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DOUBLE TAXATION CONVENTION WITH CANADA – 1980

PART I – INTRODUCTION AND GENERAL SUMMARY

A new double taxation convention has been concluded between Canada and New Zealand to replace the 1948 Agreement between the two countries. The text of the new convention has been published as a schedule to an Order-in-Council (S.R. 1981/86) and is available from Government Bookshops.

The convention came into force on 29 May 1981 with effect in New Zealand for any income year commencing on or after 1 April 1976. In Canada it takes effect for taxation years which commenced on or after 1 January 1976.

Transitional Provisions

ıe entry into force article should be noted carefully because it contains transitional provisions which may affect ᴗertain taxpayers. The transitional provisions (in paragraph 3(a) of Article 26) enable taxpayers to obtain the benefit of the 1948 Agreement where any specific provision therein provides greater relief from tax than the equivalent provision in the 1980 convention.

In New Zealand the transitional provisions are effective as follows:

(a) Up to 31 March 1981 in respect of withholding tax on income derived by **non-residents.**

(b) In respect of New Zealand tax on income derived by **residents,** for any income year commencing before 12 May 1980 which is the date of signature of the convention.

In every case where it is necessary to consider a situation involving an income year commencing prior to 12 May 1980, the transitional provisions must be considered as well as the main substantive provisions of the new convention. For example, the 1948 Agreement contains a Professors and Teachers Article (Article X) but the 1980 convention does not. Therefore a Canadian teacher who arrived in New Zealand on, say, 1 February 1980, to teach at an educational institution for 18 months, would be entitled to the exemption provisions of Article X of the 1948 Agreement from 1 February 1980 until 31 March 1981, but would be subject to tax from 1 April 1981.

N.B. The new convention is generally drafted in accordance with the 1977 OECD Model Double Taxation Convention. The notes and commentaries in the OECD booklet "Model Double Taxation Convention on Income and Capital" are therefore useful recourse material in understanding the application of the convention. Care should be taken to identify clearly differences in the text of the convention from that in the Model if using those notes and commentaries as an aid in the interpretation or application of this new convention with Canada.

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PART II – NOTES ON THE CONVENTION ARTICLE BY ARTICLE

Article 1 – Personal Scope

The convention applies to persons who are **residents** of either New Zealand or Canada or of both States. In this context the term "persons" includes companies, estates and trusts.

Article 2 – Taxes Covered

The convention covers the income taxes imposed by the Government of Canada and the income tax and excess retention tax imposed by the Government of New Zealand. Paragraph 3 confirms that the New Zealand bonus issue tax is not subject to the convention.

Article 3 – General Definitions

"Canada": Paragraph 1(a)(i)

Canada is defined to include any area outside the territorial waters of Canada which under the laws of Canada is an area within which the rights of Canada may be exercised, e.g., seabed, subsoil and their natural resources.

(2) **"New Zealand": Paragraph 1(a)(ii)**

New Zealand is defined to include areas adjacent to the territorial sea of New Zealand being designated areas over which New Zealand has sovereign rights, e.g., natural resources of the sea, or of the seabed and subsoil. The definition does not include the Cook Islands, Niue or Tokelau.

(3) **"Industrial or Commercial Profits": Paragraph 1(j)**

The primary concept of the definition is that industrial or commercial profits are profits derived from the conduct of a business. As in all double tax conventions the definition is most important because under Article 7 such profits will be exempt in the country of origin unless the recipient has a permanent establishment in that country.

(4) **"National": Paragraph 1(k)**

The term "national" is used in paragraph 2(c) and (d) of Article 4 in determining resident status. It is also used in Article 19 – Government Service.

In New Zealand the term covers any individual who is a New Zealand citizen.

In Canada the term covers any individual who is a Canadian citizen.

(5) **Trustee Receiving Income: Paragraph 2**

If dividends, interest or royalties are subject to tax in the hands of a trustee in his country of residence, the trustee is deemed to be the beneficial owner of the income for the purposes of claiming any reductions provided by Articles 10, 11 or 12 of the convention from tax in the country of origin.

(6) **Undefined Terms: Paragraph 4**

This is a standard provision. Where a term is not defined it has the meaning applicable under the domestic law of the country applying the convention.

Article 4 – Resident

(1) This Article takes positive steps to solve problems that arise when a taxpayer is resident in both countries by virtue of the domestic law of each country. The terms "resident of New Zealand" and "resident of Canada" are defined in paragraph 1 and will apply wherever used in the convention. The definition of these terms is in the first instance merely a reference to the domestic law of each country. However, where the domestic laws of each country clash so that the taxpayer is a resident of both countries, the tests set out in paragraphs 2 and 3 of Article 4 apply.

(2) Paragraph 2 sets out the tests to be applied to solve the problem of a dual resident **individual.** Dual residence arises when a taxpayer is resident in both countries by virtue of the domestic law of each country. The paragraph gives preference to the country in which the individual has a permanent home available to him. This criterion will frequently be sufficient to solve the conflict, e.g., where the individual has a permanent home in one country and has only stayed a certain length of time in the other country.

(3) Paragraph 3 sets out the rule to determine the case of a company or other legal person which is resident in both countries. These cases will be decided by the competent authorities (defined in Article 3(1)(f) under the mutual agreement procedure (refer Article 22)). Generally, competent authority intervention will not be necessary as residence will be where the place of effective management of the enterprise is situated. In this respect New Zealand views the term "effective management" as meaning the practical day to day management, irrespective of where the overriding control is exercised.

(4) In applying the tests to dual residents it should be remembered that these tests apply only for the purposes of the tax convention. If the person, **resident in New Zealand** (domestic law test) becomes for the purposes of the convention a "resident of Canada" after the tests have been applied, this does **not** mean that he is a non-resident for all purposes of New Zealand tax law. For example, he can never be subject to non-resident withholding tax, the reason being that although he is treated as a non-resident for certain purposes of the convention, he is still a resident under the New Zealand Income Tax Act. What it does mean is that he is entitled to any benefits granted by the convention to a "resident of Canada". Thus, although not subject to withholding tax on, for example, New Zealand royalty income, the royalty income would be subject to New Zealand income tax and would still qualify for the 15 percent limitation in the convention.

Article 5 – Permanent Establishment

This Article defines the term "permanent establishment". This concept determines the right of a Contracting State to tax the profits of an "enterprise of the other Contracting State". Due to the inclusion of the words "include especially" in paragraph 2, the examples cited as constituting a permanent establishment are by no means exhaustive.

The definition of "permanent establishment" is fairly standard and the following points should be noted:

- A building site or construction, installation or assembly project constitutes a permanent establishment if it lasts for more than six months.
- An oil or gas well constitutes a permanent establishment.
- An enterprise shall be deemed to have a permanent establishment if it carries on supervisory activities for more than six months in connection with a construction, installation or assembly project.
- The term "permanent establishment" includes the use or installation of substantial equipment or machinery for more than six months, e.g., an oil rig or a tunnelling machine.
- An enterprise manufacturing or processing goods, or performing mining or other operations connected with exploiting natural resources, constitutes a permanent establishment of another enterprise if the work is done on the latter's behalf. For example a New Zealand company manufacturing goods in New Zealand on behalf of a Canadian company would constitute a permanent establishment of the Canadian company.
- An agent constitutes a permanent establishment of his principal if he habitually exercises an authority to conclude contracts. However, an independent agent is generally excluded.

Article 6 – Income from Real Property

This Article recognises the internationally accepted practice in relation to income from land and the exploitation of land or landed property. The Article also applies to such items as rents, natural resource royalties, farming profits, etc. The principle of the Article is that income from "real property" may be taxed in the country where the property is situated. "Real property" is not defined in our general law but the Article provides an extensive definition. Ships and aircraft are specifically excluded from the term "real property".

Paragraph 1 of the Protocol defines the term "right", for the purposes of this Article, as any right, licence, permit, authority, title, option, privilege, or other concession, and includes a share or interest in any right, licence, permit, authority, title, option, privilege, or other concession.

The Article involves no change in current practice in relation to the income covered, i.e., our domestic law applies.

Article 7 – Business Profits

This Article is in many respects a continuation of, and a corollary to, Article 5 on the definition of the concept of permanent establishment. Under Article 7 a Contracting State cannot tax the profits of an enterprise of another Contracting State unless it carries on its business through a permanent establishment situated therein. If a permanent establishment exists, the Article goes on to lay down a set of rules by reference to which the profits of the permanent establishment are to be calculated.

(1) Paragraph 1 expresses the general rule that profits are taxable only in the country of residence unless the enterprise is engaged in business in the other country through a permanent establishment, in which case the other country may tax the profits of the permanent establishment.

It is important to note that only income attributable directly to the permanent establishment's operations can form part of the establishment's operations. This does not mean that income which is not directly attributable to the establishment's operations escapes liability for tax. For example, the restriction on the rate of tax imposed by paragraph 2 of Articles 10, 11 and 12, which concern dividend, interest and royalty payments respectively, would still apply if such income did not arise from the permanent establishment's operations.

'2) Paragraph 2 contains the normal provision enabling arm's-length profits to be attributed to the permanent establishment if necessary.

(3) Paragraph 3 merely expresses the taxpayer's right to deduct from the profits of the permanent establishment the expenses incurred for the purposes of the permanent establishment even if those expenses are incurred outside the country where the permanent establishment is situated.

(4) Paragraph 4 concerns the determination of profits to be attributed to a permanent establishment if the information available to the taxation authority for such determination is inadequate. Where there is inadequate information the paragraph allows the taxation authorities of each State to apply its domestic law in determining the profits to be attributed to the permanent establishment, whether by the exercise of a discretion or making an estimate, provided the arm's-length principle is adhered to.

(5) Paragraph 5 precludes the attribution of profits to a permanent establishment by reason of merely purchasing activities carried on by the permanent establishment for the enterprise.

(6) Under paragraph 6, income from the business of any form of insurance is not subject to the provisions of this Article. Such income may be taxed in accordance with the domestic law of each country.

Article 8 – Shipping and Air Transport

) Under this Article profits from operating ships or aircraft in "international traffic" – defined in Article 3(1)(l) – are to be taxed only in the country of residence of the operator. International shipping and aircraft profits include income from:

(a) carriage of passengers and cargo;

(b) sale of passenger tickets on behalf of other enterprises;

(c) commercial advertising;

(d) charter fees (but refer to paragraph (3) below).

(2) Under paragraph 2 both countries are able to preserve the right to tax coastal shipping. Therefore, profits derived from the carriage of passengers or cargo taken on board at one place in a respective country for discharge at another place in the same country may be taxed in that country as profits from internal traffic.

(3) Profits obtained from leasing a ship or aircraft on charter fully equipped, manned and supplied, whether or not the enterprise providing the ships or aircraft actually owns them, would be treated as profits from the operation of a ship or aircraft. However, the Article does not extend to profits from leasing a ship or aircraft on a bare boat charter basis except when it is an occasional source of income for an enterprise engaged in the international operation of ships or aircraft. Apart from this one exception, bare boat charter fees would normally be classified as business profits and consequently dealt with under Article 7.

Article 9 – Associated Enterprises

This is a standard Article enabling an arm's-length profit to be attributed to associated enterprises.

Article 10 – Dividends

(1) Paragraph 1 of the Article simply states that dividends may be taxed in the country of the recipient's residence.

(2) Paragraph 2 provides that the Contracting State from which the dividends are paid also has the right to tax, but the maximum tax that can be imposed is not to exceed 15 percent of the gross amount of the dividends. New Zealand's domestic law is not, therefore, restricted as our withholding tax rate is, at the date of this supplement, 15 percent of the gross dividend. However, the Income Tax Amendment Act 1980 amended the New Zealand domestic law by increasing the withholding tax rate to 30 percent of the gross dividend as from 1 April 1982. Therefore, in terms of the convention New Zealand's taxing rights will be restricted to 15 percent of the gross dividend even though the rate under domestic law will be 30 percent. The Canadian tax is, however, reduced from a 25 percent domestic rate to 15 percent. In the case of New Zealand the limitation will be achieved by withholding tax of 15 percent being deducted by the companies paying the dividends to residents of Canada.

(3) Paragraph 3 concerns shares which are effectively connected with a permanent establishment. The paragraph provides that in the State of source the dividends are taxable as part of the profits of the permanent establishmen there owned by the recipient which is a resident of the other State, provided they are paid in respect of holdings forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In effect, this relieves the State of source of the dividends from the 15 percent limitation under the Article.

The rules set out above also apply where the recipient of the dividends has in the other State, for the purposes of performing any of the kinds of independent personal services mentioned in Article 14, a fixed base with which the holding in respect of which the dividends are paid is effectively connected.

As at the date of this supplement, these qualifications have no effect on the New Zealand tax position because our domestic law provides for a 15 percent final withholding tax in all cases on the gross payment and no agreement can extend the taxing rights under domestic law. However, in view of the change in the New Zealand domestic law from 1 April 1982 the New Zealand tax on dividends paid in respect of shares effectively connected with a permanent establishment will be 30 percent.

(4) Paragraph 4 rules out the extra-territorial taxation of dividends, i.e., the practice by which some countries tax dividends distributed by a non-resident company solely because the corporate profits from which the distributions are made, originated in their territory (for example, realised through a permanent establishment situated therein). Article 10 deals only with dividends paid by a company which is a resident of a Contracting State to a resident of the other State. Certain countries, however, tax not only dividends paid by companies resident therein – but even distributions by non-resident companies of profits arising within the territory of those countries. At present neither Canada nor New Zealand taxes such distributions under their domestic laws. Paragraph 4 is inserted in case there is any change to the status quo in either country.

(5) Under its domestic law Canada is able to impose a 25 percent branch tax on undistributed profits of a non-resident company with a permanent establishment in Canada. This branch tax is similar to the New Zealand additional 5 percent tax on non-resident companies. Paragraph 5 limits to 15 percent the tax that Canada may impose on a New Zealand resident company with a permanent establishment in Canada.

Article 11 – Interest

(1) Paragraph 1 affirms the taxing right of the State in which the recipient of the interest is a resident.

(2) Paragraph 2 also affirms the taxing right of the State in which the interest arises, but the maximum tax that can be imposed is not to exceed 15 percent of the gross amount of the interest. New Zealand's tax is therefore limited to a maximum of 15 percent in all cases.

(3) Paragraph 3 provides that in the State of source interest is taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, **provided** the indebtedness in respect of which the interest is paid, forms part of the assets of the permanent establishment or otherwise is effectively connected with that establishment. In effect this paragraph relieves the State of source of the interest from the 15 percent limitation under the Article.

The rules set out above also apply where the recipient of the interest has in the other State, for the purposes of performing any of the kinds of professional services mentioned in Article 14, a fixed base with which the debt-claim in respect of which the interest is paid is effectively connected.

These qualifications tie in with the New Zealand domestic law which provides that if a non-resident has a fixed establishment in New Zealand, then interest derived is not subject to non-resident withholding tax but is to be assessed on an annual basis.

(4) Paragraph 4 is a source rule and precludes arguments as to the source of the interest. The paragraph deals with interest arising through a permanent establishment or fixed base. Where a loan has been contracted for the requirements of that establishment and the interest is borne by the latter, the paragraph determines that the source of the interest is in the Contracting State in which the permanent establishment is situated, leaving aside the place of residence of the owner of that establishment or fixed base.

(5) Paragraph 5 is an anti-avoidance provision to ensure that only a reasonable interest payment is taxed at the rate specified in the convention.

Article 12 – Royalties

(1) Paragraph 1 affirms the taxing right of the State in which the recipient of the royalties is a resident.

(2) Paragraph 2 also affirms the taxing right of the State in which the royalty arises, but the maximum tax that can be imposed is not to exceed 15 percent of the gross amount of the royalty. New Zealand's domestic law is therefore restricted to 15 percent in all cases. The important results of this are as follows:

- The exemption of copyright royalties (cultural royalties) contained in the 1948 Agreement is now removed. This removal was not effective in practice until 1 April 1981 because, under paragraph 3 of the Entry into Force Article, taxpayers will have had an option in the interim to claim the benefit of the 1948 Agreement and it is assumed taxpayers will do this.
- Industrial royalties and know-how payments will no longer be subject to an end-of-year assessment under New Zealand domestic law. The 15 percent tax will therefore be the final New Zealand liability. Consequently, recipients will not be concerned with claiming expenses on an actual basis or on the arbitrary basis allowed by the Commissioner.

(3) Paragraph 3 defines "royalties" for the purposes of the Article. The term includes lump sum payments and certain rents. However, variable or fixed payments for the working of mineral deposits or other natural resources do not fall within the definition as they are governed by Article 6.

It should be noted that if a payment is made in the form of rent rather than on a royalty basis but the payment comes within the term "royalties", as defined in the convention, then the 15 percent maximum rate on gross applies. However, rental payments do not constitute royalties under our domestic law and there is, therefore, no non-resident withholding tax applicable. Payments of this nature will be subject to an annual assessment on the net amount after expenses and if the tax so levied exceeds 15 percent of the gross rental, a rebate will be given by virtue of the convention to bring the tax down to 15 percent of gross.

(4) Paragraph 4 provides that in the State of source, royalties are taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, **provided** the knowledge, information, assistance, right or property in respect of which the royalties are paid is effectively connected with that establishment. In effect this relieves the State of source of the royalties from the 15 percent limitation under the Article.

The rules set out above also apply where the recipient of the royalties has in the other State, for the purpose of performing any of the kinds of professional services mentioned in Article 14, a fixed base with which the knowledge, information, assistance, right or property in respect of which the royalties are paid is effectively connected.

These qualifications tie in with New Zealand's domestic law except that our domestic law in relation to royalties provides for a withholding tax rate of 15 percent final on copyright (cultural) royalties or where the aggregate annual royalty payments do not exceed $1,000 and minimum final in all other cases.

(5) Paragraphs 5 and 6. The comments relating to paragraphs 4 and 5 respectively of the Interest Article apply equally here.

Article 13 – Alienation of Property

(1) Paragraph 1 concerns income or gains derived from the sale or disposition of:

- real property;
- shares in a company whose assets consist wholly or principally of real property;
- mining rights and other rights relating to natural resources;
- shares in a company whose assets consist wholly or principally of such rights.

The term "right" is defined in paragraph 1 of the Protocol as any right, licence, permit, authority, title, option, privilege, or other concession, and includes a share or interest in any right, licence, permit, authority, title, option, privilege, or other concession.

Income or gains from such sale or disposition may be taxed in the State where the property is situated.

(2) Paragraph 2 deals with income or gains derived from the alienation of movable property forming part of the business property of a permanent establishment or pertaining to a fixed base used for the performance of independent personal services. This may be taxed in the State where the permanent establishment or fixed base is situated.

Article 14 – Personal Services

This Article deals with income derived under two different situations:

(a) Income from professional (or independent) personal services.

(b) Income from dependent personal services (employment income).

(1) Paragraph 1 states the general rule that personal services performed by a resident of one of the Contracting States may be taxed in the other Contracting State only if the services are performed in that other Contracting State. When read in conjunction with the Credit Article (Article 21) this means that the country where the services are performed has the right to tax the income earned from the performance of those services and the country of residence is obliged to give credit for any tax so charged.

(2) Paragraph 2 states the case where exemption will be given by the State visited. The requirements are that the visit does not exceed 183 days in the aggregate in the income year, that the remuneration or income is paid by a non-resident and is not borne by a permanent establishment or fixed base which the non-resident has in that State.

Income from professional services is to be treated in much the same way as "business profits", that is, taxable only in the country of residence unless attributable to a fixed base in the other State. The term "fixed base" is intended to cover a centre of activity of a fixed or permanent character, for instance, a doctor's consulting room or the office of an architect or lawyer.

In relation to employment income, when a visitor from Canada undertakes employment in New Zealand, New Zealand PAYE tax will be required to be deducted from the remuneration paid but will be refunded on departure provided the requirements of the Article are fully met. In this respect a certificate must be obtained, by the person seeking exemption, from the Canadian tax authorities which certifies that the person is a resident of Canada for the purposes of Canadian tax.

(3) Paragraph 3 provides that remuneration derived from employment aboard a ship or aircraft operating in international traffic may be taxed in the State of residence of the shipping or airline enterprise. This means that if the enterprise is a resident of Canada then Canada has the right to tax the remuneration derived by the employee. New Zealand would allow credit for any Canadian tax on such remuneration if derived by a New Zealand resident.

Article 15 – Directors' Fees

This Article allows the State in which the company paying the fees or other similar payments is resident, to have the right to such income and the country of residence is obliged to give credit for any tax so charged.

Article 16 – Entertainers and Athletes

(1) Paragraph 1 enables the State in which the entertainer or athlete is performing the services, to tax the income derived from these personal activities.

(2) Paragraph 2 deals with the situation where income for the performance of an entertainer or athlete is not paid to the entertainer or athlete himself, but to an enterprise providing the services of the entertainer or athlete. The paragraph allows the State in which the performance is given to impose a tax on the profits diverted from the income of the entertainer or athlete to the enterprise where, for instance, the entertainer or athlete has control over or rights to the income thus diverted or has obtained or will obtain some benefit directly or indirectly from that income. However, if the enterprise is substantially subsidised out of public funds for the purpose of the entertainment activities or is a non-profit organisation, the country of residence of the enterprise may tax, under its domestic law, the income derived from the performance by the entertainer or athlete. In this case the country where the services are performed does not tax the income derived therefrom.

Without paragraph 2 the State where the services are being performed would, in such cases, be unable to tax:

(a) because it would not be personal services income to the entertainer, and

(b) in the absence of a permanent establishment, the payments could not be taxed as business profits in the hands of the other person.

Article 17 – Pensions

(1) In reading this Article it should be noted that, under paragraph 3 of the Protocol, pensions paid by the New Zealand Government to any individual in respect of services rendered to that Government are taxed exclusively in New Zealand.

(2) Subject to paragraph 3 of the Protocol, pensions and annuities are taxed exclusively in the country of residence unless the amount of the pension or annuity exceeds $10,000 in any one year in which case the country of source also has the right to tax.

) Where the amount of the pension exceeds $10,000 per year, the tax chargeable in the country of source is the lesser of:

- 15 percent of the gross amount of the pension, or
- the amount of tax that would have been payable on the gross pension by the recipient, at a rate determined as if he was resident in the country of source.

(4) Where the amount of annuities exceeds $10,000 per year the tax chargeable in the country of source is 15 percent of the gross annuities. However, the 15 percent limitation does not apply to annuities in excess of $10,000 per year received under an income-averaging annuity contract. Such income continues to be taxed in Canada at the rates applicable under domestic law. An "income-averaging annuity contract" is a method used by taxpayers in Canada for spreading forward certain unusual lump sum amounts of income received in a single year. It is similar to a purchased annuity and the annuity payments are assessable for tax in Canada when paid to the recipient.

(5) When the pensions or annuities are taxed in the country of source, credit will have to be given by the country of residence.

Article 18 – Government Service

(1) This Article deals with remuneration paid to an individual in respect of services rendered to a State or political subdivision or a local authority thereof.

(2) Paragraph 1 provides for two situations:

- Remuneration received by Government servants is generally to be taxed only in the country paying the remuneration, i.e., country of origin or source of the payment.
- However, such remuneration is taxable only in the country where the services are performed provided the services are performed there:
  - (i) by an individual who is a resident and also a national of that country, or
  - (ii) by an individual who is a resident of that country and did not become a resident of that country solely for the purpose of performing those services.

The second situation can be illustrated as follows:

Remuneration paid by the Canadian Government for services rendered in New Zealand by an individual who is a resident and national of New Zealand is taxed exclusively in New Zealand. This is still the position even though the individual, although a national (citizen) of New Zealand, became a resident of New Zealand for the purposes of rendering those services to the Canadian Government.

Article 19 – Students

Students or business apprentices visiting a Contracting State for the purpose of education or training are exempt from tax on payments they receive from overseas for their maintenance, education or training. In the case of a Canadian student visiting New Zealand, note:

- The student or apprentice must have been a resident of Canada immediately before coming to New Zealand.
- He must be in New Zealand solely for the purpose of his education or training.
- The exemption is restricted to the payments mentioned, i.e., maintenance, education or training.
- The payments must be made from sources outside New Zealand.
- There is no time limit on the period spent in New Zealand.

The converse applies to a New Zealand student or apprentice visiting Canada.

Article 20 – Other Income

(1) This Article provides a general rule relating to income not dealt with in other Articles of the convention. A secondary effect of the Article is to clarify the situation of income derived from a third country by a person who could be "resident in" both Canada and New Zealand under the general laws of each country. Under the convention that person can be a "resident of" only one country. In such a situation the taxing rights as to the third country income are allocated to the country "of" which he is a resident for the purposes of the convention.

(2) Paragraph 1 gives the country of residence the right to tax the income.

(3) Paragraph 2 also allows the country of source to tax such income in which case the normal credit provisions of Article 21 will apply with the country of residence having to give credit for tax deducted in the country of source.

(4) In paragraph 3 the Canadian tax on such income derived by a New Zealand resident from an estate or trust resident in Canada is limited to a maximum of 15 percent provided that income is subject to New Zealand tax. Again the credit provisions would apply.

(5) Paragraph 4 emphasises that income from insurance business is to be taxed according to the domestic law of either country as appropriate.

Article 21 – Elimination of Double Taxation

(1) This Article contains the normal rules; each State gives credit for the other State's tax when assessing its residents on income derived from sources in the other State. It should be noted that the credit provisions in the Article are subject to the domestic law of each country.

(2) Paragraph 3 is a source rule for the purposes of the Article to facilitate the allowance of a tax credit.

Article 22 – Mutual Agreement Procedure
Article 23 – Exchange of Information

These are standard Articles.

rticle 24 – Diplomatic and Consular Officials

The aim of this Article is to ensure that diplomatic and consular officers shall, under the convention, receive no less favourable treatment than that to which they are entitled under international law or special international agreements. Paragraph 2 establishes that the sending State is to be the State of residence for members of diplomatic or consular missions provided they are regarded as resident under the domestic law of that State.

Subject to the domestic law residence test, diplomatic or consular officers attached to the Canadian High Commission in New Zealand are regarded as residents of Canada while New Zealand diplomatic or consular officers attached to the New Zealand High Commission in Canada are regarded as New Zealand residents and consequently taxed in New Zealand on their world-wide income.

However, income derived by Canadian diplomats or consular officers from property or investments in New Zealand has a source here and is therefore subject to tax under New Zealand domestic law.

Article 25 – Territorial Extension

This is a standard Article.

Article 26 – Entry into Force

(1) This Article provides that the convention will generally take effect in New Zealand for any income year which commenced on or after 1 April 1976 and in Canada for any taxation year which commenced on or after 1 January 1976.

(2) Paragraph 3 gives taxpayers the option for any of the financial years commencing before the date of signature of the convention to take the benefit of the provisions of the 1948 Agreement if more favourable to the taxpayer than the new convention. As already stated the exemption of copyright royalties contained in the 1948 Agreement will not, therefore, be effectively removed until the financial year commencing 1 April 1981. There could also be other instances where the 1948 Agreement is more favourable than the new convention in which case paragraph 3 would be applied.

Article 27 – Termination

This Article sets out the procedure if either State wishes to terminate the convention. Unless notice of termination is given in accordance with the Article the convention continues indefinitely.

Protocol

The Protocol forms an integral part of the convention containing additional provisions in relation to certain Articles of the Convention.

(1) Paragraph 1 defines the term "right" for the purposes of Articles 6 and 13.

(2) Paragraph 2 refers to the possible inclusion in the convention of a non-discrimination article should New Zealand include such an article in any other convention.

(3) Paragraph 3 is an additional provision for the purposes of Article 17, stating that pensions paid by the Governme of New Zealand in respect of services rendered to that Government are taxed only in New Zealand.

MORE INFORMATION

If you would like more information or help, call or write to your nearest Inland Revenue Office.

The address and telephone number of your nearest office is shown in your telephone directory.

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