Reprint
as at 23 March 2007

Double Taxation Relief (Mexico) Order 2007

(SR 2007/75)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 19th day of March 2007

Present:
His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2004, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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

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

The Double Taxation Relief (Mexico) Order 2007 is administered by the Inland Revenue Department.

Contents

Order

1 Title

This order is the Double Taxation Relief (Mexico) Order 2007.

2 Commencement of order

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

3 Commencement of agreement

The agreement set out in the Schedule comes into force on the date referred to in Article 26 of the agreement.

4 Purposes

The arrangements specified in the agreement set out in the Schedule have been negotiated with the United Mexican States for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2004.

5 Arrangements have effect

The arrangements specified in the agreement set out in the Schedule have effect according to the agreement.

Schedule

cls 3, 4, 5

Agreement between the Government of New Zealand and the Government of the United Mexican States 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 United Mexican 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:

CHAPTER I
SCOPE OF THE AGREEMENT

Article 1
PERSONS COVERED

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 the Agreement shall apply are:

(a)	in New Zealand:	the income tax;
(b)	in Mexico:	the federal income tax.

2. The Agreement shall apply also to any identical or substantially similar taxes that 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 that have been made in their taxation laws.

CHAPTER II
DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
   - (a) the term "person" includes an individual, a company and any other body of persons;
   - (b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
   - (c) the term "enterprise" applies to the carrying on of any business;
   - (d) 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;
   - (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
   - (f) 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 Mexico, the Ministry of Finance and Public Credit;
   - (g) the term "national", in relation to a Contracting State, means:
     - (i) any individual possessing the nationality or citizenship of that Contracting State; and
     - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
   - (h) the term "business" includes the performance of professional services and of other activities of an independent character;

(i) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or Mexico as the context requires;

(j)

(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 designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;

(ii) the term "Mexico" means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters, and the air space of the national territory to the extent and under conditions established by international law.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of 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, a person is a resident of a Contracting State:
   (a) in the case of New Zealand, if the person is resident in New Zealand for the purposes of New Zealand tax;
   (b) in the case of Mexico, if the person is resident in Mexico for the purposes of the federal tax law of Mexico,

   and also includes the State, a political subdivision and any local authority thereof.
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 provisions of paragraphs 1 and 2 an individual is a resident of both Contracting States, then their status shall be determined as follows:
   (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
   (b) if the State in which the individual has their centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to a resident only of the State in which the individual has an habitual abode;
   (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
   (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both Contracting

States, the competent authorities shall endeavour to settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
   (a) a place of management;
   (b) a branch;
   (c) an office;
   (d) a factory;
   (e) a workshop, and
   (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, or a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than six 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:
   (a) for more than six months:
      (i) it carries on activities which consist of, or which are connected with, the exploration or exploitation of natural resources, including standing timber, situated in that State; or
      (ii) heavy equipment is being used in that State by, for or under contract with the enterprise; or
   (b) services, including consultancy services, are furnished by an enterprise, through its employees or other personnel engaged by the enterprise for such purpose if such activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period; or

(c) professional services or other activities of an independent nature are furnished by an individual within a Contracting State if such person is present in the territory of such Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period.

5. For the purposes of computing the time limits referred to in this Article, the activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be aggregated with the period during which the activities are carried on by the associated enterprise, if the activities of both enterprises are identical or substantially similar.

6. 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;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(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 of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised

through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that in their commercial or financial relations with the enterprise conditions are not made or imposed that differ from those generally agreed to by independent agents.

9. 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.

CHAPTER III
TAXATION OF INCOME

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 law of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property 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 immovable property.

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. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

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:
   (a) that permanent establishment, or
   (b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through 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 determining 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.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. 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.

6. Where 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.

7. 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 any form of insurance. For the purposes of the application of this paragraph, an insurance enterprise of New Zealand shall, except in regard to reinsurance, be deemed to have a permanent establishment in Mexico if it collects premiums in Mexico or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 of Article 5 applies.

Article 8

SHIP AND AIRCRAFT OPERATIONS

1. Profits from ship or aircraft operations derived by a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from ship or aircraft operations confined solely to places in that other State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

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

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.
3. The provisions of paragraph 2 shall not apply in the case of fraud.

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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
   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" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights and other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution or payment is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by 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 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 also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State in which the beneficial owner is a resident if:
   (a) the beneficial owner is a Contracting State, a political subdivision or the Central Bank of the Contracting State; or
   (b) the interest is paid by any of the entities mentioned in subparagraph (a); or
   (c) in the case of Mexico, the interest arises in New Zealand and is paid in respect of a loan for a period of not less than three years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured, by Banco de Mexico, Banco Nacional de Comercio Exterior or any other similar institution exclusively operating to further the policies of the Government of the United Mexican States, as may be agreed from time to time between the competent authorities of the Contracting States;
   (d) In the case of New Zealand, the interest arises in Mexico and is paid in respect of a loan for a period of not less than three years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured, by a financial institution in New Zealand of a similar nature to the Banco de Mexico or Banco Nacional de Comercio Exterior, as may be agreed from time to time between the competent authorities of the Contracting States.

4. The term "interest" as used 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 the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the laws of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.

5. The provisions of paragraphs 1, 2 and 3 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is deductible in determining the income, profits or gains attributable to that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
   (a) the use of, or the right to use, any copyright (including the use of or right to use any scientific, literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical arrangements of published editions), patent, design, or model, plan, secret formula or process, trade-mark, or other like property or right; or
   (b) the use of, or the right to use, any industrial, scientific or commercial equipment; or
   (c) knowledge or information concerning industrial, commercial or scientific experience; or
   (d) 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) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with

such permanent establishment. In such case the provisions of Article 7 shall apply.

5.

(a) Royalties shall be deemed to arise in a Contracting State when the payer is a person who is a resident of that State. 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 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, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

(b) in cases where subparagraph (a) does not deem royalties as arising in a Contracting State, payments for the use of or the right to use, in a Contracting State, any property or right described in paragraph 3, shall be treated as arising in that State.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reason, 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

ALIENATION OF PROPERTY

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which

an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such 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. Gains derived by a resident of a Contracting State from the alienation of shares or other similar rights deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. 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.

Article 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, 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 any twelve month period commencing or ending in the year of income or 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 deductible in determining the taxable profits of a permanent establishment which the employer has in the 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 15

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors and, in the case of Mexico, in that person's capacity as an "administrador" or a "comisario", of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or sportsperson shall be exempt from tax in the other Contracting State if the visit to that other State is substantially supported

by public funds of the first-mentioned State or a political subdivision or local authority thereof.

Article 17

PENSIONS, ANNUITIES AND ALIMONY

1. Pensions (including government service 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.
3. Pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.
4. Any alimony or other like maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Article 18

GOVERNMENT SERVICE

1.
   (a) Salaries, wages and other similar remuneration, other than a pension, annuity or alimony, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
   (b) However, such salaries, wages and other similar 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 14, 15 and 16 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19

STUDENTS

Payments which a student 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 solely for the purpose of the student's education receives for the purpose of the student's maintenance or education shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 20

OTHER INCOME

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing 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.

CHAPTER IV

METHOD FOR THE ELIMINATION OF DOUBLE TAXATION

Article 21

ELIMINATION OF DOUBLE TAXATION

1. In the case of New Zealand, subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Mexican tax paid under the laws of Mexico and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in Mexico (excluding, in the case of a dividend, tax paid in respect of the

profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

2. In the case of Mexico, in accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against the Mexican tax:
   (a) the New Zealand tax paid on income arising in New Zealand, in an amount not exceeding the tax payable in Mexico on such income; and
   (b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of the New Zealand and from which the first-mentioned company receives dividends, the New Zealand tax paid by the distributing company with respect to the profits out of which the dividends are paid.
3. Where in accordance with any provision of the Agreement income derived by a resident of Mexico is exempt from tax in Mexico, Mexico may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 22

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, in particular with respect to residence, are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on a permanent establishment which an enterprise of a third State has in that other State carrying on the same activities in similar circumstances.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which similar enterprises of the first-mentioned State in similar circumstances, 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. If one of the Contracting States considers that taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities shall use the mutual agreement procedure to endeavour to resolve the matter.

5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

CHAPTER V
SPECIAL PROVISIONS

Article 23

MUTUAL AGREEMENT PROCEDURE

1. Where a person 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 law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the person's case comes under paragraph 1 of Article 22, to that of the Contracting State of which the person is a national. The case must be presented within four years from the first notification of the action resulting 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 if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement, provided that in the case of Mexico the competent authority is notified of the case within four and a half years from the due date or the date of filing the return in Mexico, whichever is later. The solution so reached shall be implemented:
   (a) in the case of New Zealand, notwithstanding any time limits in the law relating to its tax;
   (b) in the case of Mexico, within ten years from the due date or the date of filing of the return in Mexico, whichever is later, or a longer period if permitted under the domestic law of Mexico.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
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.
5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services ("the Trade in Services Agreement") the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article.

Article 24

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such in-

formation for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 25

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.

CHAPTER VI

FINAL PROVISIONS

Article 26

ENTRY INTO FORCE

This Agreement shall enter into force 30 days after 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 Mexico, 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, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month 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 1st April next following the date on which the Agreement enters into force;

(b) in Mexico:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force;

(ii) in respect of other taxes, for taxable years beginning on or after 1st January in the calendar year next following that in which the Agreement enters into force.

Article 27

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

(a) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month 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 1st April in the calendar year next following that in which the notice of termination is given;

(b) in Mexico:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given;

(ii) in respect of other taxes, for taxable years beginning on or after 1st January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Ha Noi this 16th day of November 2006 in the English and Spanish languages, both texts being equally authentic. In the case of any divergence, the English text shall prevail.

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

On signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the Government of New Zealand and the Government of the United Mexican States, the signatories have agreed that the following provisions shall form an integral part of the Agreement.

1. *With reference to Article 2 of the Agreement:*

   It is understood that, notwithstanding the provisions of paragraphs 1 and 2 of that Article, 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.

2. *With reference to Article 4 of the Agreement:*

   It is understood that, for the purposes of paragraph 4 of that Article, in determining the residence of a person (other than an individual) that is a resident of both Contracting States the competent authorities shall have regard to the place of effective management of that person.

3. *With reference to Article 6 of the Agreement*:

   It is understood that the term "immovable property" includes rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments either as consideration for, or in respect of, the exploitation of or the right to explore for or exploit natural resources or standing timber.

4. *With reference to Article 7 of the Agreement:*

It is understood that the profits of an enterprise shall include profits attributable to sales of goods and merchandise referred to in subparagraph 1(b) of that Article only when the competent authority of the Contracting State in which a permanent establishment of the enterprise is situated considers that the enterprise has entered into an arrangement in relation to the sales of those goods or merchandise to avoid taxation of those profits in that Contracting State.

5. *With reference to Article 7 of the Agreement:*

It is understood that where:

(i) a resident of a Contracting State beneficially owns, whether directly or through one or more interposed trusts, 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

(ii) 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.

6. *With reference to Article 8 of the Agreement:*

It is understood that:

(a) Profits from ship or aircraft operations shall not include profits from the provision of hotel accommodation or profits from the use of any other means of transport.

(b) Profits from ship or aircraft operations shall include profits from the rental of ships or aircraft on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or aircraft are operated in international traffic by the lessee and are derived by a resident of a Contracting State engaged in the operation of ships or aircraft in international traffic.

(c) Notwithstanding the provisions of Article 12, profits of a resident of a Contracting State from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used in international traffic shall be taxable only in that State where such use or rental is incidental to the operation of ships or aircraft in international traffic.

(d) For the purposes of paragraph 2 of Article 8, 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.

7. *With reference to Article 9 of the Agreement:*

It is understood that a correlative adjustment shall be made under paragraph 2 of that Article only where the competent authorities of the Contracting States agree, in accordance with paragraph 2 of Article 23 of the Agreement.

8. *With reference to Articles 10, 11 and 12 of the Agreement:*

It is understood that a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of that interest or those dividends or royalties.

9. *With reference to Article 10 of the Agreement:*

It is agreed that if in any future double tax agreement with any other State, New Zealand should limit its taxation at source on dividends to a rate lower than 15 per cent, then such lower rate as specified in that double tax agreement shall apply to dividends arising in Mexico and beneficially owned by a resident of New Zealand and dividends arising in New Zealand and beneficially owned by a resident of Mexico under the same conditions as if such lower rate had been specified in paragraph 2 of Article 10 of the Agreement. New Zealand shall without undue delay inform Mexico of any such lower rate by way of a diplomatic note. The lower rate will be applied from the date established in the Agreement with the other State and communicated in the diplomatic note. Any revision of the rate in paragraph 2 of Article 10 of the Agreement under this

paragraph shall not be regarded as a formal amendment to the Agreement.

10. *With reference to paragraph 6 of Article 11 and paragraph 5 of Article 12 of the Agreement:*

It is understood that where a loan has been contracted by an enterprise of a Contracting State and a part of that loan is attributed to a permanent establishment of that enterprise in the other Contracting State, or where a contract under which royalties are paid has been concluded by the enterprise and a part of such contract is attributed to such permanent establishment, then only that part of the loan or contract is to be considered as an indebtedness or a contract connected with that permanent establishment.

11. *With reference to Article 12 of the Agreement:*

(a) It is understood that paragraph 3(a) of that Article also encompasses:

(i) the reception of, or the right to receive, visual images or sounds, or both, for the purpose of transmission by:

(A) satellite;

(B) cable, optic fibre or similar technology; and

(ii) the use of, or the right to use, in connection with television or radio broadcasting, visual images or sounds, or both, for the purpose of transmission to the public by:

(A) satellite; or

(B) cable, optic fibre or similar technology.

(b) It is understood that, for the purposes of the definition of "royalties" in paragraph 3 of that Article, "payments" includes payments of any kind, whether periodical or not, and however described or computed, to the extent that they are made as consideration for anything included in the "royalties" definition.

(c) It is further understood that the term "royalties" also includes payments derived from the alienation of any right or property which are contingent on the productivity, use or disposition thereof.

12. *With reference to Article 21 of the Agreement:*

It is understood that New Zealand's domestic law, relating to tax, in force at the date of signature of this Agreement provides for an underlying foreign tax credit to be claimed in certain circumstances. If New Zealand should introduce laws which significantly restrict the availability of such a credit the competent authority of New Zealand shall inform the competent authority of Mexico with a view to entering into negotiations to restore the equivalent treatment to Mexican residents.

13. *With reference to Article 22 of the Agreement:*

It is agreed that if, after the date on which the Agreement enters into force, New Zealand should agree in a double tax agreement with any other State to a Non-Discrimination Article that follows Article 24 of the OECD Model Tax Convention on Income and on Capital, New Zealand shall without undue delay enter into negotiations with Mexico with a view to providing Mexico with a similar Article.

14. *With reference to the Agreement:*

Notwithstanding any other provision in this Agreement, if the competent authorities agree that a Contracting State has introduced a law after the date of entry into force of the Agreement that is a harmful tax regime, the competent authorities will consult together to determine how the harmful tax regime will be governed by this Agreement. The competent authorities may determine that any transaction affected by such a harmful tax regime will not benefit from any of the provisions in this Agreement.

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

DONE in duplicate at Ha Noi this 16th day of November 2006 in the English and Spanish languages, both texts being equally authentic. In the case of any divergence, the English text shall prevail.

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order gives effect to the provisions of the agreement to avoid double taxation entered into between New Zealand and the United Mexican States.

This order comes into force on the 28th day after the date of its notification in the *Gazette*. However, the date on which the agreement comes into force, and the dates from which the agreement has effect, are set out in *Article 26* of the agreement.

The arrangements specified in the agreement set out in the *Schedule* have been made with the United Mexican States with a view to—

- providing relief from double taxation in relation to—
  - income tax imposed under the Income Tax Act 2004; and
  - federal income tax imposed under the law of the United Mexican States; and
- providing for the exchange of information in relation to all taxes imposed on behalf of New Zealand and the United Mexican States or their political subdivisions or local authorities.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 22 March 2007.

Contents

Notes

1 General

This is a reprint of the Double Taxation Relief (Mexico) Order 2007. The reprint incorporates all the amendments to the Double Taxation Relief (Mexico) Order 2007 as at 23 March 2007, 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/legislation/reprints.shtml or Part 8 of the *Tables of 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)

Wellington, New Zealand:
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