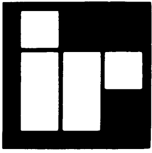


# Public Information Bulletin

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## DOUBLE TAXATION CONVENTION WITH NORWAY

## PART I – INTRODUCTION

The text of the convention has been published as a schedule to an Order-in-Council (S.R. 1983/46) which was recently distributed to district offices. It is available to the public from Government Bookshops.

The convention entered into force on 31 March 1983 with effect in New Zealand from any income year beginning on or after 1 April 1982. In Norway it takes effect from the income year beginning on 1 January 1982.


| Index | Article |
|---|---|
| Air Transport | 8 |
| Alienation of Property | 13 |
| Annuities | 18 |
| Artistes and Athletes | 17 |
| Associated Enterprises | 9 |
| Athletes | 17 |
| Bonus Issue Tax | 2 |
| Business Profits | 7 |
| Capital | 23 |
| Charter Fees | 8 |
| Credit Provisions | 24 |
| Definitions | 3 |
| Dependent Personal Services | 15 |
| Diplomatic and Consular Officers | 27 |
| Directors' Fees | 16 |
| Dividends | 10 |
| Entry Into Force | 29 |
| Excess Retention Tax | 2 |
| Exchange of Information | 26 |
| Fixed Base | 14 |
| Government Service | 19 |
| Immovable Property | 6 |
| Independent Personal Services | 14 |
| Insurance – Income from | 7 & 21 |
| Interest | 11 |
| Methods of Elimination of Double Taxation | 24 |
| Mutual Agreement Procedure | 25 |
| Offshore Activities | 22 |
| Other Income | 21 |
| Pensions and Annuities | 18 |
| Permanent Establishment | 5 |
| Personal Scope | 1 |
| Personal Services | |
| • Artistes and Athletes | 17 |
| • Dependent Personal Services | 15 |
| • Diplomatic and Consular Officers | 27 |
| • Directors' Fees | 16 |
| • Government Service | 19 |
| • Independent Personal Services | 14 |
| Professional Personal Services | 14 |
| Protocol | – |
| Relief from Double Taxation | 24 |
| Resident | 4 |
| Royalties | 12 |
| Shipping and Air Transport | 8 |
| Students | 20 |
| Taxes Covered | 2 |
| Termination | 30 |
| Territorial Extension | 28 |
| Third Country Income | 21 |

## 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 Kingdom of Norway:

(1) The national tax on income (inntektsskatt til staten);

(2) The county municipal tax on income (inntektsskatt til fylkeskommunen);

(3) The municipal tax on income (inntektsskatt til kommunen);

(4) The national contributions to the Tax Equalisation Fund (fellesskatt til Skattefordelingsfondet);

(5) The national tax on capital (formuesskatt til staten);

(6) The municipal tax on capital (formuesskatt til kommunen);

(7) The national tax relating to income and capital from the exploration for and the exploitation of submarine petroleum resources and activities and work relating thereto, including pipeline transport of petroleum produced (skatt til staten vedrorende inntekt og formue i forbindelse med undersøkelse etter og utnyttelse av undersjøiske petroleums-forekomster og dertil knyttet virksomhet og arbeid, herunder rørledningstransport av utvunnet petroleum);

(8) The national dues on remuneration to non-resident artistes (avgift til staten av honorarer som tilfaller kunstnere bosatt i utlandet);

(9) The seamen's tax (sjømannsskatt).

With regard to New Zealand the convention covers income tax and excess retention tax but not bonus issue tax which is excluded in paragraph 3.

### Article 3 – General Definition

(1) **"National": Paragraph 1(f)**

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.

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

In Norway the term covers any individual who is a Norwegian citizen.

(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 Norway" 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 Norway". 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 under an annual assessment.

**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 project constitutes a permanent establishment if it lasts for more than 6 months.

Para. 5(a) — An enterprise shall be deemed to have a permanent establishment if it carries on supervisory activities for more than 6 months in connection with a building site or construction or installation project.

Para. 5(b) — An enterprise shall be deemed to have a permanent establishment if it carries on for more than 6 months land based activities which are directly related to the exploration or exploitation of the sea-bed and subsoil and their natural resources. In this context "land based activities" are akin to "offshore activities" covered by Article 22.

**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 7. 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 7 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, paragraph 5 of Article 11 and paragraph 2 of Article 21, and consequently fall within Article 7.

(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 provides that where the profits to be attributed to a permanent establishment are determined, not on the basis of separate accounts or by making an estimate of arm's-length profit, but simply by apportioning the total profits of the enterprise by reference to various formulae then such a method may continue to be employed provided it has been customary to adopt such a practice. Such a method differs from those envisaged in paragraph 2 of Article 7, since it contemplates not an attribution of profits on a separate enterprise footing, but an apportionment of total profits. However, in general the profits to be attributed to a permanent establishment should be determined by reference to the establishment's accounts if these reflect the real facts. A method of allocation which is based on apportioning total profits is generally not as appropriate as a method which has regard only to the activities of the permanent establishment and should be used only where it has as a matter of history been customary in the past and is accepted by the Department and taxpayer as being satisfactory.

(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) Paragraph 6 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.

(7) Paragraph 7: Refer second paragraph above in the explanation to this Article.

(8) In terms of paragraph (a) 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)(g) 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).

(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 Norwegian 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 dividends to residents of Norway.

(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 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 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 Norway".

## 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 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 Norway instead of the usual 15 percent.

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

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

(b) **to** the Government or local authority of the other State or to any agency or instrumentality (including a financial institution) wholly owned by the other State or local authority thereof.

(4) Paragraph 4 defines "interest" for the purposes of the Article. Penalty charges are excluded from the term as is income which would, because of a State's domestic law, be classified as a dividend. 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 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 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 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 10 percent of the gross amount of the royalty. New Zealand's tax is therefore limited to 10 percent on gross royalties paid to residents of Norway instead of the usual 15 percent. The limitation is to be achieved by withholding tax of 10 percent being deducted by the payer 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.

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" 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.

(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 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 Norway 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 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.

(5) Paragraph 5 contains a provision for Norway to tax capital gains derived by a resident of New Zealand from the alienation of shares in a company resident of Norway. This is a measure against tax avoidance inserted at the request of Norway.

## 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. Under paragraph 1 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:

- has a fixed base regularly available to him in the other State for the purpose of performing his activities, or
- is present in the other State for a period or periods in any fiscal year (income year) which together with a period or periods in the preceding or succeeding fiscal year (income year) **exceed** in the aggregate 183 days.

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

Under the paragraph any remuneration which is not taxed in the State in which the recipient is a resident may be taxed in the State where the services are performed.

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, 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 in any fiscal year (income year) which together with a period or periods in the preceding or succeeding fiscal year (income year) do not exceed **in the aggregate** 183 days; 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.

However, any remuneration not taxed in the State where the recipient is a resident may be taxed in the State where the services are performed.

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.

For the purposes of paragraph 1 a certificate must be obtained, by the person seeking exemption, from the Norwegian tax authorities which certifies that that person is a resident of Norway for the purposes of Norwegian 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 resident of Norway then Norway has the right to tax the remuneration derived by the employee. New Zealand would allow credit for any Norwegian tax on such remuneration if derived by a New Zealand resident.

## 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 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 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 therefrom provided the activities are performed within the framework of governmental cultural exchanges between the two States.

**Article 18 – Pensions and Annuities**

(1) Paragraph 1 gives the State of residence exclusive right to tax all pensions and annuities (including Government pensions and payments under a Social Security system). The pensions are exempt in the State of source.

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

(3) Paragraph 3 provides that alimony and maintenance payments are taxable only in the State of source. As such payments are exempt from tax in New Zealand this provision is effective only in Norway.

**Article 19 – 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:

- Remuneration paid by a State in respect of services rendered to it by an individual shall be taxable only in 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 Norwegian Government for services rendered in New Zealand by an individual who is a resident and 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 Norwegian Government.

(2) Paragraph 1 does not apply if the services are performed in connection with business carried on by the State, or one of its political subdivisions or local authorities, paying the remuneration. Under paragraph 2 the ordinary rules apply: Article 15 for wages and salaries and Article 16 for directors' fees. Article 17 is not mentioned because paragraph 1 of Article 19 is 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.

**Article 20 – Students**

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

- The student or apprentice must have been a resident of Norway 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 Norway.

## Article 21 – 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 Norway 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.

(1) The effect of paragraph 1 is that income derived by a resident of New Zealand is taxed exclusively in New Zealand unless the income is derived from sources in Norway. If the income is derived from sources in Norway it may also be taxed there and a credit for the Norwegian 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 Norway. Cases of conflict between two residences are to be determined by reference to Article 4.

(2) Paragraph 2 provides for an exception from the provisions of paragraph 1 where the income is effectively connected with the activity of a permanent establishment or fixed base which a resident of a State has in the other State. The effect is that the right to tax is given to the State in which the permanent establishment or fixed base is situated. However, such income must be taxed having regard to the provisions of Article 7 or Article 14.

(3) In terms of paragraph (a) 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 22 – Offshore Activity

This is a new Article which has not been included in any other double taxation convention concluded by New Zealand. The Article affirms the taxing rights of each State in connection with exploration or exploitation activities carried out offshore. The Article is of particular significance to Norway because of the substantial activities of multinational companies associated with North Sea oil. New Zealand is also concerned in view of the activities of overseas residents associated with oil exploration and gas fields off the New Zealand coast.

(1) Under paragraph 1, a resident of a Contracting State is deemed to be carrying on a business through a permanent establishment or fixed base in the other State if he carries on activities offshore in that other State in connection with exploration and exploitation of the sea-bed and subsoil and their natural resources. The effect of paragraph 1 is that income or profits of a Norwegian enterprise engaged in such activities in New Zealand may be taxed in New Zealand and the Norwegians would have to allow credit for any New Zealand tax paid.

(2) Under paragraph 2 a permanent establishment or fixed base can only exist where the activities are carried on for a period exceeding 30 days in aggregate in **any** 12 months period. For the purposes of this paragraph and of paragraph 3 the period of activities of associated enterprises are to be aggregated provided their activities are of substantially the same character.

(3) Paragraph 3 is concerned with offshore transport activities. A permanent establishment is deemed to exist in respect of activities continued for more than 90 days in the aggregate in **any** 12 months period under the following circumstances:

- transportation of supplies or personnel to a location where activities in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources are being carried on in a Contracting State, or
- operation of tugboats and similar vessels in connection with such activities.

(4) Paragraph 4 deals with income from employment connected with offshore activities. Subparagraph 4(a) provides that salaries, wages and other similar remuneration are taxable **only** in the State where the activities are performed provided the employment offshore is carried on for a period exceeding 30 days in aggregate in **any** 12 month period. However, under subparagraph 4(b) any such employment which is exercised aboard a ship or aircraft or tugboat or similar vessel is taxable solely in accordance with paragraphs 1 and 2 of Article 15. In this respect a point to note is that paragraph 3 of Article 15 does not apply as the transport operation is not in "international traffic".

If after applying paragraph 2 of Article 15 the income derived by a Norwegian resident from employment in offshore transport activities in New Zealand is subject to New Zealand tax the Norwegians would have to allow their resident credit for any New Zealand tax paid.

## Article 23 – Capital

This Article provides that capital represented by certain assets owned by a resident of New Zealand and situated in Norway **may** be taxed in Norway. As there is no capital tax in New Zealand this Article will operate only in Norway so there can be no credit allowed in New Zealand for any capital tax payable in Norway.

The capital which **may be taxed** in Norway under this Article is represented by:

- immovable property, as referred to in Article 6, situated in Norway and owned by a resident of New Zealand,
- personal property forming part of the business property of a permanent establishment which a resident of New Zealand has in Norway and personal property pertaining to a fixed base in Norway available to a resident of New Zealand for performing independent personal services.

Capital represented by ships and aircraft operated in international traffic and by personal property pertaining to the operation of such ships and aircraft shall be **taxable only** in Norway provided the enterprise is resident of Norway. All other elements of capital owned by a resident of New Zealand are not liable to Norwegian tax.

The Article was included to give New Zealand residents the benefit of the convention. This means that the Norwegians are prepared to forgo subjecting New Zealand residents to certain taxes in Norway by virtue of the inclusion of the Article.

## Article 24 – Methods of Elimination of Double Taxation

(1) This Article contains the normal 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. It should be noted that the credit provisions in the Article are subject to the domestic law of each country. Under Norwegian domestic law overseas income is normally exempted from Norwegian tax unless it is exempt in the country of origin. However, it is Norwegian practice to provide for a credit rather than an exemption in certain cases under a tax convention. Therefore, Norway will be allowing a credit in the following cases:

- Dividends subject to 15 percent New Zealand tax in accordance with Article 10.
- Interest subject to 10 percent New Zealand tax in accordance with Article 11.
- Royalties on which New Zealand tax is limited to 10 percent in accordance with Article 12.
- Other income taxable in New Zealand in accordance with Article 21.
- Income from offshore activities subject to New Zealand tax under Article 22.

(2) Paragraph 1(b) is a source rule for the purposes of the Article to facilitate the allowance of a tax credit to New Zealand residents in respect of source taxing rights allocated to Norway under the provisions of the convention.

## Article 25 – Mutual Agreement Procedure
## Article 26 – Exchange of Information

These are standard Articles and require no additional comment.

## Article 27 – 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 28 – Territorial Extension

This is a standard Article and requires no additional comment.

## Article 29 – Entry Into Force

This Article provides that the convention will generally take effect in New Zealand in respect of income assessable for the income year beginning on 1 April 1982 and in Norway in respect of taxes on income or on capital relating to the income year beginning on 1 January 1982 and subsequent years.

## Article 30 – 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 (a) provides that income from the business of any form of insurance is not subject to the provisions of Articles 7 and 21. Such income may be taxed in accordance with the domestic law of each country.

(2) Paragraph (b) provides for a review of the maximum rate of tax at source on dividends, interest and royalties, under Articles 10, 11 and 12 respectively of the convention, should New Zealand agree to a lower rate in a subsequent convention with any other OECD member country.

(3) Paragraph (c) provides Norway with an alternative method of elimination of double taxation under Article 24 should Norway's domestic law be amended in future to allow relief by the credit method in all cases.

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

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