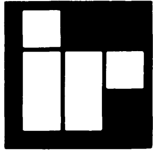

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DOUBLE TAXATION CONVENTION WITH THE REPUBLIC OF KOREA

PART I – INTRODUCTION

The text of the Convention has been published as a schedule to an Order-in-Council (S.R. 1983/5) which is available to the public from Government Bookshops.

The Convention entered into force on 22 April 1983 with effect in New Zealand in respect of income assessable for any income year beginning on or after 1 April 1981. In Korea the Convention takes effect from any taxation year beginning on or after 1 January 1981.

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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 one or both of the Contracting States. In this context the term "persons" includes a company.

Article 2 – Taxes Covered

The Convention covers the following taxes imposed by the Republic of Korea:

(i) the income tax;

(ii) the corporation tax;

(iii) the inhabitant tax;

(iv) the defence tax where it is charged by reference to the income tax or corporation tax.
See paragraph 1(a) of the Protocol.

With regard to New Zealand the Convention covers income tax and excess retention tax but not bonus issue tax which is excluded in paragraph 1(b) of the Protocol.

Article 3 – General Definitions

(1) "National" – Paragraph 2(j)

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

With regard to New Zealand the term covers any individual who is a New Zealand citizen and any legal person (e.g., a company), partnership or association which derives its status as such under New Zealand law.

With regard to Korea the term covers any individual who is a Korean national and any legal person, partnership or association which derives its status as such under Korean law.

(2) 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) Paragraph 1 defines the meaning of the term "resident of a Contracting State" (i.e., for the purposes of Article 1). In effect the defined term is a reference to the domestic law of each country. Whenever the term is used in the Convention, the residence of the taxpayer must first be determined in accordance with this Article.

(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 resolve 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. See also paragraph (4) below.

(3) Paragraph 3 sets out the rule to determine the case of a company or other legal person which is resident in both countries. 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 Korea" 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 Korea". Thus, although not subject to withholding tax on, for example, New Zealand royalty income, he would still qualify for the 10 percent limitation in the Convention in respect of tax imposed on an annual assessment basis.

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 "includes 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:

Para. 3 A building site or construction or installation or assembly project constitutes a permanent establishment if it lasts for more than 12 months.

Para. 5(a) An enterprise shall be deemed to have a permanent establishment if it carries on supervisory activities for more than 12 months in connection with a building site or construction or installation or assembly project.

Para. 5(b) An enterprise shall be deemed to have a permanent establishment if it carries on for more than 12 months activities in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources.

Article 6 – Income from Immovable 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 "immovable property" may be taxed in the country where the property is situated. "Immovable property" is not defined in our general law but the Article provides extensive definition. Ships and aircraft are specifically excluded from the term "immovable property".

The Article involves no change in current practice in relation to the income covered.

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 the other 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 are to be calculated the profits of the permanent establishment.

Before dealing with the salient features of the Article some comment is warranted on the importance of paragraph 6. This is because reference to this Article and Article 5 will not always be necessary to determine the liability of specific types of income. In effect paragraph 6 gives first preference to the other Articles in the Convention. It follows that this Article will only be applicable to business profits which do not belong to the categories of income covered by the special Articles, and, in addition, to dividends, royalties and interest which **specifically** come within the **circumstances** detailed in paragraphs 4 of Articles 10 and 12 and paragraph 5 of Article 11.

(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 (see second paragraph above). 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 precludes the attribution of profits to a permanent establishment by reason of merely purchasing activities carried on bythe permanent establishment for the enterprise.

(5) Paragraph 5 provides that unless there are good and sufficient reasons to the contrary the profits attributed to a permanent establishment must be determined by the same method each year.

(6) Paragraph 6: refer second paragraph above in the explanation to this Article.

(7) In terms of paragraph 2 of the Protocol 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

(1) Under this Article profits from operating ships or aircraft in "international traffic" – defined in Article 3(1)(h) are to be taxed only in the country of residence of the enterprise. 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 paragraph (3) below).

(e) the operation of vessels engaged in fishing, dredging or hauling activities on the high seas – see paragraph 3 of the Protocol.

(2) Due to the definition of "international traffic" exemption does not extend to profits derived from coastal traffic. Further, investment income of shipping and air transport enterprises is subject to the treatment ordinarily applied to that class of income, e.g., dividends derived would be subject to Article 10.

(3) Profits obtained from leasing a ship or aircraft on charter fully equipped, manned and supplied, whether or not the enterprise providing the ship 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 State 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. 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 is 30 percent from 1 April 1982. The Korean tax is reduced from a 25 percent domestic rate to 15 percent. In the case of New Zealand the limitation is to be achieved by withholding tax of 15 percent being deducted by companies paying the dividend to residents of Korea.

(3) Paragraph 3 defines "dividends" for the purposes of the Article. The effect is that "dividends" has the meaning given to it by section 4 of the Income Tax Act 1976.

(4) Paragraph 4 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 establishment owned in that State 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 purpose 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.

Up to 1 April 1982 these qualifications had no effect on the New Zealand tax position because our domestic law provided for a 15 percent final withholding tax in all cases on the gross payment and no convention 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.

(5) Paragraph 5: The main effect of this paragraph is that it restricts the application of taxes on undistributed profits. For example, New Zealand cannot impose excess retention tax on a privately controlled company which is a "resident of Korea".

Article 11 – Interest

(1) Paragraph 1 affirms the taxing right of the State of 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 10 percent of the gross amount of the interest. New Zealand's tax is therefore limited to 10 percent on gross interest paid to residents of Korea instead of the usual 15 percent.

(3) Paragraph 3 exempts from tax interest if it is paid:

(a) **to** the Government or a local authority or the central bank of a Contracting State, or

(b) **to** the Export Import Bank of Korea or any institution agreed to be of a similar nature to the Export Import Bank of Korea.

In New Zealand the "central bank" is the Reserve Bank of New Zealand.

(4) Paragraph 4 defines "interest" for the purposes of the Article. Income which would, because of a State's domestic law, be classified as a dividend is excluded from the term. Therefore, in New Zealand, for example, interest received by debenture holders under debentures to which section 192 or 195 of the Income Tax Act 1976 applies would be dealt with under the dividends Article.

(5) Paragraph 5 provides that in the State of source interest is taxable as part of the profits of the permanent establishment owned in that State by a resident of the other State, **provided** the interest is paid in respect of debt-claims forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In effect this paragraph relieves the State of source of the interest from any limitation under the Article.

The rules set out above also apply where the recipient of the interest has in the other State, for the purpose of performing any of the kinds of independent personal 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.

(6) Paragraph 6 is a source rule and precludes argument as to the source of the interest.

The paragraph deals with interest arising through a permanent establishment or fixed base. Where a loan was 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 base.

(7) Paragraph 7 is an anti-avoidance provision to ensure that only a reasonable interest payment is taxed at the reduced rate specified in the Convention.

Article 12 – Royalties

(1) Paragraph 1 affirms the taxing right of the State of 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 10 percent of the gross amount of the royalties. New Zealand's tax is therefore limited to 10 percent on gross royalties paid to residents of Korea instead of the usual 15 percent. The limitation is to be achieved by the payer deducting withholding tax of 10 percent at the time of payment of the royalties. In the case of royalties which are subject to annual assessment the tax assessed is not to exceed 10 percent of the gross payment.

(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 defined term as they are governed by Article 6. Although all royalties and know-how payments are covered, the following should be noted:

- If a payment is made in the form of rent rather than on a royalty basis and the payment comes within the term "royalties" then the 10 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 10 percent of the gross rental, a rebate will be given by virtue of the Convention to bring the tax down to 10 percent of gross.

- Payments for the use of industrial, commercial or scientific **equipment** are royalties as defined. However, due to paragraph 5 of the Protocol such payments are treated as royalties only if they are "dependent upon production sales, performance results or any other similar basis related to the utilisation of that equipment". Where this is not the case the payment is deemed to be profits of an enterprise to which the provisions of Article 7 apply.

(4) Paragraph 4 provides that in the State of source royalties are taxable as part of the profits of the permanent establishment owned in that State by the recipient which is a resident of the other State, **provided** the 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 10 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 right or property in respect of which the royalties are paid is effectively connected.

The comments to paragraph 4 of the Dividends Article apply equally here except that New Zealand's 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 to paragraphs 6 and 7 respectively of the Interest Article apply equally here.

Article 13 – Alienation of Property

(1) Paragraph 1 concerns income or gains derived from the alienation of **immovable** property. Income from such alienation may be taxed in the State where the property is situated. For example, if a resident of Korea sells at a profit immovable property situated in New Zealand the profit can be taxed in New Zealand if the New Zealand domestic law imposes tax thereon.

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

(3) Paragraph 3 provides that income or gains from the alienation of ships or aircraft operated in international traffic are taxable only in the State of residence of the enterprise.

(4) Paragraph 4 stipulates that any income or gains from any property not covered by the Articles is to be taxable only in the State of which the alienator is a resident. However, in paragraph 6 of the Protocol Korea retains the possibility of applying the provisions of its laws relating to the taxation of gains from the alienation of shares, rights or corporate interests in a company the assets of which consist mainly of immovable property situated in Korea.

Article 14 – Independent Personal Services

(1) This Article concerns income from professional personal services (i.e., independent personal services) as distinct from income from dependent personal services (e.g., remuneration such as salary or wages) which is dealt with separately under Article 15. Income from independent personal 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 regularly available to the taxpayer 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.

(2) The Article does not apply to artistes or athletes which are dealt with under Article 17.

Article 15 – Dependent Personal Services

(1) Paragraph 1 states the general rule that personal services performed by a resident of one of the Contracting States may be taxed in that other Contracting State, but only if the services are performed in that other Contracting State.

(2) Paragraph 2 states the case where exemption will be given by the State visited. The main requirements are that:

- the visit (or visits) does not exceed 183 days in the aggregate in the income year; and
- the remuneration is paid by an employer not resident in that State; and
- the remuneration is not connected with the activities of a permanent establishment or fixed base which the employer has in that State.

Initially New Zealand PAYE tax will be required to be deducted from the remuneration paid but will be refunded at the time of departure provided the requirements of the Article are fully met.

(3) Paragraph 3 provides that remuneration derived from employment aboard a ship or aircraft operating in international traffic shall be taxed only in the State of residence of the employee. This means that if the employee is a resident of Korea then Korea has the sole right to tax the remuneration derived by the employee and the remuneration is exempt from New Zealand tax.

(4) For the purposes of paragraphs 2 and 3, a certificate must be obtained by the person seeking exemption, from the Korean tax authorities, which certifies that that person is a resident of Korea for the purposes of Korean tax.

Article 16 – 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 tax such income. The income may also be taxed in the recipient's country of residence which would therefore have to allow credit for tax paid in the country of source.

Article 17 – Artistes 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 or paid in full to the entertainer or athlete himself but to an enterprise providing the services of the entertainer or athlete. The paragraph permits 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 the rights to the income thus diverted or has obtained or will obtain some benefit directly or indirectly from that income. Without this paragraph the State where the services are being performed would, in such cases, be unable to tax:

(a) because it would not be personal service 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 enterprise.

(3) The effect of paragraph 3 is that the State in which the activities are performed will not tax the income derived there provided:

- the visit to that State is substantially supported by the public funds of the other State, or
- the income from the visit is derived by a non-profit making organisation whose income is neither payable to, nor is otherwise available for, the personal benefit of its proprietors, members or shareholders.

The term "substantially supported" is not defined, therefore to qualify under this provision each case is determined on the facts available. For practical purposes, in respect of visits to New Zealand it is necessary for the Korean entertainers or athletes to produce written evidence certifying that they qualify under the provisions of paragraph 3 of Article 17.

In practice a certificate is also required from the Korean tax authorities to verify a qualifying non-profit making organisation.

Article 18 – Pensions and Annuities

(1) Paragraph 1 gives the State of resident exclusive right to tax pensions where they are paid in consideration of past employment. Therefore, a pension received by a resident of New Zealand from a Korean employer in respect of past employment is subject to tax in New Zealand and exempt in Korea.

However, this rule is subject to Article 19(2), wherein Government pensions paid in respect of services rendered and social security pensions need to be paid to an individual who is both a resident **and** a national of the other State, for the exclusive rights of the State of residence to apply. (See definition of "national" in Article 3.) This means that a pension paid by the Korean Government to a resident of New Zealand may also be taxed in Korea if the individual is not also a national of New Zealand. In this case the pension would be taxed in New Zealand as the country of residence and credit would be allowed for Korean tax paid.

(2) Paragraph 2 defines the term "annuities".

Article 19 – Government Services

This Article deals with remuneration paid to an individual in respect of services rendered to a State or political sub-division or local authority thereof.

(1) Paragraph 1 provides for two situations:

- Remuneration paid by a State in respect of services rendered to it by an individual shall be taxable only by that State, 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 Korean Government for services rendered in New Zealand by an individual who is a resident and a national of New Zealand shall be taxed exclusively in New Zealand. This is still the position even though the individual, although a national of New Zealand, did become a resident of New Zealand for the purposes of rendering those services for the Korean Government.

(2) Paragraph 2 deals with Government Pensions (see explanation to Article 18 in this supplement).

(3) Paragraphs 1 and 2 do not apply if the services are performed in connection with a business carried on by the State, or one of its political subdivisions or local authorities, paying the remuneration.

Under paragraph 3 the ordinary rules apply, i.e., Article 15 for wages and salaries, Article 16 for directors' fees and Article 18 for pensions. Article 17 is not mentioned because paragraphs 1 and 2 of Article 19 are to apply to remuneration paid to artistes employed by the State irrespective of whether such artistes could be said to be rendering services in connection with business carried on by the State.

(4) Paragraph 4 extends the provisions of paragraphs 1 and 2 to remuneration or pensions paid by the Bank of Korea, the Export Import Bank of Korea and the Korea Trade Promotion Corporation and also any other institute of either State performing functions of a governmental nature as agreed by the competent authorities.

Article 20 – Students and Apprentices

(1) Paragraph 1 exempts from New Zealand tax maintenance, education or training payments received here from overseas by a student or business or technical apprentice from Korea. Note:

- The student or apprentice must have been a resident of Korea immediately before he comes to New Zealand.
- He must be in New Zealand solely for the purpose of his 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 exemption is restricted to the payments mentioned, i.e., for maintenance.

The converse applies to a New Zealand student or apprentice going to Korea.

(2) Paragraph 2 applies to a visitor to New Zealand from Korea solely for the purpose of study, research or training. The paragraph exempts from New Zealand tax payments made to the Korean visitor by way of a grant, allowance or award from an arrangement for assistance programme entered into by the Government of New Zealand as well as payments from overseas for the purposes of his maintenance, education or training. Note the conditions set out in paragraph (1) above also apply.

Article 21 – Professors and Teachers

(1) Under paragraph 1 a Korean professor or teacher is exempt from New Zealand tax on his income from carrying out teaching or research in New Zealand for a period not exceeding two years irrespective of whether he will be taxed in Korea on that income. The exemption will apply provided:

- he is or was a resident of Korea immediately before visiting New Zealand;
- the visit does not exceed two years;
- the visit is solely for the purpose of teaching or research at a recognised educational institution at the invitation of the said institution.

The same rules apply conversely to a resident of New Zealand visiting Korea for the same purpose.

(2) Paragraph 2 sets out the condition that for paragraph 1 to apply the research must not be undertaken for the private benefit of a specified person or persons.

Article 22 – Other Income

This Article provides a general rule relating to income not dealt with in the other Articles of the convention. The income concerned is not only income of a class not expressly dealt with but also income from sources not expressly mentioned. 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 Korea 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 are allocated to the country "of" which he is a resident.

The effect of the Article is that income derived by a resident of New Zealand is taxed exclusively in New Zealand unless the income is derived from sources in Korea. If the income is derived from sources in Korea it may also be taxed there and a credit for the Korean tax is given in New Zealand, should that income be liable for New Zealand tax. The converse will apply in the case of a resident of Korea. Cases of conflict between two residences are to be determined by reference to Article 4.

Article 23 – Relief from Double Taxation

This Article contains the normal rules whereby each State allows 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.

(1) Paragraph 1 sets out the credit provisions in the case of Korea where credit will be allowed for New Zealand tax on income from sources in New Zealand up to the amount of the Korean tax on that income.

(2) Paragraph 2(a) sets out the credit provisions in the case of New Zealand. Paragraph 2(b) ensures that in the event of any change in the New Zealand legislation dividends derived by a New Zealand company from.a Korean company would continue to be exempt from New Zealand tax.

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

(4) Paragraph 4 provides for "tax sparing" relief (notional credit) to be allowed to New Zealand residents who receive dividends, interest or royalties when Korea forgives some or all of its tax under Korean laws relating to incentives for the promotion of economic development in Korea. A certificate must be obgained by the New Zealand tax-payer from the Korean tax authorities stipulating the specific incentive provisions in Korea under which the incentive is given.

    The amount of notional credit allowable is limited to the amount of Korean tax which would have been payable under Korean tax laws and cannot exceed the amount of New Zealand tax levied on the income.

Article 24 – Mutual Agreement Procedure
Article 25 – Exchange of Information

These Articles are to be implemented solely through Head Office.

Article 26 – Diplomatic and Consular Officers

The aim of this Article is to ensure that diplomatic agents or consular officers shall, under the Convention, receive no less favourable treatment than that to which they are entitled under international law or under special international agreements.

Article 27 – Territorial Extension

This is a standard Article and requires no additional comment.

Article 28 – Entry Into Force

This Article provides that the Convention will generally take effect in New Zealand in respect of income assessable for any income year beginning on or after 1 April 1981 and in Korea for any taxation year beginning on or after 1 January 1981.

Article 29 – 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, which forms an integral part of the Convention, contains additional provisions in relation to certain Articles of the Convention.

(1) Paragraph 1 provides in respect of Article 2:

  (a) the Convention covers the defence tax imposed by Korea:

  (b) with regard to New Zealand the Convention does not cover the bonus issue tax.

(2) Paragraph 2 provides that income from the business of any form of insurance is not subject to the provisions of Article 7. Such income may be taxed in accordance with the domestic law of each country.

(3) Paragraph 3 provides that for the purposes of Article 8 international shipping and aircraft profits includes profits from the operation of vessels engaged in fishing, dredging or hauling activities on the high seas.

(4) Paragraph 4 provides for a review of Article 10 to amend the maximum rate of tax at source on dividends should New Zealand agree to a lower rate in a subsequent convention with any other country.

(5) Under paragraph 5 payments for the use of industrial, commercial or scientific equipment are treated as royalties only if they are "dependent upon production, sales, performance, results or any other similar basis related to the utilisation of that equipment". Where this is not the case, the payment is deemed to be profits of an enterprise to which the provisions of Article 7 apply.

(6) Paragraph 6 allows Korea to retain the possibility of applying the provisions of its laws relating to the taxation of gains from the alienation of shares, rights or corporate interests in a company the assets of which consist mainly of immovable property situated in Korea.

(7) Paragraph 7 refers to the possible inclusion in the Convention of a non-discrimination article should New Zealand include such an article in a convention with any other country.

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