



Double Taxation Relief (United Kingdom) 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 (United Kingdom) Amendment Order 2004.

- (2) In this order, the Double Taxation Relief (United Kingdom) Order 1984¹ is called “the principal order”.

¹ SR 1984/24

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 of principal order

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 of principal order

Schedule 2

**Protocol between the Government of New Zealand
and the Government of the United Kingdom of
Great Britain and Northern Ireland to Amend the
Convention for the Avoidance of Double Taxation
and the Prevention of Fiscal Evasion with Respect to
Taxes on Income and on Capital Gains, signed at
London on 4 August 1983**

The Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes

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on Income and on Capital Gains, signed at London on 4 August 1983 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

Paragraph (6) of Article 8 of the Convention shall be deleted and the following new paragraph shall be inserted immediately after paragraph (5) of that Article:

“(6) Notwithstanding the provisions of this Article, income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, in the case of insurance other than life insurance, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other Contracting State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 percent of the gross premiums paid for the insurance of those risks.”

ARTICLE II

Article 11 of the Convention shall be deleted and replaced by the following:

“ARTICLE 11**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 percent 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.

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(3) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or 15 of this Convention, as the case may be, 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 or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE III

The following new paragraph shall be inserted immediately after paragraph (8) of Article 12 of the Convention:

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“(9) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE IV

The following new paragraph shall be inserted immediately after paragraph (6) of Article 13 of the Convention:

“(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE V

(1) Paragraph (1) of Article 14 of the Convention shall be deleted and replaced by the following:

“(1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 of this Convention and situated in the other Contracting State, or from the alienation of shares in a company deriving their value or the greater part of their value directly or indirectly from such property, may be taxed in that other State.”

(2) Paragraph (4) of Article 14 of the Convention shall be deleted and the following new paragraphs shall be inserted immediately after paragraph (3) of that Article:

“(4) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

(5) The provisions of this Article shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so

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resident at any time during the six fiscal years immediately preceding that year.”

ARTICLE VI

The following new Article 21A shall be inserted:

“ARTICLE 21A**Other income**

(1) Items of income of a resident of a Contracting State, 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) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7 of this Convention, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In that case the provisions of Article 8 of this Convention shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

(4) Where, by reason of a special relationship between the person referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which might reasonably have been expected to have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

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(5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE VII

Article 25 of the Convention shall be deleted and replaced by the following:

“ARTICLE 25

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Convention. 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 but may be disclosed to and 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 covered by this Convention 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.

(2) 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 in the same way as if its own taxation were involved, even though that other State may not need such information for its own tax purposes. If specifically requested by the competent authority

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of a Contracting State, the competent authority of the other Contracting State shall so far as possible provide information under this Article in the form requested.

(3) In no case shall the provisions of paragraphs (1) and (2) of this Article 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 whose disclosure would be contrary to public policy.

(4) In no case shall the provisions of paragraph (3) of this Article be construed so as 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 relates to ownership interests in a person.”

ARTICLE VIII

The Governments of the Contracting States shall notify one another, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in relation to the income or gains referred to in Article V of this Protocol, in respect of income tax, capital gains tax and corporation tax on income and gains arising on or after the date of signature of this Protocol;
 - (ii) in relation to the information referred to in Article VII of this Protocol, in respect of such information that is

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requested or exchanged on or after the date of signature of this Protocol;

- (iii) in respect of income tax not described in clause (i) of this sub-paragraph, for any year of assessment beginning on or after the sixth day of April next following the date on which this Protocol enters into force;
 - (iv) in respect of corporation tax not described in clause (i) of this sub-paragraph, for any financial year beginning on or after the first day of April next following the date on which this Protocol enters into force;
 - (v) in relation to tax credits in respect of dividends paid by companies which are residents of the United Kingdom, to terminate any entitlement to such tax credits in respect of dividends paid on or after the sixth day of April next following the date on which this Protocol enters into force.
- (b) in New Zealand:
- (i) in relation to the income or gains referred to in Article V of this Protocol, in respect of income tax on income and gains arising on or after the date of signature of this Protocol;
 - (ii) in relation to the information referred to in Article VII of this Protocol, in respect of such information that is requested or exchanged on or after the date of signature of this Protocol;
 - (iii) in respect of income tax not described in clause (i) of this sub-paragraph, for any income year beginning on or after the first day of April next following the date on which this Protocol enters into force.

Schedule 2—continued**ARTICLE IX**

This Protocol shall remain in force as long as the Convention remains in force.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at London this 4th day of November 2003.

**For the
Government of
New Zealand**

Hon Russell Marshall

**For the Government of the
United Kingdom of Great
Britain and Northern Ireland**

Rt Hon Dawn Primarolo

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EXCHANGE OF NOTES

London 4 November 2003

Your Excellency

I have the honour to refer to the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposal:

With reference to paragraph (5) of Article 14 of the Convention as inserted by paragraph (2) of Article V of the Protocol, it is understood that the law mentioned includes provisions of the United Kingdom tax legislation that counter avoidance of capital gains tax by temporary non-residents, participators in non-resident close companies, and individuals who have, or are treated for tax purposes as having, an interest under a settlement.

If the foregoing proposal is acceptable to the Government of New Zealand, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

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London 4 November 2003

Your Excellency

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

“I have the honour to refer to the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the United Kingdom the following proposal:

With reference to paragraph (5) of Article 14 of the Convention as inserted by paragraph (2) of Article V of the Protocol, it is understood that the law mentioned includes provisions of the United Kingdom tax legislation that counter avoidance of capital gains tax by temporary non-residents, participators in non-resident close companies, and individuals deriving an interest under a settlement.

If the foregoing proposal is acceptable to the Government of New Zealand, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol.”

The foregoing proposal being acceptable to the Government of New Zealand, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Protocol.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

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, which comes in to force on the 28th day after the date of its notification in the *Gazette*, adds a Protocol to the 1984 New Zealand-United Kingdom Double Tax Convention. The Protocol makes a number of amendments to the Convention.

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.
