



## Mutual Assistance in Tax Recovery (Netherlands) 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 173C(1) of the Tax Administration 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**  
This order is the Mutual Assistance in Tax Recovery (Netherlands) Order 2004.

**2 Application**

This order applies according to the tenor of the Convention set out in the Schedule.

**3 Giving effect to Convention**

- (1) It is declared that the arrangements specified in the Convention set out in the Schedule are, in relation to income tax imposed under the Income Tax Act 1994, to have effect for unpaid tax according to the tenor of the Convention.
- (2) Those arrangements have been made with the Kingdom of the Netherlands with a view to providing assistance in relation to—
  - (a) the recovery of income tax imposed under the Income Tax Act 1994; and
  - (b) the recovery of income tax, wages tax, company tax, and dividend tax imposed under the law of the Kingdom of the Netherlands.

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**Schedule**  
**Convention between New Zealand and the Kingdom**  
**of the Netherlands for mutual assistance in the**  
**recovery of tax claims**

CONVENTION BETWEEN NEW ZEALAND AND THE KING-  
DOM OF THE NETHERLANDS FOR MUTUAL ASSISTANCE  
IN THE RECOVERY OF TAX CLAIMS

The Government of New Zealand

and

The Government of the Kingdom of the Netherlands

Desiring that a Convention for mutual assistance in the recovery of  
tax claims be concluded by both States,

Have agreed as follows:

## ARTICLE 1

### SCOPE OF THE CONVENTION

1. The Contracting States shall provide each other assistance in the recovery of tax claims.
2. A Contracting State will give this assistance, whether the person affected is a resident or national of one of the Contracting States or not.

## ARTICLE 2

### TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of real or personal property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Convention shall apply are:
  - (a) In the Netherlands:
    - de inkomstenbelasting (income tax),
    - de loonbelasting (wages tax),
    - de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),
    - de dividendbelasting (dividend tax);
  - (b) In New Zealand:
    - the income tax.
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each

other of any substantial changes which have been made in their respective taxation laws.

### ARTICLE 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term “a Contracting State” means the Kingdom of the Netherlands (the Netherlands) or New Zealand as the context requires; the term “Contracting States” means the Kingdom of the Netherlands (the Netherlands) and New Zealand;
- (b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their national resources;
- (c) the term “New Zealand” means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
- (d) the terms “applicant State” and “requested State” mean respectively the Contracting State applying for assistance in the recovery of tax claims and the Contracting State requested to provide such assistance;
- (e) the term “tax claim” means any amount of taxes to which this Convention shall apply and any increases, surcharges, overdue payments, interest and costs pertaining to the said taxes, which are owed and not yet paid;
- (f) the term “person” includes an individual, a company and any other body of persons;

- (g) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (h) the term “national” means:
  - (i) in the case of the Netherlands, any individual possessing the nationality of the Netherlands, and any legal person, partnership and association deriving its status as such from the laws in force in the Netherlands;
  - (ii) in the case of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership and association deriving its status as such from the laws in force in New Zealand;
- (i) the term “competent authority” means:
  - (i) in the case of the Netherlands, the Minister of Finance or an authorised representative;
  - (ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative.

2. As regards the application of the Convention by a Contracting State, any term not defined in the Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which the Convention applies.

## ARTICLE 4 ASSISTANCE IN RECOVERY

1. At the request of the applicant State the requested State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.

2. The provisions of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested.

However, where the claim relates to a liability to tax of a person as a non resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.

3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or that person's estate is limited to the value of the estate or the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

4. The requested State shall not be obliged to take action with respect to the request:

- (a) if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty; or
- (b) if and insofar as it considers the tax claim to be contrary to the provisions of this Convention or of any other convention to which both of the Contracting States are parties.

5. The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

- (a) a declaration that the tax claim concerns a tax covered by the Convention and that the conditions of paragraph 2 are met;
- (b) an official copy of the instrument permitting enforcement in the applicant State;
- (c) any other document required for recovery;
- (d) where appropriate, a certified copy confirming any related decision emanating from a court or an administrative body.

6. The applicant State shall indicate the amount of the tax claim to be recovered in both the currency of the applicant State and the currency of the requested State. The rate of exchange to be used for this purpose is the last selling price settled on the most representative exchange market or markets of the applicant State. Each amount recovered by the requested State shall be transferred to the applicant State in the currency of the requested State. The transfer

shall be carried out within a period of a month from the date of the recovery.

7. With the agreement of the competent authorities, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, insofar as such is permitted by the laws and administrative practice of the requested State.

8. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.

9. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance in the recovery of a tax claim shall give particulars concerning that period.

10. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 9, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

11. The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances; but it shall first inform the applicant State.

12. The Contracting States shall reciprocally waive any restitution of costs resulting from the respective assistance and support which they lend each other in applying this Convention. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery which have been found unjustified in respect of the reality of the tax claim concerned or of the validity of the instrument permitting enforcement in the applicant State.

## **ARTICLE 5**

### **LIMITATIONS OF ARTICLE 4**

In no case shall the provisions of Article 4 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 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 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).

## **ARTICLE 6**

### **IMPLEMENTATION OF THE CONVENTION**

1. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Convention. This mode of application shall include a provision on the minimum amount of the tax claim for which assistance may be requested. The competent authorities may adopt forms for the implementation of this Convention.
2. Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities shall consult each other and endeavour to resolve the situation by mutual agreement.
3. Where difficulties or doubts arise regarding the implementation or interpretation of the Convention, the competent authorities shall endeavour to resolve the matter by mutual agreement.

**ARTICLE 7**  
**ENTRY INTO FORCE**

This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and, its provisions shall have effect for all tax claims which are recoverable on or after the date on which the Convention entered into force.

**ARTICLE 8**  
**TERMINATION**

This Convention shall remain in force until terminated by one of the Contracting States. Either State may terminate the Convention, through diplomatic channels, by giving notice of termination. In that event, the Convention shall cease to have effect for all tax claims which become recoverable after the date on which notice of termination has been given.

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

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

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 gives effect to the provisions of the Convention for Mutual Assistance in the Recovery of Tax Claims entered into between New Zealand and the Kingdom of the Netherlands on 20 December 2001.

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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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