



## Double Taxation Relief (Netherlands) Amendment Order 2004

Dame Sian Elias, Administrator of the Government

### Order in Council

At Wellington this 21st day of June 2004

Present:

Her Excellency the Administrator of the Government in Council

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

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#### Order

- 1 Title**
- (1) This order is the Double Taxation Relief (Netherlands) Amendment Order 2004.

- (2) In this order, the Double Taxation Relief (Netherlands) Order 1981<sup>1</sup> is called “the principal order”.

<sup>1</sup> SR 1981/43

**2 Commencement**

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

**3 Giving effect to Convention**

Clause 2 of the principal order is amended by omitting the words “the Schedule to this order”, and substituting the words “Schedules 1 and 2”.

**4 Schedule amended**

The Schedule of the principal order is amended by omitting the heading “Schedule”, and substituting the heading “Schedule 1”.

**5 New Schedule 2 added**

The principal order is amended by adding, as Schedule 2, the Schedule 2 set out in the Schedule.

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**Schedule**  
**New Schedule 2 added**

**Schedule 2**

**Second Protocol amending the Convention between  
the Government of New Zealand and the  
Government of the Kingdom of the Netherlands for  
the avoidance of double taxation and the prevention  
of fiscal evasion with respect to taxes on income with  
protocol, signed at the Hague on 15 October 1980**

**Preamble**

The Government of New Zealand and the Government of the Kingdom of the Netherlands,

**Schedule 2**—continued

Desiring that the Convention between the Government of New Zealand and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, with protocol, signed at the Hague on the 15th day of October 1980, be amended by both States,

Have agreed that the following provisions shall be integrated into the Convention:

**Article I**

The following new Article shall be inserted immediately after Article 21 of the Convention

**“ARTICLE 21A  
OTHER INCOME**

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of one of the States not dealt with in the foregoing Articles of this Convention and arising in the other State may also be taxed in that other State, but the tax so charged shall not exceed 15 per cent of the gross amount of such income.”

**Schedule 2**—continued**Article II**

1. Paragraph 2 of Article 22 of the Convention shall be deleted and replaced by the following:

“2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraph 1 of Article 16, Article 19 and paragraph 2 of Article 21A of this Convention may be taxed in New Zealand and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands laws for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.”

2. Paragraph 3 of Article 22 of the Convention shall be deleted and replaced by the following:

“3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 17 and paragraph 3 of Article 21A of this Convention may be taxed in New Zealand to the extent that these items of income are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in New Zealand of these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands laws for the avoidance of double taxation.”

3. A new paragraph 4 shall be inserted immediately after paragraph 3 of Article 22 of the Convention and paragraph 4 of the Convention shall be renumbered paragraph 5:

“4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax

**Schedule 2**—continued

for the tax paid in New Zealand on items of income which according to Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, Article 14 and paragraph 2 of Article 21A of this Convention may be taxed in New Zealand to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.”

**Article III**

1. The following new Article shall be inserted immediately before Article 23 of the Convention:

**“ARTICLE 22A****NON-DISCRIMINATION**

1. Nationals of one of the States shall not be subjected in the other 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the States.
2. The taxation on the profits as determined in accordance with the provisions of Article 7 of a permanent establishment which an enterprise of one of the States has in the other State and which are attributable to that permanent establishment in accordance with the provisions of Article 7, shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging one of the States to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on

**Schedule 2**—continued

account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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. If one of the States considers that taxation measures of the other State infringe the principles set forth in this Article, the competent authorities of the States shall consult each other in an endeavour to resolve the matter.”
2. Article XI of the Protocol shall be deleted.

**Article IV**

The existing text of Article IV of the Protocol shall become paragraph 1 and the following new paragraph shall be inserted immediately after that paragraph:

“2. Notwithstanding the provisions of Article 7, an enterprise of one of the States that carries on a business of any form of insurance, other than life insurance, and that derives income or profits from the other State in the form of premiums paid for the insurance of risks situated in that other State, may to that extent be taxed in the other State in accordance with the law of that other State relating specifically to the taxation of any person who carries on such business. However the amount of the income or profits so derived shall not exceed 10 per cent of the gross amounts receivable from carrying on such business, other than where the income or profits so derived are attributable to a permanent establishment of an enterprise of the first-mentioned State, in which case the provisions of Article 7 shall apply. The first-mentioned State shall allow a deduction or a credit of the tax levied on such income or profits in the other State in accordance with the provisions of paragraph 3 or 5 of Article 22, as the case may be. The provisions of this

**Schedule 2**—continued

paragraph shall not apply to income or profits from a contract of reinsurance entered into between two enterprises resident of the Netherlands, except where the enterprise paying the reinsurance premium has a permanent establishment in New Zealand and that premium is deductible in determining the taxable profits of that permanent establishment.”

**Article V****ENTRY INTO FORCE**

1. The States shall notify each other in writing through diplomatic channels that the constitutional requirements for the entry into force of this Second Protocol have been complied with.
2. This Second Protocol shall enter into force on the thirtieth day after the date of the latter of the notifications referred to in paragraph 1 of this Article and shall have effect:
  - (a) in New Zealand:  
in respect of income arising in any income year beginning on or after 1 April next following the date on which this Protocol enters into force;
  - (b) in the Netherlands:  
in respect of income arising on or after 1 January in the calendar year following the date on which this Protocol enters into force;

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

Done at Wellington this 20th day of December 2001 in duplicate in the English and Netherlands languages, both texts being equally authoritative.

For the Government of  
New Zealand

Phil Goff

For the Government of  
the Kingdom of the  
Netherlands

A E de Bijll Nachenius

Diane Morcom,  
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, which comes into force on the 28th day after the date of its notification in the *Gazette*, adds a Second Protocol to the 1980 New Zealand–Netherlands Double Tax Convention. The Second Protocol makes a number of amendments to the Convention.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 24 June 2004.

This order is administered in the Inland Revenue Department.

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