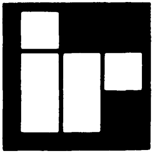

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DOUBLE TAXATION CONVENTION WITH THE UNITED KINGDOM – 1983

PART I – INTRODUCTION AND GENERAL SUMMARY

The double taxation convention signed in London on 4 August 1983 between the United Kingdom and New Zealand replaces the Agreement signed in Wellington on 13 June 1966 and subsequent amendment signed in London on 25 March 1980. The text of the convention has been published as a schedule to an Order in Council (S.R. 1984/24) which is available from Government Bookshops.

The new convention includes items not covered in the 1966 Agreement, for example, provisions dealing with Exploration and Exploitation Activities and also Interest.

The convention came into force on 16 March 1984 with effect in New Zealand for any income year beginning on or after 1 April 1984.

In the United Kingdom it takes effect:

(a) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1984;

(b) in respect of corporation tax, for any financial year beginning on or after 1 April 1984;

(c) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January 1984.

There is no need for transitional provisions in this convention as the 1966 Agreement ceases to apply when the provisions of the 1983 convention take effect.

Index	Article
Air Transport	9
Alienation of Property	14
Annuities	19
Associated Enterprises	10
Artistes	18
Athletes	18
Business Profits	8
Charter Fees	9
Containers	9
Credit Provisions	22
Definitions	3
Dependent Personal Services	16
Diplomatic Agents and Consular Officials	26
Directors' Fees	17
Dividends	11
Elimination of Double Taxation	22
Entertainers	18
Entry into Force	27
Excess Retention Tax	2
Exchange of Information	25
Exploration and Exploitation Activities	6
Fixed Base	15
Government Service	20
Immovable Property	7
Independent Personal Services	15
Insurance – Income from	8
Interest	12
Mutual Agreement Procedure	24
Non-Discrimination	23
Pensions and Annuities	19
Permanent Establishment	5

Index	Article
Personal Services	
• Artistes and Athletes	18
• Dependent	16
• Diplomatic Agents and Consular Officials	26
• Directors' Fees	17
• Exploration and Exploitation Activities	6
• Government Service	20
• Independent	15
Professional Personal Services	15
Residence	4
Royalties	13
Shipping and Air Transport	8
Specified Activities	6
Students	21
Taxes Covered	2
Termination	28

PART II – NOTES ON THE CONVENTION ARTICLE BY ARTICLE

Article 1 – Personal Scope

The convention applies to persons who are **residents** of New Zealand or of the United Kingdom or of both States.

Article 2 – Taxes Covered

The convention covers the following taxes imposed by the United Kingdom:

(a) income tax;

(b) corporation tax;

(c) capital gains tax, and

(d) petroleum revenue tax.

In New Zealand the convention covers income tax and excess retention tax.

Article 3 – General Definitions

(1) Paragraph 1 groups together various general provisions required for the interpretation of terms used in the convention.

(2) Paragraph 2 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 – Residence

(1) Paragraph 1 defines the meaning of the term "resident of a Contracting State". 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.

(3) Paragraph 3 provides that where a company or other legal person is resident in both countries, residence will be where the place of effective management of the enterprise is situated. In this context, New Zealand views the term "effective management" as meaning the practical day to day management, irrespective of where the overriding control is exercised.

In applying the tests to dual residents, as set out in paragraphs 2 and 3, it should be remembered that these tests apply only for the purposes of the convention. If the person **resident in New Zealand** (domestic law test) becomes for the purposes of the convention a "resident of the United Kingdom" after the tests have been applied, this does not mean that he is regarded as 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 regarded as being resident in New Zealand under the Income Tax Act. However, it does mean that he is entitled to any benefits granted by the convention as a "resident of the United Kingdom". For example, although New Zealand royalty income derived by him is not subject to non-resident withholding tax, he is liable for New Zealand income tax on the royalty income but qualifies for the 10 percent limitation in the convention.

Article 5 – Permanent Establishment

The Article defines the term "perament 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, however the following points should be noted:

Paragraph 2(f) An installation or structure for the exploration or exploitation of natural resources constitutes a permanent establishment.

Paragraph 3 A building site or construction or installation project or any supervisory activity connected to such a project constitutes a permanent establishment if it lasts for more than 12 months.

Article 6 – Exploration and Exploitation Activities

This Article covers activities of enterprises and individuals engaged in the offshore area particularly in relation to exploration and exploitation of natural resources.

(1) Paragraph 1 sets out the application of the Article and defines the term "specified activities" as meaning activities carried on in connection with the exploration and exploitation of the sea-bed and subsoil and their natural resources.

(2) Paragraph 2 attributes a permanent establishment to an enterprise of a State which is carrying on specified activities in the other State. For example, if a United Kingdom company is carrying on specified activities in New Zealand it is deemed to be carrying on business in New Zealand through a permanent establishment. New Zealand consequently has the right to tax the income, in terms of Article 8. This is the case regardless of the length of time spent in New Zealand.

(3) Paragraph 3 covers specified activities performed by an individual who provides services of a professional or independent nature. It attributes a fixed base to an individual who is a resident of one State and performs the specified activities in the other State. For example, a resident of the United Kingdom engaged in specified activities in New Zealand is deemed to be performing the activities from a fixed base in New Zealand. Therefore, in terms of Article 15, New Zealand has the right to tax the income. Again this is the case regardless of the length of time spent in New Zealand.

(4) Paragraph 4 covers remuneration derived by a resident of one State employed in the other State in connection with specified activities. The State where the activities are performed has the right to tax the remuneration.

Article 7 – Income from Immovable Property

This Article recognises the internationally accepted practice in relation to income from land or landed property. The Article also applies to such items as rents, natural resource royalties, farming and forestry profits, etc. The principle of the Article is that income derived by a resident of one State from immovable property situated in the other State may be taxed in the State where the immovable property is situated. "Immovable property" is not defined in our general law but the Article provides extensive definition. Ships and aircraft are excluded from the term "immovable property".

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

Article 8 – 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 8 a Contracting State cannot tax the business 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 5. 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 5 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 specifically covered in other Articles of the Convention and, in addition, to interest and royalties which specifically come within the circumstances detailed in paragraph 6 of Article 12, and paragraph 4 of Articles 13, and consequently fall within Article 8.

(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 business 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 paragraphs 1 and 3 of Article 11 and by paragraph 2 of Articles 12 and 13, 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 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 by the permanent establishment for the enterprise.

(5) Paragraph 5: refer to initial comments above on this Article.

(6) Paragraph 6 provides that 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 9 – 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).

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 11.

(2) Paragraph 2 extends the provisions of paragraph 1 to profits derived by an enterprise as a member of a pooling agreement or similar kind of arrangement with other enterprises.

(3) Paragraph 3 specifically brings within the scope of this Article profits arising from the rental of ships or aircraft or from the use, maintenance, or rental of containers and ancillary equipment provided:

(a) the ships, aircraft or containers are used in international traffic, and

(b) the enterprise receiving the profits is in the business of operating ships and aircraft in international traffic, and

(c) the rental income is incidental to the profits derived from those activities.

It follows that bare boat charter fees will be taxed only in the State of residence of the lessor provided the conditions set out in subparas (a) to (c) above are met.

In the case of container leasing where the conditions in subparas (a) to (c) are not met, the lease payments would come within the scope of Article 13 Royalties, i.e., payments for the use of commercial or scientific equipment.

This provision confirms our policy in relation to profits from leasing ships or aircraft on charter fully equipped, manned and used in international traffic. Such profits continue to be treated as coming within the scope of paragraph 1 of the Article.

Article 10 – Associated Enterprises

This Article enables arm's-length profit to be attributed to associated enterprises in accordance with the taxation laws of the State applying the convention.

Article 11 – Dividends

This Article is essentially unchanged from the Dividends Article contained in the 1966 Agreement as amended by the Protocol signed on 25 March 1980.

(1) Paragraph 1 deals with dividends paid by a United Kingdom company to a resident of New Zealand. The paragraph gives New Zealand the right to tax such dividends in which case a credit would be allowed for any United Kingdom tax paid. The paragraph allows the United Kingdom to tax the dividends also but the United Kingdom tax is limited to a maximum of 15 percent of the gross amount, i.e., the aggregate of the actual dividend and the tax credit.

(2) Paragraph 2 deals with the tax credit which is available to **individuals** who are residents of New Zealand deriving dividends from the United Kingdom under the "imputation" system of company/shareholder taxation. The paragraph allows residents of New Zealand to obtain the benefit of the tax credit on the same basis as United Kingdom residents. The "tax credit" reflects the amount of advance corporation tax (A.C.T.) which has been paid to Inland Revenue by the company at the time of paying the dividends. It is shown on the dividend warrant alongside the amount of dividend actually received.

In the United Kingdom the dividend is assessed together with the tax credit on a gross basis and the aggregate amount is subject to tax of up to 15 percent in line with paragraph 1 of the Article.

In the case of a New Zealand resident recipient, where the amount of the tax credit exceeds the United Kingdom tax liability the New Zealand resident may claim a refund of the excess amount from the United Kingdom Inland Revenue. The individual may obtain the refund by completing the form N.Z.2/Individual/Credit which is available at any office of this Department.

Example – United Kingdom Assessment of Dividend paid to New Zealand Resident

Dividend	700
Tax Credit 3/7th	300
Assessable to United Kingdom	1,000
United Kingdom tax limited to 15 percent	150
Tax Credit	300
Refund on application to United Kingdom	150

New Zealand individual shareholders entitled to the tax credit are liable to United Kingdom tax in accordance with the above example. For New Zealand tax purposes, the tax credit is included with the dividend as assessable income and a credit (15 percent maximum) is allowed for the United Kingdom tax paid.

(3) Paragraph 3 deals with dividends paid by a New Zealand company to a resident of the United Kingdom. The paragraph gives the United Kingdom the right to tax dividends received by its residents. It also allows New Zealand to tax the dividends but the New Zealand tax is limited to 15 percent of the gross amount even though the rate under our domestic law is 30 percent. The limitation is achieved by withholding tax of 15 percent being deducted by the company paying the dividends to residents of the United Kingdom.

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

(5) The main effect of paragraph 5 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 the United Kingdom".

Article 12 – 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 10 percent of the gross amount of the interest. New Zealand's tax is therefore limited to 10 percent of gross interest paid to residents of the United Kingdom instead of the usual 15 percent.

In the case of interest derived from the United Kingdom by residents of New Zealand, taxpayers may apply to the United Kingdom for relief from income tax in excess of 10 percent. The claim for relief should be made as appropriate on the N.Z.2/Individual form or N.Z.2/Company form which are available at all Inland Revenue offices.

(3) Paragraph 3 exempts interest arising in New Zealand where the interest is derived by the Government of the United Kingdom.

(4) Paragraph 4 exempts interest arising in New Zealand where the interest is derived by a resident of the United Kingdom and the loan has been made, guaranteed or insured by the United Kingdom Export Credits Guarantee Department.

The exemption provided applies in similar circumstances to interest arising in the United Kingdom and derived by the New Zealand Goverment or residents of New Zealand where the loan has been made, guaranteed or insured by the New Zealand Export Guarantee Office.

(5) Paragraph 5 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.

(6) Paragraph 6 provides that in the State of source interest is taxable as part of the profits of the permanent establishment there owned 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 attributable to 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 15, a fixed base to which the debt-claim in respect of which the interest is paid is attributable.

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. (Section 310 of the Income Tax Act 1976.)

(7) Paragraph 7 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 is contracted for the requirements of that establishment and the interest is borne by that establishment, 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.

(8) Paragraph 8 is an anti-avoidance provision to ensure that only a reasonable interest payment (e.g., arm's-length) is taxed at the reduced rate specified in the convention.

Article 13 – 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 royalties arise, 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 the United Kingdom instead of the usual 15 percent withheld. In New Zealand the limitation will be achieved by the payer of the royalties deducting withholding tax of 10 percent at the time of payment. In the case of royalties which are subject to annual assessment the tax will be limited to 10 percent of the gross payment.

In the case of royalties derived from the United Kingdom by residents of New Zealand, taxpayers may apply to the United Kingdom for relief from United Kingdom income tax in excess of 10 percent. The claim for relief should be made as appropriate on the N.Z.2/Individual form or N.Z.2/Company form which are available at all Inland Revenue offices. The form incorporates a claim that future royalties be paid with a maximum 10 percent tax deduction and, where possible, the United Kingdom Inland Revenue will arrange this.

(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 7.

It should be noted that if a payment is made in the form of rent rather than on a royalty basis and the payment comes within the term "royalties", as defined in the Convention, then the 10 percent maximum 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.

(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 royalties are attributable to 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 independent personal services, a fixed base to which royalties are attributable.

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, while a minimum final tax applies in all other cases.

(5) Paragraphs 5 and 6 – the comments to paragraphs 7 and 8 of the Interest Article apply equally here.

Article 14 – 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 the United Kingdom sells at a profit immovable property situated in New Zealand the profit can be taxed in New Zealand if the New Zealand domestic law permits that taxation.

(2) Paragraph 2 deals with income or gains from the alienation of **personal** property forming part of the business property of a permanent establishment or pertaining to a fixed base used for performing independent personal services. Such income or gains 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 solely in the State of residence of the enterprise.

(4) Paragraph 4 stipulates that any income or gains from any property not covered by the Article is to be taxable solely in the State of which the alienator is a resident.

Article 15 – Independent Personal Services

(1) This Article concerns income from 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 16. Income from independent personal services is taxable only in the State of residence **unless** the services are performed in the other State and the recipient of the income:

- is present in the other State for a period or periods aggregating more than 183 days in any consecutive twelve month period; or
- has a fixed base regularly available to him in the other State for the purpose of performing his activities.

If either of the above exceptions applies the State in which the services are performed also has the right to tax the income therefrom.

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, who are dealt with under Article 18.

Article 16 – 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, 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 recipient of the income is present in the State visited for a period or periods which do not exceed **in the aggregate** 183 days in any consecutive twelve month period; 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.

When a visitor from the United Kingdom undertakes employment in New Zealand, 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. In this respect a certificate must be obtained, by the person seeking exemption, from the United Kingdom authorities which certifies that that person is resident in the United Kingdom for the purposes of United Kingdom 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 the United Kingdom then the United Kingdom has the right to tax the remuneration derived by the employee.

Article 17 – Directors' Fees

This Article allows the State of residence of the company paying the fees or other similar payments 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 18 – 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 or 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 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 other person.

The onus is on the entertainers or athletes to prove that they are not associated with the enterprise deriving the profits.

Article 19 – Pensions and Annuities

This Article provides that pensions and purchased annuities are taxable solely in the State of residence of the recipient. For example, a pension derived from the United Kingdom by a resident of New Zealand is exempt from United Kingdom tax. Where the pension has been taxed at source in the United Kingdom, residents of New Zealand may claim relief from United Kingdom income tax. The claim for relief should be made on the N.Z.2/Individual form available at all Inland Revenue offices.

A pension derived from New Zealand by a resident of the United Kingdom is exempt from New Zealand tax.

Article 20 – Government Service

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:

(a) Remuneration paid by a State in respect of services rendered to it by an individual is taxable solely by that State, i.e., the country of origin of the payment.

(b) However, such remuneration is taxable solely in the State where the services are performed provided those services are performed:

(i) by an individual who is a citizen of that State; or

(ii) by an individual who is a resident of that State and did not become a resident of that State solely for the purpose of performing those services.

For example, if a United Kingdom Government employee is resident in New Zealand, under our domestic law, he is exempt from New Zealand tax on his government salary if he is resident here "solely for the purpose of rendering the services". However, a locally recruited employee of the United Kingdom Government working in New Zealand is not exempt here irrespective of his citizenship if he is resident in New Zealand for a reason other than working for the United Kingdom Government.

(2) This Article does not apply to:

- pensions.
- income other than government remuneration. The employee's liability to tax on other income is determined by our domestic law, as modified by other Articles of the convention.
- remuneration derived from services performed in connection with a business carried on by a State, or one of its political subdivisions or local authorities.

Article 21 – Students

This Article exempts from New Zealand tax maintenance, education or training payments received here from overseas by a student or business apprentice from the United Kingdom. Note:

- The student must have been a resident of the United Kingdom immediately before he comes to New Zealand.
- He must be in New Zealand 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 business apprentice going to the United Kingdom.

Article 22 – Elimination of Double Taxation

This Article contains the rules whereby each State gives credit for the other State's tax when assessing its residents on income derived from sources in the other State.

(1) Paragraph 1(b) allows a United Kingdom company deriving dividends from New Zealand to, in certain circumstances, claim credit in the United Kingdom for the tax paid in New Zealand by the New Zealand company on the profits out of which the dividends are paid. This is in addition to claiming credit for the 15 percent tax on dividends as per Article 11.

(2) Paragraph 2 contains the rules whereby a resident of New Zealand is allowed a credit for tax paid in the United Kingdom.

(3) Paragraph 3 is a source rule **for the purposes of the Article** in order to solve any dual source cases which may arise thus facilitating the allowance of a credit.

(4) Paragraph 4 covers the allowance of credit when Article 10 has been applied to reallocate profits between associated enterprises. For example, although the profits of a New Zealand subsidiary are reallocated by the Department, the inflated profit is still derived by the United Kingdom parent for United Kingdom tax purposes and the parent will be taxed in the United Kingdom on that profit. This paragraph ensures that the tax paid by the New Zealand subsidiary on the reallocated profit will be allowed as a credit in the United Kingdom.

(5) Paragraph 5 is designed to limit the opportunity for residents of either State to obtain credit for tax under this Article by way of artificial arrangements.

Article 23 – Non-Discrimination

The purpose of this Article is to prevent discrimination on the grounds of nationality.

(1) Paragraph 1 establishes the principle that for taxation purposes discrimination on the grounds of nationality is forbidden. The paragraph prevents a State from imposing any more burdensome taxation or connected requirement on nationals of the other State than it imposes on its own nationals **in the same circumstances.**

(2) Paragraph 2 requires non-residents trading through a permanent establishment to be taxed no less favourably than a resident who carries on the same activities. However, the proviso preserves New Zealand's right to impose the higher non-resident company tax rate on the profits of a permanent establishment in New Zealand.

(3) Paragraph 3 prevents discrimination against enterprises which are wholly or partly owned by residents of the other State, e.g., a New Zealand subsidiary of a United Kingdom company. This has no practical effect in New Zealand – we do not discriminate against such enterprises.

(4) Paragraph 4 is designed to end a particular form of discrimination resulting from the fact that in certain countries the deduction of interest, royalties and other disbursements, allowed without restriction when the recipient is resident, is restricted or even prohibited when he is a non-resident. New Zealand does not discriminate between residents and non-residents in this area.

(5) Paragraph 5 ensures that New Zealand may continue to:

(a) grant to New Zealand residents rebates and special exemptions which do not extend to non-residents;

(b) impose non-resident withholding tax on dividends paid by a New Zealand company to a United Kingdom company.

(6) Paragraph 6 restricts the scope of the Article to those taxes covered by the convention (see Article 2).

Article 24 – Mutual Agreement Procedure

Article 25 – Exchange of Information

These are standard Articles and require no additional comment.

Article 26 – Diplomatic Agents and Consular Officials

The aim of this Article is to ensure that diplomatic agents or consular officials 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 – Entry into Force

Paragraph 1 of this Article was amended by an exchange of letters the texts of which are inserted on page 17 of the Schedule to the Order in Council. The purpose of the amendment was to ensure that the provisions of the convention would have effect as from the respective dates specified.

The convention came into force on 16 March 1984 with effect in New Zealand for any income year beginning on or after 1 April 1984.

In the United Kingdom it takes effect:

(a) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1984;

(b) in respect of corporation tax, for any financial year beginning on or after 1 April 1984;

(c) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January 1984.

There is no need for transitional provisions in this convention as the 1966 Agreement, as modified by the Protocol made in 1980, ceases to apply when the provisions of the 1983 Convention take effect.

Article 28 – 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.