—*continued*

State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Income or gains from the alienation of shares of a company, the property of which consists principally of real property situated in a Contracting State, may be taxed in that State. Income or gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of real property situated in a Contracting State, may be taxed in that State.
4. Income or gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to 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 State for a period or periods not exceeding in the aggregate 183 days 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 State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers, such as theatre, motion picture, radio

Article 17—*continued*

or television artistes, and musicians, and by athletes, 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 personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself 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 or athlete are exercised.

Article 18

Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

Government service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of performing the services.

Article 19—*continued*

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the recipient is a national of and a resident of that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political or an administrative subdivision or a local authority thereof.

Article 20

Professors and teachers

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution in that Contracting State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching, advanced study or research in respect of which he is subject to tax in the other Contracting State.
2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State

Article 21—*continued*

solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 22

Other income

Items of income of a resident of a Contracting State which are not dealt with in the foregoing Articles of this Convention may be taxed in both Contracting States according to their own laws.

Article 23

Elimination of double taxation

1. In the case of Italy, double taxation shall be avoided as follows:
Where a resident of Italy owns items of income which are taxable in New Zealand, Italy, in determining its income taxes specified in Article 2 of this Convention, may include, unless specific provisions of this Convention otherwise provide, such items of income in the base upon which such taxes are imposed.
In such a case, Italy shall deduct from the taxes so calculated New Zealand tax paid on the income but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income. However, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.
2. Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle hereof), Italian tax paid under the law of Italy and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Italy shall be allowed as a credit against New Zealand tax payable in respect of that income.

Article 23—*continued*

3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

Article 24

Mutual agreement procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within two years from the first notification of the action giving rise to taxation not in accordance with the Convention.
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 an appropriate 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 national laws 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.
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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, as well as to prevent fiscal evasion. The exchange of information is not restricted by Article 1. Any information received 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 be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States 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 particulars which are 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).

Article 26

Diplomatic agents and consular officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 27

Territorial extension

1. This Convention may be extended, either in its entirety or with modifications to any territory for whose international relations either Contracting State is responsible, and which imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in Notes to be exchanged through diplomatic channels or in any manner in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 30 shall also terminate, in the manner provided for in that Article, the application of this Convention to any territory to which it has been extended under this Article.
3. Paragraph 4 of Article 2 shall apply to any taxes imposed by any territory to which this Convention is extended under this Article.

Article 28

Request for refunds

1. Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.
2. Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this article, in accordance with the provisions of Article 24 of this Convention.

Article 29

Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Wellington as soon as possible.
2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall be effective:
 - (a) in New Zealand—
in respect of income assessable for any income year beginning on or after 1 April 1978
 - (b) in Italy—
in respect of income assessable for any taxable period beginning on or after 1 January 1978.
3. Claims for refunds or credits arising in accordance with this Convention in respect of any tax payable by residents of either of the Contracting States in respect of income which is subject to tax and to which this Convention applies in accordance with paragraph 2 of this Article and which was derived before the entry into force of this Convention, shall be lodged within three years from the date of entry into force of this Convention or from the date the tax was levied whichever is later.

Article 30

Termination

This convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, not earlier than five years after its entry into force by giving notice of termination at least six months before the end of the calendar year. In such event, the Convention shall cease to be effective—

- (a) in New Zealand—
in respect of income assessable for any income year beginning on or after 1 April in the calendar year immediately following that in which the notice is given;
- (b) in Italy—
in respect of income assessable for any taxable period beginning on or after 1 January in the calendar year immediately following that in which the notice is given.

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

DONE in duplicate at Rome the sixth day of December 1979 in the English and Italian languages, both texts being equally authoritative.

For the Government of
New Zealand
B E Talboys

For the Government of the
Republic of Italy.
Franco Reviglio

Protocol

to the Convention between New Zealand and the Republic of Italy for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion.

At the signing of the Convention concluded today between New Zealand and the Republic of Italy for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Convention.

It is understood:

- (a) that, with reference to Article 7, paragraph 3, the expression “expenses which are incurred for the purposes of the permanent establishment” means the expenses directly connected with the activity of the permanent establishment;
- (b) that, with reference to Article 7, nothing in this Article shall affect the operation of any law of a Contracting State relating to the taxation of profits from insurance provided that if the relevant law in force in either State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate;
- (c) with reference to Article 8, an enterprise of a Contracting State deriving profits from the operation of ships or aircraft in international traffic shall not be subject to any local income tax imposed in the other Contracting State;
- (d) that, with reference to paragraph 5 of Article 10, the expression “tax on the company’s undistributed profits” shall not include the bonus issue tax referred to in paragraph 6 of Article 2;

Protocol—*continued*

- (e) with reference to paragraph 1 of Article 24, the expression “notwithstanding the remedies provided by the national laws” shall not be understood to mean that the time limits prescribed by national laws shall not be observed; a claim under Article 24 shall not be entertained where the taxpayer has not taken the appropriate action under the national laws;
- (f) the provisions of paragraph 3 of Article 28 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other procedures for allowing reductions in taxation provided for in this Convention;
- (g) if, in a Convention for the avoidance of double taxation that is subsequently made between New Zealand and a third State being a State that at the date of signature of this Protocol is a member of the Organisation for Economic Co-operation and Development, New Zealand shall agree to limit the rate of its taxation—
 - (i) on dividends paid by a company which is a resident of New Zealand to which a resident of that third State is entitled, to a rate less than that provided in paragraph 2 of Article 10; or
 - (ii) on interest arising in New Zealand to which a resident of that third State is entitled, to a rate less than that provided in paragraph 2 of Article 11; or
 - (iii) on royalties arising in New Zealand to which a resident of that third State is entitled, to a rate less than that provided in paragraph 2 of Article 12,the Government of New Zealand shall without undue delay inform the Government of the Republic of Italy in writing through diplomatic channels and shall enter into negotiations with the Government of the Republic of Italy to review the provisions specified in sub-paragraphs (i), (ii), and (iii) above with a view to providing the same treatment for Italy as that provided for that third State;
- (h) if, at any time after the date of signature of this Protocol, New Zealand shall include a non-discrimination Article in any of its double tax conventions, the Government of New Zealand shall without undue delay inform the Government of the Republic

Protocol—*continued*

of Italy in writing through diplomatic channels and shall enter into negotiations with the Government of the Republic of Italy with a view to including a non-discrimination Article in the present Convention.

DONE in duplicate at Rome the sixth day of December 1979, in the English and Italian languages, both texts being equally authoritative.

For the Government of
New Zealand
B E Talboys

For the Government of the
Republic of Italy.
Franco Reviglio

P G Millen,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 3 February 1983.

Contents

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Notes**1 *General***

This is a reprint of the Double Taxation Relief (Italy) Order 1983. The reprint incorporates all the amendments to the order as at 4 February 1983, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

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)*
