

**Reprint  
as at 4 December 1998**



**Double Taxation Relief (Thailand)  
Order 1998  
(SR 1998/424)**

Michael Hardie Boys, Governor-General

**Order in Council**

At Wellington this 30th day of November 1998

Present:

The Right Hon Jenny Shipley presiding in Council

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

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**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 and application**

- (1) This order may be cited as the Double Taxation Relief (Thailand) Order 1998.
- (2) This order applies according to the tenor of the agreement set out in the Schedule.

**2 Giving effect to agreement**

It is declared that the arrangements specified in the agreement set out in the Schedule, being arrangements that have been made with the Government of the Kingdom of Thailand, with a view to affording relief from double taxation in relation to income tax imposed under the Income Tax Act 1994 and the income tax and petroleum income tax imposed under the law of Thailand are, in relation to income tax imposed under that Act, and despite anything in that Act or any other enactment, to have effect according to the tenor of the agreement.

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**Schedule**  
**Agreement between the Government of**  
**New Zealand and the Government of the**  
**Kingdom of Thailand 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 Kingdom of Thailand (hereinafter referred to as “the Contracting States”), 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 Thailand:  
the income tax; and  
the petroleum income tax;  
(in this Agreement referred to as “Thai 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 within a reasonable period of time of any significant changes which have been made in the taxation laws of their respective States.

Article 2—*continued*

3. Notwithstanding the provisions of paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

## Article 3

## General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) (i) 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;
  - (ii) the term “Thailand” means the Kingdom of Thailand and includes any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with the international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand with respect to the sea-bed and subsoil and their 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 Thailand, the Minister of Finance or an authorised representative;

Article 3—*continued*

- (d) the terms “a Contracting State” and “the other Contracting State” mean New Zealand or Thailand 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 Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State;
  - (g) the term “national” means an individual possessing the nationality of a Contracting State;
  - (h) for the purposes of Articles 10, 11 and 12 the term “paid”, in relation to any amount, includes distributed (whether in cash or other property), credited or dealt with on behalf of a person or at that person’s direction; and the terms “pay”, “payable” and “payment” have corresponding meanings;
  - (i) the term “person” includes an individual, an undivided estate, a company and any other body of persons;
2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be beneficially entitled to those dividends, interest or royalties.
  3. In the application of the Agreement by a Contracting State, any term not defined in the Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## Article 4 Resident

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who:
  - (a) under the laws of that State, is liable to tax therein by reason of domicile, residence, place of incorporation, place of management or any other criterion of a similar nature; or
  - (b) in the case of New Zealand, is resident in New Zealand for the purposes of New Zealand tax; or
  - (c) in the case of Thailand, is resident in Thailand for the purposes of Thai 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 solely of the State in which a permanent home is available to the individual; if a permanent home is available to the person in both States or a permanent home is not available in either State, the individual shall be deemed to be a resident solely of the State with which the individual’s personal and economic relations are closer;
  - (b) if the individual is unable to be deemed a resident solely of a State in accordance with the provisions of subparagraph (a), the individual shall be deemed to be a resident solely 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 or national;
  - (d) if the individual is a citizen or national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 4—*continued*

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, the competent authorities of the States shall settle the question by mutual agreement and determine the mode of application of the Agreement to that person.

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;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and
  - (g) a farm or plantation; and
  - (h) a warehouse, in relation to a person providing storage facilities for others.
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 constitutes a permanent establishment if it lasts for more than 6 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 6 months, 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.
5. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it furnishes services,

Article 5—*continued*

including consultancy services, by a resident of one of the Contracting States through employees or other personnel, where activities of that nature continue for the same or a connected project within the other Contracting State for a period or periods aggregating more than 6 months within any twelve-month period.

6. For the purpose of determining the duration of activities under paragraphs 3, 4 and 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.
7. 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 or display 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 or display; 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, such as advertising or scientific research.

Article 5—*continued*

8. 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 9 applies - shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if the person:
  - (a) has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of that enterprise, unless the activities are limited to the purchase of goods or merchandise for the enterprise; or
  - (b) habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which the person regularly fills orders on behalf of the enterprise; or
  - (c) habitually secures orders in the first mentioned State wholly or almost wholly for the enterprise, or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it; or
  - (d) in so acting, manufactures or processes in that State for the enterprise goods or merchandise belonging to that enterprise.
9. 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, and is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, or on behalf of that enterprise and other enterprises which are controlled by it or have a controlling interest in it, the agent will not be considered an agent of independent status within the meaning of this paragraph.
10. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment

Article 5—*continued*

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

## Article 6

## Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishing) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable 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:
  - (a) a lease of land and any other interest in or over land, whether or not that land is improved;
  - (b) a right to explore for or exploit mineral, oil or gas deposits, standing timber, fish or other natural resources;
  - (c) a right to receive variable or fixed payments either:
    - (i) as consideration for or in respect of the exploitation of, or
    - (ii) for the right to explore for or exploit, mineral, oil or gas deposits, standing timber, fish or other natural resources;
  - (d) livestock.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. Any interest or right referred to in paragraph 2 shall be regarded as being situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration or exploitation may take place.
5. The provisions of paragraphs 1, 3 and 4 shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## Article 7

### Business profits

1. The income or 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 income or profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
  - (a) that permanent establishment; or
  - (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment if the sale or the business activities had been made or carried on in that way with a view to avoiding taxation in that other State.
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 income or 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 or with other enterprises with which it deals.
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. However, no deduction is allowable in respect of expenses which are not deductible under the laws of the Contracting State in which the permanent establishment is situated.
4. No income or 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. If the information available to the taxation or competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person provided that those laws shall be applied so far as the information available to the taxation or competent authority permits consistently with the principles of this Article.
6. For the purposes of the preceding paragraphs of this Article, the income or 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:
  - (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.
8. Where income or profits include items of income 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.
9. Nothing in this Article shall affect any provisions of the laws of either Contracting State at any time in force as they affect the taxation of any income or profits from the business of any form of insurance.

## Article 8

### Ship and aircraft operations

1. Income or profits from aircraft operations derived by a resident of a Contracting State shall be taxable only in that State.
2. Income or profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in that Contracting State and may also be taxed in the other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to 50 per cent of the amount which would be payable in respect of that income or those profits but for this paragraph.
3. Notwithstanding the provisions of paragraph 1, such income or profits may be taxed in the other Contracting State where they are income or profits from aircraft operations confined solely to places in that other State.
4. Notwithstanding the provisions of paragraph 2, such income or profits may be taxed in the other Contracting State without reduction where they are income or profits from ship operations confined solely to places in that other State.
5. The provisions of paragraphs 1, 2, 3 and 4 shall apply in relation to the share of the profits from ship or aircraft operations derived by a resident of a Contracting State through participation in a pool service, in a joint business or operating organisation or in an international operating agency.
6. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State for discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

## Article 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

Article 9—*continued*

- (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 income or profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Nothing in this Article shall affect the application of any laws of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the taxation or competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that those laws shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
3. Where income or 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 or 2, in the income or profits of an enterprise of the other Contracting State and charged to tax in that other State, and the income or profits so included are income or profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on that income or profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the taxation or 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 for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. Those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, 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 assimilated to income from shares by the laws, relating to tax, of the Contracting State of which the company making the payment is a resident for the purposes of its tax.
4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to 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 that permanent establishment or fixed base. In that case, the provisions of Article 7 or 15, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives income or profits 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 income or profits arising in that other State. This paragraph shall not

Article 10—*continued*

apply in relation to dividends paid by any company which is a resident of New Zealand for the purposes of New Zealand tax and which is also a resident of Thailand for the purposes of Thai tax

## Article 11

## Interest

1. Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. That 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:
  - (a) 10 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company);
  - (b) 10 per cent of the gross amount of the interest if the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to indebtedness arising as a consequence of a sale on credit by a resident of that other State of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length; and
  - (c) 15 percent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2, interest derived from the investment of official reserves by the Government of a Contracting State, a bank performing central banking functions in a Contracting State or the Export-Import Bank of Thailand, shall be exempt from tax in the other Contracting State.
4. The term "interest" in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and in particular, interest from government securities and income from bonds or debentures, including premiums and prizes at-

Article 11—*continued*

taching to such bonds or debentures, as well as all other income assimilated to income from money lent by the laws, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.

5. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to 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
  - (a) such permanent establishment or fixed base; or
  - (b) business activities referred to under (b) of paragraph 1 of Article 7.

In that case the provisions of Article 7 or 15, as the case may be, shall apply.

6. Interest 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 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 that interest is deductible in determining the income, profits or gains attributable to that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which might have been expected to have been agreed upon in the absence of that relationship by the payer and the person beneficially entitled, the provisions of this Article shall apply only to the last-mentioned amount. In that case the ex-

Article 11—*continued*

cess part of the amount of the interest paid shall remain taxable according to the laws, relating to tax, of each Contracting State, subject to the other provisions of this Agreement.

Article 12  
Royalties

1. Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. Those 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:
  - (a) 10 per cent of the gross amount of the royalties described in subparagraphs (a)(i), (b), (e), (f), and (g) of paragraph 3;
  - (b) 15 per cent of the gross amount of the royalties described in subparagraph (a)(ii), (c) and (d) of paragraph 3.

In relation to subparagraph (h) of paragraph 3, the rate shall not exceed those specified in subparagraph (a) or (b) above, whichever applies to the property or right in respect of which the forbearance relates.

3. The term “royalties” 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:
    - (i) any copyright; or
    - (ii) patent, trademark, design or model, plan, secret formula or process, or other like property or right;or
  - (b) the use of, or the right to use, any industrial, scientific or commercial equipment; or
  - (c) the supply of scientific, technical, industrial or commercial knowledge or information; or

Article 12—*continued*

- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
  - (e) the use of, or the right to use, any:
    - (i) motion picture film; or
    - (ii) film or videotape or any other recording for use in connection with television; or
    - (iii) tape or any other recording for use in connection with radio broadcasting; or
  - (f) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
    - (i) satellite; or
    - (ii) cable, optic fibre or similar technology; or
  - (g) the use in connection with television or radio broadcasting, or the right to use in connection with television or radio broadcasting, visual images or sounds, or both, transmitted by:
    - (i) satellite; or
    - (ii) cable, optic fibre or similar technology; or
  - (h) 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 person beneficially entitled to 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 right or property in respect of which the royalties are paid is effectively connected with:
- (a) such permanent establishment or fixed base; or
  - (b) business activities referred to under (b) of paragraph 1 of Article 7.

Article 12—*continued*

In that case the provisions of Article 7 or 15, 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 the royalties are deductible in determining the income, profits or gains attributable to that permanent establishment or fixed base, then the 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 person beneficially entitled to 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 might have been expected to have been agreed upon in the absence of that relationship by the payer and the person beneficially entitled, the provisions of this Article shall apply only to the last-mentioned amount. In that case the excess part of the amount of the royalties paid shall remain taxable according to the laws, relating to tax, of each Contracting State, subject to the other provisions of this Agreement.

## Article 13

## Alienation of property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property (as defined in paragraph 2 of Article 6) situated in the other Contracting State may be taxed in that other State.
2. Income, profits or gains from the alienation of property, other than immovable 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

Article 13—*continued*

State in the other Contracting State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than immovable property) pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State in which the enterprise alienating such ships, aircraft or other property is a resident.
4. Nothing in this Agreement affects the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.
5. For the purposes of this Article, the situation of immovable property shall be determined in accordance with paragraph 4 of Article 6.

Article 14  
Branch tax

1. Nothing in this Agreement shall be construed as preventing Thailand from imposing tax on the disposal of profits, out of Thailand, that were not exempt from tax in Thailand in accordance with the provisions of this Agreement.
2. However, the rate of tax on such disposal of profits shall not exceed 15 per cent of the gross amount of the disposal.

Article 15  
Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities shall be taxable only in that State unless such services are performed in the other Contracting State and:

Article 15—*continued*

- (a) 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 year of income concerned; or
- (b) a fixed base is regularly available to the individual in the other State for the purpose of performing the individual's activities.

If the provisions of subparagraphs (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 services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the performance of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## Article 16

## Dependent personal services

1. Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is 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 from that exercise may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is 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 that other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income concerned; and

Article 16—*continued*

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
  - (c) the remuneration is not deductible in determining the taxable profits of a permanent establishment or fixed base which the employer has in that other 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 17

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 18

Entertainers and sportspersons

1. Notwithstanding the provisions of Articles 15 and 16, income derived by entertainers (such as theatrical, motion picture, radio or television artistes, musicians, athletes and other 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 that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed by an entertainer or a sportsperson, or provided by an enterprise of a Contracting State in a Contracting State if the visit to that Contracting State, or the enterprise, as the case may be, is substantially supported

Article 18—*continued*

by public funds of the other Contracting State, including any local authority or statutory body thereof.

## Article 19

## Pensions

1. Pensions (including government pensions) and annuities paid to a resident of a Contracting State shall be taxable only in that State.
2. 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.

## Article 20

## Government service

1. (a) Remuneration, other than a pension, paid by a Contracting State to an individual in respect of services rendered to that State 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 individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 16 and 17 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State.

## Article 21

## 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 Contract-

Article 21—*continued*

ing State and who is temporarily present in that other State solely for the purposes of:

- (a) studying at a university or other recognised educational institution; or
- (b) studying or carrying out research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organisation,

receives payments from sources outside that other State for the purpose of the student's maintenance or education, those payments shall be exempt from tax in that other State.

Article 22

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 that if such income is derived from sources within the other Contracting State, that income may also be taxed in that other State.

Article 23

Elimination of double taxation

1. Subject to the provisions of the laws of New Zealand from time to time in force 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), Thai tax paid under the laws of Thailand and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of New Zealand from sources in Thailand shall be allowed as a credit against New Zealand tax payable in respect of that income.
2. Where a company, which is a resident of Thailand and is not a resident of New Zealand for the purposes of New Zealand tax, pays a dividend to a company which is a resident of New Zealand and which controls directly or indirectly not less than 10 per cent of the voting interest in the first mentioned com-

Article 23—*continued*

pany, the credit referred to in paragraph 1 shall include the Thai tax paid by that first mentioned company in respect of that portion of its profits out of which the dividend is paid.

3. Where, on application by the Competent Authority of Thailand to the Competent Authority of New Zealand, the Governor-General of New Zealand, by Order in Council, designates a specific investment in Thailand to be an approved economic development project, the Thai tax mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the amount of tax which under the law of Thailand and in accordance with this Agreement would have been payable as tax on income but for the tax incentives granted under the law of Thailand designed to promote economic development.
4. Paragraph 3 shall apply only in relation to income derived in any of the first 10 income years in relation to which this Agreement has effect by virtue of subparagraph (a)(ii) of Article 28 and in any later income year that may be agreed in an exchange of letters for this purpose by the authorised representatives of the Government of New Zealand and of the Government of the Kingdom of Thailand.
5. The amount of New Zealand tax payable under the laws of New Zealand and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Thailand in respect of profits, income or gains arising in New Zealand, shall be allowed as a credit against Thai tax payable in respect of such profits, income or gains, provided that such credit shall not exceed the Thai tax (as computed before allowing any such credit) which is appropriate to the profits, income or gains arising in New Zealand.
6. Where a company, which is a resident of New Zealand and is not a resident of Thailand for the purposes of Thai tax, pays a dividend to a company which is a resident of Thailand and which controls directly or indirectly not less than 10 per cent of the voting share of the first mentioned company, the credit referred to in paragraph 5 shall include the New Zealand tax paid by that first mentioned company in respect of that portion of its profits out of which the dividend is paid.

Article 23—*continued*

7. If, at any time after the date of signature of this Agreement, the laws relating to New Zealand tax or Thai tax are amended so as to materially affect the relief from double taxation provided by this Article, the Government of New Zealand and the Government of the Kingdom of Thailand shall without undue delay enter into negotiations with a view to revising this Article.

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is 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. The provisions of this Article shall not be construed as obliging a Contracting State to grant to a resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

Article 24—*continued*

5. This Article shall not apply to any provisions of the taxation laws of a Contracting State which:
  - (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 (except where that provision is in an international agreement) does not allow for different treatment of residents of the other Contracting State as compared with the treatment of residents of any third State.
6. The provisions of this Article shall only apply to the taxes which are the subject of this Agreement.
7. If one of the Contracting States considers that taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities shall consult each other in an endeavour to resolve the matter.

## Article 25

## Mutual agreement procedure

1. Where a person who is 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

Article 25—*continued*

the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic 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 Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the Agreement.

Article 26

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. 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) 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. They 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 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;

Article 26—*continued*

- (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 27

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 general rules of international law or under the provisions of special agreements.

## Article 28

## Entry into force

This Agreement shall enter into force on the last date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give the Agreement the force of law in New Zealand and in Thailand, as the case may be, and, in that event, the 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 1 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 1 April next following the date on which the Agreement enters into force;
- (b) in Thailand:
  - (i) in respect of taxes withheld at source, on amounts paid or remitted on or after 1 January next following that in which the Agreement enters into force;
  - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after 1 January next following that in which the Agreement enters into force.

## Article 29 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, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, the Agreement shall cease to be effective:

- (a) in New Zealand:
  - (i) in respect of withholding tax on income that is derived by a non-resident, on or after 1 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 1 April in the calendar year next following that in which the notice of termination is given;
- (b) in Thailand:
  - (i) in respect of taxes withheld at source, on amounts paid or remitted on or after 1 January next following that in which the notice of termination is given;
  - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after 1 January next following that in which the notice of termination is given.

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

DONE in duplicate at Wellington this 22nd day of October 1998 in the English language.

For the Government of New  
Zealand

(Rt Hon Don McKinnon)  
Minister of Foreign Affairs and  
Trade

For the Government of the  
Kingdom of Thailand

(Saroj Chavanaviraj)  
Permanent Secretary of the  
Ministry of Foreign Affairs

**Protocol to the Agreement Between the  
Government of New Zealand and the  
Government of the Kingdom of Thailand  
for the Avoidance of Double Taxation  
and the Prevention of Fiscal Evasion with  
Respect to Taxes on Income**

At the signing of the Agreement concluded today between the Government of New Zealand and the Government of the Kingdom of Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provision which shall form an integral part of the Agreement:

If in any future agreement for the avoidance of double taxation, Thailand should limit its taxation at source on any interest or royalties to a rate lower than those provided for in paragraph 2(c) of Article 11 or paragraph 2(b) of Article 12, Thailand shall without undue delay enter into negotiations with New Zealand with a view to providing the same treatment.

DONE in duplicate at Wellington this 22nd day of October 1998 in the English language.

For the Government of New  
Zealand

(Rt Hon Don McKinnon)

Minister of Foreign Affairs and  
Trade

For the Government of the  
Kingdom of Thailand

(Saroj Chavanaviraj)

Permanent Secretary of the  
Ministry of Foreign Affairs

Marie Shroff,  
Clerk of the Executive Council.

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**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 Thailand on 22 October 1998.

The order generally takes effect from 1 April 1999 and the 1999–2000 income year.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 3 December 1998.

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**Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
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**Notes****1 *General***

This is a reprint of the Double Taxation Relief (Thailand) Order 1998. The reprint incorporates all the amendments to the order as at 4 December 1998, 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)*

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