

Double Taxation Relief (Republic of Korea) Amendment Order 1997

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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1 Title and commencement

- (1) This order may be cited as the Double Taxation Relief (Republic of Korea) Amendment Order 1997, and is part of the Double Taxation Relief (Republic of Korea) Order 1983¹ (“the principal order”).
- (2) This order comes into force on the 28th day after the date of its notification in the *Gazette*.

2 Giving effect to Protocol to Convention

- (1) Clause 2 of the principal order is amended by omitting the word “Schedule”, and substituting the words “First and Second Schedules”.
- (2) The principal order is amended—

¹ SR 1983/5

- (a) By omitting from the Schedule the heading “SCHEDULE”, and substituting the following headings:

First Schedule”

- (b) By adding, as the Second Schedule, the Second Schedule set out in the Schedule of this order.

Schedule
New Second Schedule of principal order
Second Schedule

Second Protocol to the Convention
Between the Government of the Republic
of Korea and the Government of New
Zealand for the Avoidance of Double
Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income

Preamble

The Government of the Republic of Korea and the Government of New Zealand (hereinafter referred to as ‘the Contracting Parties’)

Having regard to the Convention between the Government of the Republic of Korea and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Seoul on 6 October 1981 (hereinafter referred to as ‘the Convention’),

Have agreed that the following provisions shall form an integral part of the Convention:

Article 1

Notwithstanding paragraph 4 of Article 23 of the Convention, a New Zealand resident deriving income from Korea, being income referred-to in that paragraph, shall not be deemed to have paid Korean tax in respect of such income where the competent authority of New Zealand considers, after consultation with the compe-

Second Schedule—*continued*Second Protocol to the Convention Between the
Government of the Republic of Korea and the
Government of New Zealand for the Avoidance
of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income—*continued*

tent authority of the Republic of Korea, that it is inappropriate to do so having regard to:

- (a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph 4 of Article 23 for the benefits of that person or any other person;
- (b) the extent to which benefits accrue to a person who is neither a New Zealand resident nor a resident of Korea;
- (c) the prevention of fraud or the prevention of the evasion or avoidance of the taxes to which the Convention applies;
- (d) any other matter which the competent authorities consider relevant in the particular circumstances of the case including any submissions from the New Zealand resident concerned.

Article 2

Paragraph 4 of Article 23 of the Convention is hereby deleted and substituted with the following paragraph:

- “4 For the purposes of paragraph 2, and with respect to items of income dealt with in Articles 10, 11 and 12, the term “Korean tax paid” shall be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws and in accordance with this Convention but for the exemption or reduction of Korean tax in accordance with the Korean laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in Korea in modification of, or in addition to, those laws so far as they are

Second Schedule—*continued*
Second Protocol to the Convention Between the
Government of the Republic of Korea and the
Government of New Zealand for the Avoidance
of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income—*continued*

agreed by the competent authorities of the Contracting
States to be of a substantially similar character.

Article 3

Article 1 and 2 of this Second Protocol shall apply to
income derived on or after the day on which it enters
into force.

Article 4

1. The Contracting Parties shall notify each other through
diplomatic channels that the constitutional require-
ments for the entry into force of this Second Protocol
have been complied with.
2. This Second Protocol shall enter into force on the thir-
tieth day after the date of the later of the notification
referred to in paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorised
thereto by their respective Governments, have signed this Protocol.
DONE at Wellington in duplicate this 14th day of July in the English
language.

Don McKinnon

Yoon-Kyung Oh

FOR THE GOVERNMENT
OF NEW ZEALAND

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

MARIE SHROFF,
Clerk of the Executive Council.

Explanatory note

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

This order adds a Protocol to the 1983 New Zealand-Republic of Korea Double Tax Convention. The aim of the Protocol is to prevent tax avoidance through the use of tax sparing. The Protocol applies to income derived on or after the first day of the month following the date on which it comes into force in accordance with Article 2 of the Protocol.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 28 August 1997.
